Basic information

2008/0140(APP) APP - Consent procedure Directive	Awaiting final decision
Equal treatment: implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation **Subject** 4.10.08 Equal treatment of persons, non-discrimination	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	BUITENWEG Kathalijne Maria (Verts/ALE)	15/09/2008

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs (Associated committee)	LYNNE Elizabeth (ALDE)	06/10/2008
ENVI Environment, Public Health and Food Safety	SARTORI Amalia (PPE-DE)	07/10/2008
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
CULT Culture and Education	GRÖNER Lissy (PSE)	15/09/2008
JURI Legal Affairs	FRASSONI Monica (Verts/ALE)	22/09/2008
FEMM Women's Rights and Gender Equality	GOTTARDI Donata (PSE)	09/10/2008

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	3583	2017-12-08
Employment, Social Policy, Health and Consumer Affairs	3548	2017-06-15
Employment, Social Policy, Health and Consumer Affairs	3247	2013-06-20
Employment, Social Policy, Health and Consumer Affairs	3357	2014-12-11

	Employment, Social Policy, Health and Consumer Affairs	3280	2013-12-09
	Employment, Social Policy, Health and Consumer Affairs	2980	2009-11-30
	Employment, Social Policy, Health and Consumer Affairs	3099	2011-06-17
	Employment, Social Policy, Health and Consumer Affairs	2916	2008-12-16
	Employment, Social Policy, Health and Consumer Affairs	3053	2010-12-06
	Employment, Social Policy, Health and Consumer Affairs	3177	2012-06-21
	Employment, Social Policy, Health and Consumer Affairs	3206	2012-12-06
	Employment, Social Policy, Health and Consumer Affairs	3475	2016-06-16
	Employment, Social Policy, Health and Consumer Affairs	3131	2011-12-01
	Employment, Social Policy, Health and Consumer Affairs	3434	2015-12-07
	Employment, Social Policy, Health and Consumer Affairs	2893	2008-10-02
	Employment, Social Policy, Health and Consumer Affairs	2947	2009-06-08

European Commission	Commission DG	Commissioner
	Employment, Social Affairs and Inclusion	ANDOR László

Key events

Date	Event	Reference	Summary
02/07/2008	Legislative proposal published	COM(2008)0426	Summary
02/09/2008	Committee referral announced in Parliament		
02/10/2008	Debate in Council		Summary
23/10/2008	Referral to associated committees announced in Parliament		
16/12/2008	Debate in Council		Summary
16/03/2009	Vote in committee		Summary
20/03/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0149/2009	
01/04/2009	Debate in Parliament		
02/04/2009	Decision by Parliament	T6-0211/2009	Summary
02/04/2009	Results of vote in Parliament		
08/06/2009	Debate in Council		Summary
30/11/2009	Debate in Council		Summary
02/12/2009	Additional information		Summary
06/12/2010	Debate in Council		Summary
17/06/2011	Debate in Council		
01/12/2011	Debate in Council		
21/06/2012	Debate in Council		Summary

06/12/2012	Debate in Council		Summary
20/06/2013	Debate in Council		
09/12/2013	Debate in Council		Summary
11/12/2014	Debate in Council		Summary
07/12/2015	Debate in Council		
16/06/2016	Debate in Council		
15/06/2017	Debate in Council		
08/12/2017	Debate in Council		
21/10/2019	Resumption of business from the previous parliamentary term		
13/11/2024	Resumption of business from the previous parliamentary term		

Technical information

Procedure reference	2008/0140(APP)
Procedure type	APP - Consent procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 019-p1
Stage reached in procedure	Awaiting final decision
Committee dossier	LIBE/6/65317

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE418.014	14/01/2009	
Committee opinion	CULT	PE415.268	20/01/2009	
Committee opinion	EMPL	PE412.242	22/01/2009	
Committee opinion	ENVI	PE415.287	27/01/2009	
Committee opinion	FEMM	PE415.155	11/02/2009	
Committee opinion	JURI	PE418.254	13/02/2009	
Amendments tabled in committee		PE418.459	13/02/2009	
Amendments tabled in committee		PE421.199	12/03/2009	
Committee report tabled for plenary, 1st reading/single reading		A6-0149/2009	20/03/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0211/2009	02/04/2009	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0426	02/07/2008	Summary
Document attached to the procedure	SEC(2008)2180	02/07/2008	
Document attached to the procedure	SEC(2008)2181	02/07/2008	
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0321/2008	17/06/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency

Name	Role	Committee	Date	Interest representatives
KUHNKE Alice	Rapporteur	LIBE	03/06/2026	Equinet - the European Network of Equality Bodies
KUHNKE Alice	Rapporteur	LIBE	12/05/2026	Commissie Meijers
KUHNKE Alice	Rapporteur	LIBE	25/11/2025	Antidiskriminierungsstelle des Bundes - ADS
KUHNKE Alice	Rapporteur	LIBE	05/11/2025	#DiasporaVote! AGE Platform Europe Equinet - the European Network of Equality Bodies European Network Against Racism Fundacja na rzecz Kobiet i Planowania Rodziny The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association
KUHNKE Alice	Rapporteur	LIBE	11/06/2025	Equinet - the European Network of Equality Bodies
KUHNKE				AGE Platform Europe Equinet - the European Network of Equality Bodies European Disability Forum European Network Against Racism

Alice	Rapporteur	LIBE	25/03/2025	Fundacja na rzecz Kobiet i Planowania Rodziny The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association Transgender Europe
KUHNKE Alice	Rapporteur	LIBE	18/03/2025	AGE Platform Europe
KUHNKE Alice	Rapporteur	LIBE	12/03/2025	Federa Foundation for Women and Family planning
KUHNKE Alice	Rapporteur	LIBE	19/02/2025	AGE Platform Europe EL*C - EuroCentralAsian Lesbian* Community European Disability Forum European Civic Forum The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association Transgender Europe
KUHNKE Alice	Rapporteur	LIBE	04/02/2025	Heinrich Böll Stiftung e.V.
KUHNKE Alice	Rapporteur	LIBE	03/02/2025	Helsinki Foundation for Human Rights
KUHNKE Alice	Rapporteur	LIBE	03/02/2025	Polish Society of Discrimination Law
KUHNKE Alice	Rapporteur	LIBE	03/02/2025	Amnesty International Limited
KUHNKE Alice	Rapporteur	LIBE	08/04/2024	Equinet - the European Network of Equality Bodies

Other Members

Transparency		
Name	**Date**	**Interest representatives**
SIPPEL Birgit	02/04/2025	Commissioner for Equality

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

2008/0140(APP) - 06/12/2012

The Council took note of a progress report on the Equal Treatment Directive aimed at outlawing discrimination on the grounds of religion or belief, disability, age or sexual orientation also in areas outside the labour market.

The Commission's 2008 proposal complementing existing EC legislation in this area, the proposed Directive would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; social advantages; education; and access to goods and services, including housing.

Work carried out from 2008 to the Cypriot Presidency: between 2008 and 2012, a large majority of delegations 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 social 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 maintained **general reservations**, questioning the need for the Commission's proposal, which they see as infringing on national competence for certain issues and as **conflicting with the principles of**

subsidiarity and proportionality. Certain other 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.

Under the Cypriot Presidency, progress has been made in the attempt to clarify the scope of the Directive, in particular as regards access to social protection and to education.

Access to Social Protection: the Presidency sought to clarify the scope with regard to social protection by specifying, in particular, that the Directive would apply to "access to social protection" and that it prohibited discrimination "in the access to benefits and services as determined by Member States" (Recital 17a and Article 3(1)(a)). A majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction. However, certain others questioned the advisability of reducing the scope by referring to "access", preferring to align the text with Directive 2000/43/EC. Certain delegations also called for the text and its practical implications to be clarified, including with respect to the issue of age discrimination, and for legal certainty to be improved. **Some delegations continued to call for "social protection" to be removed from the scope.**

Access to Education: the Presidency sought to clarify the scope by specifying, in particular, that the Directive would apply to "access to education," the organisation of education systems and the content of teaching and educational activities falling within the exclusive competence of the Member States. A majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction. However, certain others would, ideally, have preferred to align the text with Directive 2000/43/EC, where the term "access" is not included. Others also saw a need to clarify the text, including with respect to the issue of age discrimination. Certain delegations continued to call for "education" to be removed from the scope.

Outstanding issues

- the overall scope of the Directive, the division of competences and the issue of subsidiarity;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;
- the implementation calendar;
- the need to ensure legal certainty;
- the overall impact of the proposal, including on SMEs.

As regards disabilities: many delegations acknowledge the importance of the proposal, in particular with regard to the rights of persons with disabilities. A number of delegations, however, question the need for this instrument, which they see as encroaching on national competence, or have other concerns, notably as regards legal certainty and the practical, financial and legal impact of the proposal.

In conclusion, while significant progress has been made under the Cypriot Presidency in the attempt to clarify the scope, particularly as regards access to social protection and access to education, there is a clear need for extensive further work on the proposal.

Two delegations suggested that work on this proposal should be abandoned because no solution seemed to be in sight after several years of discussions. Some other delegations, however, stressed that work should continue, in the interest of strengthening anti-discrimination legislation.

For the time being, all delegations have maintained general scrutiny reservations on the proposal. CZ, DK, FR, MT and UK have maintained parliamentary scrutiny reservations.

The Commission has meanwhile affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

The European Parliament adopted its Opinion under the Consultation Procedure on 2 April 2009. 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**.

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

2008/0140(APP) - 09/12/2013

The Council took note of a **progress report** on the directive on equal treatment with regard to religion or belief, disability, age or sexual orientation.

The Lithuanian presidency has brought forward the **technical work** on certain issues, including:

- **The scope (definition of "access")**: the Presidency suggested a differentiated concept of access, access to social protection and access to education being defined more narrowly than access to goods and services. It retained, in a Recital, a clarification of this definition specifying that access does not include the determination whether a person is eligible to receive social protection or education.
- **The concept of discrimination**: the Presidency returned to a single definition of discrimination.
- **The division of competences**: the Presidency reworded a Recital with a view to clarifying the delineation of national competences for social security, social assistance, social housing and healthcare, particularly with respect to the financing and management of social protection systems and matters of eligibility.

Certain delegations have maintained **general reservations**, questioning the need for the Commission’s proposal, which they see as infringing on national competence for certain issues and as conflicting with the principles of **subsidiarity and proportionality**.

Further discussion is also needed on a number of other outstanding issues, including the following:

- the overall scope, certain delegations being opposed to the inclusion of social protection and education within the scope;

- anticipatory measures (usually "accessibility") aimed at ensuring equal treatment for persons with disabilities;

- the implementation calendar;

- further aspects of the division of competences and subsidiarity; and

- legal certainty in the Directive as a whole.

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

2008/0140(APP) - 11/12/2014

The Council held an orientation debate on the equal treatment directive. This Directive is designed to extend protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation to areas outside employment.

A large majority of delegations have 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 social 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).

The German Delegation has maintained a general reservation and expressed various concerns in particular the existence of an adequate legal basis. It has taken the view that the proposal violated the subsidiarity principle and emphasised the burden that the proposed measures would impose on businesses (especially SMEs) and underlined the lack of legal certainty as a critical issue.

Germany has also taken the view that the issues covered in the proposal could be better regulated at the national level and therefore regarded the proposal as infringing on national competence. The Maltese delegation has similarly called for a clear delineation of national competences and respect for the principles of subsidiarity and proportionality to be ensured. The Dutch delegation called for solutions to be found to its concerns, particularly in respect of the financial implications.

Outstanding issues: although progress has recently been made, in particular, in the discussions on the scope of the Directive and on the concept of "**access**," the Working Party has recognised the need for further discussion, with a view to resolving the outstanding questions, which include the following:

- remaining issues related to the scope, the division of competences and the issue of subsidiarity; areas where clarification is required include housing, information and communication technology (ICT), education, social security, transportation and the physical/built environment;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;
- the implementation calendar;
- the need to ensure legal certainty in the Directive as a whole;
- the overall financial and practical impact of the proposal, including on SMEs.

For the time being, all delegations have therefore maintained general scrutiny reservations on the proposal, with sometimes parliamentary scrutiny reservations. The Commission has meanwhile affirmed its original proposal at this stage and has maintained a scrutiny reservation on any changes thereto.

To recall, 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.

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

2008/0140(APP) - 21/06/2012

The Council took note of a **progress report** on the equal treatment directive.

During discussions in the Council's working party, a large majority of delegations 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 social 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. However, some delegations would have preferred more ambitious provisions with regard to **disability**.

While emphasizing the importance of the fight against discrimination, certain delegations have maintained general reservations, questioning the need for the Commission's proposal, which they see as encroaching on national competence for certain issues and **conflicting with the principles of subsidiarity and proportionality**.

Certain other 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.

For the time being, all delegations have maintained general scrutiny reservations on the proposal. CZ, DK, FR, MT and UK have maintained parliamentary scrutiny reservations. The Commission has meanwhile affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

The European Parliament adopted its Opinion under the Consultation Procedure on 2 April 2009. 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.

The proposal has been under examination in the Council since 2008. Despite the well-known difficulties, efforts have continued in order to clarify the various issues that have arisen. During the Danish presidency, the experts have focused on age discrimination.

The discussion has advanced to some extent, improving the clarity of the text. A great deal of work still needs to be done however.

The Council's work under the Danish presidency:

The discussions addressed a number of issues, including the following:

(a) General exception for age: aiming to improve legal certainty, so that certain justifiable differences of treatment would continue to be allowed under the Directive, the Presidency tabled a suggestion whereby conditions of eligibility related to age and disability, including age limits, for benefits and services within the framework of the Member States' social protection systems are excluded from the scope.Age limits in the area of education are similarly excluded in the current draft.

Certain delegations felt that social protection ought to be removed from the scope altogether. The Commission representative, however, affirmed the need to keep social protection within

the scope and expressed the concern that excluding *all* conditions of eligibility from the scope might appear to **negate the very purpose of the Directive** with respect to ensuring equal access to social protection.

Certain delegations had doubts regarding the formulation of the provisions concerning social protection. Article 3 states that healthcare is part of social protection and thus falls within the scope of the Directive; *private* healthcare services, however, would not benefit from the exemption of age or disability related conditions of eligibility from the scope, which only applies to healthcare in the context of "the organisation of *Member States' social protection systems*," i.e. public healthcare. **Certain delegations questioned this distinction between private and public healthcare, and stated that it was not clear-cut**, calling for clarification. Endorsing the need for clarity, the Commission representative nevertheless took a favourable view of the approach taken in the Presidency's drafting suggestions, whereby age limits set as a condition of eligibility to public healthcare would be exempted from the Directive, whereas private healthcare providers would be required to justify the age limits they set.

(b) Financial services: the draft Directive would, in certain cases, permit proportionate differences of treatment on the grounds of age and disability in the provision of financial services. In an attempt to clarify the text, the Presidency introduced separate recitals for age (Recital 15) and disability (Recital 15a). In order to further improve legal certainty in the light of the Judgement of the Court of Justice, the Presidency specified that :

- while risk factors related to age are used in the provision of insurance, banking and other financial services to assess the individual risk and to determine premiums and benefits, in certain financial services, persons of different ages are not in a comparable situation for the assessment of risk ;
- similarly, in certain financial services, persons with a disability are not in a comparable situation for the assessment of risk with that of persons without such a disability.

The Presidency also sought to clarify the criteria for risk assessments to the effect that **proportionate differences of treatment on the grounds of age or disability do not constitute discrimination if a person's age or disability is a determining factor in the assessment of risk for the service in question** and this assessment is based on actuarial principles and relevant and reliable statistical data (or, in the case of disability, relevant and reliable medical knowledge).

Delegations called for certain clarifications and expressed divergent views on these criteria, some calling for greater flexibility, while others wanted stricter rules.

Emphasising the need for legal certainty, certain delegations also **warned against inadvertently outlawing commercial practices where cheaper rates were offered to certain age groups**. In this context, certain delegations saw a need to clarify the suggested adjustment of the burden of proof rule provided for in Recital 14a for cases where more favourable conditions of access are offered to persons of a certain age.

Other issues requiring further discussion include:

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the potentially discriminatory situation that might arise if, for example, insurance providers in small national markets refuse altogether to cater for certain age groups;
- the provisions concerning minors, certain delegations having called for persons under eighteen to be excluded from the Directive;
- and consistency with the UNCRPD.

Generally speaking, the Presidency's drafting suggestions were broadly supported by many delegations as a step in the right direction, more work being nevertheless required on the provisions concerning age as a discrimination factor.

Further discussion is also needed on a number of other outstanding issues,including the following:

- the division of competences, the overall scope and subsidiarity;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;
- the implementation calendar;
- legal certainty in the Directive as a whole; and
- the overall impact of the proposal, including on SMEs.

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

2008/0140(APP) - 02/10/2008

The Council conducted a **policy debate**, open to the public, on the proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

The debate was conducted on the basis of a questionnaire submitted by the Presidency. The questionnaire aimed, in particular, to clarify Member States' ambitions in respect of the Directive, the scope which they wished to give to the principle of equal treatment at Community level, the link between a Community framework and national powers and their position concerning the equal treatment of persons with disabilities.

A large number of Ministers favoured a **high level of ambition**. Several Ministers said that their existing national legal systems went beyond the Commission proposal. Some Ministers questioned the need to establish Community rules in this area, while supporting the principle of equal treatment.

Ministers underlined the importance of the proposal with regard to the United Nations Convention on the Rights of Persons with Disabilities, which had been signed by all the Member States and was in the process of being ratified by most of them. Some delegations would have preferred more ambitious provisions concerning measures to combat discrimination on grounds of disability. Most delegations asked for certain parts of the proposal to be clarified with regard to legal certainty. A large number of delegations requested clarifications regarding the proposal's economic and financial impact.

Based on the division of powers as defined in the existing Directives, Commissioner **Vladimir ŠPIDLA**said that, according to his analysis, Member States' sovereignty in the areas concerned would not be affected by the proposal.

The Council asked its preparatory bodies to continue to work actively on this file with a view to improving the text both from a legal viewpoint and in terms of clarifying the provisions.

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

2008/0140(APP) - 08/06/2009

On the basis of a **progress report**, the Presidency briefed the Council on the state of play in the discussions on the draft directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The Commission proposal seeks to extend protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation to areas outside the labour market, including social protection, social advantages, education and access to goods and services.

Under the Czech Presidency, the discussions within the preparatory bodies of the Council concentrated on the provisions aimed at protecting persons with disabilities from discrimination (Article 4 of the proposal). The Presidency tabled drafting suggestions to align the Directive more closely with the text of the UN Convention on the Rights of Persons with Disabilities and to provide for the progressive implementation of the Directive. Delegations have taken a broadly favourable view of the Czech Presidency's approach as a step in the right direction, particularly welcoming the attempt to clarify the text, to provide for the gradual implementation of certain provisions and to align the draft Directive more closely with the UN Convention.

However, further work is needed, in particular, on the following issues:

- the scope of the provisions, including in respect of infrastructures, buildings, transport and the design and manufacture of goods;
- the financial and practical implications of the provisions;
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ensuring legal certainty, especially in regard to the concrete obligations created by the Directive, including with respect to terms such as "on an equal basis with others" and "reasonable accommodation";
- the interrelationship between the draft Directive and more detailed sectoral standards or specifications on the accessibility of particular goods, including public transport;
- the implementation calendar, particularly in respect of provisions requiring modifications to existing infrastructures and buildings;
- the possible need for further alignment with the UN Convention, taking into account the need for legal clarity.

Further discussion is needed with a view to **demarcating the division of competences between the Member States and the European Community** as precisely as possible. More work is also needed to elucidate the delicate distinction between access to fields such as education, healthcare and social protection, and the organisation of such fields, the latter being an area of national competence. Other issues that require additional examination include the cross-border dimension that underlies the Community competences in the fields listed in the scope, the provisions related to family law, and the need to find a balance between anti-discrimination and the rights of individuals in the private sphere.

The current draft text provides for **certain differences of treatment** that should not be seen as discrimination (for example, cheaper public transport offered to children, disabled persons or pensioners), and contains specific provisions concerning the assessment of risk by the providers of financial services, including insurance. However, further discussion is needed, particularly on the key notion of objective and reasonable justification, so as to distinguish clearly between differences of treatment which would not be permitted and those which are justified.

Lastly, in underlining the importance of **legal certainty**, delegations have expressed the wish to avoid further cases having to be brought before the European Court of Justice (ECJ). They have consequently stressed the need for the clearest possible wording throughout, including in the definitions of key terms, and have underlined the importance of ensuring consistency with existing legislation.

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

2008/0140(APP) - 02/07/2008 - Legislative proposal

PURPOSE: to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market.

PROPOSED ACT: Council Directive.

CONTENT: this proposal builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC which prohibit discrimination on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief. The Commission stresses that, as far as possible, the concepts and rules provided for in this proposal build on those used in the existing Directives based on Article 13 EC.

Purpose: the main objective of the directive is to combat discrimination based on religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment, outside the field of employment. The directive does not prohibit differences of treatment based on sex which are covered by Articles 13 and 141 of the EC Treaty and related secondary legislation.

Concept of discrimination: the definition of the principle of equal treatment is based on that contained in the previous directives adopted under Article 13 (1) EC as well as relevant case law of the European Court of Justice.

Direct discrimination consists of treating someone differently solely because of his or her age, disability, religion or belief and sexual orientation. **Indirect discrimination** is more complex in that a rule or practice which seems neutral in fact has a particularly disadvantageous impact upon a person or a group of persons having a specific characteristic. The author of the rule or practice may have no idea of the practical consequences, and intention to discriminate is therefore not relevant. As in Directives 2000/43/EC, 2000/78/EC and 2002/73/EC, it is possible to justify indirect discrimination (if "that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary").

Harassment is a form of discrimination. The unwanted conduct can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment. This definition is identical to the definitions contained in the other Article 13 directives.

A **denial of reasonable accommodation** is considered a form of discrimination. Certain differences of treatment based on age may be lawful, if they are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test).

In the existing Article 13 EC directives exceptions to the prohibition of direct discrimination were allowed for "genuine and determining occupational requirements", for differences of treatment based on age, and in the context of sex discrimination, in access to goods and services. Although the current proposal does not cover employment, there will be differences of treatment in the areas mentioned in the proposal. However, as exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required.

A **special rule is added for insurance and banking services**, in recognition of the fact that age and disability can be an essential element of the assessment of risk for certain products, and therefore of price. If insurers are not allowed to take age and disability into account at all, the additional costs will have to be entirely borne by the rest of the "pool" of those insured, which would result in higher overall costs and lower availability of cover for consumers. The use of age and disability in the assessment of risk must be based on accurate data and statistics.

Scope: discrimination based on religion or belief, disability, age or sexual orientation is prohibited by both the public and private sector in:

- social protection, including social security and health care;

- social advantages;

- education;

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

In terms of **access to goods and services**, only professional or commercial activities are covered. Transactions between private individuals acting in a private capacity will not be covered: letting a room in a private house does not need to be treated in the same way as letting rooms in a hotel. The areas are covered only to the extent that the subject matter falls within the competences of the Community. Thus, for example, the organisation of the school system, activities and the content of education courses, including how to organise education for persons with disabilities, is a matter for the Member States, and they may provide for differences in treatment in access to religious educational institutions.

Matters related to marital and family status, which includes adoption, are outside the scope of the directive. This includes reproductive rights. Member States remain free to decide whether or not to recognise legally registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies.

The directive does not cover national laws relating to the secular nature of the State and its institutions, nor to the status of religious organisations. Member States may thus allow or prohibit the wearing of religious symbols in schools. Differences in treatment based on nationality are also not covered.

Equal treatment of persons with disabilities: effective access for disabled people 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, shall be provided by anticipation. This obligation is limited by the defence that if this would impose a disproportionate burden or would require major changes to the product or service, it does not need to be done.

In some cases **individual measures of reasonable accommodation** may be necessary to ensure effective access for a particular disabled person. This is only the case if it would not impose a disproportionate burden. A non-exhaustive list is given of factors that could be taken into account in assessing whether the burden is disproportionate, thus allowing the specific situation of small and medium sized, and micro enterprises, to be taken into account.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States have experience in applying it. What might be appropriate for a large corporation may not be for a small or medium-sized company. The requirement to make reasonable accommodation does not only imply making physical changes but may entail an alternative means of providing a service.

The proposal deals with other provisions which are common to all Article 13 Directives. These provisions include positive action, minimum requirements, the defence of rights, the shift of the burden of proof, victimisation, the dissemination of information, the promotion of dialogue with relevant stakeholders, the requirement that Member States have a body or bodies ("Equality Body") at national level to promote equal treatment of all persons, compliance and sanctions.

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

2008/0140(APP) - 30/11/2009

On the basis of a progress report, the Presidency briefed the Council on the s**tate of play** in the discussions on the draft directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Under the Swedish Presidency, **the preparatory bodies of the Council have advanced the discussion** to some extent by improving the clarity of the disability provisions, the scope and the respective competences of the EU and its member states.

However, further extensive work still needs to be done on numerous issues in order to guarantee legal certainty and to ensure that all newly introduced obligations and their possible cost implications are fully understood. This concerns in particular the **accessibility of buildings and infrastructure**. In order to meet concerns expressed, the Swedish Presidency has suggested a nuanced implementation timetable under which existing infrastructure and buildings would be given longer than new ones.

The main outstanding issues are as follows:

Division of competences, scope and subsidiarity (Article 3): further discussion is needed on the scope, including with a view to establishing the intended reach of the disability provisions (see below) and to demarcating the division of competences between the Member States and the European Community even more precisely than hitherto6. In particular, more work is needed to elucidate the delicate distinction between access to fields such as education, healthcare and social protection, and the organisation of such fields, the latter being an area of national competence.

The disability provisions (Articles 4, 4a and 4b): further discussion will be needed on the following issues:

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the scope of the provisions and the concrete obligations to be created, including with respect to the physical environment (or "the built environment"); new and existing buildings, facilities and infrastructure; different types of building and housing; transport; and the design and manufacture of goods;
- the method for assessing what constitutes a disproportionate burden, and the notion of a denial of reasonable accommodation.
- the financial, administrative and practical implications of the provisions and their scope, particularly regarding SMEs and the self-employed; and
- the exact interrelationship between the draft Directive and more detailed sectoral standards or specifications on the accessibility of particular goods and services, including public transport.

Legal certainty in the Directive as a whole: in underlining the importance of legal certainty, delegations have expressed the wish to avoid further cases having to be brought before the European Court of Justice (ECJ).

They have consequently stressed the need for the clearest possible wording throughout, including in the definitions of key terms, and have underlined the importance of ensuring consistency with existing legislation.

Other issues: a large number of other questions will also require further discussion, including the following:

- the legal basis, including the cross-border dimension that underlies the Community competences in the fields listed in the scope;
- the concepts of harassment, discrimination by association and discrimination based on assumptions;
- legitimate differences of treatment on the grounds of age (especially in respect of minors), and on the grounds of disability as well as age in the provision of financial services (including banking and insurance);
- the need to find the right balance between protection against discrimination and rights in the private sphere (including freedom of speech and religion); and
- the issue of gender mainstreaming.

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

2008/0140(APP) - 16/12/2008

The French Presidency briefed Ministers on progress with regard to the proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

The Council's preparatory bodies have so far examined:

- the links between Community and national competences,
- the legal basis,
- the provision to prevent discrimination based on disability, legitimate differing treatment depending on age and disability, and legal security.

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

2008/0140(APP) - 06/12/2010

Ministers adopted **two sets of conclusions** on gender equality.

The first, entitled "Support of the implementation of the European Commission's **Strategy on equality between women and men 2010-2015**" (*see Council Doc. 16880/10*), welcomes the strategy and underlines its links with the Europe 2020 strategy. It makes the economic case for equality, which is needed to boost growth and employment, and is a prerequisite for reaching the headline target of a 75% employment rate for women and men. By adopting the conclusions, ministers also invited the European Council to adapt and improve the European pact for gender equality. The new strategy replaces the Commission's "Roadmap for equality between women and men (2006-2010)", which was supported by the European Council of March 2006 in the form of a European pact for gender equality.

The second set of conclusions concerns the **fight against inequalities in salaries between women and men** (*see Council Doc. 16881/10*). By adopting the text, ministers emphasised the need for a more detailed understanding of the gender pay gap, which still averages 18% in the EU. The conclusions invites the Member States to adopt or pursue a comprehensive set of measures to tackle the full range of causes of the gender pay gap linked to labour market inequalities between women and men, coordinating the actions of all relevant key actors, particularly the social partners, at all levels.

Member States and the Commission are invited to take the necessary steps to monitor the gender pay gap and monitor progress on a regular basis by using main indicators, taking into account the methodology of the Structure of Earnings Survey (SES), considering **complementary indicators**.

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

2008/0140(APP) - 02/04/2009 - Text adopted by Parliament, 1st reading/single reading

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.