

# 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 European Parliament adopted by 363 votes to 226, with 12 abstentions, a legislative resolution 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 main amendments are as follows:

**Multiple discrimination and discrimination by association:** the legislation should prohibit direct and indirect discrimination, multiple discrimination and discrimination by association based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or gender. MEPs point out that multiple discrimination occurs when discrimination occurs on two or more grounds. Effective legal procedures should be available to deal with situations of multiple discrimination and national legal procedures should ensure that a complainant can raise all aspects of a multiple-discrimination claim in a single procedure.

**Assumptions:** 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.

**Harassment:** MEPs note that the concept of harassment may be defined in accordance with the national law and practice of the Member States.

**Scope:** MEPs calls for the prohibition of discrimination to also apply to transport. They note that the 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. It shall not apply to the content of teaching, activities and the organisation of national educational systems, while Member States shall ensure the rights of persons with disabilities to education without discrimination and on the basis of equal opportunities. It is equally without prejudice to national legislation ensuring equality between males and females.

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. Lastly, the advertising and media sectors shall be excluded from the scope of the directive.

**Financial services:** in terms of the provision of insurance, banking and other financial services, 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 actuarial principles, accurate statistical data or medical knowledge, shall not be deemed to constitute discrimination. MEPs note that these data should be accurate, recent, and relevant and made available on request, in an accessible way. Moreover, 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.

**Positive action:** the directive shall not prevent any Member State from adopting measures or from allowing these measures to be taken by the public, private or voluntary sectors to prevent or compensate for disadvantages.

**Persons with disabilities:** "disability" is to be understood in the light of the UN Convention on the Rights of Persons with Disabilities, and persons with chronic diseases. The proposed directive provides that 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. MEPs point out that this access should also concern telecommunication and electronic communications, information, financial services, culture and leisure, buildings open to the public, modes of transport and other public spaces and facilities.

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, a meaningful alternative to access shall be provided. However, those measures should not impose a disproportionate burden or require a fundamental alteration, i.e. 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.

**Permitted differences in treatment:** according to MEPs, 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.

MEPs consider that 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

**Promotion of equality:** 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 the directive. To this end, Member States shall organise ad hoc information and awareness campaigns and training.

**Defence of rights:** 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 the directive, in a way which is dissuasive and proportionate to the damage suffered.

**Independent body:** 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.

**Sanctions:** these must be effective, proportionate and dissuasive and result in the cessation of the discriminatory conduct and the removal of its effects. They may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit.

**Implementation:** in order to comply with the obligation to provide effective non-discriminatory access to existing infrastructures, policies or procedures, 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, including targets, means and timeline.