

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0264/2000**

21 September 2000

**\***

## **REPORT**

on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation

(COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))

Committee on Employment and Social Affairs

Rapporteur: Thomas Mann

Draftsman for opinion\*:

Joke Swiebel, Committee on Citizen's Freedoms and Rights, Justice and Home Affairs

(\* Hughes 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)

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
LEGISLATIVE PROPOSAL .....	6
DRAFT LEGISLATIVE RESOLUTION .....	41
EXPLANATORY STATEMENT .....	42
OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS * .....	48
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET .....	73
OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY .....	80
OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES .....	85

(\* Hughes Procedure)

## PROCEDURAL PAGE

By letter of 7 February 2000 the Council consulted Parliament, pursuant to Article 13 of the EC Treaty on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 - 1999/0225 (CNS)).

At the sitting of 14 February 2000 the President of Parliament announced that she had referred this proposal to the Committee on Employment and Social Affairs as the committee responsible and to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0068/2000).

At the sitting of 18 February 2000 the President of Parliament announced that this report would be drawn up in accordance with the Hughes Procedure by the Committee on Employment and Social Affairs and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

The Committee on Employment and Social Affairs had appointed Thomas Mann rapporteur at its meeting of 15 February 2000.

The committee considered the Commission proposal and draft report at its meetings of 5 June 2000, 21 June 2000, 28 August 2000 and 19 September 2000.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairman; José Ribeiro e Castro, vice-chairman; Thomas Mann, rapporteur; Sylviane H. Ainardi, Jan Andersson, María Antonia Avilés Perea, Alexandros Baltas (for Claude Moraes pursuant to Rule 153(2)), Regina Bastos, Jean-Louis Bernié, Roberto Felice Bigliardo, Andre Brie (for Arlette Laguiller), Ieke van den Burg, Philip Rodway Bushill-Matthews, Alejandro Cercas Alonso, Luigi Cocilovo, Elisa Maria Damião, Proinsias De Rossa, Den Dover (for Raffaele Lombardo), Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Koldo Gorostiaga Atxalandabaso, Richard Howitt (for Helle Thorning-Schmidt), Stephen Hughes, Anne Elisabet Jensen (for Daniel G.L.E.G. Ducarme), Karin Jöns, Piia-Noora Kauppi (for Guido Podestà), Dieter-Lebrecht Koch (for James L.C. Provan), Ioannis Koukiadis, Rodi Kratsa, Jean Lambert, Alain Lipietz (for Ian Stewart Hudghton), Elizabeth Lynne, Mario Mantovani, Pietro-Paolo Mennea (for Luciana Sbarbati pursuant to Rule 153(2)), Ria G.H.C. Oomen-Ruijten (for David Sumberg), Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Miet Smet, Ilkka Suominen, Anne E.M. Van Lancker and Barbara Weiler.

The opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on Women's Rights and Equal Opportunities are attached. The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets and the Committee on Culture, Youth, Education,

the Media and Sport decided on 24 February 2000, 27 January 2000 and 22 February 2000 respectively not to deliver an opinion.

The report was tabled on 21 September 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### Proposal for a Council directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))

The proposal is amended as follows:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

#### (Amendment 1)

##### Title

Establishing a general framework for equal treatment in employment and occupation

Establishing a general framework for ***application of the principle of*** equal treatment in employment and occupation

##### *Justification:*

*The Commission text presenting the two proposals says itself that their purpose is to complement and intensify national legislative measures by which the principle of equality is applied. And that makes sense, as there are already national provisions against discrimination. This wording would be more in line with the principle of subsidiarity.*

#### (Amendment 2)

##### Recital 1

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, as general principles of Community law.

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, ***and thus deriving from the constitutional traditions common to the Member States*** as general principles of Community law.

---

<sup>1</sup> OJ C 177, 27.6.2000, p. 42

*Justification:*

*Fundamental rights form part of the general principles of Community law because they are common principles deriving from the internal laws of each of the Member States, and not, as the Council's wording implies, because they happen to be guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms.*

(Amendment 3)  
Recital 3

The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions<sup>1</sup>. The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in

- ***Council Directive 75/117/EEC of 10 February 1975<sup>2</sup> on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women,***
- Council Directive 76/207/EEC of 9 February 1976<sup>3</sup> on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,
- ***Council Directive 79/7/EEC of 19 December 1978<sup>4</sup> on the progressive implementation of the principle of equal treatment for men and women in matters of social security,***
- ***Council Directive 86/378/EEC of 24 July 1986<sup>5</sup> on the implementation of the principle of equal treatment for men and women in occupational social security schemes,***
- ***Council Directive 86/613/EEC of 11 December 1986<sup>6</sup> on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women***

---

<sup>1</sup> OJ L 39, 14.2.1976, p. 40

<sup>2</sup> OJ L 45, 19.2.1975, p. 19

<sup>3</sup> OJ L 39, 14.2.1976, p. 40

<sup>4</sup> OJ L 6, 10.1.1979, p. 24

<sup>5</sup> OJ L 225, 12.8.1986, p. 40

<sup>6</sup> OJ L 359, 19.12.1986, p. 56

- during pregnancy and motherhood,*
- ***Council Directive 97/80/EC of 15 December 1997<sup>7</sup> on the burden of proof in cases of discrimination based on sex.***

The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

*Justification:*

*It is important to mention not only Directives 86/613/EEC, 97/80/EEC and 76/207/EEC but also Directive 75/117/EEC, which was the first to deal with equal pay for men and women and directives 79/7/EEC and 86/378/EEC on equal treatment in social security.*

(Amendment 4)  
Recital 3a (new)

***(3a) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities and to promote equality between men and women, especially since women are often the victims of multiple discrimination.***

*Justification:*

*This formulation is analogous to that in the Council directive implementing the principle of equal treatment of persons irrespective of race or ethnic origin (2000/43/EC of 29 June 2000), the gender aspect of equal treatment being guaranteed in the directive.*

(Amendment 5)  
Recital 3b (new)

***On 29 June 2000 the Council approved Directive 2000/43/EC on the application of the principle of equal treatment regardless of race or ethnic origin, which already affords protection against such***

<sup>7</sup> OJ L 14, 20.1.1998, p. 6



***discrimination in the area of employment  
and occupation.***

*Justification:*

*In view of the adoption of the directive referred to here there is no need for these grounds for discrimination to be included in this directive.*

(Amendment 6)

Recital 5

The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action **for** the social and economic integration of elderly and disabled people.

The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action **to ensure equal rights for men and women and** the social and economic integration of elderly and disabled people.

*Justification:*

*The Community Charter of the Fundamental Social Rights refers to the equality of men and women, especially in employment and occupation. It should therefore be mentioned in the directive.*

(Amendment 7)

Recital 7

The **1999** Employment Guidelines **agreed by the European Council at Vienna on 11 and 12 December 1998 stress the need to foster conditions for a** more active participation in the labour market by formulating a coherent set of policies aimed at combating discrimination on grounds of disability and race or ethnic origin. **The European Council Conclusions of Vienna emphasise** the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

The **European Employment Strategy adopted at the extraordinary summit meeting of the European Council in Luxembourg on 20/21 November 1997 laid the foundations for** more active participation in the labour market **with a view to combating unemployment. At its meeting in Cologne on 3 and 4 June 1999 the European Council took the initiative by adopting a European employment pact to make sustainable growth and sufficient employment possible. To expand the Luxembourg and Cologne initiative, the 2000** Employment Guidelines **were adopted by the European Council at its meeting in Helsinki on 10 and 11**

**December 1999. They reaffirm the need to lay the foundations for a more active labour market policy** by formulating a coherent set of policies aimed at combating discrimination on grounds of disability and race or ethnic origin. The need to pay particular attention to supporting older workers, in order to increase their participation in the labour force, **is also emphasised.**

*Justification:*

*The Employment Guidelines on which the European Council agreed in Helsinki on 10/11 December 1999 are also meant to combat discrimination on the grounds of disability, ethnic origin or race. Reference to these guidelines should therefore be made in the directive.*

(Amendment 8)

Recital 8

Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life.

Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life **and to personal self-realisation.**

*Justification:*

*The individual's self-realisation is an essential motive for engaging in an occupation or employment and must therefore form an integral part of this directive.*

(Amendment 9)

Recital 9

Discrimination based on **racial or ethnic origin**, religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the fostering of the free movement of persons.

Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the **improvement of living standards** and quality of life, economic and social cohesion and solidarity, and **freedom of movement.**

*Justification:*

*The term 'free movement of persons' is unclear. The aim of the directive is rather to ensure that people are able to move freely throughout the EU without suffering discrimination.*

(Amendment 10)  
Recital 10

To this end any direct or indirect discrimination based on **racial or ethnic origin**, religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.

To this effect any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this directive should be prohibited throughout the Community. Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.

*Justification:*

*For reasons of legal consistency, it would be appropriate to remove discrimination based on race or ethnic origin insofar as this is already covered by directive 2000/43 (directive on race of 29 June 2000).*

(Amendment 11)  
Recital 12

(12) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.

(12) A difference of treatment may be justified **only** where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.

*Justification:*

*This is the only case where a difference of treatment based on a characteristic related to any ground for discrimination is not of a discriminatory nature.*

(Amendment 12)  
Recital 17

(17) The effective implementation of the principle of equality requires adequate judicial protection **in civil matters against victimisation and an adjustment** of the general rules on the burden of proof.

(17) The effective implementation of the principle of equality requires adequate judicial protection **in judicial cases against victimisation and, in both civil and administrative matters, special, adjusted consideration** of the general rules on the

burden of proof.

*Justification:*

*The amendment brings the text into line with the European Parliament's position on the proposal for an anti-racism directive.*

(Amendment 13)  
Recital 19

(19) Member States should promote social dialogue between the social partners **to address different forms of discrimination in the workplace and to combat them.**

(19) Member States should promote social dialogue between the social partners, **out of respect for their autonomy, to ascertain the various forms of discrimination in the workplace and endeavour to avoid them.**

*Justification:*

*Better wording.*

(Amendment 14)  
Recital 20

Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be declared null and void, or should be amended.

Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be declared null and void, **or that it should be possible for them to be declared null and void, or that they** should be amended.

*Justification:*

*Laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations and professions that are inconsistent with the principle of equal treatment are already null and void in some Member States; in others they must be declared null and void.*

(Amendment 15)  
Recital 22a (new)

***The Directive will form part of the *acquis communautaire* which must be adopted by the candidate countries if they are to accede to the European Union. In the meantime, applicant countries must be kept informed about the implementation of this Directive so that they are prepared to comply fully with it upon accession. In existing association agreements with candidate countries it must be ensured that any clauses which permit discrimination are subsequently amended. Association agreements concluded in the future must not contain any clauses that permit discrimination on the grounds referred to in Article 1.***

*Justification:*

*This amendment is in line with Parliament's position on the anti-racism directive (Amendment 23) and its resolution of 16 March 2000 on combating racism and xenophobia in the candidate countries.*

(Amendment 16)  
Recital 22b (new)

***Equal treatment and non-discrimination are fundamental legal principles of the European Union. The EU institutions, in harmony with public institutions in the Member States, shall therefore comply with these principles in the performance of their tasks. In addition, the Commission will screen any forthcoming legislation in any field to assess any potential discriminatory practices which arise from it, and modify the legislation to remove any danger that it may give rise to discrimination.***

*Justification:*

*Legislation often has unintended discriminatory effects, especially where such legislation deals with setting EU-wide standards for products. The Commission must assess any new legislation with these potential discriminatory effects in mind.*

(Amendment 17)

Recital 22c (new)

***Declaration 11 annexed to the Treaty of Amsterdam on the status of churches and non-confessional organisations states that the EU respects the status of churches and religious associations in Member States and Article 9 of the European Convention on Human Rights guarantees the right to freedom of thought, conscience and religion.***

*Justification:*

*A positive statement of respect for religious freedom is required.*

(Amendment 18)  
Recital 22d (new)

***The Member States should repeal all penal code provisions discriminating against homosexuals.***

*Justification:*

*Several EU Member States still retain discriminatory penal code provisions by making certain consensual sexual activity a criminal offence only in relation to same-sex activity (gross indecency and unequal age of consent provisions, the latter even being in breach of the European Human Rights Convention). Often, individuals convicted of offences under these discriminatory laws are dismissed from their employment and thus further discriminated against.*

(Amendment 19)  
Recital 22a (new)

***22a. The Commission and Council consider themselves to be under an obligation, within three years of the adoption of this directive, to extend the scope, in the case of all grounds for discrimination referred to in Article 13 of the EC Treaty, to at least the fields defined in the directive on equal treatment of persons irrespective of racial or ethnic origin.***

*Justification:*

*In the interests of equality before the law, transparency and the quality of legislation, it is necessary for a ban on discrimination with the same scope to enter into force within a reasonable time limit for all the grounds referred to in Article 13 of the EC Treaty. In its Agenda for Social Policy (as cited in the press release of 28 June 2000), the Commission has recently announced that it will submit a proposal for a directive in 2001 extending the ban on discrimination on grounds of sex to fields other than employment. This amendment sets a time frame designed to support this intention and extend it to all grounds for discrimination referred to in Article 13 of the EC Treaty.*

(Amendment 20)

Article 1

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of **racial or ethnic origin**, religion or belief, disability, age or sexual orientation.

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment **and engagement** and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of religion or belief, disability, age or sexual orientation.

*Justification:*

*Following the adoption by the Council of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, protection against such discrimination is already afforded in the area of employment and occupation and does not need to be included in this Directive. The need for engagement conditions to comply with the principle of equal treatment must be explicitly included in the Directive's aims.*

(Amendment 21)

Article 2(2)(a)

(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one **person** is treated less favourably than another is, has been or would be treated.

(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one **natural or legal person or a non-formalised group of persons** is treated less favourably than another is, has been or would be treated.

*Justification:*

*It is also necessary to protect against discrimination associations or other groups which concern themselves with one or more of the grounds for discrimination referred to in this proposal.*



(Amendment 22)

Article 2(2)(b)

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice **is liable to** affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice **affects or is intrinsically liable to** affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, **so that they are placed, or there is a consequent risk that they will be placed, at a particular disadvantage**, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

*Justification:*

*This revised definition, which (as in the Commission proposal) takes account of the judgment of the Court of Justice of the European Communities in the O'Flynn case, seeks to ensure that problems of statistical proof do not unnecessarily arise and that the concept of comparative disadvantage, which is inherent in indirect discrimination, is covered. The formulation also corresponds to the identical article in the framework directive on equal treatment of persons irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 23)

Article 2(3)

3. Harassment **of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.**

3. Harassment **shall be deemed to be discrimination within the meaning of paragraph 1 when an 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, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practices of the Member States.**

*Justification:*

*This is a broader definition of harassment in accordance with Directive 2000/43/EEC of 29 June 2000.*

(Amendment 24)  
Article 2(3a) (new)

***3a. Behaviour consisting of incitement, instructions or pressure to discriminate shall fall within the definitions in (a) and (b) above irrespective of whether any specific victim of discrimination can be identified.***

*Justification:*

*Incitement or instructions to discriminate should be explicitly mentioned in the directive as conduct which prevents equality of treatment. There is a need to cover the situation where, for instance, a manager encourages his subordinate to discriminate in recruitment.*

(Amendment 25)  
Article 2.4.

In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable ***accommodation*** shall be ***provided, where needed, to enable such persons to have access to, participate in, or advance in employment***, unless this requirement creates an undue hardship.

In order to guarantee compliance with the principle of equal treatment for persons with disabilities, ***in all areas of the material scope of this directive as defined by Article 3***, reasonable ***adjustment*** shall be ***made***, unless this requirement creates an undue hardship.

***The term "reasonable adjustment" can be defined as providing or modifying devices, services or facilities, or changing practices or procedures including among other things, training and provision of personal support or assistance, in order for a disabled person to be able to participate under equal conditions in a service, programme, activity or employment.***

***Undue hardship shall involve more than the nominal cost for the provider but shall be deemed to exist where the employer's general economic situation is such that he cannot reasonably be expected to make adjustments to cater for disabled persons in view of the costs involved. Particular account shall be taken of the size and turnover of the undertaking and of the possibility of obtaining government financial assistance in this context.***

*Justification:*

*It is of particular importance that the terms 'reasonable accommodation' and 'undue hardship' are clarified. The term 'reasonable accommodation' is often subject to mistranslation, and may be unclear in non-English speaking countries, where the concept of 'reasonable accommodation' is well-established. Therefore it will be better to refer to this as 'reasonable adjustment'. It is also important that the definition clearly sets out its meaning which includes the modification of facilities, services and procedures as well as provision of personal assistance to a disabled person when necessary (including provision of sign language interpretation).*

*The concept of undue hardship should be used to achieve a fair balance between the legitimate demands of disabled people for meaningful equal treatment and the possibly insupportable costs that this could imply.*

(Amendment 26)  
Article 2(5) (new)

***In implementing this directive, Member States shall ensure the integration of a gender perspective in order to prevent and eliminate multiple discrimination against women.***

*Justification:*

*This formulation is analogous to that in the Council directive implementing the principle of equal treatment of persons irrespective of race or ethnic origin (2000/43/EC of 29 June 2000), the gender aspect of equal treatment being guaranteed in the directive.*

(Amendment 27)  
Article 2(6)(new)

***In order to guarantee compliance with the principle of equal treatment for older workers, Member States shall organise ongoing professional training courses.***

*Justification:*

*Just as it is justified to provide for appropriate physical adjustments to be made for disabled people at the workplace, it is only fair to enable workers who, as the years go by, are unable to follow professional refresher courses, to remain competitive.*

(Amendment 28)  
Article 2(7) (new)

***In order to guarantee compliance with the principle of equal treatment, reasonable***

***measures shall be taken, where necessary, to facilitate combining work and care and to provide for adequate childcare facilities and parental leave.***

*Justification:*

*In line with the conclusions of the Meeting of EU Ministers for Women's Affairs, May 1998, Belfast.*

(Amendment 29)

Article 3(a)

(a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

(a) conditions for access to employment, ***unpaid and voluntary work, official duties***, self-employment and occupation, including selection criteria and recruitment conditions, ***finding of employment by public and private employment agencies and authorities***, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

*Justification:*

*Official duties, unpaid and voluntary work should likewise fall within the scope of this directive. It would not be right for official (i.e. public) duties to become a separate field of application: they should be covered by the definition of the term 'employment'.*

*Employment agencies and authorities have an important role to play in access to work. These bodies sometimes discriminate both in providing information and in procuring labour. Judicial review of their actions is vital to equality of treatment in employment and occupation.*

(Amendment 30)

Article 3(b)

(b) access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining;

(b) access to all types and to all levels, of vocational guidance, ***practical training***, vocational training, advanced vocational training, ***the acquisition of professional experience*** and retraining;

*Justification:*

*This corresponds to the European Parliament's position on the anti-racism directive (Amendment 31). These activities too should therefore be protected by the directive.*

(Amendment 31)  
Article 3(c)

(c) employment and working conditions, including dismissals **and** pay;

(c) employment and working conditions, including **redundancy**, dismissals, pay, **health and safety, information and consultation**;

*Justification:*

*This amendment corresponds to Parliament's opinion on the proposal for an anti-racism directive (Amendment 62) with the addition of redundancy, which is not covered by the term "dismissals". The health, safety at work, information and consultation of workers form part of working conditions and possible areas for discrimination.*

(Amendment 32)  
Article 3(d)

(d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

(d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations, **and participation or candidacy in elections held within or above the level of such an organisation.**

*Justification:*

*This amendment corresponds to Parliament's opinion on the proposal for an anti-racism directive (Amendment 33). The elections referred to form an important part of worker participation in firms and should therefore be protected against discrimination.*

(Amendment 33)  
Article 3e (new)

***Access to social assistance, including social security and healthcare; within the scope of the Directive.***

*Justification:*

*Social security and healthcare are key benefits of proper working conditions. It is essential that reference to these elements be made, as limited or non-existent access to such benefits may be discriminatory.*

(Amendment 34)  
Article 3, paragraph 2 (new)

***This Directive applies to third-country nationals but does not cover difference of treatment based on nationality and is without prejudice to provisions governing the entry into and residence of third-country nationals and their access to employment and an occupation.***

*Justification:*

*The same wording is used here as in Directive 2000/43 on racial discrimination.*

(Amendment 35)  
Article 3 a (new)

***Within three years of the adoption of this directive, the Council, on a proposal from the Commission and after consulting the European Parliament, shall decide, for all the grounds for discrimination referred to in Article 13 of the EC Treaty, on an extension of the scope to at least those fields defined in the directive on equal treatment of persons irrespective of racial or ethnic origin.***

*Justification:*

*In the interests of equality before the law, transparency and the quality of legislation, it is necessary for a ban on discrimination with the same scope to enter into force within a reasonable time limit for all the grounds referred to in Article 13 of the EC Treaty. In its communication on an Agenda for Social Policy (COM(2000) 379), the Commission announced that it will submit a proposal for a directive in 2001 extending the ban on discrimination on grounds of sex to fields other than employment. This amendment sets a time frame designed to support this intention and extend it to all grounds for discrimination referred to in Article 13 of the EC Treaty.*

(Amendment 36)  
Article 4(1)

### **Genuine** occupational qualifications

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of **the nature of the particular occupational activities concerned or of the context in which they are carried out**, such a characteristic constitutes a **genuine** occupational qualification.

### **Essential** occupational qualifications

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of **the context in which the occupational activities are carried out**, such a characteristic constitutes **an essential occupational qualification and is objectively and reasonably justified by a legitimate purpose**.

#### *Justification:*

*It would seem appropriate to include the concepts of legitimacy and objectivity, since the issue is how to justify a difference of treatment. It requires the same approach as in the case of age grounds, covered by Article 5. The term 'essential' would seem more appropriate than the term 'genuine' 'occupational qualifications'.*

#### (Amendment 37)

##### Article 4.2.

Member States **may** provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in **the field of religion or belief with respect to education, information and the expression of opinions**, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment **based on a relevant characteristic related to religion or belief** shall not constitute discrimination where, by reason of the nature of these activities, **the characteristic constitutes** a genuine occupational qualification.

Member States **shall** provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the **educational, social, health care and related work they undertake**, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based **specifically upon the religion or belief of an individual** shall not constitute discrimination where, by reason of the nature of these activities, **the religion or beliefs in question constitute** a genuine occupational qualification. **This will not justify discrimination on any other grounds.**

#### *Justification:*

*The intention is to widen the text to cover the wider "social" activities of religious organisations while restricting it to personnel directly involved in ideological guidance (i.e. not receptionists or janitors). It also makes it clear that the dispensation will apply only to religious beliefs and not, for example, to sexual orientation.*

(Amendment 38)  
Article 5

Notwithstanding point (a) of Article 2(2), ***the following*** differences of treatment, ***in particular***, shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a legitimate aim and are appropriate and necessary to the achievement of that aim:

Notwithstanding point (a) of Article 2(2), differences of treatment, shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a ***strictly defined*** legitimate aim and are appropriate and necessary to the achievement of that aim.

- (a) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;***
- (b) the fixing of a minimum age as a condition of eligibility for retirement or invalidity benefits;***
- (c) the fixing of different ages for employees or groups or categories of employees for entitlement to retirement or invalidity benefits on grounds of physical or mental occupational requirements;***
- (d) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;***
- (e) the establishment of requirements concerning the length of professional experience;***
- (f) the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.***



*Justification:*

*The non-exhaustive list of exceptions contained in the original Commission proposal gives the impression that the proposed variants of discrimination on grounds of age have already been found to be objectively justified, and that accordingly they do not constitute discrimination for the purposes of the directive. However, this is not the case. At the same time, it is not desirable to adopt a fixed list of exceptions at a time when thinking about the social importance of the age factor is undergoing rapid change. Articles 4 and 5 of the proposal for a directive are closely related to the amendment below inserting an Article 5a (new).*

(Amendment 39)  
Article 5a (new)

***The provisions of Articles 4 and 5 shall be applied restrictively. Every five years each Member State should assess the exemptions it has permitted in the light of social developments. Member States must notify the Commission of the exemptions and periodic assessments. The Commission shall publish these.***

*Justification:*

*The obligation to provide notification and assessment guarantees that exemptions permitted will be carefully considered. Openness is essential precisely in order to ensure that these exemptions are made the subject of public debate.*

(Amendment 40)  
Article 6

***This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.***

***The principle of equal treatment shall not prevent any Member State, with a view to ensuring that full equality within the meaning of this directive is achieved in practice, from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented persons to participate fully in social life, or to prevent or compensate for disadvantages they may experience.***

*Justification:*

*This amendment seeks alignment with the text of Article 141(4) of the EC Treaty. This wording is preferable so as to ensure that the legal concept of positive discrimination is formulated in the same way in all documents, thereby precluding difficulties of interpretation.*

(Amendment 41)  
Article 8(1)

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.

Member States shall ensure that judicial and/or administrative procedures, ***including where they deem it appropriate conciliation and arbitration procedures***, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.

***The recourse to a judicial remedy shall be in accordance with the most effective national procedures, after possible recourse to other competent authorities where appropriate. Member States shall provide support in respect of legal costs in accordance with the most favourable provisions of national law.***

*Justification:*

*The same wording is used here as in Directive 2000/43 on racial discrimination, with the addition of the arbitration procedure, which is particularly important for employment relationships. The most important aspect of this amendment is the aim of facilitating access to the courts in the event of discrimination. The formulation also accords with the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 42)

Article 8(2)

Member States shall ensure that associations, organisations or other legal entities *may* pursue any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

Member States shall ensure that associations, organisations or other legal entities, ***which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, and which represent the interests of employees and other groups protected by Article 13 of the EC Treaty, are entitled to pursue or to support*** any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

***At the same time, associations, organisations or other legal entities having a legitimate interest in appearing in court shall be given a right of collective action, i.e. the power to ask the court, of their own motion, whether unequal treatment is present, aside from the particular circumstances of an individual case.***

***Member States shall introduce a limitation period of 6 to 12 months after which anyone who feels discriminated against is no longer entitled to initiate legal or administrative proceedings.***

*Justification:*

*The most important aspect of this amendment is the aim of facilitating access to the courts in the event of discrimination and to allow organisations to bring proceedings without the consent of a victim, particularly where the discrimination concerns a group of people and it is not feasible to obtain the approval of each person concerned. Often, victims of discrimination are very reluctant to seek legal protection, and fear of victimisation may restrain them from asserting their rights. The right to collective action makes it possible for joined cases to be considered even if they are not brought by the separate victims themselves. The formulation also accords with the corresponding article in the directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament. A limitation period is needed, since the cost and organisational effort involved would otherwise be unreasonable for many undertakings.*

(Amendment 43)  
Article 8a (new)

**Statistics**

***Member States shall introduce into their national legal systems the provisions required to ensure that public authorities and employers keep and monitor statistics on all aspects of the employment and training of the persons to whom this directive applies, where this is legally possible. These statistics shall be broken down by target group and sex.***

*Justification:*

*This amendment is based on the European Parliament's position on the anti-racism directive (Amendment 44) and develops it further by emphasising the importance of statistics for the shaping of ideas and as a source of evidence of discrimination.*

(Amendment 44)  
Article 9(1)

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts ***from which it may be presumed*** that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts ***which, unless rebutted or qualified by further evidence, give rise to a reasonable inference*** that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

***This competent, independent authority shall perform a kind of mediating function between employers and employees. Corporate arbitration units which already exist or are created in the Member States shall not be impeded by this authority.***

*Justification:*

*The term 'competent authority' has been defined to prevent a large number of interest groups from claiming rights to a say. The idea of this authority playing a mediating role between employers and employees is based on the desire to solve problems without administrative or legal proceedings being initiated. Facilities that already exist must not be impeded.*

(Amendment 45)  
Article 10

***Victimisation***

Member States shall introduce into their national legal systems such measures as are necessary to protect ***employees against*** dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

***Protection of victims and witnesses***

Member States shall introduce into their national legal systems such measures as are necessary to protect ***both natural and legal persons and non-formalised groups of persons covered by this Directive, whatever their situation as victims or witnesses, from*** dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Justification:*

*While the text of the article suggests that witnesses may receive the protection required when they are the object of discrimination for making an accusation or taking legal action, it would seem more appropriate to say so just as clearly in the title. Not only individual employees require protection but also persons as referred to in this directive.*

(Amendment 46)  
Article 10(2) (new)

***(2) Member States shall also introduce appropriate penalties which are proportionate, effective and deterrent, which may include the payment of compensation to the victim or groups of victims.***

*Justification:*

*For effective protection against reprisals, penalties are necessary. Compensation is one possible penalty. The amendment specifies that this may only be paid to the victim, in order to prevent its becoming lucrative for legal persons to act on behalf of a victim or in the context of the collective right of action.*

(Amendment 47)

Article 11

**1. Member States shall ensure that *adequate information on* the provisions adopted pursuant to this Directive *is provided to vocational training and educational bodies and is adequately disseminated within the workplace.***

**2. Member States shall ensure that *competent public authorities are informed by appropriate means as regards all national measures taken pursuant to this Directive.***

Member States shall ensure that the provisions adopted pursuant to this Directive ***and those which already apply in this field are communicated to all persons concerned by the appropriate means throughout their territory and that training is provided on the impact of the directive on all public bodies.***

***At the same time, a wide-ranging information campaign should target all citizens and social organisations to explain their rights and ways of claiming them as they ensue from the Directive.***

*Justification:*

*More extensive requirement to provide information to all parties concerned, by analogy with Directive 2000/43/EC of 29 June 2000. However, action by government bodies is often taken as an example, which makes it appropriate to require them to organise courses on the consequences of the directive. The value of a directive also depends on the extent to which the public is aware of its contents so that they can take advantage of the measures proposed.*

Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

***In accordance with national traditions and practices***, Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment ***in all areas to which this Directive applies***, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices ***and the training of their members***.

***Large and medium-sized undertakings shall appoint someone in whom employees can confide if they feel they are being discriminated against.***

***The social dialogue between employers and employees is an important component of these consultations. It shall be ensured that the right to free collective bargaining is upheld. Organisations that support the protection of social groups against discrimination may participate in negotiations between the two sides of industry only if explicitly invited to do so by the latter.***

*Justification:*

*This amendment is based on the European Parliament's position on the proposal for an anti-racism directive (Amendment 50). It endorses the concept of the social dialogue provided that it accords with national traditions. There is otherwise a danger that groups which support minorities will always want to participate in negotiations between the two sides of industry.*

*In firms of an appropriate size an employee who feels discriminated against must have somewhere he can go in an effort to solve the problem internally. This is meant to prevent measures that might have serious consequences for those concerned.*

(Amendment 49)

Article 12(2)

2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

2. Member States shall encourage the two sides of the industry, ***with due respect for their autonomy***, to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

*Justification:*

*It would seem appropriate to introduce the concept of autonomy as separate parties that the social partners enjoy in all their activities. Omission might be seen as an intrusion in their freedom of negotiation.*

(Amendment 50)

Article 12(3) (new)

***Member States shall take appropriate measures to promote the social dialogue and to encourage civil societies to engage in dialogue on measures to combat discrimination. They should also promote permanent contacts with government organisations and the two sides of industry to enable experience to be exchanged on the incidence of and fight against discrimination in employment and occupation.***

*Justification:*

*Civil societies should participate actively in measures to combat discrimination in employment and occupation. A prohibition of discrimination on its own is not enough to eliminate prejudices from the minds of those concerned. Information campaigns help to reduce these prejudices*



(Amendment 51)  
Article 12(4) (new)

***Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of religion or belief, disability, age or sexual orientation with a view to promoting the principle of equal treatment.***

*Justification:*

*The proposed Directive should refer explicitly to the participation of NGOs representing the target groups of the Directive. This amendment uses the same wording already provided for in the Council Directive to combat Racism (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).*

(Amendment 52)  
Article 12a (new)

***1. Member States shall provide for an independent body or bodies for the promotion of equal treatment of both natural and legal persons and non-formalised groups of persons. These bodies may form part of independent agencies charged at national level with the defence of human rights or safeguarding individuals' rights.***

***2. Member States shall ensure that the functions of these independent bodies include receiving and pursuing complaints from both natural and legal persons and non-formalised groups of persons, associations or nongovernmental organisations, performing research into methods of inquiry and advising thereon, carrying out detailed investigations, providing concrete help for victims, organising investigations or surveys concerning discrimination on any ground referred to in Article 1, publishing reports and making recommendations on issues***

*relating to discrimination and undertaking public awareness campaigns.*

*3. Member States shall ensure that sufficient financial resources are made available to the independent bodies. As a minimum, Member States shall guarantee the treatment of complaints free of charge for those who are not in a position to make their own financial contribution.*

*4. In so far as this is relevant to their operations, the independent bodies must be permitted to inspect confidential information, including pay and personnel administration data.*

*Justification:*

*By analogy with the framework directive on equal treatment irrespective of racial or ethnic origin, the directive should incorporate a provision concerning the position and role of one or more independent bodies which, in addition to monitoring compliance with the provisions of the directive, actively promote the equal treatment objectives. The independent bodies should have the power to investigate complaints by victims. In order to be able to carry out thorough investigations into complaints and possibly rule on them, the independent bodies will require access to confidential information such as pay and personnel administration data.*

*Paragraph 2 permits public awareness campaigns, which can do much to promote equality of opportunity.*

*The stipulation that consideration of a complaint ought not in principle to have any financial consequences for the complainant is inspired by the consideration that the cost aspect should not be allowed to deter victims from submitting complaints.*

*The formulation of this new article is in line with that of the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 53)  
Article 13(a)

Any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

any **arrangements**, laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished **by 31 December 2002**;

*Justification:*

*This amendment is based on the European Parliament's position on the proposal for an anti-racism directive (Amendment 56) and is designed to ensure that any arrangements which are inconsistent with the directive are amended by the same date as that given in Article 15.*

(Amendment 54)  
Article 13(b)

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, **individual** contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are declared null and void or are amended.

(b) any provisions contrary to the principle of equal treatment which are included in collective **accords or** agreements, contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are declared null and void or are amended.

*Justification:*

*The words 'accords or' are added to ensure the article also covers those employment law contracts that stipulate this condition (but are not agreements). The word 'individual' is deleted in employment contracts so as not to exclude the notion of group contract.*

(Amendment 55)  
Article 13(c) (new)

***Public corporations do not conclude any contracts with undertakings which have been shown to discriminate against employees who are protected by Article 13 of the EC Treaty.***

*Justification:*

*As indirect representatives, public corporations should be models that show they are actively opposing discrimination by not cooperating with undertakings in which discrimination occurs.*

(Amendment 56)  
Article 13 (d) (new)

***Member States may take into account an undertaking's or organisation's record of compliance with national provisions implementing this directive, including the record of compliance with national provisions of Member States other than the State in question, when awarding contracts and grants. In public procurement tenders authorities may include demands that discriminate in favour of persons falling within the scope of this directive.***

*Justification:*

*It is essential that Member States consider contractors performance in adhering to or attempting to incorporate anti-discriminatory measures into employment practice. This was supported by the European Parliament in its final vote on the Directive on Racism.*

(Amendment 57)  
Article 13 e (new)

***The existing legislation in the field of equal treatment of men and women is brought in line with this directive in those areas where the present directive affords more protection than the rules contained in 76/207/EEC and 86/613/EEC.***

*Justification:*

*In several respects this draft directive , and the directive on racial and ethnic origin, afford more protection from discrimination than the existing directive 76/207/EEC on implementation of the principle of equal treatment of men and women in respect of access to the labour process, vocational training and promotion prospects and also terms of employment.*

(Amendment 58)

Article 14

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 15 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. ***This will include prohibiting by legal sanction:***

- (a) incitement or pressure to discriminate on any ground referred to in Article 1;***
- (b) decisions or activities by a public authority or public institution which constitute discrimination on any of the grounds referred to in Article 1 against persons, groups of persons or institutions.***

***Penalties may include payment of compensation to the victim.***

The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 15 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Justification:*

*The text of the amendment brings the provisions regarding penalties into line with the wording of the UN Convention on the Elimination of All Forms of Racial Discrimination, particularly Article 4, and provides a more explicit description of the offences punishable by law under the directive. Compensation is a feasible and effective penalty. The amendment specifies that such compensation must be paid to the victim, to ensure that legal persons do not profit from appearing on a victim's behalf or in the context of the collective right of action.*

*The formulation of this new article is in line with that of the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 59)

Article 15

Member States shall *adopt* the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

*Applying the principle of equal treatment, Member States shall ensure that the laws, regulations and administrative provisions necessary to comply with this Directive enter into force by 31 December 2002, or may mandate the social partners, if they jointly so request, to implement this Directive as regards the provisions falling under collective agreements. In that case, Member States shall ensure that the social partners have introduced the requisite measures by agreement by 31 December 2002; Member States must themselves take all measures to be able to guarantee at all times the outcomes prescribed in this Directive.* They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Member States shall also inform the Commission of provisions of national legislation which have already been adopted in the sphere covered by this Directive.*

*Justification:*

*This amendment combines Parliament's position on the anti-racism directive (Amendment 58) with the Council's final text in Directive 2000/43/EC.*

Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

**1. Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, *and every five years thereafter, and after consulting the NGOs which defend the interests of the groups of people covered by Article 13 of the EC Treaty*, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive. *Before drawing up its report, the Commission shall consult these NGOs.***

**2. *The Commission's report shall include an assessment of whether the objectives of the Directive have been achieved in practice, and a description of the measures taken by the Member States. Account shall also be taken of the viewpoints of the social partners and relevant non-governmental organisations.***

**3. *It shall cover all existing provisions of Community law concerning the equality of men and women with a view to ensuring the same protection in the area of employment and occupation for all groups protected by Article 13 of the EC Treaty.***

**4. *In accordance with the principle of integration of equal-opportunities policy (gender mainstreaming), this report shall, inter alia, evaluate the groups of measures with regard to men and women.***

**5. *In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.***

*Justification:*

*Monitoring and checking that the Member States comply with their obligations is a very important part of legislative work in the EU, not only at the judicial level but also in practice. As a legislator, the European Parliament is entitled to know whether citizens obtain the rights conferred on them by Directives.*

*The two sides of industry and the NGOs must be consulted when the report is drawn up, since they have knowledge on when and where discrimination is particularly common.*

*This amendment also stresses the importance of making an assessment of the significance of the Directive in practice. It is also important that the assessment is ongoing and should therefore also take place after the first formal check on implementation. Findings should be forwarded to the European Parliament every five years.*

*It is of elementary importance that this directive should be brought into line with provisions requiring the equality of men and women and that the report should also draw attention to any multiple discrimination against women and the measures taken to combat it.*



## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(1999) 565)<sup>2</sup>,
  - having been consulted by the Council pursuant to Article 13 of the EC Treaty (C5-0068/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on Women's Rights and Equal Opportunities (A5-0264/2000),
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 should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

<sup>2</sup> OJ C 177, 27.6.2000, p. 42

## EXPLANATORY STATEMENT

### Introduction

The framework directive on equal treatment in employment and occupation is a major step forward. It stands for substantial protection of minorities throughout the EU. There are plans based on Article 131 of the EC Treaty for a package of measures to combat discrimination, which includes two legislative proposals and an action programme.

One of the positive features is the attempt made with this directive to protect all the groups listed in Article 13 of the EC Treaty (members of different races and ethnic groups, religious communities, members of a certain ideology, disabled persons) against discrimination in employment and occupation. Discrimination on the grounds of gender is excluded. It is already governed by directives based on Article 141 of the EC Treaty<sup>3</sup>. As your rapporteur and as a member of the Committee on Women's Rights, I should make it very clear that this directive is primarily intended to protect groups coming under Article 13 of the EC Treaty other than women.

### Concept of discrimination

By discrimination the European Court of Justice means 'the application of different rules to comparable situations or the application of the same rules to different situations'<sup>4</sup>. This accords with the case law of the European Court of Human Rights<sup>5</sup>. Indirect discrimination occurs when apparently neutral provisions, criteria or procedures place a person or group of persons at a disadvantage when they attempt to gain access to employment or an occupation.

This definition is also to be found in the directive on the application of the principle of equal treatment regardless of race and ethnic origin<sup>6</sup>, which has already been approved by the European Parliament<sup>7</sup>. The definition of indirect discrimination given in Article 2(2)(b) of the directive is based on the appropriate case law of the European Court of Justice<sup>8</sup>.

An example of indirect discrimination against women is any provision that discriminates against part-time workers, because it will hit women particularly hard. Indirect discrimination also occurs where a provision may only concern foreign workers. It is enough in this context for the measure to have an adverse effect on far more people of one sex than of the other.<sup>9</sup>

At the workplace there are far too many instances of discrimination against people with homosexual tendencies. The directive is clearly opposed to such behaviour.

### Context of the directive

The planned directive must be seen in context with other means of combating discrimination, there being various of going about this at European level:

#### *Directives*

One way of combating discrimination is to create directives:

<sup>3</sup> 72/207/EEC; 86/613/EEC; 97/80/EC

<sup>4</sup> European Court of Justice, Case 411/98, Boyle, ECR 1998, p. 6401, point 39; European Court of Justice, Case 279/93, Schumaker, ECR 1995, p. 225, point 30

<sup>5</sup> ECHR 252, paragraph 10

<sup>6</sup> COM(1999)566 final

<sup>7</sup> Buitenweg report, A5-0136/2000

<sup>8</sup> Case C-237/94, O'Flynn v Adjudication Officer, ECR 1996, I-2617

<sup>9</sup> Case 411/96, Boyle, point 76; also Directive 97/80/EC

- A number of directives concerning discrimination against women have been adopted<sup>10</sup>.
- A directive on the application of the principle of equal treatment regardless of race or ethnic origin was adopted by the Council on 29 June 2000.
- A directive against discrimination in employment and occupation, for which I am your rapporteur, will probably be adopted by the Council in October 2000.
- A supplementary directive opposing, among other things, sexual harassment at the workplace<sup>11</sup> has already been submitted to Parliament.

### *Information and education*

Information and education are of the utmost importance, since not even the best legal instruments are enough to change basic attitudes at the workplace. There is, for example, a danger of employers sharply reducing recruitment so as to avoid the accusation of discrimination. Besides equality before the law, the goal must be actual equality in everyone's mind. Prejudices must be eliminated. Intensive educational and information work and training, especially in collaboration with the two sides of industry, are needed since they come closest to the action and can bring influence to bear. Drawing attention to discriminatory practices increases everyone's awareness.

This must be done as part of a mainstreaming approach, i.e. the promotion of equal treatment in all areas and at all levels of policy. Even the causes of discrimination can be eliminated if faced up to on a broad front. Not only government agencies should participate: all social actors should be actively involved.

### *Positive measures*

Positive measures are intended to help ensure that disadvantaged groups receive special assistance. Equality on a purely legal basis does not automatically result in the goals of anti-discrimination being achieved.

Three approaches adopted in some Member States are conceivable in this context: firstly, those concerned can be helped to assert their rights through the creation of units specifically for the purpose. Secondly, underrepresented groups can be assisted by means of quotas. A third option is preferential appointment to posts even when all applicants have the same qualifications. Such measures have been unambiguously approved by the European Court of Justice, provided that they are not applied automatically and provision is made for exceptions in individual cases<sup>12</sup>.

It should be remembered, however, that, because of Article 141(4) of the EC Treaty, the introduction of such positive measures is mainly the Member States' responsibility. Some Member States, France, for example, regard positive measures as being inconsistent with their constitutions.

### *Charter of Fundamental Rights*

A further option in the EU-wide fight against discrimination is the planned Charter of Fundamental Rights. It remains to be seen in this context what will be the relationship between the planned anti-racism directive, for which Article 13 of the EC Treaty forms the legal basis, and the Charter of Fundamental Rights. It will be particularly important to consider the relationship between the Charter and the proposed article that prohibits

<sup>10</sup> See Footnote 1.

<sup>11</sup> COM(2000)334

<sup>12</sup> ECR 1995, I-3051

discrimination on the grounds of sex, race, skin colour or ethnic or social origin, language, religion or ideology, membership of a national minority, assets, birth, disability, age or sexual orientation.

#### *Other measures*

Resources from the Social Fund (EQUAL), from which firms benefit, are used to finance measures that actively oppose discrimination. Action programmes may also be effective in the fight against discrimination. At Community level three action programmes with a total volume of over EUR 220 million are currently under discussion. They are the action programme to combat discrimination<sup>13</sup>, the action programme to combat social exclusion<sup>14</sup> and the fifth programme for the equality of men and women<sup>15</sup>.

#### **Necessary amendments to the directive**

Your rapporteur believes some aspects of the planned framework directive are in need of amendment:

##### *1. Proceedings initiated by associations*

Under Article 8(2) associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations under the directive on behalf of the complainant with his or her approval.

It is not clear what associations, organisations or other legal entities are meant.

To clarify these terms, the rapporteur proposes that only organisations, associations or legal entities representing employees and the groups protected by Article 13 of the EC Treaty should be entitled to initiate proceedings.

##### *2. Shifting the burden of proof*

Article 9 concerning the burden of proof states that persons who consider themselves wronged because the principle of equal treatment has not been applied to them must establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It is for the respondent to prove that there has been no breach of the principle of equal treatment.

The wording does not reveal what 'competent authorities' are. This term should be clarified.

As it is for the respondent to prove that there has been no breach of the principle of equal treatment, he will have to keep application documents for some considerable time. He cannot know, after all, whether an unsuccessful applicant will take action against him before a court or by means of an administrative procedure. To reduce the risk of litigation, financial and logistical measures will need to be taken by large undertakings, which receive many applications every day, and by medium-sized undertakings too. Firms are required to keep documents on each employee so that they can prove that the termination of employment was objectively justified and was not due to discrimination. Problems to do with legislation on data protection may also arise (primarily in countries with strict data protection legislation).

A welcome idea in the directive is that a complainant who feels discriminated against does not have to prove explicitly that he has been the victim of discrimination. Experience shows that minorities are reluctant to take action against routine discrimination. This is especially true if

<sup>13</sup> COM(1999)567: EUR 98 million over six years

<sup>14</sup> COM(2000)368: EUR 70 million over five years

<sup>15</sup> COM(2000)335: EUR 55 million over five years

their own unfortunate experience leads them to fear that they will not be believed in courts presided over by judges who do not belong to a minority. If they simply have to make the facts from which discrimination may be presumed seem credible, workers who have really suffered discrimination will initiate legal proceedings or at least call in an arbitration body. In the medium term this directive is likely to help reduce discrimination at the workplace.

Whatever happens, a balance must be struck between the employee's and the employer's legitimate interests. As your rapporteur, I propose the introduction of a limitation period of six to twelve months (well aware that in some Member States a maximum of six months is prescribed, and this should not, in my opinion, be increased), after which the victim would forfeit his right to complain or institute legal proceedings. This would require employers to keep application documents or appraisals for a limited period. Employees can benefit from the – for them – favourable rules on the burden of proof to enjoy better protection against discrimination at the workplace in the future.

### *3. Protection of people with disabilities*

The directive qualifies the employer's obligation to provide 'reasonable accommodation' by stating that this must not cause 'undue hardship'.

The directive is meant to add to and clarify the employer's obligation under framework Directive 89/391/EEC to adapt the workplace to the needs of disabled workers<sup>16</sup>. However, no more than what is reasonable is to be required. Furthermore, the obligation is to apply only if it does not cause undue hardship.

There is a danger that employers will claim 'undue hardship' to avoid what they consider to be 'unnecessary' expenditure on the creation of workplaces suitable for disabled workers. Experience in the USA shows that four years after the passing of the Disabilities Act the spending by undertakings on the creation of a workplace suitable for a disabled worker averages no more than US\$ 500. The investment is worthwhile, because disabled people are also potential customers. Undertakings that are suitable for or friendly towards the disabled often have a comparatively high turnover. The potential in Europe is high: it is estimated that 12% of the EU population are deemed to be disabled. According to one study, the tourist industry in Europe loses about EUR 45 billion each year because it fails to provide infrastructure suitable for disabled people. These examples show that employers' fears about the costs involved are too short-sighted. What is completely ignored is that integrating disabled people into the work environment also has economic advantages. The term 'undue hardship' must be accurately defined. Associations of the disabled rightly say that a further directive is needed to cover the various problems which disabled people encounter. Someone whose mobility is impeded has different problems from someone who is mentally handicapped.

### *4. Protection of elderly people*

Associations that represent the interests of the elderly and pensioners believe that Article 5 will be disadvantageous for these population groups. Article 5 is based on the assumption that a difference of treatment does not constitute direct discrimination on grounds of age if it is objectively justified by a legitimate aim and is appropriate and necessary to the achievement of that aim. The main criticism here is that the fixing of a minimum age as a condition of

<sup>16</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1

eligibility for retirement or invalidity benefits does not constitute discrimination. The principle of solidarity between younger and older workers has top priority in this context.

#### *5. Safeguarding free collective bargaining*

Employers' and employees' associations are concerned that the directive will erode the autonomy of the two sides of industry, especially as more and more organisations outside undertakings are 'interfering in internal affairs'. Your rapporteur, who regards the social partnership as an essential element of the social market economy, appreciates that these reservations are to be considered when the directive is implemented. Hence the need for the appointment of someone in whom workers who feel discriminated against can confide. To safeguard free collective bargaining, I also believe that external organisations should participate in collective bargaining only if explicitly invited to do so by the two sides in the negotiations.

#### *6. Protection of religious communities*

Representatives of religious communities point out that in some countries the planned directive is likely to have implications for the constitutional position of such communities. In particular, the exception defined in Article 4(2) does not extend to institutions and organisations that provide social services and health care. If the staff of the hospitals and nurseries they run can no longer be selected on the basis of religious criteria since this would constitute discrimination against the persons concerned, there is a danger that Churches or religious communities will run fewer and fewer facilities whose existence is in the public interest. Such facilities should therefore be covered by Article 4(2).

#### *7. Applicability of the directive to third-country nationals*

It is questionable whether the directive – and especially Article 3(a) – is applicable to nationals of third countries<sup>17</sup>, particularly when it is remembered that access to the labour market for these people is subject to an authorisation system.

The rapporteur is in favour of the directive being applicable to third-country nationals. However, as Article 13 is not geared to discrimination on the grounds of nationality, national legislation on entry, residence and access to the labour market for third-country nationals is not affected.

---

<sup>17</sup> Of whom there are some 10 million in the EU as a whole.

14 September 2000

## **OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS**

for the Committee on Employment and Social Affairs

on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation  
(COM(1999) 565 – C5-0068/2000 -1999/0225(CNS))

Draftsman: Joke Swiebel

### **PROCEDURE**

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Joke Swiebel draftsman at its meeting of 24 February 2000.

It considered the draft opinion at its meetings of 13 March 2000, 11 April 2000, 22-23 June 2000, 12-13 July 2000 and 13-14 September 2000.

At the last meeting it adopted the amendments below by 16 votes to 11.

The following were present for the vote: Robert J.E. Evans, vice-chairman; Bernd Posselt, vice-chairman; Joke Swiebel, draftsman; Maria Berger (for Olivier Duhamel), Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Rocco Buttiglione), Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2) of the Rules of Procedure), Glyn Ford (for Gerhard Schmid), Daniel J. Hannan, Ewa Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Martin Schulz), Luis Marinho (for Sérgio Sousa Pinto), William Francis Newton Dunn (for Timothy Kirkhope), Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Margot Keßler), Fodé Sylla, Anna Terrón i Cusí, Gianni Vattimo, Christian von Boetticher and Jan-Kees Wiebenga.

## SHORT JUSTIFICATION

### INTRODUCTION

On 25 November 1999 Commissioner Anna Diamantopoulou presented the first proposals for action under Article 13 of the EC Treaty, comprising a communication, two proposals for directives and an action programme. On 6 June 2000, political agreement was reached within the Council on the parallel directive on equal treatment irrespective of race or ethnic origin, after the European Parliament had delivered its opinion on it on 18 May 2000. This subject can therefore be regarded as having been fully dealt with. This opinion for the Committee on Employment and Social Affairs focuses on the proposal for a framework directive on equal treatment in employment and occupations.

### THE POLITICAL SIGNIFICANCE OF THE EQUALITY PRINCIPLE AND THE GENERAL CONTEXT

The right to equality of treatment and protection against discrimination is a fundamental human right which is central to the concerns of the European Union. European rules currently differ in nature and content where different grounds for discrimination are concerned, and this is difficult to reconcile with that principle. To operate a hierarchy of variants of discrimination would give the wrong signal politically. Moreover, it would result in a patchwork of rules, which would be detrimental to the quality of legislation and would create an unclear situation from the point of view of the public.

The framework directive against racial discrimination (i.e. dealing with equal treatment irrespective of race or ethnic origin – COM(1999)566 final)<sup>18</sup> provides for a higher level of protection and is broader in scope, in comparison both with those provisions of the proposal for a directive under consideration here which concern religion or belief, disability, age and sexual orientation<sup>19</sup> and with existing Community legislation on equal treatment of men and women. The latter, in particular, is a political absurdity. European legislation on discrimination on grounds of sex suffers from the dialectics of progress (discrimination on grounds of sex has been on the EC/EU agenda for decades), and in principle affects more citizens than any other form of discrimination in Europe.

The differences in the level of protection relate to such issues as the definition of the concept of discrimination, the formulation of exceptions, the phenomenon of harassment, positive action, the burden of proof, reprisals, defence of rights, information, the possibility of group actions and whether or not there is a need for an independent monitoring body.

With regard to scope, it is a matter of defining the areas of the life of society in which discrimination is to be outlawed. The framework directive now under consideration has the narrowest scope (see Article 3 of the proposal: employment, vocational training, employment conditions, membership of trade unions), the existing package of directives concerning

<sup>18</sup> The document on which the Council reached agreement on 6 June contained a number of changes in comparison with the original text and also differs in a number of respects from the Commission's modified proposal for a directive on the subject (COM(2000)328 final).

<sup>19</sup> The criterion of race or ethnic origin is disregarded in this connection because after adoption of the directive against racial discrimination, this framework directive cannot add anything new in this respect. I am assuming that the criterion of 'race or ethnic origin' will subsequently be deleted from the text of this framework directive; there is therefore no need to table any amendment to this end.



discrimination on grounds of sex also extends to social security, while in addition the new directive against racial discrimination also covers social benefits, education and the supply of and access to goods and services.

Your rapporteur considers that in principle the differences in *level of protection* ought to be corrected as part of the present legislative procedure, taking as a guideline the level of protection for the criterion of race or ethnic origin which Parliament decided upon on 18 May 2000 in adopting the Buitenweg report (A5-0136/2000). In so far as applicable, amendments to the Commission's text are proposed in order to secure this.

As the Commission has recently decided to submit a proposal – pursuant to Article 141 of the ECT – to adjust the directive on equal treatment of men and women in employment (Directive 76/207/EEC)<sup>20</sup>, it should be considered in its place and not anticipated here, in order to keep the legislative process orderly. (Moreover, the difference in legal basis – and hence in the role to be played in the process by the European Parliament – in any case requires the proposals to be considered separately). However, the Council and Parliament may be expected to assess the substance of this proposal in the light of the same criteria, i.e. the level of protection against discrimination will be just as high in the case of sex as in the case of the other grounds referred to in Article 13 of the ECT.

Overcoming the aforementioned differences in *scope* may require further research and consultation. However, it cannot be delayed, despite the Commission's promise on the subject and because of the overriding importance of the principle of equality itself<sup>21</sup>. Your rapporteur therefore proposes indicating a time frame in this directive. This would compel the Commission and Council within a certain number of years to equalise the scope of anti-discrimination legislation for all the grounds referred to in Article 13, in other words to make it the same for all grounds as for race and ethnic origin. Such a clause would strengthen the Commission's strategy of pursuing a phased approach.

## **CONSIDERATION OF THE INDIVIDUAL ARTICLES**

### **Article 1 – Purpose**

(a) Your rapporteur has not been convinced by the various advocates of defining the grounds for discrimination more precisely. On the contrary, the arguments adduced at the hearing on Article 13<sup>22</sup> show that such detailed definitions would give rise to fresh problems. Such an approach would soon result in the definition of categories of persons who were protected by the ban on discrimination and others who were not, which would be not only legally absurd but also politically undesirable.

If discrimination on the basis of particular religions and beliefs were to be outlawed, while that based on others (falling outside the definition) was permitted, this would effectively mean introducing a policy of 'recognition' which would not only violate the separation of

<sup>20</sup> A first unnumbered and undated version of such a proposal has already been reported to exist. It is concerned with changes to the level of protection – where disparities have now arisen – and not the scope.

<sup>21</sup> Incidentally, the Commissioner has also promised to submit in 2001 a proposal for a directive pursuant to Article 13 of the ECT on equal treatment of men and women in fields other than employment and occupations.

<sup>22</sup> Held in Brussels on 23 and 24 May 2000 by the European Parliament's Committee on Citizens' Rights, Justice and Home Affairs and Committee on Employment and Social Affairs.

church and state but also be hard to reconcile with the essence of the equality principle. In your rapporteur's view, the same applies *mutatis mutandis* to the other grounds for discrimination.

After all, outlawing discrimination means not allowing one person to treat another differently on the basis of a characteristic or feature which the former attributes to the latter. In principle it is irrelevant whether the latter person genuinely possesses that characteristic or feature<sup>23</sup>. For the same reasons, the doubt which has been expressed as to whether 'race' can legitimately be used as a concept is irrelevant. Attempts to define and demarcate the grounds for discrimination precisely entail a risk that, by reasoning *a contrario*, new variants of discrimination may unintentionally be legitimated.

- (b) The criterion of 'sex' ought to be added to the list as a stepping stone for the aforementioned time frame.
- (c) The criterion of 'race' should be deleted because of the overlap with the directive against racial discrimination.
- (d) (Applies only to the Dutch version)  
The term 'sexual orientation' has wrongly been translated as 'seksuele geaardheid'. The only correct Dutch translation is 'seksuele gerichtheid', as used in Dutch legislation outlawing discrimination. Your rapporteur proposes correcting this error in the text under consideration. The Dutch version of Article 13 of the EC Treaty will have to be corrected by some other means.

#### **Articles 2, 4, 5 and 6 – the outlawing of discrimination and the exceptions to the ban Direct and indirect discrimination**

The system adopted in the proposal for a directive is similar to that used in existing European legislation against discrimination on grounds of sex, which is based on a formal, self-contained approach: direct discrimination is prohibited except in the case of unequal treatment which does not constitute discrimination because it falls under the explicit provisions of the directive itself permitting exceptions (genuine occupational qualifications, positive action). The other 'escape route' is via the concept of indirect discrimination and the associated objective justification test. But under no circumstances can direct discrimination be justified according to this system. This model has worked well for discrimination on grounds of sex and can be extended to 'race' and 'sexual orientation' without much problem. However, the Commission's efforts to formulate the justifications for exceptions to the ban on discrimination on grounds of the relatively 'new' criteria of age and disability have produced results which, in the view of your rapporteur, are not logically tenable.

The non-exhaustive list of justifications of differences of treatment on grounds of age given in Article 5 makes it possible to adduce objective justification for cases of direct discrimination. This constitutes a threat to the survival of the EU's existing equal treatment provisions. Your

<sup>23</sup> Your rapporteur considers that it is in this light that one should see the somewhat infelicitously formulated and much criticised passage in the Commission's Explanatory Memorandum stating that sexual behaviour does not fall under the concept of sexual orientation. The Commission and Council should make it clear that this passage certainly does not mean that protection against discrimination on grounds of sexual orientation lapses as soon as it becomes apparent that people do not confine themselves to thoughts and fantasies but also act in a corresponding manner.

rapporteur considers that it would be preferable to incorporate in the text of the directive the generally accepted grounds for exceptions to the ban on direct discrimination on grounds of age and not to apply the objective justification test to them. However, it is questionable whether there is yet sufficient consensus within society concerning the acceptability or otherwise of age limits to allow such an approach. A temporary solution will therefore have to be found. I shall return to this later in connection with Article 5.

With regard to disability too, the proposal for a directive (Article 2(4)) abandons the formal, self-contained system, but in quite a different direction. By recognising that not only unequal treatment of equal cases but also equal treatment of unequal cases constitutes discrimination, the narrow, negative approach to combating discrimination is broadened to a positive obligation to take specific measures to attain *de facto* equality (equal results)<sup>24</sup>. Your rapporteur is very much in favour of this provision; indeed, in the case of people with disabilities, this is surely the only credible way of imparting real substance to the principle of non-discrimination. On the other hand, it might be argued that this provision should be extended to all grounds for discrimination. Possibilities include sexually segregated toilets and washrooms, facilities for nursing mothers, facilities to enable workers to fulfil their everyday religious obligations (meals, festivals, clothing rules), etc. At this stage, no amendments along these lines are incorporated in this opinion.

### **Harassment**

Consideration should again be given to whether the definition of harassment ought not to be supplemented so as to include detrimental influence on terms of employment. The concept should also extend to harassment by parties other than an employer or colleagues (e.g. patients or customers).

### **People with disabilities: reasonable accommodation v. undue hardship**

In order to bring the formulation of Article 2(4) into line with the material scope defined in Article 3, an amendment is tabled referring to access to vocational training and membership of trade unions and the like.

In some EU countries, the concept of reasonable accommodation or modifications is still relatively unfamiliar. Experience in countries where the law requires such measures will provide sufficient guidance to resolve interpretation problems. Thus it does not seem necessary for the text to define more clearly what measures may be regarded as constituting reasonable accommodation or how undue hardship is to be assessed.

### **Article 3 – Material scope**

In the relevant amendment, your rapporteur proposes incorporating a time frame in the text so as to compel the Commission and Council to decide within three years on an extension of the scope to at least those fields defined in the directive against racial discrimination.

### **Article 4 – Genuine occupational qualifications**

Experience of a similar provision in the directive on equal treatment of men and women (76/207/EEC) has shown that controlled, restrictive application of this escape clause is desirable if it is not to undermine the substance of the prohibition of discrimination itself. A compulsory assessment system (once every five years) and notification of the Commission

<sup>24</sup> Failure to adopt the specific measures in question could also be defined as a form of indirect discrimination; others regard this provision as an injunction to pursue a policy of positive action.

therefore seem appropriate (see also Amendment 39 in the recently adopted EP report on equal treatment irrespective of race or ethnic origin (A5-0136/2000)). The need for such restrictive application, subject to assessment, is reinforced by the second paragraph, which is concerned solely with discrimination on grounds of religion or belief<sup>25</sup>. When weighing up the conflicting claims arising from fundamental rights, the freedom of ideological organisations to conduct their own personnel policies must not be allowed to infringe the non-discrimination principle excessively.

#### **Article 5 – Justification of differences of treatment on grounds of age**

The formulation of this article in the proposal for a directive shows the drafters to have been in two minds: on the one hand, it is proposed that possible exceptions to the prohibition on discrimination on grounds of age should be subject to a justification test, while on the other hand a non-exhaustive list of exceptions is given. This could give the impression that these variants of age differentiation have already passed the justification test, but that is not the case. Thinking about the social importance of the age factor is rapidly changing, which is just one of the reasons why it is not expedient to adopt a fixed list of exceptions. Your rapporteur proposes deleting the list of possible exceptions from Article 5 so as to create an open assessment system. The Member States must, however, be required to review periodically whether the age criteria in use still comply with the justification test in the directive and inform the Commission of this.

#### **Articles 6-16**

Your rapporteur's amendments concerning these articles are modelled on the views expressed by the EP on 18 May 2000 when adopting the Buitenweg report concerning the proposal for a directive outlawing racial discrimination.

As already stated, your rapporteur believes that Parliament should opt for the same level of protection in the case of the directive now under consideration.

---

<sup>25</sup> Mistranslated in the Dutch version of the proposal for a directive, unlike in other passages, as 'religie of geloof'.

## AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>26</sup>

Amendments by Parliament

(Amendment 1)  
Recital 2

Does not affect the English version.

(Amendment 2)  
Recital 3a (new)

***(3a) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities and to promote equality between men and women, especially since women are often the victims of multiple discrimination.***

*Justification:*

*This formulation is analogous to that in the Council directive implementing the principle of equal treatment of persons irrespective of race or ethnic origin (2000/43/EC of 29 June 2000), the gender aspect of equal treatment being guaranteed in the directive.*

(Amendment 3)  
Recital 3b (new)

***(3b) The principle of equal treatment of persons irrespective of race or ethnic origin, as provided for in Article 13 of the EC Treaty, is implemented by Council Directive 2000/43/EC of 29 June 2000.***

<sup>26</sup> OJ C 177, 27.6.2000, p. 42.

*Justification:*

*Equal treatment of persons irrespective of race or ethnic origin is dealt with in Directive 2000/43/EC and relates to all fields, including employment and occupation. In order to avoid any confusion, it seems desirable to exclude discrimination on grounds of race or ethnic origin from the scope of this directive.*

(Amendment 4)

Recital 9

(9) Discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the fostering of the free movement of persons.

(9) Discrimination based on **sex**, racial or ethnic origin, religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the fostering of the free movement of persons.

*Justification:*

*See justification for Amendment 15.*

(Amendment 5)

Recital 10

(10) To this end any direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.

(10) To this end any direct or indirect discrimination based on **sex**, racial or ethnic origin, religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.

*Justification:*

*See justification for Amendment 15.*

(Amendment 6)

Recital 19

(19) Member States should promote social dialogue between the social partners to address different forms of discrimination in the workplace and to combat them.

(19) Member States should promote social dialogue between the social partners ***and dialogue with nongovernmental organisations (NGOs)*** to address different forms of discrimination in the workplace and to combat them.

*Justification:*

*In addition to social dialogue between the social partners, organisations representing specific groups such as the disabled and the elderly also play an important part in non-discrimination policy.*

(Amendment 7)  
Recital 22a (new)

***22a. The Commission and Council consider themselves to be under an obligation, within three years of the adoption of this directive, to extend the scope, in the case of all grounds for discrimination referred to in Article 13 of the EC Treaty, to at least the fields defined in the directive on equal treatment of persons irrespective of racial or ethnic origin.***

*Justification:*

*See justification for Amendment 15.*

(Amendment 8)

Article 1

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of **racial or ethnic origin**, religion or belief, disability, age or sexual orientation.

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment **of natural and legal persons or non-formalised groups of persons** as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of **sex**, religion or belief, disability, age or sexual orientation.

*Justification:*

*For the grounds for inserting the term 'sex', see the justification for Amendment 15. For the reference to legal persons and groups, see the justification for Amendment 4.*

(Amendment 9)

Article 2(2)(a)

(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one **person** is treated less favourably than another is, has been or would be treated.

(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one **natural or legal person or a non-formalised group of persons** is treated less favourably than another is, has been or would be treated.

*Justification:*

*See justification for Amendment 4.*



(Amendment 10)  
Article 2(2)(b)

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice **is liable to** affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice **affects or is intrinsically liable to** affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, **so that they are placed, or there is a consequent risk that they will be placed, at a particular disadvantage**, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

*Justification:*

*This revised definition, which (as in the Commission proposal) takes account of the judgment of the Court of Justice of the European Communities in the O'Flynn case, seeks to ensure that problems of statistical proof do not unnecessarily arise and that the concept of comparative disadvantage, which is inherent in indirect discrimination, is covered. The formulation also corresponds to the identical article in the framework directive on equal treatment of persons irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 11)  
Article 2(2)(c) (new)

**(c) indirect discrimination shall be taken to occur where rules and criteria concerning employment-related social security benefits or concerning taxation are liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies.**

*Justification:*

*In some Member States, immigrants from third countries suffer discrimination with regard to social security benefits and tax concessions, while immigrants from Member States of the Union are protected by the Treaties.*

(Amendment 12)  
Article 2(3)

3. Harassment **of a person related to any of the discriminatory grounds and areas**

3. Harassment **shall be deemed to be discrimination within the meaning of**

*referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.*

*paragraph 1 when an 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, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.*

*Justification:*

*This is a broader definition of harassment in accordance with Directive 2000/43/EEC of 29 June 2000.*

(Amendment 13)  
Article 2(3)a (new)

*Behaviour consisting of incitement, instructions or pressure to discriminate shall fall within the definitions in (a) and (b) above irrespective of whether any specific victim of discrimination can be identified.*

*Justification:*

*Incitement or instructions to discriminate should be explicitly mentioned in the directive as conduct which prevents equality of treatment. There is a need to cover the situation where, for instance, a manager encourages his subordinate to discriminate in recruitment.*

(Amendment 14)  
Article 2(4)

4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, *to enable such persons to have access to, participate in, or advance in employment*, unless this requirement creates an undue hardship.

4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided *in the fields falling within the scope of this directive as defined in Article 3*, where needed, unless this requirement creates an undue hardship.

*Justification:*

*For reasons which are not stated, the proposal for a directive mentions only three aspects of*

*the scope as being covered by this article. It would be better for this article to apply to all aspects of the scope in order to avoid confusion.*

(Amendment 15)  
Article 2(5) (new)

***5. In implementing this directive, Member States shall ensure the integration of a gender perspective in order to prevent and eliminate multiple discrimination against women.***

*Justification:*

*This formulation is analogous to that in the Council directive implementing the principle of equal treatment of persons irrespective of race or ethnic origin (2000/43/EC of 29 June 2000), the gender aspect of equal treatment being guaranteed in the directive.*

(Amendment 16)  
Article 3(a)

(a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

(a) conditions for access to employment, ***unpaid and voluntary work, official duties***, self-employment and occupation, including selection criteria and recruitment conditions, ***and including procurement of labour and finding of employment by public and private employment agencies and authorities***, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

*Justification:*

*Official duties, unpaid and voluntary work should likewise fall within the scope of this directive. It would not be right for official (i.e. public) duties to become a separate field of application: they should be covered by the definition of the term 'employment'.*

*Employment agencies and authorities have an important role to play in access to work. These bodies sometimes discriminate both in providing information and in procuring labour. Judicial review of their actions is vital to equality of treatment in employment and occupation.*

(Amendment 17)  
Article 3(d)

(d) membership of and involvement in an

(d) membership of and involvement in

organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations, **and voting or standing as a candidate in elections to bodies within or between such organisations.**

*Justification:*

*Elections to posts in such organisations are an important part of economic democracy and should thus be free from discrimination.*

(Amendment 18)  
Article 3(2)(new)

***Within three years of the adoption of this directive, the Council, on a proposal from the Commission and after consulting the European Parliament, shall decide, for all the grounds for discrimination referred to in Article 13 of the EC Treaty, on an extension of the scope to at least those fields defined in the directive on equal treatment of persons irrespective of racial or ethnic origin.***

*Justification:*

*In the interests of equality before the law, transparency and the quality of legislation, it is necessary for a ban on discrimination with the same scope to enter into force within a reasonable time limit for all the grounds referred to in Article 13 of the EC Treaty. In its Agenda for Social Policy (as cited in the press release of 28 June 2000), the Commission has recently announced that it will submit a proposal for a directive in 2001 extending the ban on discrimination on grounds of sex to fields other than employment. This amendment sets a time frame designed to support this intention and extend it to all grounds for discrimination referred to in Article 13 of the EC Treaty.*

(Amendment 19)  
Article 5

Notwithstanding point (a) of Article 2(2), **the following** differences of treatment, **in particular**, shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a legitimate aim and are appropriate and necessary to the achievement of that aim:

Notwithstanding point (a) of Article 2(2), differences of treatment shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a **strictly defined** legitimate aim and are appropriate and necessary to the achievement of that aim.

- (a) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;*
- (b) the fixing of a minimum age as a condition of eligibility for retirement or invalidity benefits;*
- (c) the fixing of different ages for employees or groups or categories of employees for entitlement to retirement or invalidity benefits on grounds of physical or mental occupational requirements;*
- (d) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;*
- (e) the establishment of requirements concerning the length of professional experience;*
- (f) the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.*

*Justification:*

*The non-exhaustive list of exceptions contained in the original Commission proposal gives the impression that the proposed variants of discrimination on grounds of age have already been found to be objectively justified, and that accordingly they do not constitute discrimination for the purposes of the directive. However, this is not the case. At the same time, it is not desirable to adopt a fixed list of exceptions at a time when thinking about the social importance of the age factor is undergoing rapid change. Articles 4 and 5 of the proposal for a directive are closely related to the amendment below inserting an Article 5a (new).*

(Amendment 20)  
Article 5a (new)

***The provisions of Articles 4 and 5 shall be applied restrictively. Every five years each Member State should assess the exemptions it has permitted in the light of social developments. Member States must notify the Commission of the exemptions and periodic assessments. The Commission shall publish these.***

*Justification:*

*The obligation to provide notification and assessment guarantees that exemptions permitted will be carefully considered. Openness is essential precisely in order to ensure that these exemptions are made the subject of public debate.*

(Amendment 21)

Article 6

***This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.***

***The principle of equal treatment shall not prevent any Member State, with a view to ensuring that full equality within the meaning of this directive is achieved in practice, from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented persons to participate fully in social life, or to prevent or compensate for disadvantages they may experience.***

*Justification:*

*This amendment seeks alignment with the text of Article 141(4) of the EC Treaty. This wording is preferable so as to ensure that the legal concept of positive discrimination is formulated in the same way in all documents, thereby precluding difficulties of interpretation.*

(Amendment 22)

Article 8

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.

2. Member States shall ensure that associations, organisations or other legal entities may *pursue* any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant *with his or her approval*.

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended. ***The recourse to a judicial remedy shall be in accordance with the most effective national procedures, after possible recourse to other competent authorities where appropriate. Member States shall provide support in respect of legal costs in accordance with the most favourable provisions of national law.***

2. Member States shall ensure that associations, organisations or other legal entities may ***be entitled to institute or support*** any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant. ***At the same time, associations, organisations or other legal entities having a legitimate interest in appearing in court shall be given a right of collective action, i.e. the power to ask the court, of their own motion, whether unequal treatment is present, aside from the particular circumstances of an individual case.***

*Justification:*

*The most important aspect of this amendment is the aim of facilitating access to the courts in the event of discrimination. The main point of the last part of the amendment is to allow organisations to bring proceedings without the consent of a victim, particularly where the discrimination concerns a group of people and it is not feasible to obtain the approval of each person concerned. Often, victims of discrimination are very reluctant to seek legal protection, and fear of victimisation may restrain them from asserting their rights. The right to collective action makes it possible for joined cases to be considered even if they are not brought by the separate victims themselves. The formulation also accords with the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 23)

Article 8(3)(new)

***Member States are urged to ensure that appropriate conciliation procedures are available. These procedures must not be compulsory and are without prejudice to the complainant's right of recourse to judicial protection as set out in Article 8(1).***

*Justification:*

*Conciliation can make a positive contribution to the resolution of a conflict. The decision to have recourse to a conciliation procedure must not mean that recourse to a judicial remedy is ruled out thereafter.*

(Amendment 24)

Article 9a (new)

***Public authorities and employers shall keep statistics on the employment and training of persons covered by this directive. These shall be periodically submitted to the independent body or bodies referred to in Article 12a (new).***

*Justification:*

*By gathering statistics on participation rates of disadvantaged groups, awareness can be raised about prevention of discrimination. Such statistics can also provide clear evidence of cases of discrimination. Moreover, they can be used in drawing up the annual reports referred to in Article 16a (new).*



(Amendment 25)

Article 10

Member States shall introduce into their national legal systems such measures as are necessary to protect **employees** against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Member States shall introduce into their national legal systems such measures as are necessary to protect **both natural and legal persons and non-formalised groups of persons** against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Justification:*

*Not only individual employees require protection but also persons as referred to in this directive.*

(Amendment 26)

Article 10(2)(new)

**(2) Member States shall also introduce appropriate penalties which are proportionate, effective and deterrent, which may include the payment of compensation to the victim or groups of victims.**

*Justification:*

*For effective protection against reprisals, penalties are necessary. Compensation is one possible penalty. The amendment specifies that this may only be paid to the victim, in order to prevent its becoming lucrative for legal persons to act on behalf of a victim or in the context of the collective right of action.*

(Amendment 27)  
Article 10a (new)

*Performance of contracts*

*In awarding contracts and subsidies, a Member State may take account of the extent to which an enterprise or organisation has abided by this directive in the past.*

*In connection with public calls for tender, the authorities may consider bids which constitute preferential treatment of persons falling within the scope of this directive.*

*Justification:*

*Authorities set an example, which they should also do vis-à-vis the outside world in awarding contracts and subsidies and in tendering procedures. By requiring enterprises or organisations to have abided by the spirit and letter of this directive, authorities can also provide guidance in their role as awarders of subsidies or contracts.*

(Amendment 28)  
Article 11(2)

2. Member States shall ensure that **competent** public authorities are informed by appropriate means as regards all national measures taken pursuant to this Directive.

2. Member States shall ensure that public authorities **and the general public** are informed by appropriate means as regards all national measures taken pursuant to this Directive **and that training is provided on the impact of the directive on all public bodies.**

*Justification:*

*The importance of the directive needs to be conveyed to the general public. However, action by government bodies is often taken as an example, which makes it appropriate to require them to organise courses on the consequences of the directive.*

(Amendment 29)

Article 12a (new)

- 1. Member States shall provide for an independent body or bodies for the promotion of equal treatment of both natural and legal persons and non-formalised groups of persons. These bodies may form part of independent agencies charged at national level with the defence of human rights or safeguarding individuals' rights.**
- 2. Member States shall ensure that the functions of these independent bodies include receiving and pursuing complaints from both natural and legal persons and non-formalised groups of persons, associations or nongovernmental organisations, performing research into methods of inquiry and advising thereon, carrying out detailed investigations, providing concrete help for victims, organising investigations or surveys concerning discrimination on any ground referred to in Article 1, publishing reports and making recommendations on issues relating to discrimination and undertaking public awareness campaigns.**
- 3. Member States shall ensure that sufficient financial resources are made available to the independent bodies. As a minimum, Member States shall guarantee the treatment of complaints free of charge for those who are not in a position to make their own financial contribution.**
- 4. In so far as this is relevant to their operations, the independent bodies must be permitted to inspect confidential information, including pay and personnel administration data.**

*Justification:*

*By analogy with the framework directive on equal treatment irrespective of racial or ethnic origin, the directive should incorporate a provision concerning the position and role of one or more independent bodies which, in addition to monitoring compliance with the provisions of the directive, actively promote the equal treatment objectives. The independent bodies should have the power to investigate complaints by victims. In order to be able to carry out thorough investigations into complaints and possibly rule on them, the independent bodies will require access to confidential information such as pay and personnel administration data.*

*Paragraph 2 permits public awareness campaigns, which can do much to promote equality of opportunity.*

*The stipulation that consideration of a complaint ought not in principle to have any financial consequences for the complainant is inspired by the consideration that the cost aspect should not be allowed to deter victims from submitting complaints.*

*The formulation of this new article is in line with that of the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 30)  
Article 12b (new)

***12b. Member States shall encourage dialogue with the nongovernmental organisations (NGOs) concerned which, in accordance with national legislation and practice, have a legitimate interest in efforts to combat discrimination on any of the grounds referred to in Article 1 with the aim of promoting the principle of equal treatment.***

*Justification:*

*In addition to the social dialogue between the social partners, an important part is also played in non-discrimination policy by organisations representing specific groups such as the disabled and the elderly.*

(Amendment 31)

Article 13(a)

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

(a) any **rules**, laws, regulations and administrative provisions contrary to the principle of equal treatment **shall be** abolished **by 31 December 2002**;

*Justification:*

*This date corresponds with that by which, pursuant to Article 15, the laws, regulations and administrative provisions necessary to comply with the directive must enter into force. It is only logical that Member States should ensure that provisions which are contrary to the directive are repealed by the same date.*

(Amendment 32)

Article 14

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 15 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. ***This will include prohibiting by legal sanction:***

- (a) Incitement or pressure to discriminate on any ground referred to in Article 1;***
- (b) Decisions or activities by a public authority or public institution which constitute discrimination on any of the grounds referred to in Article 1 against persons, groups of persons or institutions.***

***Penalties may include payment of compensation to the victim.***

The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 15 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Justification:*

*The text of the amendment brings the provisions regarding penalties into line with the wording of the UN Convention on the Elimination of All Forms of Racial Discrimination, particularly Article 4, and provides a more explicit description of the offences punishable by law under the directive. Compensation is a feasible and effective penalty. The amendment specifies that such compensation must be paid to the victim, to ensure that legal persons do not profit from appearing on a victim's behalf or in the context of the collective right of action.*

*The formulation of this new article is in line with that of the corresponding article in the framework directive on equal treatment irrespective of racial or ethnic origin as amended and adopted by the European Parliament.*

(Amendment 33)  
Article 15, first paragraph

Member States shall **adopt** the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

Member States shall **ensure that** the laws, regulations and administrative provisions necessary to comply with this Directive **enter into force** by 31 December 2002, **or may mandate the social partners, if they jointly so request, to implement this Directive as regards the provisions falling under collective agreements. In that case, Member States shall ensure that the social partners have introduced the requisite measures by agreement by 31 December 2002; Member States must themselves take all measures to be able to guarantee at all times the outcomes prescribed in this Directive.** They shall forthwith inform the Commission thereof.

*Justification:*

*Extension to include the role of the social partners, by analogy with Directive 2000/43/EC of 29 June 2000.*

(Amendment 34)  
Article 16

Member States shall communicate to the Commission, within **two years** of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the

Member States shall communicate to the Commission, within **one year** of the date mentioned in Article 15, **and subsequently every two years**, all the information necessary for the

Council on the application of this Directive.

Commission to draw up a report to the European Parliament and the Council on the application of this Directive **and to make suggestions and general recommendations.**

*Justification:*

*Regular reporting will make it possible to monitor whether Member States are complying with the directive.*

(Amendment 35)

Article 16, second paragraph (new)

***The Commission report shall take due account of the views of the social partners and the NGOs concerned. In accordance with the principle of integration of equal-opportunities policy (gender mainstreaming), this report shall, inter alia, evaluate the groups of measures with regard to men and women. In the light of the above information, the report shall, if necessary, include proposals for revision and updating of the Directive.***

*Justification:*

*The reports must also draw attention to any multiple discrimination against women and the measures taken to combat it. Other modifications also by analogy with Directive 2000/43/EC of 29 June 2000.*

12 July 2000

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Employment and Social Affairs

on the proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation  
(COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))

Draftsman: Arlene McCarthy

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Arlene McCarthy draftsman at its meeting of 1 February 2000.

It considered the draft opinion at its meetings of 26/27 June 2000 and 11/12 July 2000.

At the latter meeting it adopted the amendments below by 14 votes to 8, with 1 abstention.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Rainer Wieland, vice-chairman; Arlene McCarthy, draftsman; Luis Berenguer Fuster, Carlos Candal, Brian Crowley, Raina A. Mercedes Echerer, Francesco Fiori (for Hans-Peter Mayer pursuant to Rule 153(2)), Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Donald Neil MacCormick, Luis Marinho, Manuel Medina Ortega, Bill Miller, Elena Ornella Paciotti, Francesco Enrico Speroni, Astrid Thors, Theresa Villiers, Diana Paulette Wallis, Joachim Wuermeling and François Zimeray.

### **SHORT JUSTIFICATION**

#### **Background**

The proposal for a directive is based on Article 13 of the EC Treaty: *Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

The directive sets out to establish a general framework for ensuring respect for the principle of equal treatment between persons irrespective of race or ethnic origin, religion or belief, disability, age, or sexual orientation in the areas of access to employment and occupation, promotion, vocational training, employment and working conditions and membership of trade unions, employers' associations and professional bodies and organisations.

Your draftsman agrees with the Commission that the mere recognition at Community level of individuals' right to employment equality will send a clear message that the European Union



is fully committed to the fundamental principle of equal opportunities for all citizens, whilst securing a common set of minimum standards in this area. It will also strengthen Union citizenship and the rights and interests of Community nationals. Even though the proposed directive does not deal with sex discrimination directly, it will help consolidate the mainstreaming approach to equal opportunities given that women are over-represented among the unemployed ethnic and religious minorities, the disabled and the elderly.

Your draftsman further appreciates that by removing grounds for discrimination in the workplace, the directive will promote social inclusion, full participation in economic, cultural and social life and enjoyment of basic human rights and freedoms.

Your draftsman considers that the proposal is consistent with the principle of subsidiarity enshrined in Article 5 of the EC Treaty having regard to the Protocol on the application of the principles of subsidiarity and proportionality. She takes the view that the Commission has provided a clear and cogent justification for the need for this specific piece of framework legislation in the Annex to the proposal.

Consequently, in making the following proposals for amendments, your draftsman has sought to tighten up the wording of a number of provisions of the directive, without detracting from its overall aims. She would also draw the Commission's attention to a translation error in the English version of the heading to Article 3, where "Material scope" should read "Substantive scope".

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>27</sup>

Amendments by Parliament

(Amendment 1)  
Recital 23 (new)

***Since the Directive constitutes part of the *acquis communautaire* which candidate countries are required to implement before accession, those countries must be kept informed about the implementation of the Directive in the Member States so as to assist them in complying with its provisions.***

*Justification:*

<sup>27</sup> OJ C 177, 27.6.2000, p.42

*This is consistent with the line taken in Parliament's resolution of 16 March 2000 on countering racism and xenophobia in candidate countries.*

(Amendment 2)  
Article 2(4)

In order to guarantee respect *of* the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates *an* undue hardship.

In order to guarantee respect *for* the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment and *vocational training and to benefit from membership of organisations referred to in Article 3(d)*, unless this requirement creates undue hardship.

*Undue hardship shall involve more than the nominal cost for the provider of such reasonable accommodation. The following issues should be taken into account when deciding whether the provision of reasonable accommodation amounts to undue hardship:*

- *The size of the organisation or branch;*
- *The cost of the accommodation or adjustment;*
- *The total turn-over of the organisation or firm;*
- *The availability of public subsidies to cover the cost of the accommodation;*
  - *Any financial benefit for the provider as a result of making the accommodation or adjustment.*

*Justification:*

*The clarification of the concept of "provision of reasonable accommodation" is designed to protect both the disabled and employers. It is intended to ensure (a) that disabled persons can participate on equal terms in services, programmes, activities, jobs and other opportunities through adjustments to premises, modifying instructions and reference manuals, provision of training and alterations to working hours and (b) that a fair balance is struck between the legitimate demands of disabled persons and the financial costs which the employer may be reasonably expected to bear. The amendment deliberately refers to the question of possible public subsidies, since there is a concern that the directive could be used to place the financial burden of providing reasonable accommodation solely on employers.*

*The provision of reasonable accommodation constitutes affirmative action with a view to enabling disabled persons to participate in economic life and associated activities.*

(Amendment 3)  
Article 5, Indent (f)

***the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.*** **Delete.**

*Justification:*

*It is uncertain what this provision means. Since it could easily be construed as legitimising age discrimination, it should be deleted. Not only has "ageism" been criticised by the Commission in its 1999 Employment Guidelines and in its Communication on active ageing, it makes no economic sense to discriminate unjustifiably against persons on account of their age, especially at a time which labour and skills shortages are beginning to emerge and social security budgets and pension arrangements are becoming increasingly strained. Figures show that only 36.3% of 55 to 64 year olds in the European Union are in employment. Many of the remaining 63.7% are debarred from working only by prejudice against older workers. This is often tragic in human terms and wasteful in economic terms. Moreover, discrimination on grounds of age may often cloak other forms of unlawful discrimination (race, gender, disability).*

(Amendment 4)  
Article 6

***This Directive shall be without prejudice to the right of Member States to maintain or adopt measures*** intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.

***With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages or*** intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.

*Justification:*

*This amendment is calculated to deal with the concern that Article 6 as originally drafted did not allow for the retention of existing positive discrimination schemes, such as quotas for disabled people, as is consistent with the principle of subsidiarity.*

(Amendment 5)  
Article 9(1)

Member States shall take such measures as

Member States shall take such measures as

are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts **from which it may be presumed** that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts **which, unless rebutted or qualified by further evidence, give rise to a reasonable inference** that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

*Justification:*

*Self-explanatory.*

(Amendment 6)  
Article 12(a)(new)

***Member States shall provide for an independent body or bodies for the promotion and rigorous monitoring of the principle of equal treatment for persons covered by any of the discriminatory grounds referred to in Article 1. Such bodies may form part of independent agencies charged at national level with the defence of human rights or with the safeguarding of individuals' rights.***

*Justification:*

*This provision would strengthen Article 8, which provides for the bringing of judicial and/or administrative procedures by associations, organisations or other legal entities on behalf of a complainant. An analogous provision is already contained in the proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM(1999)566 final), which has already been approved by Parliament.*

(Amendment 7)  
Article 11(1)

Member States shall ensure that adequate information on the provisions adopted pursuant to this Directive **is** provided to vocational training and educational bodies and **is** adequately disseminated within the

Member States shall ensure that adequate **guidance and** information on the provisions adopted pursuant to this Directive **are** provided to vocational training and educational bodies **and**

workplace.

**employers** and adequately disseminated within the workplace **with the assistance and participation of NGOs.**

*Justification:*

*This reflects the need for involvement of representative non-governmental organisations referred to in the 1996 Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on equality of opportunity for people with disabilities<sup>28</sup> (point III, 2) and the 1999 Council Resolution on equal employment opportunities for people with disabilities<sup>29</sup> (point 2(a)). It is also concerned to ensure that guidance (including training) is given to employers on how best to comply with the provisions of national law which are enacted to comply with the directive.*

(Amendment 8)  
Article 13a (new)

**Member States shall introduce into their national legal systems such measures as are necessary to ensure that public authorities in the Member States shall exclude any contractor from participating in a public procurement contract when it has been found guilty of infringing the laws, regulations and administrative provisions transposing this Directive.**

*Justification:*

*This amendment is in line with practice in certain Member States, would be compatible with the WTO Agreement on Public Procurement and mirror the provisions of the proposed new public procurement directives with regard to illegal activities on the part of contractors.*

(Amendment 9)  
Article 16

The Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

The Member States shall, **in consultation with NGOs**, communicate to the Commission, within two years of the date mentioned in Article 15, **and every year thereafter**, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

<sup>28</sup> OJ C 12, 13.1.1997, p. 1.

<sup>29</sup> OJ C 186, 2.7.1999, p. 3.

*Justification:*

*This would provide for an annual review of the implementation of the Directive and enable involvement of NGOs (see also the justification*

22 June 2000

## **OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY**

for the Committee on Employment and Social Affairs

on the proposal for a Council directive on establishing a general framework for equal treatment in employment and occupation  
(COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))

Draftsman: Linda McAvan

### **PROCEDURE**

The Committee on Industry, External Trade, Research and Energy appointed Linda McAvan draftsman at its meeting of 28 March 2000.

It considered the draft opinion at its meetings of 24 May 2000, 6 June and 21 June 2000.

At the last meeting it adopted the amendments below by 26 votes, with 14 abstentions.

The following were present for the vote: : Carlos Westendorp y Cabeza chairman; Nuala Ahern, vice-chairman; Peter Michael Mombaur vice-chairman; Linda McAvan, draftsman; Konstantinos Alyssandrakis, Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, Yves Butel, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Dorette Corbey (for Erika Mann), Claude J.-M.J. Desama, Harlem Désir, Raina A. Mercedes Echerer (for Nelly Maes), Concepció Ferrer, Francesco Fiori (for Renato Brunetta), Glyn Ford, Jacqueline Foster (for Godelieve Quisthoudt-Rowohl), Neena Gill (for Eryl Margaret McNally), Norbert Glante, Robert Goebbels (for Rolf Linkohr), Lisbeth Grönfeldt Bergman (for Anders Wijkman), Michel Hansenne, Malcolm Harbour, Bashir Khanbhai (for Christos Folias), Bernd Lange (for François Zimeray), Peter Liese (for Werner Langen), Caroline Lucas, Hans-Peter Martin (for Imelda Mary Read), Marjo Tuulevi Matikainen-Kallström, Elizabeth Montfort, Luisa Morgantini, Angelika Niebler, Giuseppe Nisticò (for Paul Rübig), Reino Kalervo Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, Samuli Pohjamo (for Nicholas Clegg), John Purvis, Alexander Radwan (for W.G. van Velzen), Mechtild Rothe, Christian Foldberg Røvsing, Umberto Scapagnini, Konrad K. Schwaiger, Esko Olavi Seppänen, Astrid Thors, Claude Turmes (for Ilka Schröder), Jaime Valdivielso de Cué, Dominique Vlasto.

## AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>30</sup>

Amendments by Parliament

---

(Amendment 1)  
Recital 3 a (new)

***(3a) In accordance with article 3.2. of the Amsterdam Treaty, it is essential that this directive should also eliminate inequalities and to promote equality between men and women on the job market, especially given that women suffer a disproportionate level of multiple discrimination; Community law on equal treatment should be reviewed in light of this directive***

*Justification:*

*Women often suffer the double burden of discrimination on the job market on the basis of their gender, racial or ethnic origin, religion or beliefs, disability or age. This amendment is not only a reminder of this, but also highlights the Article in the Treaty laying the basis for gender mainstreaming across activities of the EU, including this directive. This Directive will also have implication for existing Community law on equal treatment.*

(Amendment 2)  
Recital 3 b (new)

***(3b) Equal treatment and non-discrimination are fundamental principles of European Union law; this directive is an expression of these fundamental principles; it is essential that the EU institutions in line with other public authorities in the Member States must respect these principles in the performance of their responsibilities;***

*Justification:*

---

<sup>30</sup> OJ C xxx.



*The Court of Justice has already clarified that the EU institutions must respect fundamental rights in the exercise of their duties, including non-discrimination (for example, C-130/75, Prais v Council (1976) ECR 1589). This recital aims to establish that this directive is a specific expression of the general principle of fundamental rights, and as such the EU institutions should respect its terms in their own policies and practices.*

(Amendment 3)  
Recital 17a (new)

***(17a) Training of public bodies on the aims and the provisions of this Directive is vital because of their responsibility in implementing the Directive in the Community at large and in order to offset any risk of institutional racism in the public bodies themselves.***

*Justification:*

*It is vitally important that public authorities provide training on the provision of the directive to their representatives who are responsible for implementing it in the wider community, and that all those working in public bodies such as social security offices are aware of the implications of anti-discrimination provisions, and of the importance of avoiding the development of so-called institutional racism.*

(Amendment 4)  
Recital 22 a (new)

***(22a) This Directive will form part of the Community acquis which the candidate countries will be required to implement before accession; whereas in the meantime, applicant countries must be kept informed about the implementation of this Directive so that they are prepared to comply fully with it upon accession.***

*Justification:*

*In line with the resolution adopted by the European Parliament on 16 March 2000 on countering racism and xenophobia in candidate countries, it is vital that attention is paid to the implementation of the whole directive in applicant countries.*

(Amendment 5)  
Article 2(4)

4. In order to guarantee compliance with the principle of equal treatment for persons with disability, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates an undue hardship.

4. In order to guarantee compliance with the principle of equal treatment for persons with disability, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment **and vocational training**, unless this requirement creates an undue hardship.

*Justification:*

*Disable persons' specific needs should also be taken into account in the field of vocational training so that they will not to be discriminated.*

(Amendment 6)  
Article 11(1)

1. Member States shall ensure that adequate information on the provision pursuant to this Directive is provided to vocational training and educational bodies and is adequately disseminated within the workplace.

1. Member States shall ensure that adequate information on the provision pursuant to this Directive is provided to vocational training and educational bodies, **as well as to NGOs representing the target groups suffering from discriminations based on the grounds listed under article 1**, and is adequately disseminated within the workplace.

*Justification:*

*NGOs representing target groups should be fully informed about the laws, regulations and administrative provisions necessary to comply with the Directive in order better monitor the implementation of the directive in the interests of the persons they represent.*

(Amendment 7)  
Article 16

Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

***After hearing the NGOs representing the persons suffering from discriminations listed under article 1***, Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive. ***Before drawing up its report, the Commission shall also hear the NGOs mentioned***

*above.*

*Justification:*

*NGOs representing the different categories of persons who could be victims of discrimination should be heard both by Member States and the Commission in order to supply a more complete information as far as the implementation of the directive is concerned.*

18 September 2000

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

for the Committee on Employment and Social Affairs

on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation  
(COM(1999) 565 – C5-0068/2000 – 1999/0225(CNS))

Draftsperson: Maria Martens

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Maria Martens draftsman at its meeting of 26 January 2000.

It considered the draft opinion at its meetings of 11 July 2000 and 14 September 2000.

At the latter meeting it adopted the amendments below unanimously.

The following were present for the vote: Theorin, chairperson; Eriksson, vice-chairperson; Van Lancker, vice-chairperson; Evans, vice-chairperson; Martens, draftsperson; Aviles Perea, Gröner, Izquierdo Rojo (for Valenciano Martínez-Orozco), Müller E.F., Prets, Schmidt (for van der Laan), Smet and Sörensen.

## AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>31</sup>

Amendments by Parliament

(Amendment 1)  
Citation 5(a) (new)

***Having regard to the EQUAL programme adopted by the European Parliament at its sitting of 13 October 1999 which is concerned inter alia with encouraging new methods of combating discrimination and inequality on the labour market;***

*Justification:*

*EQUAL seeks to achieve the objectives of Articles 13 and 137 of the Treaty.*

(Amendment 2)  
Recital 3

(3) The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.<sup>32</sup> The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

(3) The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.<sup>2</sup> The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. ***In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, eliminate inequalities and promote equality between men and women.***

<sup>31</sup> OJ C 177, 27.6.2000, p.42.

<sup>32</sup> OJ L 39, 14.2.1976, p.40.

***especially since women are often the victims of multiple discrimination.***

*Justification:*

*This wording is in line with that in Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and takes due account of the gender aspect of equal treatment.*

(Amendment 3)  
Recital 3(a) (new)

***(a) The principle of equal treatment between persons irrespective of racial or ethnic origin, laid down in Article 13 of the Treaty establishing the European Community, is implemented by Council Directive 2000/43/EC of 29 June 2000.***

*Justification:*

*Equal treatment irrespective of racial or ethnic origin is dealt with in Directive 2000/43/EC and covers all areas, including employment and occupation. In the interests of clarity, it would be useful to exclude racial and ethnic origin as grounds for discrimination from the scope of this Directive.*

(Amendment 4)  
Recital 5

The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration ***of elderly and disabled people.***

The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration.

*Justification:*

*Suitable measures are needed not only for the elderly and the disabled, but for all categories specified in Article 13 of the Treaty.*

(Amendment 5)

Recital 7

The 1999 Employment Guidelines agreed by the European Council at Vienna on 11 and 12 December 1998 stress the need to foster conditions for a more active participation in the labour market by formulating a coherent set of policies aimed at combating discrimination on grounds of ***disability and race or ethnic origin***. The European Council Conclusions of Vienna emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

The 1999 Employment Guidelines agreed by the European Council at Vienna on 11 and 12 December 1998 stress the need to foster conditions for a more active participation in the labour market by formulating a coherent set of policies aimed at combating discrimination on grounds of ***the categories specified in Article 13 of the Treaty***. The European Council Conclusions of Vienna emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

(Amendment 6)

Recital 9(a) (new)

***(a) Discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation may affect men and women differently.***

*Justification:*

*Although the Directive does not cover equal treatment between men and women, there should at least be express recognition of the possibility that discrimination on any of the above grounds could affect men and women differently.*

(Amendment 7)

Recital 12

(12) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.

(12) A difference of treatment may be justified ***only*** where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.

*Justification:*

*This is the only case where a difference of treatment based on a characteristic related to any ground for discrimination is not of a discriminatory nature.*

(Amendment 8)  
Recital 12(a) (new)

***(a) Encouragement of 'proportional participation' can enhance the principle of equal treatment and helps make equal opportunities a reality; measures undertaken by the European Union and the Member States in this context could help achieve the objectives of this Directive.***

*Justification:*

*The concept of equal treatment necessitates a proactive approach in order to make equal opportunities a reality. Measures to promote proportional participation ensure participation by all groups in the sphere of employment and occupation*

(Amendment 9)  
Recital 19

Member States should promote social dialogue between the social partners to address different forms of discrimination in the workplace and to combat them.

Member States should promote social dialogue between the social partners ***and dialogue with non-governmental organisations (NGOs)*** to address different forms of discrimination in the workplace and to combat them. ***In addition, employers may ensure that a person is appointed at the workplace whom workers may consult where necessary.***

*Justification:*

*In addition to social dialogue between the social partners, organisations representing specific groups such as the disabled and the elderly also play an important role in shaping policy to combat discrimination.*

*This will probably make it easier for individuals with experience of discrimination or intimidation to lodge complaints. The person in question has, of course, the duty of confidentiality.*



(Amendment 10)  
Recital 23 (new)

***Whereas women's pay, even for the same work, can be as much as 30% less than that of men in the EU.***

*Justification:*

*In 1975 the 'equal pay' directive (75/117/EEC) made a start with the move towards equal pay for men and here are still considerable discrepancies.*

(Amendment 11)  
Recital 24 (new)

***Whereas the employment level for women is about 20% less than that of men.***

(Amendment 12)  
Article 1

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of ***racial or ethnic origin***, religion or belief, disability, age or sexual orientation.

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of religion or belief, disability, age or sexual orientation.

*Justification:*

*Racial and ethnic origin as a discriminatory ground is dealt with in Directive 2000/43/EC of 29 June 2000.*

(Amendment 13)  
Article 2(3)

3. Harassment ***of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment***, shall be deemed to be discrimination within the meaning of paragraph 1.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1 ***when an 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, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance***

*with the national laws and practice of the Member States.*

*Justification:*

*This is a broader definition of harassment which is consistent with Directive 2000/43/EC of 29 June 2000.*

(Amendment 14)  
Article 2(4)(a) (new)

***In order to guarantee compliance with the principle of equal treatment, reasonable measures shall be taken, where necessary, to facilitate combining work and care and to provide for adequate childcare facilities and parental leave.***

(Amendment 15)  
Article 2(4)(b) (new)

***An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.***

*Justification:*

*In line with Directive 2000/43/EC of 29 June 2000, action must also be taken to combat incitement to discrimination.*

(Amendment 16)  
Article 2(4)(c) (new)

***Member States shall ensure that implementation of this Directive incorporates a gender perspective so as to prevent and eliminate multiple discrimination against women.***

*Justification:*

*This wording is in line with that in Council Directive 2000/43/EC of 29 June 2000*

*implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and takes due account of the gender aspect of equal treatment.*

(Amendment 17)  
Article 3(a)

This Directive shall apply to:  
(a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

This Directive shall apply to:  
(a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion; ***and to the conditions for access to unpaid work or voluntary activities;***

*Justification:*

*Women, in particular, often perform unpaid or voluntary work.*

(Amendment 18)  
Article 4(1)

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of ***the nature of the particular occupational activities concerned or of the context in which they*** are carried out, such a characteristic constitutes a genuine occupational qualification.

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the context in which ***the occupational activities*** are carried out, such a characteristic constitutes a genuine occupational qualification.

(Amendment 19)  
Article 4(2)

Member States *may* provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.

**The** Member States *shall* provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.

*Justification:*

*This is necessary to ensure the legitimate and necessary derogation for religious organisations in the European Union.*

(Amendment 20)  
Article 5 (d), (e) and (f)

***(d) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;***  
***(e) the establishment of requirements concerning the length of professional experience;***  
***(f) the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.***

***deleted***

*Justification:*

*Such differences in treatment open the door for systematic age-based discrimination.*

(Amendment 21)  
Article 6

*This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.*

*With a view to ensuring full equality in practice within the meaning of this Directive, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to facilitate full participation in employment and occupation or to prevent or compensate for disadvantages that are experienced.*

*Justification:*

*The aim of this amendment is to follow the wording of Article 141(4) of the EC Treaty. Provisions concerning protection by means of positive action should preferably be worded in the same way in all texts.*

(Amendment 22)  
Article 8(2)

2. Member States shall ensure that associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

2. Member States shall ensure that associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations, ***including, if so desired, conciliation procedures***, under this Directive on behalf of the complainant with his or her approval.

*Justification:*

*In some cases, conciliation can be more effective for the injured party.*

(Amendment 23)  
Article 8(3) (new)

***The Member States shall provide an independent body to which individuals, groups of individuals or public authorities may apply with complaints about discrimination and intimidation. The task of this body shall be to assess such complaints.***

*Justification:*

*It is important to have an independent body to examine and assess complaints. It can also*

*help in publicising the complaints.*

(Amendment 24)

Article 11

**1. Member States shall ensure that *adequate information on* the provisions adopted pursuant to this Directive *is provided to vocational training and educational bodies and is adequately disseminated within the workplace.***

**2. Member States shall ensure that *competent public authorities are informed by appropriate means as regards all national measures taken pursuant to this Directive.***

Member States shall ensure that the provisions adopted pursuant to this Directive ***and the provisions already in force in this area are brought to the attention of all persons concerned by the appropriate means throughout their territory.***

*Justification:*

*More extensive requirement to disseminate information, as in Directive 2000/43/EC of 29 June 2000.*

(Amendment 25)

Article 12a (new)

***Article 12a***

***Member States shall encourage dialogue with relevant non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in combating discrimination based on any of the grounds referred to in Article 1, with a view to promoting the principle of equal treatment.***

*Justification:*

*In addition to social dialogue between the social partners, organisations representing specific groups such as the disabled and the elderly also play an important role in shaping policy to combat discrimination*

(Amendment 26)  
Article 12b (new)

**Article 12b**

**1. Member States shall designate an independent body or bodies for the promotion of the principle of equal treatment of all persons without discrimination on the grounds referred to in Article 1. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.**

**2. Member States shall ensure that the competences of these bodies include:**  
**- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 8, providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,**  
**- conducting independent surveys concerning discrimination,**  
**- publishing independent reports and making recommendations on any issue relating to such discrimination.**

*Justification:*

*The independent body for which Directive 2000/43/EC of 29 June 2000 provides must also be laid down in respect of discrimination based on the grounds dealt with in this Directive.*

(Amendment 27)  
Article 13 c (new)

***The existing legislation in the field of equal treatment of men and women is brought in line with this directive in those areas where the present directive affords more protection than the rules contained in 76/297/EEC and 86/613/EEC.***

*Justification:*

*.In several respects this draft directive , and the directive on racial and ethnic origin, afford more protection from discrimination than the existing directive 76/207/EEC on implementation of the principle of equal treatment of men and women in respect of access to the labour process, vocational training and promotion prospects and also terms of employment.*

(Amendment 28)

Article 15, first paragraph

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 ***or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, Member States shall ensure that by 31 December 2002, management and labour introduce the necessary measures by agreement, Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive.*** They shall forthwith inform the Commission thereof.

*Justification:*

*Expanded to include the role of the social partners, in line with Directive 2000/43/EC.*

(Amendment 29)

Article 15, second paragraph a (new)

***Member States shall recommend the introduction into their national legal systems of such measures as are necessary to ensure that public authorities and employers keep and monitor statistics on the employment and training of persons covered by the Directive which will include a breakdown by target group and gender.***



*Justification:*

*Debate around the Lisbon summit focused in part on the need for benchmarking and statistics in relation to the European Employment Strategy. The inadequacy of statistics in relation to the employment rates of discriminated groups is a major barrier to monitoring the impact of the National Action Plans in the framework of the employment guidelines, thus undermining the whole approach.*

*The Directive should require Member States to oblige employers and public authorities to keep and monitor statistics on the employment and training of discriminated groups.*

(Amendment 30)

Article 16

Member States shall communicate to the Commission, within **two years** of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Member States shall communicate to the Commission, within **one year** of the date mentioned in Article 15 **and every two years thereafter**, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive

*Justification:*

*In line with Parliament's opinion concerning Directive 2000/43/EC.*

(Amendment 31)

Article 16(2) (new)

***2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant NGOs. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the sets of measures taken on women and men. In the light of the information obtained, this report shall include, if necessary, proposals to revise and update this Directive.***

*Justification:*

*Reports must also highlight any cases of multiple discrimination against women and the measures taken to combat them. Other changes are in line with Directive 2000/43/EC of 29 June 2000.*