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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Kathalijne Maria BUITENWEG (Greens/EFA, NL) amending, under the consultation procedure, 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. The committee was concerned to ensure that the rights of persons with disabilities were clarified and expanded.

The main amendments are as follows:

Concept of discrimination: the committee extended the requirement of reasonable accommodation to children. The text provides that denial of reasonable accommodation in a particular case 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 the directive.

Members also provided that 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.

Furthermore, 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. Member States concerned shall ensure that any data relied on in the assessment of risk are recently compiled and relevant, regularly updated and published. 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 5 years after transposition of the Directive.

Clarifying this amendment, the committee notes in a new recital that 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.

Scope: access to transport is now included within the scope of the directive. The committee notes that 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.

Persons with disabilities: in order to guarantee compliance with 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.

Non-discriminatory access to services which are available to the public, and 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, must 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 adisproportionate 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.

Members clarified the above point by providing that effective non-discriminatory access involves the 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 the 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.

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.

Multiple discriminations: a new clause is inserted in the text. It notes that multiple discriminations occur when a person is discriminated against on a combination of two or more of the grounds set out in this Directive.

Dialogue with relevant stakeholders: this must include dialogue with 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 should also include monitoring of the implementation of the Directive.