

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0149/2009

20.3.2009

REPORT

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

(COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kathalijne Maria Buitenweg

Rapporteur for opinion(*):

Elizabeth Lynne, Committee on Employment and Social Affairs

(*) Associated committee – Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0426),
 - having regard to Article 13(1), of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0291/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs, and the opinions of the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (A6-0149/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations

Amendment

(2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations

Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, to which [all] Member States are signatories. In particular, the UN Convention on the Rights of Persons with Disabilities includes the denial of reasonable accommodation in its definition of discrimination.

Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, *the UN Convention on the Rights of the Child*, the UN Convention on the Rights of Persons with Disabilities, *Article 14 of and Optional Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms* and the European Social Charter, to which [all] Member States are signatories. In particular, the UN Convention on the Rights of Persons with Disabilities includes the denial of reasonable accommodation in its definition of discrimination.

Amendment 2

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The principle of equality and the prohibition of discrimination are general principles of international, European and national law, that bind the EU and its Member States in all matters within their competence. This Directive contributes to reaching this aim and to overcome discrimination that is not compatible with it.

Amendment 3

Proposal for a directive

Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) This Directive is one means by which the Community is complying with its

obligations under the UN Convention on the Rights of Persons with Disabilities, and should be interpreted in that light.

Amendment 4

Proposal for a directive Recital 2 c (new)

Text proposed by the Commission

Amendment

(2c) In accordance with Article 5 of the Political Declaration agreed at the conclusion of the United Nations World Conference on Ageing in Madrid 2002, it was agreed to reaffirm the commitment to spare no effort in eliminating all forms of discrimination, including age discrimination; to recognise that persons, as they age, should enjoy a life of fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies; to enhance the recognition of the dignity of older persons; and to eliminate all forms of neglect, abuse and violence.

Amendment 5

Proposal for a directive Recital 2 d (new)

Text proposed by the Commission

Amendment

(2d) Physical and mental health and well-being are key to the quality of life of individuals and society and are vital factors for achieving the objectives of the European Union's Lisbon Strategy.

Amendment 6

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

Amendment

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular **by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, including Article 9 on freedom of thought, conscience and religion and Article 10 on freedom of expression, as well as** by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; **Article 20 provides that everyone is equal before the law;** Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; **Article 24 gives specific rights to children;** and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

Amendment 7

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.

Amendment

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of **direct and indirect** discrimination, **multiple discrimination and discrimination by association**, but also **the need to promote** the benefits of diversity.

Amendment 8

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The diversity of European society is a key aspect of the cultural, political and social integration of the Union and must be respected.

Amendment 9

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Discrimination based on religion or belief, disability, age, or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

Amendment 10

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) This Directive also covers multiple discrimination, that is where discrimination occurs on the basis of two or more grounds listed in Articles 12 and 13 of the EC Treaty. Effective legal procedures must be available to deal with such situations, and national legal

procedures should ensure that a complainant can raise all aspects of a multiple discrimination claim in a single procedure.

Amendment 11

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The Community has adopted **three legal instruments** on the basis of Article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These **instruments** have demonstrated the value of legislation in the fight against discrimination. **In particular**, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation **on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.**

Amendment

(8) The Community has adopted **a set of directives** on the basis of Article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These **directives** have demonstrated the value of legislation in the fight against discrimination. **Directive 2000/43/EC establishes a framework against discrimination based on racial or ethnic origin inside and outside the labour market. Directive 2004/113/EC establishes a framework for equal treatment between men and women in the access to and supply of goods and services.** Directive 2000/78/EC establishes **for the grounds of religion or belief, disability, age and sexual orientation** a general framework for equal treatment in employment and occupation. **It does not cover areas outside this scope.**

Amendment 12

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market,

Amendment

(9) Therefore, legislation should prohibit **direct and indirect discrimination, multiple discrimination and discrimination by association** based on **sex, racial or ethnic**

including social protection, education and access to and supply of goods and services, **including** housing. It should provide for measures to ensure the equal access **of persons with disabilities** to the areas covered.

origin, religion or belief, disability, age or sexual orientation **or gender** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, **such as** housing, **transport, associations and health**. It should provide for measures to ensure the equal access to the areas covered **of persons of a particular religion or belief, disability, age or particular sexual orientation, or a combination of these specific characteristics, and of persons associated with them.**

Amendment 13

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In this Directive, goods should be taken to be those within the meaning of the provisions of the EC Treaty relating to the free movement of goods. Services should be taken to be those within the meaning of Article 50 of the EC Treaty.

Amendment 14

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) Persons with disabilities frequently face discrimination in the form of inaccessible public transport and the built environment, as well as inaccessible communications and information. Member States must take measures to ensure accessibility in these areas in order to put into effect the principle of equal treatment.

Amendment 15

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) This Directive ***should be*** without prejudice to the competences of the Member States in the areas of education, social security and health care. It ***should also be*** without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

Amendment

(11) This Directive ***is*** without prejudice to ***the exercise of*** the competences of the Member States in the areas of education ***and social protection, including*** social security and health care. It ***is*** also without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

Amendment 16

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment

(12) Discrimination is understood to include direct and indirect discrimination, ***multiple discrimination***, harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment 17

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, whether environmental or attitudinal, may hinder their full and effective participation in society on an equal basis with others.

Amendment 18

Proposal for a directive
Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Owing to the excessive burden on small and medium-sized enterprises (SMEs), they should be afforded special protection, following the model of the US Civil Rights Act.

Amendment 19

Proposal for a directive
Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) Discrimination is understood to include denial of medical treatment on the grounds of age alone.

Amendment 20

Proposal for a directive
Recital 12 d (new)

Text proposed by the Commission

Amendment

(12d) Discrimination on the grounds of disability includes discrimination on the grounds that a person is accompanied by or assisted by a recognised guide dog or assistance dog which has been trained in accordance with either the International Guide Dog Federation or Assistance Dogs International standards.

Amendment 21

Proposal for a directive
Recital 12 e (new)

Text proposed by the Commission

Amendment

(12e) Effective non-discriminatory access can be provided by a variety of means, including through “design for all” and through facilitating the use of assistive devices by persons with disabilities, including aids to mobility and access, such as recognised guide dogs and other assistance dogs.

Amendment 22

Proposal for a directive
Recital 12 f (new)

Text proposed by the Commission

Amendment

(12f) An alteration is fundamental with regard to Article 4 if it alters the goods or services or the nature of the trade, profession or business to the extent that the provider of the goods or services is effectively providing a completely different kind of goods or services.

Amendment 23

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) In implementing the principle of equal treatment ***irrespective of religion or belief, disability, age or sexual orientation***, the Community should, in accordance with ***Article 3(2)*** of the EC Treaty, aim to eliminate inequalities, and to promote equality ***between men and women, especially since women are often the victims*** of multiple discrimination.

(13) This Directive also takes into account multiple discrimination. As discrimination can occur on two or more of the grounds listed in Articles 12 and 13 of the EC Treaty, in implementing the principle of equal treatment, the Community should, in accordance with Articles 3(2) and 13 of the EC Treaty, aim to eliminate inequalities relating to sex, race or ethnic origin, disability, sexual orientation, religion or

belief, or age or a combination of these, and to promote equality, whatever combination of characteristics relating to the above-mentioned factors a person may have. Effective legal procedures should be available to deal with situations of multiple discrimination. In particular national legal procedures should ensure that a complainant can raise all aspects of a multiple-discrimination claim in a single procedure.

Amendment 24

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Differences in treatment on grounds of age and disability may be permitted if they are objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Such differences of treatment may include, for example, special age conditions regarding access to certain goods or services such as alcoholic drinks, arms, or driving licences. The promotion of the economic, cultural or social integration of young or older persons or persons with disabilities may also be regarded as a legitimate aim. Therefore measures relating to age and disability which set more favourable conditions than are available to others, such as free or reduced tariffs for the use of public transport, museums, or sport facilities, are presumed to be compatible with the principle of non-discrimination.

Amendment 25

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where **the factors** are shown to be **key** factors for the assessment of risk.

Amendment

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where **they** are shown to be **determining** factors for the assessment of risk, **and where the service provider can demonstrate significantly higher risks, by actuarial principles, statistical data or medical data. These data should be accurate, recent and relevant and made available on request. The actuarial and risk factors should reflect the positive changes in life expectancy and active ageing as well as increased mobility and accessibility for people with disabilities.**

Amendment 26

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law, is subject to compliance with the principles of the Treaty and in particular with the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and with the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency. Legal requirements on the co-ordination of procedures for the award

of public works contracts, public supply contracts and public service contracts having been laid down by Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004

on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹, so that the award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law, is subject to compliance with the principles of the EC Treaty and in particular with the principle of equal treatment irrespective of sex, race or ethnic origin, disability, sexual orientation, religion or belief or age and the principle of non-discrimination. However, for public contracts above a certain value, provisions of Community coordination of national procedures for the award of such contracts have been drawn up so as to ensure the opening-up of public procurement to competition. Member States should interpret these coordinating provisions in accordance with the principles of equal treatment irrespective of sex, race or ethnic origin, disability, sexual orientation, religion or belief or age and other rules of the Treaty.

¹ OJ L 134, 30.4.2004, p. 114.

Amendment 27

Proposal for a directive Recital 16

Text proposed by the Commission

(16) All individuals enjoy **the** freedom to contract, including the freedom to choose a contractual partner for a transaction. **This**

Amendment

(16) All individuals enjoy freedom to contract, including the freedom to choose a contractual partner for a transaction. **It is**

Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their professional or commercial activity.

important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context. Transactions between private individuals acting in a private capacity are therefore not covered by this Directive, where they do not constitute a professional or commercial activity by the contractors.

Amendment 28

Proposal for a directive Recital 17

Text proposed by the Commission

(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including *the protection of private and family life and transactions carried out in that context*, the freedom of religion, *and* the freedom of association. This Directive is without prejudice to *national laws on marital or family status, including on reproductive rights*. *It is also without prejudice to* the secular nature of the State, state institutions or bodies, or education.

Amendment

(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the freedom of religion, the freedom of association, *freedom of expression and freedom of the press*. This Directive is without prejudice to the secular nature of the State, state institutions or bodies, or education. *This Directive does not alter the division of competences between the European Union and its Member States, including in the area of marital and family law and health law.*

Amendment 29

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with

Amendment

(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with

special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. Member States may also allow or prohibit the wearing or display of religious symbols at school.

special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief ***provided that these are necessary and proportionate and do not infringe the right to education.*** Member States may also allow or prohibit the wearing or display of religious symbols at school.

Amendment 30

Proposal for a directive Recital 19

Text proposed by the Commission

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. ***Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of a number of factors including the size, resources and nature of the organisation. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.***

Amendment

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations.

Amendment 31

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In no cases are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of whether the measure in question is impracticable and unsafe and could not be made practicable and safe by a reasonable change to rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services. Reasonable accommodation would not necessarily require significant structural changes to buildings whose structure is protected specifically under national law on account of their historical, cultural or architectural value. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities.

(Based on the text at the end of Recital 19 of COM (2008)0426)

Amendment 32

Proposal for a directive
Recital 21

Text proposed by the Commission

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by **a group of** persons of a particular religion or belief, disability, age or sexual orientation. Such measures **may permit** organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by persons of a particular religion or belief, disability, age or sexual orientation, **or having a combination of characteristics relating to these specific factors, and persons associated with them. This prohibition may be accompanied by measures designed to promote equal treatment and equal opportunities which take account of the gender dimension and affirmative actions aimed at meeting the special needs of persons or categories of persons who, because of their characteristics, require structures, services and assistance not required by others.** Such measures **shall be accompanied by the establishment of independent** organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment 33

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf

Amendment

(23) Persons who have been subject to **direct and indirect** discrimination, **multiple discrimination or discrimination by association**, based on religion or belief, disability, age, sexual orientation **or gender** should have adequate means of legal protection. To provide a more effective level of protection, associations,

of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 34

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.

Amendment

(25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation. ***Effective judicial protection of individual rights must be accompanied by active promotion of non-discrimination and equal opportunities.***

Amendment 35

Proposal for a directive

Recital 26

Text proposed by the Commission

(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels.

Amendment

(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels. ***With this in view, the Commission and Member States should take steps to ensure that the provisions laid down in this Directive and those already in force in this sector are brought to the notice of the public and***

stakeholders – through information and press campaigns aimed inter alia at eliminating stereotypes – by appropriate, adequate and accessible means (such as sign language or special websites for the visually impaired).

Amendment 36

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) In interpreting the meaning of the grounds of discrimination, international and European human rights instruments should be taken into account by courts and tribunals, including the recommendations and case-law of their supervisory organs, such as the European Court of Human Rights.

Amendment 37

Proposal for a directive Article 1

Text proposed by the Commission

Amendment

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

*1. This Directive lays down a framework for combating discrimination, **including multiple discrimination**, on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.*

*2. **Multiple discrimination occurs when discrimination is based:***

(a) on any combination of the grounds of religion or belief, disability, age, or sexual orientation, or

(b) on any one or more of the grounds set

out in paragraph 1, and also on the ground of any one or more of

(i) sex (in so far as the matter complained of is within the material scope of Directive 2004/113/EC as well as this Directive),

(ii) racial or ethnic origin (in so far as the matter complained of is within the material scope of Directive 2000/43/EC as well as this Directive), or

iii) nationality (in so far as the matter complained of is within the scope of Article 12 of the EC Treaty).

3. In this Directive, multiple discrimination and multiple grounds shall be construed accordingly.

Amendment 38

Proposal for a directive Article 2 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on **any** of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Amendment

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person, **or persons who are or who are assumed to be associated with such a person**, is treated less favourably than another is, has been or would be treated in a comparable situation, on **one or more** of the grounds referred to in Article 1.

b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation, **or persons who are or who are assumed to be associated with such persons**, at a particular disadvantage compared with other persons, unless that provision, criterion or practise is objectively justified by a legitimate aim and the means of

achieving that aim are appropriate and necessary.

Amendment 39

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Amendment

3. ***Without prejudice to freedom of speech,*** harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. ***In this context, the concept of harassment may be defined in accordance with the national law and practice of the Member States.***

Amendment 40

Proposal for a directive Article 2 – paragraph 4

Text proposed by the Commission

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

Amendment

(4) An instruction ***or request, based on a hierarchical relationship,*** to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

Justification

[First part of amendment does not affect the English version]

Amendment 41

Proposal for a directive

Article 2 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Discrimination based on assumptions about a person's religion or belief, disability, age or sexual orientation or because of association with persons of a particular religion or belief, disability, age or sexual orientation, shall be deemed to be discrimination within the meaning of paragraph 1.

Amendment 42

Proposal for a directive

Article 2 – paragraph 5

Text proposed by the Commission

Amendment

5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities ***or persons who associate with a person with a disability, where the accommodation is needed to enable such persons to provide personal assistance to a person with a disability,*** shall be deemed to be discrimination within the meaning of paragraph 1.

Amendment 43

Proposal for a directive

Article 2 – paragraph 6

Text proposed by the Commission

Amendment

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of

6. This Directive does not preclude differences in treatment on grounds of age if they are objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate, proportionate, necessary and

achieving that aim are appropriate *and* necessary. *In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.*

effective.

Amendment 44

Proposal for a directive Article 2 – paragraph 7

Text proposed by the Commission

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit *proportionate* differences in treatment where, for the product in question, the use of age or disability is a *key* factor in the assessment of risk based on *relevant and accurate* actuarial *or* statistical data.

Amendment

7. Notwithstanding paragraph 2, in the provision of *insurance, banking and other* financial services Member States may permit differences in treatment where, for the product in question, the use of age or disability is a *determining* factor in the assessment of risk based on actuarial *principles*, statistical data, *or medical data*. *These data should be accurate, recent, and relevant and made available on request, in an accessible way. The actuarial and risk factors should reflect positive changes in life expectancy and active ageing as well as increased mobility and accessibility for people with disabilities. The service provider must be able to objectively demonstrate significantly higher risks and ensure that the difference in treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are proportionate, necessary and effective. The Member States shall inform the Commission and review their decision five years after transposition of this Directive, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission.*

Amendment 45

Proposal for a directive
Article 2 – paragraph 8

Text proposed by the Commission

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.

Amendment

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary **and proportionate** for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.

Amendment 46

Proposal for a directive
Article 2 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. This Directive recognises that the right to privacy is a means of combating the discrimination referred to in this Article.

Amendment 47

Proposal for a directive
Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) Access to and supply of goods and other services which are available to the public, including housing.

(d) Access to and supply of goods and other services which are available to the public, including housing **and transport**.

Amendment 48

Proposal for a directive Article 3 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) affiliation to and activities in associations and the services provided by such organisations.

Amendment 49

Proposal for a directive Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Subparagraph (d) ***shall apply to*** individuals ***only insofar as they are performing a*** professional ***or commercial*** activity.

Subparagraph (d) ***does not concern transactions between private*** individuals ***for whom the transactions do not constitute a commercial or*** professional activity.

Amendment 50

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive ***is without prejudice to national laws on marital or family status and reproductive rights.***

2. This Directive ***does not alter the division of competences between the European Union and its Member States.***

Amendment 51

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. This Directive is without prejudice to the

3. This Directive is without prejudice to the

responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, **including the provision of special needs education**. Member States may **provide** for differences **in** treatment in access to educational institutions based on religion or belief.

responsibilities of Member States for the content of teaching, activities and the organisation of their **national** educational systems, **while ensuring the rights of persons with disabilities to education without discrimination and on the basis of equal opportunities**. Member States shall ensure that, in determining which type of education or training is appropriate, the views of the person with a disability are respected. Member States may allow, **only on the basis of objective justifications**, for differences in access to educational institutions based on religion or belief, **when to require individuals, on the basis of objective justifications, to act in good faith and with loyalty to the organisation's ethos, provided that this does not justify discrimination on any other ground and that other educational institutions are geographically accessible and form a reasonable alternative, in order to prevent indirect discrimination**. Member States shall ensure that this does not lead to a denial to the right to education.

Amendment 52

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

4. This Directive is without prejudice to national **legislation** ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status **and** activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation **promoting** equality between men and women.

Amendment

4. This Directive is without prejudice to national **law** ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status, activities **and legal framework** of churches and other organisations based on religion or belief **where this falls outside the competence of the EU**. **Where the activities of churches or other organisations based on religion and belief fall within EU competence, they shall be subject to the Union's non discrimination provisions**. It is equally without prejudice to national legislation **ensuring** equality

between *males* and *females*.

Amendment 53

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Amendment

5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. ***Discrimination on the grounds of religion or belief, disability, age or sexual orientation which is presented as a difference in treatment based on nationality shall be treated as discrimination within the meaning of Article 1.***

Amendment 54

Proposal for a directive Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. This Directive is without prejudice to the right of publishers to refuse advertisements from individuals, parties and organisations that do not share their democratic values, and from individuals, parties or organisations that do not share the political orientation on which the newspaper in question is founded.

Amendment 55

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:

Amendment

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, ***whereby "disability" is to be understood in the light of the UN Convention on the Rights of Persons with Disabilities and persons with chronic diseases:***

Amendment 56

Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing ***and transport***, shall be provided by anticipation, including through appropriate modifications or adjustments. ***Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.***

Amendment

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, ***telecommunication and electronic communications, information including information provided in accessible formats, financial services, culture and leisure, buildings open to the public, modes of transport and other public spaces and facilities***, shall be provided by anticipation, including through appropriate modifications or adjustments. ***Where discrimination arises from practice, policy or procedure, measures shall be taken so that it no longer has that effect.***

Amendment 57

Proposal for a directive
Article 4 - paragraph 1 - point b

Text proposed by the Commission

b) *Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.*

Amendment

b) *For the purposes of paragraph 1, effective non-discriminatory access involves the identification and elimination of obstacles and barriers and the prevention of new obstacles and barriers that hamper the access of persons with disabilities to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, effective non-discriminatory access for persons with disabilities shall be provided under the same terms and conditions as for persons without disabilities wherever possible, and the use of assistive devices by persons with disabilities shall be facilitated, including aids to mobility and access, such as recognised guide dogs and other assistance dogs wherever necessary. Where reasonable accommodation cannot be made to ensure effective non-discriminatory access, despite all efforts, provided under the same terms and conditions, and in accordance with the provisions of this Directive, a meaningful alternative to access shall be provided. For the purposes of this provision, “reasonable accommodation” means alternative measures needed in a particular case to enable a person with a disability to have access to and/or enjoy or exercise on an equal basis with others rights that fall within the scope of as defined in Article 3, paragraph 1.*

Amendment 58

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. For the purposes of assessing whether *measures necessary* to comply with paragraph 1 would impose a disproportionate burden, account *shall* be taken, *in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities*. The burden shall not be disproportionate when it is sufficiently remedied by measures existing *within the framework of the equal treatment policy* of the Member State concerned.

Amendment

2. *Measures to obtain effective non-discriminatory access should not impose a disproportionate burden or require a fundamental alteration*. For the purposes of assessing whether to comply with paragraph 1 would impose a disproportionate burden, account *should* be taken *of whether the measure in question is impracticable or unsafe and could not be made practicable and safe by a reasonable change to rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services*. *A change is fundamental if it alters the goods and services or the nature of the trade, profession or business, to such an extent that the provider of the goods or services is effectively providing a completely different kind of goods or services*. *Reasonable accommodation shall not necessarily require significant structural changes to buildings whose structure is protected specifically under national law on account of their historical, cultural or architectural value*. The burden shall not be *deemed* disproportionate when it is sufficiently remedied by measures existing *in* the Member State concerned. *The principle of reasonable accommodation and disproportionate burden should be interpreted in the light of Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities*.

Amendment 59

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to comply with the obligation to provide effective non-discriminatory access to existing infrastructures, policies or procedures within the meaning of point 1(a), Member States may, if necessary, have an additional period of 10 years from the deadline for transposition to comply with that obligation. Member States wishing to make use of the additional period shall submit to the Commission a plan for progressive compliance with the requirements set out in point 1(a), including targets, means and timeline. Any Member State which chooses to make use of this additional period shall report bi-annually to the Commission on the steps taken to provide effective non-discriminatory access and on the progress towards implementation of point (1)(a). The Commission shall report bi-annually to the Council.

Amendment 60

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services. ***However, wherever possible, EU institutions and Member States shall take measures to encourage providers of goods and services, in particular manufactured goods, to design accessible solutions, for instance through public procurement practices. Accessible products and services are those designed so that they***

may be used by all users.

Amendement 61

Proposal for a directive

Article 5

Text proposed by the Commission

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.

Amendment

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures ***or from allowing these measures to be taken by the public, private or voluntary sectors*** to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.

Amendment 62

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Amendment

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available ***in practice*** to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Amendment 63

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

deleted

Amendment 64

Proposal for a directive
Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall introduce in their national legal systems such measures as are necessary to ensure real and effective compensation or reparation, as the Member States determine, for the loss and damage sustained by a person injured as a result of discrimination within the meaning of this Directive, in a way which is dissuasive and proportionate to the damage suffered.

Amendment 65

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Paragraph 1 shall not prevent Member States from introducing rules *of evidence* which are more favourable to plaintiffs.

2. Paragraph 1 shall not prevent Member States from introducing rules which are more favourable to plaintiffs.

Justification

Provisions should be made for the Member States to adopt rules more favourable to plaintiffs as part of the redress procedure.

Amendement 66

Proposal for a directive

Article 9 a (new)

Text proposed by the Commission

Amendment

9a. Member States shall actively promote equality between persons irrespective of religion or belief, disability, age or sexual orientation when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas within the scope of this Directive.

Amendment 67

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means, ***including the Internet***, throughout their territory.

Amendment 68

Proposal for a directive

Article 11

Text proposed by the Commission

Amendment

Article 11

Article 11

With a view to promoting the principle of equal treatment, Member States shall

With a view to promoting the principle of equal treatment, Member States shall

encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

encourage dialogue with relevant stakeholders, in particular non-governmental organisations, **organisations representing civil society, churches, and religious, philosophical, and non-denominational organisations**, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive **and such consultation shall also include monitoring of the implementation of the Directive.**

Amendement 69

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall designate **a** body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of **human rights or the safeguard of individuals' rights, including** rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

Amendment

1. Member States shall designate **an independent functioning and adequately funded** body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. **Member States shall ensure that the body or bodies have competence in the fields covered by this Directive and the fields of employment and occupation under Directive 2000/78/EC.** These bodies may form part of agencies charged at national level with the defence of **the** rights under other Community acts including Directives 2000/43/EC, **2000/78/EC** and 2004/113/EC.

Amendment 70

Proposal for a directive Article 12 – paragraph 2 – indent -1 (new)

Text proposed by the Commission

Amendment

- facilitating administrative or legal

proceedings concerning discrimination where the victim is resident in a Member State other than that of the respondent, by contacting the equivalent organisation or organisations in the Member State of the respondent,

Amendment 71

Proposal for a directive

Article 12 – paragraph 2 – indent -1a (new)

Text proposed by the Commission

Amendment

- ensuring access by the complainant to legal aid in accordance with Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes¹, where appropriate,

¹ OJ L 26, 31.1.2003, p. 41.

Amendement 72

Proposal for a directive

Article 12 – paragraph 2 – indent 2

Text proposed by the Commission

Amendment

- conducting independent surveys concerning discrimination,

*- **monitoring and** conducting independent surveys concerning discrimination, **including on the application of anti-discrimination law,***

Amendement 73

Proposal for a directive

Article 12 – paragraph 2 – indent 3 a (new)

Text proposed by the Commission

Amendment

*- **cooperating and exchanging information with the Fundamental Rights***

Agency and with other corresponding EU bodies.

Amendment 74

Proposal for a directive Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall provide these bodies with sufficient resources to enable them to carry out their duties in an effective and accessible manner.

Amendment 75

Proposal for a directive Article 13 – point a

Text proposed by the Commission

Amendment

a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are ***immediately*** abolished;

Amendment 76

Proposal for a directive Article 14

Text proposed by the Commission

Amendment

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive ***and result in the cessation of the discriminatory conduct and the***

removal of its effects.

Amendment 77

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. In order *to take account of particular conditions, Member States may, if necessary, establish that the obligation to provide effective access as set out in Article 4 has to be complied with by ... [at the latest] four [years after adoption].*

Member States wishing to use *this* additional period shall *inform* the Commission *at the latest by the date set down in paragraph 1 giving reasons.*

Amendment

2. In order *to comply with the obligation to provide effective non-discriminatory access to existing infrastructures, policies or procedures within the meaning of Article 4(1)(a), Member States may, if necessary, have an additional period of 10 years [from the deadline for transposition] to comply with that obligation.*

Member States wishing to use *the* additional period shall *submit to* the Commission *a plan for progressive compliance with the requirements set out in Article 4(1)(a), including targets, means and timeline. Any Member State which chooses to make use of this additional period shall report annually to the Commission on the steps taken to provide effective non-discriminatory access and on the progress made towards implementation of Article 4(1)(a). The Commission shall report annually to the Council.*

Amendment 78

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States *and national equality bodies* shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this

Amendment

1. Member States shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Directive.

Amendment 79

Proposal for a directive

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. No later than ** years after the entry into force of this Directive, a comprehensive Community legal framework relating to non-discrimination must be brought into force in the form of a single Directive consolidating and thus replacing all existing Directives based on Article 13 of the EC Treaty, including this Directive. The new directive shall provide for an equal level of protection for each ground for discrimination.

Amendment 80

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. ***The report shall include a review of the current practices in Member States in relation to Article 2(7), with regard to the use of age or disability as a factor in the calculation of premiums and benefits.*** In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. ***The report shall also contain information about multiple discrimination, covering not only discrimination on grounds of religion or belief, sexual orientation, age***

and disability, but also discrimination on grounds of sex, race and ethnic origin. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

EXPLANATORY STATEMENT

The Commission submitted this proposal for a directive on equal treatment in July 2008. It was a long-awaited proposal, since the Commission had promised as far back as 2004 to draft a 'broad directive'. Your rapporteur is pleased with the Commission proposal, which seeks to apply, outside the labour market, the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Article 13 of the EC Treaty, incorporated into the Treaty of Amsterdam in 1997, prohibits discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 13 currently forms the legal basis for two directives. The first is the Racial Equality Directive (Directive 2000/43/EC) which bans discrimination based on racial or ethnic origin, both within and outside the labour market. The other, Directive 2000/78, bans discrimination on the labour market based on religion or belief, disability, age or sexual orientation.

Owing to the difference in scope between the two directives, a hierarchy of reasons for discrimination has emerged. The proposal before us here is an attempt to place protection against discrimination, on whatever grounds, on an equal footing. Your rapporteur expects the Commission to put forward proposals in 2010 bringing protection against discrimination on the basis of gender up to the same level, thus eliminating this hierarchy.

The Commission has sought to link this proposal for a directive with the existing Racial Equality Directive. Many of the terms are the same, such as direct and indirect discrimination, and the procedures it creates are also equivalent. Accordingly your rapporteur does not feel that these need detain us long.

There are, however, also differences between the Commission proposal and the Racial Equality Directive. These differences may be justified, because the reasons for discrimination vary and not every different treatment counts as discrimination. However, it must be possible to give a clear reason for the difference.

The proposal is a framework of minimum standards offering protection against discrimination. Member States may always offer a higher level of protection, but may not make the new directive a reason for lowering their current level. The directive offers victims a right of redress and makes it clear that the Member States have the desire and the duty to combat discrimination.

Your rapporteur wishes to stress the importance of combating all forms of discrimination. Discrimination is unfortunately still an issue in Europe as elsewhere. In a special Eurobarometer poll in 2008, 15% of Europeans claimed that they had been subjected to discrimination in the past year. This must change. It must be possible for two men to occupy a hotel room, for people with disabilities to go shopping and for elderly people to obtain insurance.

A good number of Member States already have legislation providing protection to a greater or

lesser extent against discrimination, outside the labour market, based on religion or belief, disability, age or sexual orientation.¹ It is important to enact coherent European regulations in this area in order to make clear that Europe as a whole does not permit discrimination. Freedom from discrimination is a fundamental right and should apply to everyone in the Union.

Grounds for discrimination

Directive 2000/78/EC does not contain any definitions of religion or belief, disability, age or sexual orientation, though the European Court of Justice did once rule on the meaning of 'disability'. The Court stated that : "*the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.*"² The UN Convention on the Rights of Persons with Disabilities defines 'disability' as follows: 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. Your rapporteur has sought to provide a link to this definition in a new recital.

Assumptions and association

In the Coleman case (C-303/06) the Court of Justice stated that not only people with disabilities but also their family members are protected by the ban on discrimination in Directive 2000/78/EC. Your rapporteur considers it a good idea for reasons of legal certainty to spell this out explicitly in this directive.

It is not always possible to ascertain a person's religion or belief, disability, age or sexual orientation at first sight, and yet people make all kinds of assumptions on the basis of appearance or name which may also lead to discrimination. For example, some boys are harassed at school because they are thought to be homosexual when this may not be the case. Your rapporteur considers that this is just as bad, and therefore proposes that the directive should include an explicit provision to the effect that discrimination on the basis of assumptions is also covered by this legislation.

Exception for age

The Commission proposal provides for a general exception for discrimination on the grounds of age. The fact that this directive does not preclude the fixing of a specific age for access to social benefits, education and certain goods or services does not alter the fact that such different treatment must be justified by a legitimate objective, the means to achieve which must be appropriate and necessary. Your rapporteur wishes to make this clear in the directive.

¹ McColgan, Niessen and Palmer: Comparative analyses on national measures to combat discrimination outside employment and occupation, Mapping study on existing national legislative measures - and their impact in - tackling discrimination outside the field of employment and occupation on the grounds of sex, religion or believe, disability, age and sexual orientation, December 2006.

² Case C13-05, ground 43. (Chacon Navas)

Financial services

Under the proposal, differences in treatment on the basis of age or disability may be permitted in the case of financial services in which the use of age or disability is an important factor in the assessment of risk based on relevant and accurate actuarial or statistical data. Directive 2004/113/EC contains a similar provision, but includes the requirement to make such data public. Your rapporteur therefore proposes that this requirement be adapted to this directive too.

Marital status

It falls outside the EU's area of responsibility to enact laws on marriage. Every Member State may legislate for itself on what conditions people have to meet in order to be married. However, the Commission proposal would also permit discrimination in connection with reproductive rights, such as sterilisation. Your rapporteur considers this undesirable and has therefore amended the text and restricted the exceptions.

Education

Schools based on a particular set of values may refuse pupils if they are unwilling to subscribe to the ethos of the school. This must not lead to discrimination on any grounds other than religion or belief. There is already an article with equivalent effect in the directive on equal treatment in the labour market (2000/78 EC).

Disability

In order to guarantee equal treatment for people with disabilities, it is not sufficient to prohibit discrimination. Positive action is also needed in the form of measures taken by anticipation and by offering appropriate adaptations. For example, public buildings should be accessible to people in wheelchairs.

Your rapporteur proposes that there should only be two types of exception to the principle of effective, non-discriminatory access. The first is when this would be unreasonably burdensome. The courts should decide when this is so in an individual case. When taking such decisions it is important to weigh up all the circumstances of the case, including the size of the organisation, the costs and the possible advantages of better access for persons with disabilities. In countries where this is already standard practice, it appears that cost is rarely a factor. The second form of exception is when a measure would require a fundamental change to the service offered. This would be the case when the service in question would effectively become a completely different service.

Compensation

Article 8(2) of Directive 2004/113/EC requires Member States to introduce such measures as are necessary to ensure real and effective compensation or reparation for the loss and damage suffered as a result of discrimination. Your rapporteur proposes that this provision should also be included in this directive, so that citizens with complaints have effective redress.

One independent body

The Commission proposes that the Member States must have a body or bodies at national level to promote the equal treatment of citizens. Recital 28 refers to the UN Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights. Your rapporteur proposes that the attendant principles of independence and adequate resources be explicitly referred to in the directive.

22.1.2009

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Rapporteur(*): Liz Lynne

(*) Associated committee – Rule 47 of the Rules of Procedure

SHORT JUSTIFICATION

In May 2008, the European Parliament adopted my report on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC). In this, the Parliament reminded the Commission of its commitment to put forward a comprehensive antidiscrimination directive to outlaw discrimination outside of employment on the grounds disability, age, religion or belief and sexual orientation, in order to complete the package of anti-discrimination legislation under Article 13 of the EC Treaty as provided in its 2008 work programme. Race and Gender have already been covered by the Race Directive and Gender Directive and we seek to bring this directive in line with those.

Many of the issues raised by the European Commission's proposal fall within the competence of the Employment and Social Affairs Committee and some are a shared competence between the Civil Liberties Committee and the Employment and Social Affairs Committee.

The specific areas covered exclusively by the Employment and Social Affairs Committee are social protection, including social security, healthcare as well as social advantages.

There is shared competence with regards to denial of reasonable accommodation for people with disabilities, access to and supply of goods and services that are available to the public including housing, discrimination in the of provision of financial services on the grounds of age and disability, differences of treatment on grounds of age, as well as the equal treatment of persons with disabilities and dialogue with relevant stakeholders.

The proposal for a Directive builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC which means that the directive is consistent with the horizontal objectives of the European Union, in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. The proposal refers to concepts used in existing Directives which people are familiar with.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) This Directive is one means by which the European Community is complying with its obligations under the UN Convention on the Rights of Persons with Disabilities, and should be interpreted in that light.

Justification

This recital clarifies the link between the obligations adopted by the Union with the UN Convention on the Rights of Persons with Disabilities and this proposed directive.

Amendment 2

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) In accordance with Article 5 of the Political Declaration agreed at the conclusion of the United Nations World Conference on Ageing in Madrid 2002 it was agreed to reaffirm the commitment to

spare no effort in eliminating all forms of discrimination, including age discrimination; to recognise that persons, as they age, should enjoy a life of fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies; to enhance the recognition of the dignity of older persons; and to eliminate all forms of neglect, abuse and violence.

Justification

This recital reiterates the UN's declaration to tackle all forms of discrimination including age discrimination.

Amendment 3

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.

Amendment

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination, ***including multiple discrimination***, but also the benefits of diversity.

Amendment 4

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for

Amendment

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation ***or on a combination of grounds*** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including

measures to ensure the equal access of persons with disabilities to the areas covered.

housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Justification

This recital is consistent with the later proposed amendment regarding multiple discrimination.

Amendment 5

**Proposal for a directive
Recital 9 a (new)**

Text proposed by the Commission

Amendment

(9a) Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with attitudinal or environmental barriers may hinder their full and effective participation in society on an equal basis with others.

Amendment 6

**Proposal for a directive
Recital 9 b (new)**

Text proposed by the Commission

Amendment

(9b) Effective non-discriminatory access can be provided by a variety of means, including through 'design for all' and through facilitating the use of assistive devices by persons with disabilities, including aids to mobility and access, such as recognised guide dogs and other assistance dogs.

Amendment 7

Proposal for a directive Recital 9 c (new)

Text proposed by the Commission

Amendment

(9c) Persons with disabilities frequently face discrimination in the form of inaccessible public transportation and the built environment, as well as inaccessible communications and information. Member States must take measures to ensure accessibility in these areas in order to put into effect the principle of equal treatment.

Amendment 8

Proposal for a directive Recital 9 d (new)

Text proposed by the Commission

Amendment

(9d) Effective non-discriminatory access involves the identification and elimination of obstacles and barriers, whether attitudinal or environmental, and the prevention of new obstacles and barriers that hamper the access of persons with disabilities, to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible. Where access cannot be provided under the same terms and conditions, and subject to the provisions of this Directive, a meaningful alternative to ensure access must be provided.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment

(12) Discrimination is understood to include direct and indirect discrimination, **multiple discrimination**, harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment 10

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Discrimination can occur on the grounds that a person has a particular religion or belief, disability, age, or sexual orientation, or a combination thereof and on the grounds that a person is assumed to have a, or associates with or is assumed to associate with a person who has a, particular religion or belief, disability, age, or sexual orientation.

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

(13) ***In*** implementing the principle of equal treatment ***irrespective of religion or belief, disability, age or sexual orientation***, the Community should, in accordance with ***Article 3(2)*** of the EC Treaty, aim to eliminate inequalities, and to promote equality ***between men and women, especially since women are often the victims*** of multiple discrimination.

Amendment

(13) ***As discrimination can occur on multiple grounds, in*** implementing the principle of equal treatment, the Community should, in accordance with ***Articles 3(2) and 13*** of the EC Treaty, aim to eliminate inequalities ***relating to sex, race or ethnic origin, disability, sexual orientation, religion or belief or age, or a combination of these***, and to promote equality, ***whatever combination of***

characteristics relating to sex, race or ethnic origin, disability, sexual orientation, religion or belief or age, a person may have. When implementing the provisions of this Directive, Member States should take into account the problem of multiple discrimination.

Justification

This extends the current recital 13 which refers to multiple discrimination experienced by women to cover all the grounds contained in Article 13.

Amendment 12

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.

Amendment

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should ***reflect the positive changes in life expectancy and active ageing as well as increased mobility and accessibility for people with disabilities, and not operate as blanket discrimination on these grounds. The assessment of risk by the service provider must conclusively justify a finding of significantly higher risks, using recent, regularly updated and accurate published statistical or actuarial data.***

Justification

This amendment aims at restricting the possibility of discrimination in access to financial services by ensuring that all data used in such decision making is transparent, authoritative and up-to-date, and requiring objectivity by service providers in demonstrating this.

Amendment 13

Proposal for a directive Recital 19

Text proposed by the Commission

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure *such* access. In neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of *a number of factors including the size, resources and nature of the organisation*. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.

Amendment

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure access. In neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of *whether the measure in question is unfeasible or unsafe and could not be made feasible and safe by a reasonable modification of rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services*. *Reasonable accommodation would not necessarily require significant structural changes to buildings whose structure is protected specifically under national law on account of their historical, cultural or architectural value*. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities.

Amendment 14

Proposal for a directive Article 2 – paragraph 5

Text proposed by the Commission

5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

Amendment

5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards person with disabilities ***and young children, or persons who associate with a person with a disability, where the accommodation is needed to enable such persons to provide personal assistance to a person with a disability,*** shall be deemed to be discrimination within the meaning of paragraph 1.

Justification

This amendment extends a requirement for reasonable accommodation to children.

Amendment 15

Proposal for a directive Article 2 - paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Discrimination shall be deemed to occur where eligibility for welfare benefits, in cash or in kind, granted on account of disability or sickness is subject to a specific age criterion.

Justification

As regards invalidity benefits such as hospital care or money payments (pensions), granting them to sufferers of a given age while denying them to others not that age constitutes another form of discrimination.

Amendment 16

Proposal for a directive Article 2 – paragraph 6

Text proposed by the Commission

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. ***In particular, this Directive shall not preclude*** the fixing of a specific age for access to social benefits, education ***and certain goods or services.***

Amendment

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are ***objectively and reasonably*** justified by a legitimate aim, and if the means of achieving that aim are ***proportionate*** and necessary. ***Such differences of treatment shall not preclude measures aimed at protecting the rights of children or*** the fixing of a specific age for access to ***entitlements, social benefits, financial services and*** education, ***excluding benefits in cash or in kind in the event of sickness or incapacity for work,***

Amendment 17

Proposal for a directive Article 2 – paragraph 7

Text proposed by the Commission

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit ***proportionate*** differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

Amendment

7. Notwithstanding paragraph 2, in the provision ***of insurance, banking and other*** financial services ***due regard must be given to increased life expectancy and active ageing, as well as increased mobility and accessibility for disabled people, and*** Member States may permit differences in treatment where, for the product in question, the use of age or disability is a ***determining*** factor in the assessment of risk based on relevant and accurate actuarial or statistical data. ***The service provider must be able to objectively demonstrate significantly higher risks and ensure that the***

difference in treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Member States concerned shall ensure that any data relied on in the assessment of risk are recently compiled and relevant, regularly updated and published. The Member States concerned shall inform the Commission and ensure that accurate data relevant to use of age and disability as a determining actuarial factor are compiled, published and regularly updated. Such Member States shall review their decision five years after transposition of this Directive.

Amendment 18

Proposal for a directive Article 3 – point d

Text proposed by the Commission

(d) Access to and supply of goods and other services which are available to the public, including housing. *Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.*

Amendment

(d) Access to and supply of goods and other services which are available to the public, including housing **and transport.**

Justification

This clarifies the scope of the directive to make it clear that transport is included.

Amendment 19

Proposal for a directive Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. In order to guarantee compliance with

Amendment

1. In order to guarantee compliance with

the principle of equal treatment in relation to persons with disabilities:

the principle of equal treatment in relation to persons with disabilities, *'disability' is to be understood in light of the UN Convention on the Rights of Persons with Disabilities and persons with chronic diseases are included:*

Amendment 20

Proposal for a directive Article 4 - paragraph 1 - point a

Text proposed by the Commission

(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing ***and transport***, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental ***alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.***

Amendment

(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, ***telecommunication and electronic communications, information including information provided in accessible formats, financial services, culture and leisure, buildings open to the public, transport modes and other public spaces and facilities***, shall be provided by anticipation, including through appropriate modifications or adjustments. ***Where discrimination arises from practice, policy or procedure, measures need to be taken so that it no longer has that effect.*** Such measures should not impose a disproportionate burden, nor require fundamental ***alterations to the nature of the goods, services, trade, profession or business in question. An alteration is fundamental if it alters the goods or services or the nature of the trade, profession or business to the extent that the provider of the goods or services is effectively providing a completely different kind of goods or services.***

Amendment 21

Proposal for a directive
Article 4 - paragraph 1 - point b

Text proposed by the Commission

(b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.

Amendment

deleted

Amendment 22

Proposal for a directive
Article 4 - paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) For the purposes of paragraph 1, effective non-discriminatory access involves the identification and elimination of obstacles and barriers, whether attitudinal or environmental, and the prevention of new obstacles and barriers that hamper the access of persons with disabilities to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, effective non-discriminatory access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible, and the use of assistive devices by persons with disabilities facilitated, including aids to mobility and access, such as recognised guide dogs and other assistance dogs wherever necessary. Where effective non-discriminatory access cannot be provided under the same terms and conditions, and subject to the provisions of this Directive, a meaningful alternative to ensure access must be

provided.

Amendment 23

Proposal for a directive Article 4 –paragraph 2

Text proposed by the Commission

2. For the purposes of *assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The* burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.

Amendment

2. For the purposes of paragraph 1 *the* burden shall not be *deemed* disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.

Amendment 24

Proposal for a directive Article 4 - paragraph 3

Text proposed by the Commission

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.

Amendment

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services. *However, wherever possible, Member States shall take measures to encourage providers of services and goods, in particular manufactured goods, to design accessible solutions, for instance through public procurement practices. Accessible products and services are those designed so that they can be used by all users.*

Amendment 25

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Multiple discrimination

1. Multiple discrimination occurs when a person is discriminated against on a combination of two or more of the grounds set out in this Directive.

2. Member States shall ensure that the means of enforcement of obligations under this Directive are available to all persons who consider themselves to be victims of multiple discrimination.

3. Member States shall provide that where multiple grounds are established, a claim can be defeated only by reason of a justification or another defence which is applicable to all of those grounds on which the claim is made. However if only one ground is established then the claim may be defeated by any justification or defence relevant to that ground.

Justification

This introduces an article on multiple discrimination which is restricted to Recital 13 in the Commission text.

Amendment 26

Proposal for a directive
Article 11

Text proposed by the Commission

Amendment

Article 11

Article 11

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, ***organisations representing civil society, churches, and***

practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

religious, philosophical, and non-denominational organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive ***and such consultation should also include monitoring of the implementation of the Directive.***

Justification

Given that the involvement of non-governmental organisations is being explicitly secured to help promote the principle of equal treatment, it is equally necessary to refer to the role of, on the one hand, civil society organisations and, secondly, churches and religious, philosophical, and non-denominational organisations so as to bring the directive into line with, respectively, Article 11 of the Treaty on European Union and Article 17 of the Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	EMPL 2.9.2008
Associated committee(s) - date announced in plenary	23.10.2008
Drafts(wo)man Date appointed	Elizabeth Lynne 6.10.2008
Discussed in committee	5.11.2008 2.12.2008 20.1.2009
Date adopted	21.1.2009
Result of final vote	+: 28 –: 11 0: 7
Members present for the final vote	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnock, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Ona Juknevičienė, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Rovana Plumb, Bilyana Ilieva Raeva, Elisabeth Schroedter, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Françoise Castex, Richard Howitt, Rumiana Jeleva, Magda Kósáné Kovács, Sepp Kusstatscher, Viktória Mohácsi, Csaba Sógor, Evangelia Tzampazi, Anja Weisgerber
Substitute(s) under Rule 178(2) present for the final vote	Adrian Manole

27.1.2009

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Rapporteur: Amalia Sartori

SHORT JUSTIFICATION

The European Union is based on the common principles of freedom, democracy and respect for human rights and fundamental freedoms. Inherent recognition of the unique nature of each individual and his or her right to enjoy equal access to the possibilities that life offers is a common feature of all European societies, which have made the concept of ‘united in diversity’ the bulwark of their union.

The diversity of European society is a key aspect of the cultural, political and social integration of the Union and must be respected, just as the discrimination which constitutes a threat to its core values should be opposed.

There is a long tradition of European measures aimed at ensuring equality between individuals. The Treaty of Amsterdam granted new powers to take action against any discrimination on the grounds of sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. European-level laws and safeguards already exist with regard to discrimination in the field of employment. Once adopted, this directive will supplement the process of implementation of Article 13 of the EC Treaty by extending the scope of the prohibition of discrimination to any form of discrimination on the grounds of race, ethnic origin or sex, and ending any perceived hierarchy in the protection of rights.

As regards the specific field of interest of the Committee on the Environment, Public Health and Food Safety, achieving that ambitious objective in the sectors for which it is responsible

calls for a wide-ranging response, since the respective national traditions and strategies in areas such as healthcare and social protection tend to be more diversified than in employment-related sectors.

Despite the progress made, the European legal framework enabling discrimination to be combated remains incomplete. Some Member States have adopted measures which prohibit, over and above existing provisions in the field of employment, any discrimination on the grounds of age, sexual orientation, disability, religion or belief, but for the moment there is no uniform minimum standard on what constitutes discrimination or for safeguarding against it. Notwithstanding these shortcomings, however, the European Union still boasts one of the most developed legal scenarios in the world when it comes to combating discrimination.

The main calls for stronger action against discrimination have come from the public, who expect an increase in joint action in this field, above and beyond what is already specifically provided for, and in a range of sectors, such as healthcare, where broad disparities still exist between Member States, alongside clear discrimination, often against vulnerable sectors of the population, and even within individual States.

It is surprising and unfortunate that in a Union so far advanced in many areas, there are still no common rules on disability or sexual violence and harassment, and no adequate recognition of the fundamental rights which in a contemporary society should surely enjoy the legal protection they deserve.

Combating discrimination means investing in raising the awareness of a society that is developing through integration but which in order to achieve it needs to invest in training, information and the dissemination of best practices, seeking out for the good of all its citizens, and in their interest, a fair compromise and common equilibrium between its many and multiform diversities.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of

Amendment

(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of

liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law. ***In accordance with Article 13 of the Treaty establishing the European Community, which empowers the Council to take appropriate action to combat discrimination, in combination with the provisions of Article 152 of that Treaty, there is a need to encourage the systematic mainstreaming of non-discrimination and equal opportunities into all policies, particularly in the context of already-existing coordination mechanisms for employment, social integration, education, training and public health.***

Amendment 2

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Equal importance should be placed on mental health and physical health as the former is associated with cardiovascular disease, cancer and diabetes as a consequence of drug abuse and addiction.

People with severe mental health problems are mostly exposed to social stigma, poverty, limited housing options and difficulties in accessing physical health care, while mental illnesses such as depression or anxiety contribute to increased cost from lost worker productivity.

Amendment 3

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) Physical and mental health and well-being are key to the quality of life of individuals and society and are vital factors for achieving the objectives of the European Union's Lisbon Strategy.

Amendment 4

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The public expect an increase in joint action in the field of health, and huge healthcare disparities still exist between Member States and within individual States, just as there are some sectors in which Member States cannot operate effectively on their own. These circumstances demand a greater commitment from the European Union, including the possibility of a common health policy tailored to the interests of the general public.

Amendment 5

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Access to healthcare is a fundamental right enshrined in Article 35 of the Charter of Fundamental Rights of the European Union¹, and it is a prime

responsibility of the public authorities in the Member States to provide equal access for all to a high-quality healthcare system.

¹ OJ C 364, 18.12.2000, p. 1.

Amendment 6

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) The diversity of European society is a key aspect of the cultural, political and social integration of the Union and must be respected.

Amendment 7

Proposal for a directive Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) Good health is essential to physical and psychological well-being. Leaving aside biological differences, social and economic disparities, environment and access to education, knowledge and information all have an incisive effect on public health. The rights of citizens and their responsibility for their own health are of fundamental importance, hence the importance of promoting health literacy programmes and encouraging all sectors of society to lead healthy lifestyles. Initiatives aimed at reducing the disparities between healthcare systems should include targeted health promotion and public education;

Amendment 8

Proposal for a directive Recital 4 d (new)

Text proposed by the Commission

Amendment

(4d) Violence against women, sex slavery and prostitution are among the main health issues affecting women. Although violence against women is particularly widespread, that health issue is not factored into medical training or practice.

According to World Health Organisation estimates, at least one fifth of all women worldwide have suffered physical or psychological abuse at some point in their lives. The combating of sexual harassment and violence against women must be made a priority for Community action, not least in the form of specific public health measures.

Amendment 9

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing ***and health***. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Amendment 10

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Discrimination is understood to include denial of medical treatment on the grounds of age alone.

Amendment 11

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination. ***To that end, the scope of protection needs to be extended to also cover multiple discrimination.***

Amendment 12

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Member States should support partnerships of people with learning disabilities and/or mental health problems to spread awareness of their rights, present proposals for improved services and facilitate access to information on new medicines and innovative treatments.

Amendment 13

Proposal for a directive Recital 21

Text proposed by the Commission

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation. Such measures may permit *organisations* of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation. ***Community legislation on non-discrimination does not prevent Member States from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to discrimination on grounds where there is provision for protection.*** Such measures may permit *organizations* of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment 14

Proposal for a directive Recital 25

Text proposed by the Commission

(25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.

Amendment

(25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation. ***Effective judicial protection of individual rights must be flanked with active promotion of non-discrimination and equal opportunities.***

Amendment 15

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Each Member State has a responsibility to ensure the health of all its citizens, but cooperation between the Member States, EU institutions, local authorities, international organisations and the general public is nevertheless needed in order to achieve that goal.

Amendment 16

Proposal for a directive Recital 30 b (new)

Text proposed by the Commission

Amendment

(30b) The provision of healthcare calls for effective political support, in all sectors and at every level, within the EU Member States and the European Union and at a global level. Besides this, in view of the existence of new health threats that are often cross-border in scale, such as pandemics, new transmissible diseases and biological warfare, and of the effects of climate change and globalisation, particularly on food and migration, the issue of health should be addressed as a fundamental policy issue, in the spirit of the Treaty of Lisbon and the Lisbon strategy, and mainstreamed into all the relevant European Union policies.

Amendment 17

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) Satisfactory information on existing legislation is needed, so that potential victims of discrimination can actually invoke that legislation and so that employers, service providers and the authorities are informed as to their obligations. However, knowledge of non-discrimination legislation is still limited. The Commission must promote and contribute to training and information measures on existing legislation, which should be specifically aimed at the key stakeholders, including the bodies responsible for equality matters, the judiciary, the legal profession, NGOs and the social partners.

Amendment 18

Proposal for a directive Article 2 a – paragraph 1 (new)

Text proposed by the Commission

Amendment

Article 2a

Definitions

1. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in combination with various barriers may hinder their full and effective participation in society on an equal basis with others.

Justification

The definition of ‘persons with disabilities’ should be the same in all the Member States, to ensure equal treatment. Accordingly the definition of ‘persons with disabilities’ applied in the directive should correspond to the definition used in the UN Convention on the Rights of

Amendment 19

Proposal for a directive

Article 2 a – paragraph 2 (new)

Text proposed by the Commission

Amendment

2. ‘Universal design’ means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Justification

To ensure genuine and non-discriminatory access for people with disabilities to goods available to the public, it is desirable to promote goods usable by all. Accordingly, a definition of ‘universal design’ should be added to the directive corresponding to the definition in the UN Convention on the Rights of Persons with Disabilities.

Amendment 20

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care,

a) The measures necessary to enable persons with disabilities to **be consulted about their care needs and** to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social

education, or goods and services in question or require the provision of alternatives thereto.

protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.

Amendment 21

Proposal for a directive Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a The Member States shall pay particular attention to the possibility of access to electronic services for people with disabilities.

Justification

There is an increasing trend for public services to be provided via the electronic network, and yet we have no real knowledge of particular groups' ability to access these services. We need to do all in our power to prevent the exclusion of people with disabilities from the information society.

Amendment 22

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Equality of treatment under healthcare systems

1. Subject to the principle of subsidiarity, and with due regard for Member States' competences in the area of ensuring respect for the principle of equal treatment between persons:

a) emphasis should be placed on disease prevention strategies. Preventive measures, based on scientific data, should reflect, inter alia, gender-specific concerns and other factors underlying

disparities;

b) the Member States should use gender-disaggregated statistics and data in all health and medical services;

c) awareness should be increased of the different physical conditions of women and men, within all medical research and in the development of new drugs, and of the differences in the effects of medication;

d) health policy strategies need to reflect the existence of environmental factors particularly affecting vulnerable groups such as pregnant or nursing women, children, teenage girls and the disabled, whose health is specifically at risk from those hazardous environmental factors.

2. Member States shall take the necessary measures to ensure that the rights of citizens and their responsibility for their own health are promoted and safeguarded, inter alia by sponsoring health literacy programmes and encouraging all sectors of society to lead healthy lifestyles.

3. The Commission must promote targeted training programmes for medical and paramedical staff.

Amendment 23

Proposal for a directive Article 10 - subparagraph 2 (new)

Text proposed by the Commission

Amendment

The Commission shall promote training, continuous education and information measures in respect of existing legislation, aimed specifically at key stakeholders.

Amendment 24

Proposal for a directive Article 11

Text proposed by the Commission

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

Amendment

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular **professional associations representing medical and paramedical staff and** non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

The Commission shall collect, analyse and disseminate objective, comparative, reliable and relevant information, including any available research findings and best practices.

Amendment 25

Proposal for a directive Article 16

Text proposed by the Commission

1. Member States and national equality bodies shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender

Amendment

1. Member States and national equality bodies, ***in association with the European Institute for Gender Equality,*** shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as ***the European Institute for Gender Equality and*** the EU Fundamental Rights

mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Agency. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men, ***especially in the areas referred to Article 3***. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	ENVI 2.9.2008
Drafts(wo)man Date appointed	Amalia Sartori 7.10.2008
Discussed in committee	1.12.2008
Date adopted	22.1.2009
Result of final vote	+: 35 -: 3 0: 5
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Liam Aylward, John Bowis, Frieda Brepoels, Martin Callanan, Dorette Corbey, Magor Imre Csibi, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Jill Evans, Anne Ferreira, Karl-Heinz Florenz, Cristina Gutiérrez-Cortines, Satu Hassi, Jens Holm, Marie Anne Isler Béguin, Caroline Jackson, Dan Jørgensen, Christa Klauß, Urszula Krupa, Marie-Noëlle Lienemann, Peter Liese, Jules Maaten, Linda McAvan, Riitta Myller, Miroslav Ouzký, Dimitrios Papadimoulis, Vittorio Prodi, Frédérique Ries, Guido Sacconi, Daciana Octavia Sârbu, Amalia Sartori, Richard Seeber, Bogusław Sonik, María Sornosa Martínez, Thomas Ulmer, Anja Weisgerber, Glenis Willmott
Substitute(s) present for the final vote	Inés Ayala Sender, Iles Braghetto, Philip Bushill-Matthews

20.1.2009

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Rapporteur: Lissy Gröner

SHORT JUSTIFICATION

With its draft directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the Commission aims to further supplement European legislation in the area of equality.

The 1997 Treaty reform adopted in Amsterdam, in particular the creation of Article 13 of the EC Treaty, granted the EU new possibilities as regards shaping an equal opportunities policy. As a result, four directives have already come into force in recent years relating to:

- equal treatment in employment and occupation¹
- equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions²
- the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin³
- the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services⁴.

A large number of important concepts and principles for the implementation of the principle of equal treatment are already defined in the above texts. This is the case, for example, for the concepts of ‘direct and indirect discrimination’, ‘harassment’, ‘unwanted conduct’ or ‘instruction to discriminate’, and the principle of the reversal of the burden of proof from the plaintiff to the respondent in the case of legal proceedings, dissuasive but proportionate penalties and protection against victimisation (adverse treatment of victims of discrimination

¹ 2000/78/EC, revised in 2006

² 2002/73/EC

³ 2000/43/EC

⁴ 2004/113/EC

who have lodged a complaint or launched legal proceedings). The present draft directive also incorporates these basic rules.

The purpose of the present proposal is to expand the principle of equal treatment to cover the following further areas of life in society:

- social protection, including social security and health care,
- social advantages,
- and access to goods and services which are available to the public, including housing.

The rapporteur for the opinion proposes the following amendments:

Gender discrimination

As it stands, the draft directive does not include a key element that is of crucial importance in equal opportunities policy in the area of employment and access to goods and services: the ban on discrimination based on gender. The rapporteur is proposing that the scope of the directive be expanded accordingly.

Access to the media

Access to the media remains especially problematic for people with disabilities. The rapporteur takes the view that audiovisual service providers should take greater account of the situation for people with hearing loss in particular. Digital audiovisual services make options such as the subtitling of television programmes technically possible. This idea was also addressed by Parliament in its declaration on the subtitling of all public service television programmes in the EU¹ and should be incorporated as an explicit component of the directive.

Access to education

The draft directive underlines the subsidiarity principle and hence the extensive autonomy enjoyed by the Member States in the field of education. It should nevertheless be stressed that, when shaping their respective education policy, the Member States must take account of the higher principle of equal treatment in access to education, even though unequal treatment on grounds of religion or belief is admissible in the case of religious schools in particular.

Multiple discrimination

Multiple discrimination describes a situation where discrimination takes place separately for several different reasons. This concept should be incorporated into the directive.

Legal practice shows that, in most European Member States, the reality of the discrimination experienced by those affected is not paid sufficient attention when dealing with complaints relating to multiple discrimination.

Studies indicate that women from minority groups appear to be most vulnerable to multiple discrimination. The social reality requires that measures be adopted to ensure that legal action

¹ PT_TA(2008)0127

can be taken against discrimination on grounds of gender and disability.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age **or** sexual orientation

Amendment

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, sexual orientation **or gender**

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age **or** sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

Amendment

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age, sexual orientation **or gender**; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

Amendment 3

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age **or** sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Amendment

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age, sexual orientation **or gender** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing, **and access to the media**. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Amendment 4

Proposal for a directive Recital 21

Text proposed by the Commission

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age **or** sexual orientation. Such measures may permit organisations of persons of a particular religion or belief, disability, age **or** sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age, sexual orientation **or gender**. Such measures may permit organisations of persons of a particular religion or belief, disability, age, sexual orientation **or gender** where their main object is the promotion of the special needs of those persons.

Amendment 5

Proposal for a directive Recital 23

Text proposed by the Commission

(23) Persons who have been subject to discrimination based on religion or belief, disability, age **or** sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment

(23) Persons who have been subject to discrimination based on religion or belief, disability, age, sexual orientation **or gender** should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 6

Proposal for a directive Recital 24

Text proposed by the Commission

(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.

Amendment

(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation **or gender**.

Amendment 7

Proposal for a directive Article 1

Text proposed by the Commission

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, **or** sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Amendment

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, sexual orientation **or gender**, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Amendment 8

Proposal for a directive Article 2 – paragraph 2 – subparagraph (b)

Text proposed by the Commission

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, **or** a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Amendment

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, a particular sexual orientation **or gender** at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Amendment 9

Proposal for a directive Article 2 – paragraph 2 – subparagraph b a (new)

Text proposed by the Commission

Amendment

(ba) multiple discrimination shall be taken to occur where a person is discriminated against on two or more of the grounds referred to in Article 1 at the

same time and these grounds accumulate;

Amendment 10

Proposal for a directive

Article 2 – paragraph 2 – subparagraph b b (new)

Text proposed by the Commission

Amendment

(bb) where a difference of treatment occurs on several of the grounds referred to in Article 1, this difference of treatment can be justified only if the justification applies to all the grounds on which the difference of treatment is based;

Amendment 11

Proposal for a directive

Article 2 – paragraph 2 – subparagraph b c (new)

Text proposed by the Commission

Amendment

(bc) when applying the principle of equal treatment pursuant to Article 13 of the Treaty, the Community has an obligation to combat multiple discrimination on the basis of several of the grounds referred to in Article 13 of the Treaty.

Justification

The concept of multiple discrimination was brought into being at the UN World Conference against Racism held in South Africa in 2001 and refers to unequal treatment on the grounds of several factors on which the discrimination is based (e.g. discrimination against Jewish women on the grounds of their gender - female - or their religion - Jewish - or both; or discrimination against a homosexual Kurdish man on the grounds of his ethnic origin - Kurdish - or his sexuality - homosexual - or both).

Amendment 12

Proposal for a directive

Article 3 – paragraph 1 – subparagraph d a (new)

Text proposed by the Commission

Amendment

(da) Access to the media.

Justification

The European Union must ensure that all citizens have equal access to information, media, education and culture. (See Written Declaration 0099/2007 on the subtitling of all public service television programmes in the EU.)

Amendment 13

Proposal for a directive

Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief.

3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education; **however, there may be no discrimination as regards access to education.** Member States may provide for differences in treatment in access to educational institutions based on religion or belief.

Justification

The European Union must ensure that all citizens have equal access to information, media, education and culture. (See Written Declaration 0099/2007 on the subtitling of all public service television programmes in the EU.)

Amendment 14

Proposal for a directive Article 5

Text proposed by the Commission

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, *or* sexual orientation.

Amendment

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, sexual orientation *or gender*.

Amendment 15

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Amendment

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended. *Member States shall ensure that the various grounds for discrimination are not dealt with separately.*

Amendment 16

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall designate a body or bodies for the promotion of equal treatment

Amendment

1. Member States shall designate a body or bodies for the promotion of equal treatment

of all persons irrespective of their religion or belief, disability, age, *or* sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

of all persons irrespective of their religion or belief, disability, age, sexual orientation *or gender*. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	CULT 2.9.2008
Drafts(wo)man Date appointed	Lissy Gröner 15.9.2008
Discussed in committee	1.12.2008
Date adopted	20.1.2009
Result of final vote	+: 25 -: 1 0: 0
Members present for the final vote	Maria Badia i Cutchet, Ivo Belet, Guy Bono, Marie-Hélène Descamps, Věra Flasarová, Milan Gaľa, Vasco Graça Moura, Lissy Gröner, Luis Herrero-Tejedor, Ruth Hieronymi, Mikel Irujo Amezaga, Ramona Nicole Mănescu, Manolis Mavrommatis, Ljudmila Novak, Doris Pack, Zdzisław Zbigniew Podkański, Pál Schmitt, Hannu Takkula, Thomas Wise, Tomáš Zatloukal
Substitute(s) present for the final vote	Gyula Hegyi, Nina Škottová, László Tőkés, Ewa Tomaszewska, Cornelis Visser
Substitute(s) under Rule 178(2) present for the final vote	Maria Berger

13.2.2009

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Rapporteur: Monica Frassoni

SHORT JUSTIFICATION

This proposal for a directive establishes a general framework for action to combat discrimination on grounds of religion or belief, disability, age or sexual orientation, with a view to implementing the principle of equal treatment outside the labour market in the Member States. It is based on Directives 2000/43/EC, 2000/78/EC and 2004/113/EC and establishes a minimum standard level of protection within the EU for victims of discrimination.

This opinion merely clarifies a number of points, without making any substantive changes to the proposal for a directive. Your rapporteur nonetheless considers that Article 3(2) of the proposal, which states that 'this Directive is without prejudice to national laws on marital or family status and reproductive rights', presents a problem in that it fails clearly to identify the boundaries between Community law and national law. Furthermore, the term 'reproductive rights' is inappropriate. The committee responsible has asked Parliament's Legal Service for a legal opinion on both of these issues. That opinion is still in the process of being drawn up. Your rapporteur will closely monitor the committee responsible's discussions on these matters.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education ***and access to and supply of goods and services which are available to the public, including housing and transport***, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.

Amendment

(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care ***and*** education shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.

Justification

It is unreasonable to anticipate all necessary construction measures. In particular, it is not possible to assess which measures constitute an unreasonable burden. Article 4(1) provides no legal certainty in this regard.

Amendment 2

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the

Amendment

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available ***in practice*** to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which

discrimination is alleged to have occurred has ended.

the discrimination is alleged to have occurred has ended.

Amendment 3

Proposal for a directive Article 10

Text proposed by the Commission

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.

Amendment

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means, ***including the Internet***, throughout their territory.

Amendment 4

Proposal for a directive Article 12

Text proposed by the Commission

Article 12

Bodies for the Promotion of Equal treatment

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

2. Member States shall ensure that the competences of these bodies include:

– without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to

Amendment

deleted

victims of discrimination in pursuing their complaints about discrimination,

– conducting independent surveys concerning discrimination,

– publishing independent reports and making recommendations on any issue relating to such discrimination.

Justification

The Commission proposal contravenes the principle of subsidiarity. It is the responsibility of Member States to take measures enabling the principle of equal treatment to be put into effect. Member States must therefore decide whether, and to what extent, they will designate a body or bodies to promote equal treatment.

Amendment 5

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States **and national equality bodies** shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Amendment

1. Member States shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Justification

The Commission proposal contravenes the principle of subsidiarity. It is the responsibility of Member States to take measures enabling the principle of equal treatment to be put into effect. Member States must therefore send a report to the Commission.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 23.9.2008
Drafts(wo)man Date appointed	Monica Frassoni 22.9.2008
Discussed in committee	20.1.2009
Date adopted	12.2.2009
Result of final vote	+: 15 -: 0 0: 0
Members present for the final vote	Alin Lucian Antochi, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Alain Lipietz, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Rainer Wieland, Jaroslav Zvěřina
Substitute(s) present for the final vote	Sharon Bowles, Brian Crowley, Jean-Paul Gauzès, Kurt Lechner, Georgios Papastamkos

11.2.2009

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS))

Rapporteur: Donata Gottardi

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age *or* sexual orientation

Amendment

Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, sexual orientation *or gender*

Amendment 2

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 *of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.*

Amendment 3

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.

Amendment 4

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The Community has adopted *three legal instruments* on the basis of Article 13(1) of the EC Treaty to prevent

Amendment

(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the *Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Articles 9 and 10 thereof, and by the Charter of Fundamental Rights of the European Union, particularly Article 10, Article 12(2), and Articles 21 and 26 thereof.*

Amendment

(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of *direct and indirect discrimination, multiple discrimination and discrimination by association*, but also the benefits of diversity.

Amendment

(8) The Community has adopted *a set of directives* on the basis of Article 13(1) of the EC Treaty to prevent and combat

and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These *instruments* have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The Community has adopted three legal instruments on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.

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Amendment

(8) The Community has adopted three legal instruments on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age, *gender* and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age, *gender* and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, **including** housing. It should provide for measures to ensure the equal access **of persons with disabilities** to the areas covered.

Amendment

(9) Therefore, legislation should prohibit **direct and indirect** discrimination, **multiple discrimination and discrimination by association** based on religion or belief, disability, age or sexual orientation **or gender** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, **such as** housing, **transport and associations**. It should provide for measures to ensure the equal access to the areas covered **of persons of a particular religion or belief, disability, age or particular sexual orientation, or a combination of these specific characteristics, and of persons associated with them**.

Amendment 7

Proposal for a directive Recital 11

Text proposed by the Commission

(11) This Directive should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

Amendment

(11) **The aim of this Directive is to combat discrimination and safeguard the processes of inclusion and integration.** This should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

Amendment 8

Proposal for a directive Recital 12

Text proposed by the Commission

(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment

(12) Discrimination, **multiple discrimination and discrimination by association** is understood to include direct and indirect discrimination, harassment **and sexual harassment**, instructions to discriminate and denial of reasonable accommodation.

Amendment 9

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Discrimination may be based on religion or belief, disability, age or sexual orientation of a given person or on a combination of these factors, as well as on the presumed religion, belief, disability, age or sexual orientation of a given person or of a person with whom the latter is associated or presumed to be associated.

Amendment 10

Proposal for a directive Recital 13

Text proposed by the Commission

(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women,

Amendment

(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age, **gender** or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and

especially since women are often the victims of multiple discrimination.

women, especially since women are often the victims of multiple discrimination **and discrimination by association**.

Amendment 11

Proposal for a directive Recital 14

Text proposed by the Commission

(14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination should remain a matter for the national judicial or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.

Amendment

(14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination, **multiple discrimination and discrimination by association** should remain a matter for the national judicial **bodies, the European Court of Justice**, or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.

Amendment 12

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.

Amendment

(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination **only in cases** where the factors are shown to be key factors for the assessment of risk **and do not result in disproportionate and unjustified differences in treatment**.

Amendment 13

Proposal for a directive Recital 16

Text proposed by the Commission

(16) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. This Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their professional or commercial activity.

Amendment

deleted

Amendment 14

Proposal for a directive Recital 17

Text proposed by the Commission

(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life **and transactions carried out in that context**, the freedom of religion, and the freedom of association. This Directive **is without prejudice to national laws on marital or family status, including on reproductive rights**. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.

Amendment

(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life, freedom of religion, and freedom of association. This Directive is without prejudice to the secular nature of the State, state institutions or bodies, or education. ***This Directive shall also apply to de facto partnerships and civil unions where these are recognised by the Member States' legislation and to the social benefits deriving therefrom.***

Amendment 15

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An

Amendment

(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An

Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. Member States may also allow or prohibit the wearing or display of religious symbols at school.

Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief ***provided that these are necessary and proportionate and do not represent an infringement of the right to education***. Member States may also allow or prohibit the wearing or display of religious symbols at school.

Amendment 16

Proposal for a directive Recital 19

Text proposed by the Commission

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In ***neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of a number of factors including the size, resources and nature of the organisation. The principle of reasonable accommodation and disproportionate burden are established in***

Amendment

(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities, ***persons who care for them and persons associated with them***, to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In ***the same way, with regard to age, effective non-discriminatory access must be ensured through appropriate measures, including the elimination of physical barriers, particularly in the case of public buildings and means of public transport, for minors and the elderly and***

Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.

those who care for them.

Amendment 17

Proposal for a directive Recital 21

Text proposed by the Commission

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by **a group of** persons of a particular religion or belief, disability, age or sexual orientation. Such measures **may permit** organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Amendment

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by persons of a particular religion or belief, disability, age or sexual orientation, **or a combination of these specific characteristics, and persons associated with them. This may be accompanied by measures designed to promote equal treatment and equal opportunities which take account of the gender dimension and affirmative actions aimed at meeting the special needs of persons or categories of persons who, because of their characteristics, require structures, services and assistance not required by others.** Such measures **shall be accompanied by the establishment of independent** organisations of persons of a particular religion or belief, disability, age, sexual orientation **or gender** where their main object is the promotion of the special needs of those persons.

Amendment 18

Proposal for a directive Recital 23

Text proposed by the Commission

(23) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should

Amendment

(23) Persons who have been subject to **direct and indirect** discrimination, **multiple discrimination or discrimination by**

have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

association, based on religion or belief, disability, age, sexual orientation **or gender** should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 19

Proposal for a directive Recital 24

Text proposed by the Commission

(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent **when evidence of such discrimination is brought. However, it is not for the respondent to prove** that the plaintiff **adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.**

Amendment

(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of **providing sufficient** proof must shift back to the respondent. The **Member States may adopt provisions that are more favourable to** the plaintiff.

Amendment 20

Proposal for a directive Recital 26

Text proposed by the Commission

(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and

Amendment

(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and

programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels.

programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels. ***With this in view, the Commission and Member States should take steps to ensure that the provisions laid down in this Directive and those already in force in this sector are brought to the notice of the public and stakeholders – through information and press campaigns aimed inter alia at eliminating stereotypes – by appropriate, adequate and accessible means (such as sign language or special websites for the visually impaired).***

Amendment 21

Proposal for a directive

Recital 27

Text proposed by the Commission

(27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.

Amendment

(27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of ***an independent*** body or bodies in each Member State, ***for each of the various factors of discrimination***, with competence to analyse the problems involved, to study possible solutions, ***provide information and training*** and to provide concrete assistance for the victims, ***including in cases of multiple discrimination so that persons who consider themselves to be victims of multiple discrimination can choose which body to apply to - and also appoint to defend them in judicial or administrative proceedings.***

Amendment 22

Proposal for a directive Recital 29

Text proposed by the Commission

(29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

Amendment

(29) Member States should provide for effective, proportionate and dissuasive sanctions ***which result in the cessation of the discriminatory conduct and the removal of its effects*** in case of breaches of the obligations under this Directive.

Amendment 23

Proposal for a directive Article 1

Text proposed by the Commission

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Amendment

This Directive lays down a framework for combating discrimination, ***including multiple discrimination and discrimination by association***, on the grounds of religion or belief, disability, age, sexual orientation ***or gender***, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Justification

Reference needs to be made to multiple discrimination since it applies to all grounds for discrimination, and to discrimination by association, which affects women in particular.

Amendment 24

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect

Amendment

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect

discrimination on any of the grounds referred to in Article 1.

discrimination, **multiple discrimination or discrimination by association**, on any of the grounds referred to in Article 1.

Justification

The concepts of multiple discrimination and discrimination by association need to be introduced in order to deal effectively with cases where two or more forms of discrimination occur, placing the victim in an even more vulnerable position and creating major difficulties as regards legal redress.

Amendment 25

Proposal for a directive Article 2 – paragraph 2 - point a

Text proposed by the Commission

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on **any** of the grounds referred to in Article 1;

Amendment

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on **one of more** of the grounds referred to in Article 1;

Justification

The notion of multiple discrimination, which is defined below, needs to be introduced with reference to direct discrimination.

Amendment 26

Proposal for a directive Article 2 – paragraph 2 - point b

Text proposed by the Commission

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Amendment

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, a particular sexual orientation **or gender, or having a combination of these specific characteristics – or persons associated with them** – at a particular disadvantage compared with other persons, unless that provision, criterion or practice is

objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, *there is such a thing as discrimination by association, whereby a person is unfavourably affected as a result of being in a direct relationship with people having a particular religion or set of beliefs, or a disability, or of a certain age or sexual orientation. Discrimination by association can arise, for example, when people are, or are thought to be, in a relationship, without necessarily cohabiting, and independently of any legal links of marriage or affiliation, to persons professing a particular religion or set of beliefs, having a disability or being of a certain age or sexual orientation.*

Justification

The concept of indirect discrimination should include both multiple discrimination and discrimination by association, which affects persons connected with the victim of the discrimination.

Amendment 27

Proposal for a directive

Article 2 – paragraph 2 - point b a (new)

Text proposed by the Commission

Amendment

(ba) multiple discrimination shall be taken to occur when the discrimination is based on a combination of two or more of the grounds referred to in Articles 12 and 13 of the EC Treaty.

Justification

The concept of multiple discrimination needs to be included in the definitions in this proposal for a directive.

Amendment 28

Proposal for a directive
Article 2 – paragraph 2 - point b b (new)

Text proposed by the Commission

Amendment

(bb) discrimination by association shall be taken to occur when a person suffers adverse effects as a result of being directly associated with persons of a particular religion or belief, disability, age or sexual orientation. Discrimination by association shall concern persons associated – or presumed to be associated – by emotional ties – not necessarily living together and regardless of formal legal status through marriage or affiliation – with persons of a particular religion or belief, disability, age or particular sexual orientation.

Justification

Discrimination by association needs to be defined.

Amendment 29

Proposal for a directive
Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to **any** of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to **one or more** of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Justification

In the interests of consistency, the notion of 'multiple grounds' should also be introduced with relation to harassment.

Amendment 30

Proposal for a directive

Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Sexual harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct with sexual connotations, expressed in physical, verbal or non-verbal form, takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Justification

It is important to include sexual harassment in this Directive, with particular reference to discrimination on grounds of sexual orientation.

Amendment 31

Proposal for a directive

Article 2 – paragraph 4

Text proposed by the Commission

Amendment

4. An instruction to discriminate against persons on ***any*** of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

4. An instruction to discriminate against persons on ***one or more*** of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

Justification

In the interests of consistency, the notion of 'multiple grounds' should also be included with reference to instructions to discriminate.

Amendment 32

Proposal for a directive Article 2 – paragraph 5

Text proposed by the Commission

5. Denial of reasonable accommodation in *a* particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

Amendment

5. Denial of reasonable accommodation ***shall be deemed to be discrimination within the meaning of paragraph 1, as in the*** particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities ***or persons connected to them,*** shall be deemed to be discrimination ***or persons associated with them*** within the meaning of paragraph 1.

Justification

In the interests of consistency, provision should also be made in this connection for discrimination by association.

Amendment 33

Proposal for a directive Article 2 – paragraph 6

Text proposed by the Commission

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.

Amendment

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are ***objectively and reasonably*** justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.

Amendment 34

Proposal for a directive Article 2 – paragraph 7

Text proposed by the Commission

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

Amendment

7. Notwithstanding paragraph 2, in the provision of financial, **banking and insurance** services Member States may permit proportionate differences in treatment **only** where, for the products in question, **it has been demonstrated that** the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

The Member States concerned shall inform the Commission and ensure that accurate and relevant data on the use of age or disability as key factors in the assessment of risk are gathered, published and updated regularly.

Member States shall be required to carry out an assessment five years after the date of transposition of the Directive, taking into account the Commission report, and forward the findings of that assessment to the Commission.

Justification

It is vital to ensure that, when it comes to access to and use of financial, insurance and banking services, factors such as age and disability are not used as grounds for unjustified (less favourable) and discriminatory treatment.

Amendment 35

Proposal for a directive Article 2 – paragraph 8

Text proposed by the Commission

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the

Amendment

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary **and proportionate** for public security, for the maintenance of public

prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.

order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others. ***It shall also be without prejudice to national legislation promoting equality between men and women.***

Amendment 36

Proposal for a directive

Article 2 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. This Directive recognises that the right to privacy is an instrument for combating the discrimination referred to in this article.

Justification

The value of the right to privacy as an instrument for combating discrimination needs to be stressed, until such time as society is able to reject stereotypes and overcome its fear of difference.

Amendment 37

Proposal for a directive

Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) Access to and supply of goods and other services which are available to the public, ***including*** housing.

(d) Access to and supply of goods and other services which are available to the public, ***such as*** housing ***and transport, where the Community is competent for the matter concerned.***

Justification

Reference should be made to specific sectors such as housing and transport by way of example rather than as an exhaustive list.

Amendment 38

Proposal for a directive
Article 3 - paragraph 1 – subparagraph 2

Text proposed by the Commission

Subparagraph (d) shall *apply to individuals only insofar as they are performing a professional or commercial activity.*

Amendment

In applying subparagraph (d), *it shall be ensured that individuals' privacy is respected.*

Amendment 39

Proposal for a directive
Article 3 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) affiliation to and activities in associations and the services provided by such organisations.

Justification

Associations need to be included within the scope of the directive.

Amendment 40

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. *This Directive is* without prejudice to *national laws on* marital or family status and reproductive rights.

2. Without prejudice to *the competence of the Member States for matters relating to* marital or family status and reproductive rights, *this Directive shall apply to de facto partnerships and civil unions, where these are recognised by the laws of the Member States, and to the social benefits deriving therefrom.*

Justification

A reference to this should be included to comply with the case law of the Court of Justice.

Amendment 41

Proposal for a directive
Article 3 - paragraph 3

Text proposed by the Commission

3. ***This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief.***

Amendment

3. ***Notwithstanding the powers of the Member States in respect of education, teaching and training, and their responsibilities for the content, activities and organisation of their educational systems, this Directive shall aim to guarantee processes of inclusion and integration, and the provision to people with disabilities of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief, provided that these differences do not constitute discrimination on one or more other grounds, that they are necessary and proportionate and that they do not of themselves constitute a violation of the right to education.***

Justification

It is important that the scope of the directive should take appropriate account of education, teaching and training in order to avoid discrimination.

Amendment 42

Proposal for a directive
Article 3 – paragraph 5

Text proposed by the Commission

5. ***This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.***

Amendment

deleted

Justification

There is already a specific body of law on this subject.

Amendment 43

**Proposal for a directive
Article 4 – paragraph 1**

Text proposed by the Commission

Equal treatment *of persons with* disabilities

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:

Amendment

Equal treatment *and* disabilities

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities *and of persons associated with them or who care for them*:

Justification

Account should be taken of the need for equal treatment for the disabled and those who care for them.

Amendment 44

**Proposal for a directive
Article 4 - paragraph 1 - introductory part**

Text proposed by the Commission

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:

Amendment

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, *in which connection 'disability' is to be understood as it is defined in the UN Convention on the Rights of Persons with Disabilities and includes persons with chronic diseases*:

Amendment 45

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Member States shall take into consideration the interests and needs of different groups of disabled persons with reference to both their various disabilities and their gender, age, race or ethnic origin, religion or personal belief, sexual orientation, and other factors of discrimination.

Justification

With regard to equal treatment for persons with disabilities, account needs to be taken of all factors - horizontal and otherwise - which may be associated with disabilities.

Amendment 46

Proposal for a directive

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Age and access to buildings and services
The Member States shall take appropriate measures to ensure effective non-discriminatory access, including the elimination of physical barriers, particularly in the case of public buildings and means of public transport, for minors and the elderly and those who care for them.

Justification

The amendment draws attention to the requirement for appropriate measures to be taken to combat age-related discrimination affecting minors and the elderly.

Amendment 47

Proposal for a directive
Article 5

Text proposed by the Commission

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, *or* sexual orientation.

Amendment

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, sexual orientation *or gender*.

Amendment 48

Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Member States shall adopt measures to promote equal treatment and equal opportunities - taking account of the gender dimension - for persons of a particular religion or belief, disability, age or sexual orientation.

Justification

Affirmative action needs to be made effective by promoting activities to ensure equal treatment.

Amendment 49

Proposal for a directive
Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. This Directive is without prejudice to the possibility for Member States to provide for preferential treatment or adopt affirmative action aimed at meeting the special needs of persons or categories of persons who, because of their characteristics, require structures,

services and assistance not needed by others.

Justification

Affirmative action needs to be made effective by promoting equal treatment and measures tailored to specific needs.

Amendment 50

**Proposal for a directive
Article 7 – paragraph 1 b (new)**

Text proposed by the Commission

Amendment

1b. Member States shall stipulate that, where multiple causes of discrimination have been identified, a complaint may be rejected only on the basis of a justification or other argument applicable to all the grounds referred to in the complaint. However, if a single ground has been identified, the complaint may be rejected on the basis of a justification or argument relating only to that ground.

Justification

Member States must guarantee the possibility of adequate means of redress for victims of multiple discrimination.

Amendment 51

**Proposal for a directive
Article 8 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be

presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.

presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of ***direct and indirect*** discrimination, ***multiple discrimination and discrimination by association***.

Justification

The aim is to include multiple discrimination and discrimination by association within the prohibition of discrimination.

Amendment 52

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 shall not prevent Member States from introducing rules ***of evidence*** which are more favourable to plaintiffs.

Amendment

2. Paragraph 1 shall not prevent Member States from introducing rules which are more favourable to plaintiffs.

Justification

Provisions should be made for the Member States to adopt rules more favourable to plaintiffs as part of the redress procedure.

Amendment 53

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout ***their*** territory.

Amendment

The Commission and the Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of ***the public and*** the persons concerned - ***via information and press campaigns designed also to overcome stereotypes*** - by appropriate, ***adequate and accessible*** means throughout ***European*** territory.

Justification

In order to ensure that the principle of equal treatment is known, respected and effectively applied, wide-ranging information campaigns are needed using appropriate means such as sign language or special websites for the visually impaired.

Amendment 54

Proposal for a directive Article 11

Text proposed by the Commission

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a *legitimate* interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

Amendment

Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive, *with a view to promoting the principle of equal treatment*.

Justification

The Member States must support dialogue with relevant stakeholders, which should be extended to all those concerned and involved in the promotion of equal treatment and equal opportunities.

Amendment 55

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall designate *a* body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives

Amendment

1. Member States shall designate *an independent* body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation *or gender*. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives

2000/43/EC and 2004/113/EC.

2000/43/EC and 2004/113/EC.

Where various independent equality bodies are set up to deal with the various factors of discrimination, persons believing themselves to be victims of multiple discrimination may choose which body to apply to – and to appoint to defend them in judicial or administrative proceedings – and this body shall be responsible for considering the alleged discriminatory situation as a whole.

Justification

The way in which equality bodies are organised needs to be adapted to deal properly with cases of multiple discrimination.

Amendment 56

**Proposal for a directive
Article 12 – paragraph 2 – indent 2**

Text proposed by the Commission

Amendment

– carrying out information campaigns and training activities,

Justification

The remit of equality bodies should be extended to include information and training.

Amendment 57

**Proposal for a directive
Article 13 – letter b**

Text proposed by the Commission

Amendment

(b) any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

(b) any contractual provisions, internal rules of **public bodies and** undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

Justification

Measures to ensure respect for the principle of equal treatment should also cover public bodies.

Amendment 58

Proposal for a directive

Article 14

Text proposed by the Commission

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.

Amendment

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive ***and result in the cessation of the discriminatory conduct and the removal of its effects.***

Justification

To ensure effective compliance with the principle of equal treatment an appropriate definition of the application of sanctions is required.

Amendment 59

Proposal for a directive

Article 16 a (new)

Text proposed by the Commission

Amendment

16a. The Commission shall, by, prepare and set in motion the procedure for approval of a proposal aimed at coordinating the present directive with the directives in force in the areas of equal opportunities and prevention of discrimination.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	FEMM 2.9.2008
Drafts(wo)man Date appointed	Donata Gottardi 9.10.2008
Date adopted	10.2.2009
Result of final vote	+: 15 -: 11 0: 1
Members present for the final vote	Edit Bauer, Hiltrud Breyer, Edite Estrela, Ilda Figueiredo, Věra Flasarová, Lissy Gröner, Urszula Krupa, Roselyne Lefrançois, Pia Elda Locatelli, Astrid Lulling, Siiri Oviir, Doris Pack, Marie Panayotopoulos-Cassiotou, Zita Pleštinská, Anni Podimata, Christa Prets, Teresa Riera Madurell, Eva-Riitta Siitonen, Eva-Britt Svensson, Britta Thomsen, Corien Wortmann-Kool, Anna Záborská
Substitute(s) present for the final vote	Gabriela Crețu, Ana Maria Gomes, Donata Gottardi, Elisabeth Jeggle, Maria Petre

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation			
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)			
Date of consulting Parliament	23.7.2008			
Committee responsible Date announced in plenary	LIBE 2.9.2008			
Committee(s) asked for opinion(s) Date announced in plenary	EMPL	ENVI	IMCO	CULT
	2.9.2008	2.9.2008	2.9.2008	2.9.2008
	JURI	FEMM		
	23.9.2008	2.9.2008		
Not delivering opinions Date of decision	IMCO 10.9.2008			
Associated committee(s) Date announced in plenary	EMPL 23.10.2008			
Rapporteur(s) Date appointed	Kathalijne Maria Buitenweg 15.9.2008			
Discussed in committee	13.11.2008	21.1.2009	17.2.2009	16.3.2009
Date adopted	16.3.2009			
Result of final vote	+: 34			
	–: 7			
	0: 4			
Members present for the final vote	Roberta Angelilli, Alfredo Antoniozzi, Mario Borghezio, Catherine Boursier, Emine Bozkurt, Kathalijne Maria Buitenweg, Maddalena Calia, Michael Cashman, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Bárbara Dührkop Dührkop, Urszula Gacek, Kinga Gál, Patrick Gaubert, Jeanine Hennis-Plasschaert, Ewa Klant, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Baroness Sarah Ludford, Claude Moraes, Rareş-Lucian Niculescu, Martine Roure, Sebastiano Sanzarello, Inger Segelström, Ioannis Varvitsiotis, Manfred Weber			
Substitute(s) present for the final vote	Alin Lucian Antochi, Edit Bauer, Simon Busuttil, Marco Cappato, Carlo Casini, Iratxe García Pérez, Elisabetta Gardini, Sophia in 't Veld, Metin Kazak, Jean Lambert, Marian-Jean Marinescu, Bill Newton Dunn, Nicolae Vlad Popa			
Substitute(s) under Rule 178(2) present for the final vote	Iles Braghetto, Jan Cremers, Raül Romeva i Rueda			
Date tabled	20.3.2009			