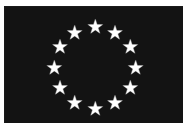


EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

2008/0140(CNS)

14.1.2009

DRAFT REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kathalijne Maria Buitenweg

Rapporteur (*):
Elizabeth Lynne, Committee on Employment and Social Affairs

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

Symbols for procedures

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

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

Amendments to a legislative text

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0426),
 - having regard to Article 13(1), of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0291/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs, and the opinions of the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

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

Amendment

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

discrimination but also the benefits of diversity.

discrimination but also the *need to promote* the benefits of diversity.

Or. en

Amendment 2

Proposal for a directive Recital 8

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This directive benefits from the experience and the legal framework of directive 2000/78/EC, but also from the other anti-discrimination directives.

Amendment 3

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

This definition is the same as the definition in the UN Convention which is currently being ratified.

Amendment 4

Proposal for a directive Recital 12 b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 5

Proposal for a directive Recital 12 c (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 6

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In the implementation of this directive, when judging complaints of discrimination, there should be as much awareness as possible of multiple discrimination, taking account not only of religion or belief, disability, age or sexual orientation, but also of gender, racial and ethnic origin.

Or. nl

Amendment 7

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

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

(16) It is important to respect fundamental rights and freedoms, including the right to freedom of

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

association. It is also important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context.

Or. en

Amendment 8

Proposal for a directive Recital 17

Text proposed by the Commission

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

Amendment

(17) This Directive is without prejudice to national laws on access to marriage. However, where types of relationship other than marriage are recognised as equivalent to marriage under national law, the principle of equal treatment should apply. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.

Or. en

Justification

Marriage is a declaratory act and is not a good or service. Therefore it falls outside the scope of this Directive.

Amendment 9

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) To determine whether the measures in question give rise to a disproportionate

burden as with regard to article 4, account should be taken in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.

Or. en

Amendment 10

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 11

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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

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

degrading, humiliating or offensive environment.

creating an intimidating, hostile, degrading, humiliating or offensive environment.

Or. en

Justification

To make sure there is a good balance between non-discrimination and freedom of speech, only harassment in a closed environment should be considered discrimination in this Directive.

Amendment 12

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 13

Proposal for a directive Article 2 – paragraph 6

Text proposed by the Commission

Amendment

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

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

shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.

Or. en

Amendment 14

Proposal for a directive Article 2 – paragraph 7

Text proposed by the Commission

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

Amendment

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate 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 Member States concerned shall notify the Commission and ensure that accurate data concerning the use of age or disability as a determining actuarial factor are compiled, published and regularly updated. Those Member States shall review their decision five years after the date of transposition and shall communicate the results of that review to the Commission.***

Or. en

Justification

This amendment restricts the possibility for differences in treatment to determining factors and it obliges to publicly justify these differences in treatment, as is also required in Directive 2004/113/EC.

Amendment 15

Proposal for a directive Article 2 – paragraph 8

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 16

Proposal for a directive Article 3 - paragraph 1 - point d - second sentence

Text proposed by the Commission

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

Amendment

In applying subparagraph (d), the private life of individuals shall be respected.

Or. nl

Amendment 17

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Justification

The European Commission stated that it only confirms a division in competences and is not considered an exception. Such a confirmation of the status quo should be in a recital (see amendment 6) rather than in an article.

Amendment 18**Proposal for a directive
Article 3 – paragraph 3***Text proposed by the Commission*

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

Amendment

3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organization of their educational systems, including the provision of special needs education. Member States may ***allow for*** differences in treatment in access to educational institutions based on religion or belief ***when it is to require individuals to act in good faith and with loyalty to the organization's ethos and should not justify discrimination on any other ground.***

Or. en

Justification

The Commission proposal is not completely clear on the boundaries of the exception. The amendment clarifies that there can only be differences in treatment based on religion or belief, not on any other ground. It also clarifies that this can only be justified when it is necessary to protect an organization's ethos.

Amendment 19

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. nl

Amendment 20

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

Text proposed by the Commission

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

Amendment

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, ***telecommunication and electronic communications, information including information provided in accessible formats, financial services, culture and leisure, buildings open to the public, transport modes and other public spaces***

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

and facilities, shall be provided by anticipation, including through appropriate modifications or adjustments. *Where discrimination arises from practice, policy or procedure, measures need to be taken so that it no longer has that effect.* Such measures should not impose a disproportionate burden, nor require fundamental *alterations to the nature of the goods, services, trade, profession or business in question.*

Or. en

Amendment 21

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

Text proposed by the Commission

Amendment

(ba) For the purposes of paragraph 1, effective non-discriminatory access involves the identification and elimination of obstacles and barriers 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 obstacles, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, effective non-discriminatory access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible. 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.

Or. en

Amendment 22

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 23

Proposal for a directive Article 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 24

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 25

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 26

Proposal for a directive

Article 12 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that the competences of *this body* include:

Or. en

Amendment 27

Proposal for a directive

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Member States shall provide this body with sufficient resources to carry out its tasks in an effective and easily accessible manner.

Or. nl

Amendment 28

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. ***The report shall include a review of the current practices in Member States in relation to Article 2 paragraph 7, with regard to the use of age or disability as a factor in the calculation of premiums and benefits.*** In accordance with the principle of gender mainstreaming, this report shall,

to revise and update this Directive.

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.

Or. en

EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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

Grounds for discrimination

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

Assumptions and association

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

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

Exception for age

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

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

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

Financial services

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

Marital status

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

Education

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

Disability

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

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

Compensation

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

One independent body

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