



Brussels, 16 November 2022  
(OR. en)

13070/22

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**Interinstitutional File:  
2008/0140(CNS)**

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**SOC 537  
ANTIDISCRIM 102  
MI 700  
JAI 1259  
FREMP 196**

## **REPORT**

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From:	Presidency
To:	Permanent Representatives Committee / Council
No. prev. doc.:	13067/22
No. Cion doc.:	11531/08 - COM(2008) 426 final
Subject:	Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation - Progress Report

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### **I. INTRODUCTION**

On 2 July 2008, the Commission adopted a proposal for a Council Directive aiming to extend the protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation to areas outside employment. Complementing existing EC legislation<sup>1</sup> in this area, the proposed horizontal equal treatment Directive would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; education; and access to goods and services, including housing.

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<sup>1</sup> In particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

A large majority of delegations has welcomed the proposal in principle, many endorsing the fact that it aims to complete the existing legal framework by addressing all four grounds of discrimination through a horizontal approach.

Most delegations have affirmed the importance of promoting equal treatment as a shared value within the EU. In particular, several delegations have underlined the significance of the proposal in the context of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). However, some delegations would have preferred more ambitious provisions in regard to disability.

While emphasising the importance of the fight against discrimination, certain delegations have, in the past, questioned the need for the Commission's proposal, which they have seen as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality. Certain delegations have also requested clarifications and expressed concerns relating, in particular, to the lack of legal certainty, the division of competences, and the practical, financial and legal impact of the proposal.

Two delegations have maintained general reservations on the proposal as such.

For the time being, all delegations have maintained general scrutiny reservations on the text.

CZ and DK have maintained parliamentary scrutiny reservations. The Commission supports the search for a compromise, while maintaining a scrutiny reservation on any changes to its original proposal at this stage.

The European Parliament adopted its Opinion on 2 April 2009<sup>2</sup> under the Consultation Procedure. Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal now falls under Article 19 of the Treaty on the Functioning of the European Union; thus unanimity in the Council is required, following the *consent* of the European Parliament.

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<sup>2</sup> See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) has been appointed Rapporteur by the current Parliament.

## II. THE COUNCIL'S WORK UNDER THE CZECH PRESIDENCY

Following on from the discussions that had taken place in 2021, which largely focused on the disability provisions,<sup>3</sup> the Working Party on Social Questions<sup>4</sup> continued its examination of the file based on a steering note<sup>5</sup> and a new set of drafting suggestions<sup>6</sup> tabled by the Czech Presidency.

In its steering note, the Presidency invited delegations to present their views on the provisions contained in the latest version of the text that would have granted the Member States the right to request a temporary exemption from the requirement to provide reasonable accommodation for persons with disabilities. Delegations were asked, in particular, to indicate whether they considered these provisions as being compatible with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Delegations were invited, moreover, to assess the need for such an exemption in the light of the fact that the draft Directive already included the rule that reasonable accommodation would not have to be provided if it caused an undue or disproportionate burden.

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<sup>3</sup> See docs. 9109/21 and 14046/21.

<sup>4</sup> Meetings took place on 18 July and 30 September 2022.

<sup>5</sup> Doc. 10626/22.

<sup>6</sup> Doc. 12063/22.

A clear majority of delegations expressed the view (in some cases, preliminary) that the suggested exemption was both incompatible with the UNCRPD and unnecessary. A number of delegations also stressed that the existing provision whereby reasonable accommodation need only be provided if it does not impose a disproportionate burden already comprised a sufficient safeguard. Certain other delegations also expressed a willingness to discuss different options with a view to finding a solution, unanimity being required before the Directive could be adopted. However, some other delegations supported exploring the idea of the suggested exemption, while also acknowledging the need for further work with a view to ensuring compatibility between the UNCRPD and the Directive. Certain delegations also took open positions and stressed issues such as the need for flexibility in order to manage the financial burden that would arise from the disability provisions contained in the Directive and the need for exemptions to be strictly exceptional and time-bound, limited and focused.

Based on this discussion, the Czech Presidency tabled a set of drafting suggestions that included the following main elements:

- a) The provision offering the Member States the possibility of requesting a temporary exemption from the obligation to provide reasonable accommodation was deleted (Article 15(1a-1c)).
- b) An optional additional transposition period of 2 years (e.g. 6 years in total from the entry into force of the proposal) for the obligation to provide reasonable accommodation for persons with disabilities was added to the text (Article 15(2)).
- c) A recital explaining the rationale for the additional transposition period (Recital 20c) was also added to the text.

A majority of delegations as well as the Commission representative supported the removal from the text of the possibility to request a temporary exemption from the obligation to provide reasonable accommodation. A majority of delegations also supported (or could accept) the suggested extension to the transposition period in respect of the obligation to provide reasonable accommodation. However, other delegations and the Commission representative were unable to support this idea, as they felt that the resulting total of 6 years would amount to an inordinately long transposition period. Some delegations needed more time to examine the new drafting suggestions.

Other issues discussed during the Czech Presidency included the following:

Certain delegations reiterated their misgivings regarding the removal of the *accessibility provisions* from the Directive, and called for more ambitious disability provisions. However, the Commission representative expressed the view that the Directive under discussion, being focused on discrimination, was not the right place for concrete accessibility provisions within the material scope.

Others saw a need for legal guidance regarding the interplay between the proposed Directive and the UNCRPD.

Further details are set out in docs. 11435/22 + COR 1 and 13067/22. The latest version of the draft Directive is set out in the Annex to this document.

### **III. CONCLUSION**

While certain progress has been made during the discussions based on the latest text, there is clearly a need for significant further work before the required unanimity can be reached in the Council.

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Proposal for a

**COUNCIL DIRECTIVE**

**on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission<sup>7</sup>,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament<sup>8</sup>,

Acting in accordance with a special legislative procedure,

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ C , , p. .

Whereas:

- (1) In accordance with Article 2 of the Treaty on European Union (TEU), the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, values which are common to all the Member States. In accordance with Article 6 of the TEU, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights'). Pursuant to the same Article, fundamental rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
- (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 United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, to which [all] Member States are signatories. This Directive, and in particular the provisions regarding accessibility and reasonable accommodation, respects the fundamental principles recognised in the UNCPRD and in the United Nations Convention concerning the Protection of the World Cultural and Natural Heritage.

- (2a) As of 23 December 2010, the Union is a party to the UNCRPD. The provisions of UNCRPD form, in accordance with Article 216(2) of the Treaty on the Functioning of the European Union (TFEU), an integral part of the European Union legal order and Union legislation should therefore be interpreted in a manner that is consistent with the UNCRPD. In particular, the UNCRPD includes, in its Article 2, the denial of reasonable accommodation in its definition of discrimination and, in its Article 9, obligations on accessibility. In its Communication 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier Free Europe', the Commission called for consistency to ensure effective implementation of the UNCRPD across the Union and established accessibility as one of the eight areas of action.
- (3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights. Article 10 of the Charter of Fundamental Rights 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.
- (4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, of Intercultural Dialogue in 2008 and for Active Aging and Solidarity between generations in 2012 have highlighted the persistence of discrimination but also the benefits of diversity.
- (5) The European Council, in Brussels on 14 December 2007, invited Member States in its Conclusions to strengthen efforts to prevent and combat discrimination inside and outside the labour market.



- (5a) On 21 February 2011, the Council reaffirmed in its Conclusions its strong commitment to the promotion and protection of freedom of religion or belief without discrimination. On 17 June 2011 in Council's conclusions the Council and the representatives of the governments of the Member States invited the Member States and the European Commission to continue to combat discrimination against persons with disabilities and to review the existing legal framework. On 16 June 2016, the Council invited in its Conclusions the European Commission to promote the measures outlined in the latter's List of Actions to advance LGBTI equality.
- (6) The European Parliament has called for the extension of the protection against discrimination in European Union law in its Resolution of 20 May 2008<sup>9</sup> and in its Resolution of 8 September 2015<sup>10</sup>.
- (6a) Discrimination has a serious impact not only on individuals but also on society including on gross domestic product, tax revenue and social cohesion. The protection against discrimination as provided for in this Directive can contribute to a better health status, educational outcomes and, for all these reasons, to an increase in the Member States' gross domestic product.

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<sup>9</sup> European Parliament resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC) (2007/2202(INI)) (OJ C279 E, 19.11.2009, p. 23).

<sup>10</sup> European Parliament resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014) (2014/2254(INI)) (OJ C316, 22.09.2017, p. 2.)

- (7) The European Commission has affirmed in its Communication 'Renewed social agenda: Opportunities, access and solidarity in 21st century Europe' that, in societies where each individual is regarded as being of equal worth, no artificial barriers or discrimination of any kind should hold people back in exploiting these opportunities. Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Union as they are laid down in the Treaties, 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 abolishing of obstacles to the free movement of persons, goods and services between Member States. The European Commission has further underscored and renewed its commitment to combat discrimination and to promote equal opportunities in its Communication 'Non-discrimination and equal opportunities: A renewed commitment' and in its Recommendation 'Establishing the European Pillar of Social Rights'.

- (8) Existing European Union legislation includes three legal instruments based on Article 13 of the Treaty establishing the European Community, which has been replaced by Article 19 of the TFEU. They are Directive 2000/43/EC<sup>11</sup>, Directive 2000/78/EC<sup>12</sup> and Directive 2004/113/EC<sup>13</sup>, which aim to prevent and combat discrimination on grounds of sex, racial or 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, the degree and the form of protection against discrimination on these grounds beyond the areas of employment vary between the different Member States. Directive 2000/43/EC protects persons against discrimination on the grounds of their racial or ethnic origin in the access to and supply of goods and services, social protection as well as education, whereas Directive 2004/113/EC offers protection against discrimination on the ground of sex in the access to and supply of goods and services, with the exclusion of the content of media and advertising as well as education.
- (9) The purpose of this Directive is, therefore, in respect of the grounds it covers, to extend the degree and the form of protections against discrimination beyond the areas of employment into the specific areas set out in this Directive. Thus, Union legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including access to social protection, access to education and access to and supply of goods and services, including housing. Services should be taken to be those within the meaning of Article 57 of the TFEU.

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<sup>11</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

<sup>12</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>13</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

- (10) Directive 2000/78/EC prohibits discrimination in access to vocational training; it is necessary to complete this protection by extending the prohibition of discrimination to education which is not considered vocational training.
- (11) This Directive should be without prejudice to the competences of the Member States, in particular 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.
- (12) Discrimination is understood to include direct discrimination, indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation to persons with disabilities. Discrimination is also understood to occur based on multiple grounds.
- (12a) Discrimination occurs, *inter alia*, when a person is treated less favourably, or harassed, because of an association which that person has, or is perceived to have, with persons of a particular religion or belief, disability, age or sexual orientation, or with organisations dedicated to the promotion of the rights of these persons<sup>14</sup>. Discrimination also occurs when a person is treated less favourably or harassed because of a religion or belief, disability, age or sexual orientation which that person is simply assumed to have. It is therefore appropriate to provide explicitly for protection against such discrimination by association or by assumption in this Directive.<sup>15</sup>

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<sup>14</sup> Judgment of the Court in Case C-83/14, *CHEZ Razpredelenie (Nikolova)*, 16 July 2015 and Judgment of the Court in Case C-303/06 *Coleman v Attridge*, 17 July 2008.

<sup>15</sup> *Ibidem*.

- (12ab) Discrimination on multiple grounds is understood as discrimination, in any of its forms, occurring on the basis of any combination of two or more of the following grounds, including where taken separately the situation would not give rise to discrimination against the person concerned: religion or belief, disability, age or sexual orientation. Discrimination on multiple grounds should be recognised in order to reflect the complex reality of discrimination cases, as well as to increase the protection of the victims thereof.
- (12b) Harassment is contrary to the principle of equal treatment, since victims of harassment cannot enjoy, on an equal basis with others, access to social protection, education and goods and services. Harassment can take different forms, including unwanted verbal, physical, or other non-verbal conduct. Such conduct may be deemed harassment in the meaning of this Directive when it is either repeated or otherwise so serious in nature that it has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- (13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Union should, in accordance with Article 8 of the TFEU, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of discrimination on multiple grounds.

In the preparation or review of the laws, regulations and administrative provisions necessary to comply with this Directive, Member States should take account of the differential impact on men and women.

- (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 and/or scientific evidence.
- (14a) Differences in treatment in connection with age may be permitted under certain circumstances if they are objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary. In this context, the promotion of economic, cultural or social integration of persons belonging to specific age groups should constitute a legitimate aim. The means of achieving this aim, such as the offer of more favourable conditions of access to persons belonging to specific age groups, should be appropriate and necessary. Measures relating to age that offer more favourable conditions to persons of a certain age 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 and do not constitute discrimination on the ground of age.
- (15)
- (15a)
- (15b) Customers and relevant judicial and complaints bodies should have the right to be informed, upon request, about the reasons explaining differences of treatment on the grounds of age or disability in financial services. The information provided should be useful and understandable to a general public and it should explain differences in individual risk for the service in question. Providers of financial services should, however, not be obliged to disclose commercially sensitive data.

- (16) All individuals enjoy the freedom of 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 are carried out in the context of private or family life.
- (17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms in line with the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the protection of private and family life, freedom of religion, freedom of association, freedom of expression, freedom of the press and freedom of information. This Directive should not prejudice measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order, for the prevention of crime for the protection of health and for the protection of the rights and freedoms of others.
- (17-a) This Directive does not alter the division of competences between the Union and the Member States as defined by the Treaties, including in the areas of education and social protection. 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.
- (17a) This Directive covers the application of the principle of equal treatment in the access to social protection, access to education and access to and supply of goods and services within the limits of the competences of the Union. The concept of 'access' does not include the determination, in accordance with national law and practice, of whether a person is eligible to receive social protection or education, since the Member States are responsible for the organisation, funding and content of their social protection and educational systems, and also for the definition of who is entitled to receive social protection or education.

- (17b) Social protection, within the meaning of this Directive, should cover social security, social assistance, social housing and health care. Consequently, this Directive should apply with regard to all rights, entitlements and benefits which are derived from general or special social security, social assistance and healthcare schemes, and which are statutory or provided either directly by the State, or by private parties. In this context, the Directive should apply with regard to benefits in cash, benefits in kind and services, irrespective of whether the schemes involved are contributory or non-contributory. The abovementioned schemes include, for example, the branches of social security defined by Regulation (EC) No 883/2004<sup>16</sup> of the European Parliament and of the Council,, as well as schemes providing for benefits or services granted for reasons related to the lack of financial resources or risk of social exclusion. This Directive also applies to supplementary pensions covered by Directive 2014/50/EU.
- (17c)
- (17d)
- (17e)
- (17f) The exclusive competence of Member States with regard to the organisation of their social protection systems includes competence for the setting up, financing and management of such systems and related arrangements as well as the competence for determining the substance, the amount, the calculation and the duration of benefits and services, and for the setting of the conditions of eligibility for benefits and services, as well as for the adjustment of those conditions in order to ensure the sustainability of public finances.

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<sup>16</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p.1).



- (17g) The exclusive competence of Member States with regard to the organisation of their educational systems and the content of teaching and of educational activities, including the provision of special needs education, includes competence for the setting up, financing and management of educational institutions, for the development of curricula and other educational activities, for the definition of examination processes and for the setting of the conditions of eligibility, including, for example, age limits for schools, scholarships or courses.
- (17ga)
- (17h) This Directive does not apply to matters covered by family law including marital status and adoption and to laws on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.
- (17i)
- (18)
- (19) According to Article 17 of the TFEU, the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and it equally respects the status of philosophical and non-confessional organisations.
- (19a) 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. The definition of "long term" in relation to the concept of disability should be seen in the light of the case law of the Court of Justice of the European Union, in particular its judgement in Case C-395/15.

- (19ab)<sup>17</sup> The principle of accessibility is established in the United Nations Convention on the Rights of Persons with Disabilities. The Convention provides in this respect that to enable persons with disabilities to live independently and participate fully in all aspects of life, Member States as State Parties are to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public both in urban and in rural areas.
- (19b) Measures to ensure accessibility for persons with disabilities, on an equal basis with others, to the areas covered by this Directive play an important part in ensuring full equality in practice. Such measures should comprise the identification and elimination of obstacles and barriers to accessibility, as well as the prevention of new obstacles and barriers. Measures to ensure accessibility for persons with disabilities should not impose a disproportionate burden. Accessibility should be considered to have been achieved in a proportionate manner if persons with disabilities are able, effectively and on an equal basis with others, to access the services that particular buildings, facilities, transport services and infrastructure are meant to supply or offer to the public, even if they cannot have access to the entire building, facility or infrastructure concerned.
- (19c) Such measures should aim at achieving accessibility including with regard to, inter alia, the physical environment, transportation, information and communication technology and systems, and services, within the scope of this Directive. The fact that access might not always be possible to achieve in full equality with others may not be presented as a justification for not adopting all measures to increase as far as possible accessibility to persons with disabilities.

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<sup>17</sup> Recital to be revised later.

- (19ca) Reasonable accommodation should be realised in the areas covered by the Directive, provided it does not give rise to any disproportionate burden. The UNCRPD provides that all States Parties, in order to promote equality and eliminate discrimination, shall take all appropriate steps to ensure that reasonable accommodation is provided. Reasonable accommodation as defined in the UNCRPD, means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. Directive 2000/78/EC provides that ‘employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer’.
- (19cb) Measures to provide reasonable accommodation play an important part in ensuring full equality for persons with disabilities in the areas covered by this Directive. In the context of a contractual or other relationship of long duration between the provider and the person with a disability, structural alteration to premises or equipment could be deemed a reasonable accommodation. Reasonable accommodation can include adjusting or modifying the provider's usual policies, procedures and practices, adapting conditions of access and providing specific assistance, taking into account the particular needs of a person with a disability, with a view to achieving an equal outcome.

- (19cc) The measures of reasonable accommodation are only required to the extent that they do not impose a disproportionate burden. Exemptions from one or more requirements of equal treatment due to the disproportionate burden that they impose should not go beyond what is strictly necessary in order to limit that burden with respect to each individual case. Measures that would impose a disproportionate burden should be understood as measures that would impose an additional excessive organisational or financial burden, while taking into account the likely resulting benefit for the disabled person(s) concerned. Only legitimate reasons should be taken into account in any assessment.
- (19d)
- (19e) Where Union law providing for detailed standards or specifications on accessibility or reasonable accommodation in respect of particular goods or services is complied with, the requirements of this Directive with respect to accessibility or reasonable accommodation should be deemed to be complied with.

- (20) Union law already establishes detailed specifications on accessibility and reasonable accommodation in some areas. Such specifications are provided for, *inter alia*, in Commission Regulation (EU) No 1300/2014<sup>18</sup>, Regulation (EU) No 181/2011 of the European Parliament and of the Council<sup>19</sup>, Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>20</sup> and Regulation (EC) No 1107/2006 of the European Parliament and of the Council<sup>21</sup>. Union law also already establishes legal requirements to ensure accessibility, without providing for specification or standards of this requirement. Such legal requirements are established, *inter alia*, in Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>22</sup> and in Directive 2014/24/EU of the European Parliament and of the Council<sup>23</sup>. For example, Article 7 of Regulation (EU) No 1303/2013 requires that accessibility for persons with disabilities is one of the criteria to be observed in defining operations co-financed by the Funds.

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<sup>18</sup> Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (OJ L 356, 12.12.2014, p. 110).

<sup>19</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

<sup>20</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

<sup>21</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).

<sup>22</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>23</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

(20-aa)

- (20-a) In addition to general anticipatory measures to ensure accessibility, measures to provide reasonable accommodation in individual cases play an important part in ensuring full equality in practice for persons with disabilities in the areas covered by this Directive. In the context of a contractual or other relationship of long duration between the provider and the person with a disability, structural alteration to premises or equipment could be deemed a reasonable accommodation. Reasonable accommodation can include adjusting or modifying the provider's usual policies, procedures and practices, adapting conditions of access and providing specific assistance, taking into account the particular needs of a person with a disability, with a view to achieving an equal outcome. Measures to provide reasonable accommodation should not impose a disproportionate burden.
- (20-b) Member States are encouraged to develop and implement innovative measures to ensure reasonable accommodation.
- (20aa) In the provision of housing, the provider should not, in order to comply with the reasonable accommodation provisions set out in this Directive, be required to make structural alterations to the premises or to pay for such alterations. In accordance with national law and practice, a provider should accept such alterations, if they are funded otherwise-and do not impose disproportionate burden of some other kind.
- (20ab) The obligation to offer reasonable accommodation, provided that it does not give rise to any disproportionate burden, is established in Directive 2000/78/EC and in the UNCRPD. The UNCRPD also recognizes the importance of accessibility in enabling persons with disabilities to fully enjoy human rights and all fundamental freedoms. It sets accessibility as a general principle and requires States parties to take appropriate measures to ensure access on an equal basis with others.

- (20b) In assessing whether measures to ensure accessibility or reasonable accommodation would impose a disproportionate burden, account should be taken of a number of factors including, *inter alia*, the size, resources and nature of the organisation or enterprise, as well as the estimated costs of such measures or the (technical and/or economic) life span of infrastructures and objects which are used to provide a service. Furthermore, a disproportionate burden could arise in particular where significant structural alterations would be required in order to provide access to movable or immovable property which is protected under national rules on account of its historical, cultural, artistic or architectural value.
- (20c) (new) In order to allow for sufficient time to comply with the requirements to ensure reasonable accommodation for persons with disabilities set out in this Directive, it is appropriate that a longer transposition period for such measures is provided.
- (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, or having a combination of characteristics relating to these specific grounds of discrimination. Such measures may include support of organisations of and for persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the economic, cultural or social integration, of those persons, or catering for their particular needs.
- (22) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

- (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.
- (24) The rules on the burden of proof should 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 should shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the claimant adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.
- (25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (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.



- (27) Experience in applying Directives 2000/43/EC, 2004/113/EC and 2006/54/EC<sup>24</sup> shows that protection against 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 of discrimination. In accordance with the purpose of extending the degree and the form of protection against discrimination based on sex and racial or ethnic origin to the grounds covered by this Directive, the competences of this body or bodies should include also the areas covered by Directive 2000/78/EC. The Commission Recommendation on Standards for Equality Bodies of 22 June 2018 may be used by the Member States as guidance to ensure that these bodies function in an effective and independent manner.
- (28) Member States should promote the collection of data on equal treatment and discrimination, with the aim notably of monitoring and evaluating the effectiveness of the measures taken to comply with this Directive. For this purpose, Member States may for instance set baselines or measurable targets, or engage in the collection of qualitative and/or quantitative data. For the purpose of this Directive, data on equal treatment and discrimination should be understood as including any information that is useful and relevant for the purpose of describing and analysing the state of equality, in the sense that it provides indications of the existence and/or extent of discrimination and/or equality. The data collected may include baseline data, such as demographic and socio-economic data, data on material and experienced inequalities, or data which allows for the assessment of current policies or data based on human rights indicators. Data should be collected in accordance with national legislation and practice and in accordance with the applicable Union law, in particular that governing the protection of personal data.

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<sup>24</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

- (29) Member States should provide for effective, proportionate and dissuasive penalties in the event of breaches of national provisions adopted pursuant to this Directive. Penalties can include administrative and financial sanctions such as fines or the payment of compensation, as well as other types of sanctions.
- (30) Since the objective of this Directive, namely ensuring a common level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (31) In accordance with paragraph 34 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>25</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.

HAS ADOPTED THIS DIRECTIVE:

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<sup>25</sup> OJ L 123, 12.5.2016, p. 1.

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### *Purpose*

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 within the scope of this Directive, and furthers the promotion of that principle in the field of employment and occupation as provided for in Directive 2000/78/EC.

### *Article 2*

#### *Concept of discrimination*

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no discrimination on any of the grounds referred to in Article 1.
2. For the purposes of this Directive, "discrimination" means:
  - (a) direct discrimination on one of the grounds referred to in Article 1, that 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;
  - (b) indirect discrimination on one of the grounds referred to in Article 1, that shall be taken to occur where an apparently neutral provision, criterion or practice, would put persons of a certain religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other persons, unless the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;

- (c) harassment related to one of the grounds referred to in Article 1, that shall be taken to occur where unwanted conduct 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 laws and practice of the Member States;
- (d)
- (d-a)
- (d-b) instruction to discriminate against persons, on one of the grounds referred to in Article 1;
- (e) denial of reasonable accommodation for persons with disabilities, that shall be taken to occur where there is a failure to comply with Article 4a of this Directive;

3-a

- 3. Discrimination under this Directive includes discrimination based on a combination of the grounds of discrimination set out in Article 1, as well as a combination of one or more of those grounds and any of the grounds of discrimination protected under Directive 2000/43/EC and/or Directive 2004/113/EC.
- 4.
- 5.
- 6. Notwithstanding paragraphs 1 and 2 preferential treatment based on age or disability may be permitted if it is objectively justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary.

- 6-a Preferential treatment to ensure inclusion, integration or participation in society on an equal basis with others may take the form of free access, reduced tariffs or preferential access for the protected groups based on age or disability and may be permitted under this Directive as a justified, appropriate and necessary treatment.
- 6a.
7. Notwithstanding paragraphs 1 and 2 differences of treatment based on age or on a health condition that may be linked to a person's disability may be permitted in the provision of insurance, banking and other financial services in case they are objectively justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary, and only to the extent the assessment of risks is based on accurate, recent and relevant actuarial or statistical data and takes account of the individual situation of the applicant for the insurance, banking or other financial service.
- 7a. Notwithstanding paragraph 2, a difference in treatment based on age in the provision of insurance, banking and other financial services does not constitute age discrimination in case the differences in individuals' premiums and benefits are objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, and to the extent the assessment of the risks is based on accurate, recent and relevant actuarial or statistical data and takes account of the individual situation of the applicant for the insurance, banking or other financial service.

8. This Directive shall be without prejudice to measures laid down in national law which, in a democratic society, are appropriate and necessary for the maintenance of public security and of public order, for the prevention of crime, for the protection of minors, for the protection of health and safety and for the protection of the fundamental rights and freedoms of others, including the protection of private and family life, the right to freedom of religion, freedom of association, freedom of expression, freedom of the press and freedom of information and the freedom to contract. This Directive does not limit the competence of Member States nor extend that of the Union in the areas mentioned in this paragraph.

### *Article 3*

#### *Scope*

1. Within the limits of the competences conferred upon the European Union and within the limits set out in paragraph 2 and in full respect of the principle of subsidiarity and national constitutions and legal traditions, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) access to social protection, in so far as it relates to social security, and to social assistance, social housing and healthcare.

Access under this point shall include the process of seeking information, applying and registration as well as the actual provision of social protection measures.

- (b)

- (c) access to education.

Access under this point shall include the process of seeking information, applying and registration as well as the actual admission to and participation in educational activities;

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

Access under this point shall include the process of seeking information, applying, registration, ordering, booking, renting and purchasing as well as the actual provision and enjoyment of the goods and services in question.

2. This Directive does not apply to:

- (a) matters covered by family law, including marital status and adoption, as well as reproductive rights, nor to related entitlements to social security benefits linked to marital status;
- (b) the organisation and funding of Member States' social protection systems, including the setting up and management of such systems and related arrangements as well as the substance, the amount, the calculation and the duration of benefits and services, and the conditions of eligibility for these benefits and services, such as, for example, age limits for certain benefits;
- (c)
- (d) the organisation and funding of the Member States' educational systems, including the setting up and management of educational institutions, the content of teaching and of educational activities, the development of curricula, the definition of examination processes, and the conditions of eligibility, such as, for example, age limits for schools, scholarships or courses;
- (e) differences of treatment based on a person's religion or belief in respect of admission to educational institutions, the ethos of which is based on religion or belief, in accordance with national laws, traditions and practice.
- (f) access to and supply of goods and services, including housing, which are offered within the area of private and family life and the transactions carried out in this context.



3.
  - 3a. This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols and does not limit the exclusive competence of Member States in these matters.
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 and does not limit the exclusive competence of Member States in these matters.
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.

*Article 4*

*Article 4a*

*Reasonable accommodation for persons with disabilities*

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided within the areas set out in Article 3.
2. For the purpose of paragraph 1, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure the person with a disability the enjoyment or exercise on an equal basis with others of access to social protection measure, access to education, and access to and supply of goods and services within the scope of this Directive.
3. In the provision of housing, paragraphs 1 and 2 shall not require the provider to make structural alterations to the premises or to pay for them. In accordance with national law and practice, a housing provider shall accept such alterations if they are funded otherwise and do not impose a disproportionate burden.
4. The provisions of this Article shall be without prejudice to the provisions of Union law covering accessibility or reasonable accommodation in respect of particular goods or services.

5. For the purposes of assessing whether measures necessary to comply with this Article would impose a disproportionate burden, account shall be taken, in particular, of:
- a) the size, resources, nature, and net turnover and profit of the duty bearer;
  - aa) the negative impact on the person with a disability affected by the fact that the appropriate and necessary measure is not provided;
  - b) the estimated cost of the appropriate and necessary measure;
  - c) the estimated benefit for persons with disabilities generally, taking into account the frequency and duration of use of the relevant goods and services and the frequency and the duration of the relationship with the seller or provider;
  - ca) the amount of public funding available to the duty bearer for taking the appropriate and necessary measure;
  - d)
  - e) the historical, cultural, artistic or architectural value of the movable or immovable property in question; and
  - f) the safety and practicability of the measures in question.

The burden shall not be deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

2.

3.

*Article 5*  
*Positive action*

1. 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.

*Article 6*  
*Minimum requirements*

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## **CHAPTER II**

### **REMEDIES AND ENFORCEMENT**

#### *Article 7*

#### *Defence of rights*

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.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, 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.
3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

*Article 8*  
*Burden of proof*

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 discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to claimants.
3. Paragraph 1 shall not apply to criminal procedures.
4. Member States may decide not to apply paragraph 1 to proceedings in which the court or other competent body investigates the facts of the case.
5. Paragraphs 1, 2, 3 and 4 of this Article shall also apply to any legal proceedings commenced in accordance with Article 7(2).

*Article 9*  
*Victimisation*

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 10*

*Dissemination of information*

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.

*Article 11*

*Dialogue with relevant stakeholders*

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, 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.

*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 safeguarding of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
  - (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
  - (b) conducting independent surveys concerning discrimination, and
  - (c) publishing independent reports and making recommendations on any issue relating to such discrimination.

3.



## CHAPTER III

### FINAL PROVISIONS

#### *Article 13*

#### *Compliance*

Member States shall take the necessary measures to ensure that the principle of equal treatment is respected within the scope of this Directive and in particular that:

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

#### *Article 14*

#### *Penalties*

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties 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.

#### *Article 14a*

#### *Gender mainstreaming*

In accordance with Article 8 of the Treaty on the Functioning of the European Union, the Member States shall, when implementing this Directive, take into account the aim of eliminating inequalities, and of promoting equality, between men and women.

*Article 15*  
*Implementation*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by .... [4 years after adoption]. They shall immediately inform the Commission thereof and shall communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

1a.

1b.

1c.

2. With respect to Article 4a, Member States may decide to extend the transposition period referred to in paragraph 1 by up to 2 years. For that purpose, Member States shall notify the Commission of such decision and communicate the relevant transposition date by [4 years after adoption].

2a.

3.

3a.

4. Member States shall promote the collection of data on equality treatment and non-discrimination. Data shall be collected in accordance with national legislation and practice and in accordance with the applicable Union law, in particular that regarding the protection of personal data.

*Article 16*

*Report*

1. Member States shall communicate to the Commission, by [two years after the date provided for in Article 15(1)] 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 national equality bodies and relevant stakeholders, 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.

*Article 17*

*Entry into force*

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

*Article 18*

*Addressees*

This Directive is addressed to the Member States.

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