EUROPEAN PARLIAMENT

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Committee on Employment and Social Affairs

2008/0140(CNS)

22.1.2009

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur(*): Liz Lynne

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

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SHORT JUSTIFICATION

In May 2008, the European Parliament adopted my report on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC). In this, the Parliament reminded the Commission of its commitment to put forward a comprehensive antidiscrimination directive to outlaw discrimination outside of employment on the grounds disability, age, religion or belief and sexual orientation, in order to complete the package of anti-discrimination legislation under Article 13 of the EC Treaty as provided in its 2008 work programme. Race and Gender have already been covered by the Race Directive and Gender Directive and we seek to bring this directive in line with those.

Many of the issues raised by the European Commission's proposal fall within the competence of the Employment and Social Affairs Committee and some are a shared competence between the Civil Liberties Committee and the Employment and Social Affairs Committee.

The specific areas covered exclusively by the Employment and Social Affairs Committee are social protection, including social security, healthcare as well as social advantages.

There is shared competence with regards to denial of reasonable accommodation for people with disabilities, access to and supply of goods and services that are available to the public including housing, discrimination in the of provision of financial services on the grounds of age and disability, differences of treatment on grounds of age, as well as the equal treatment of persons with disabilities and dialogue with relevant stakeholders.

The proposal for a Directive builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC which means that the directive is consistent with the horizontal objectives of the European Union, in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. The proposal refers to concepts used in existing Directives which people are familiar with.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) This Directive is one means by which the European Community is complying with its obligations under the

UN Convention on the Rights of Persons with Disabilities, and should be interpreted in that light.

Justification

This recital clarifies the link between the obligations adopted by the Union with the UN Convention on the Rights of Persons with Disabilities and this proposed directive.

Amendment 2

Proposal for a directive
Recital 2 b (new)

Text proposed by the Commission	*Amendment*
	(2b) In accordance with Article 5 of the Political Declaration agreed at the conclusion of the United Nations World Conference on Ageing in Madrid 2002 it was agreed to reaffirm the commitment to spare no effort in eliminating all forms of discrimination, including age discrimination; to recognise that persons, as they age, should enjoy a life of fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies; to enhance the recognition of the dignity of older persons; and to eliminate all forms of neglect, abuse and violence.

Justification

This recital reiterates the UN's declaration to tackle all forms of discrimination including age discrimination.

Amendment 3

Proposal for a directive
Recital 4

Text proposed by the Commission	*Amendment*
(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.	(4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination***, including multiple discrimination,*** but also the benefits of diversity.

Amendment 4

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.	(9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation ***or on a combination of grounds*** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Justification

This recital is consistent with the later proposed amendment regarding multiple discrimination.

Amendment 5

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with attitudinal or environmental barriers may hinder their full and effective participation in society on an equal basis with others.

Amendment 6

Proposal for a directive
Recital 9 b (new)

Text proposed by the Commission	*Amendment*
	(9b) Effective non-discriminatory access can be provided by a variety of means, including through 'design for all' and through facilitating the use of assistive devices by persons with disabilities, including aids to mobility and access, such as recognised guide dogs and other assistance dogs.

Amendment 7

Proposal for a directive
Recital 9 c (new)

Text proposed by the Commission	*Amendment*
	(9c) Persons with disabilities frequently face discrimination in the form of inaccessible public transportation and the built environment, as well as inaccessible communications and information. Member States must take measures to ensure accessibility in these areas in order to put into effect the principle of equal treatment.

Amendment 8

Proposal for a directive
Recital 9 d (new)

Text proposed by the Commission	*Amendment*
	(9d) Effective non-discriminatory access involves the identification and elimination of obstacles and barriers, whether attitudinal or environmental, and the prevention of new obstacles and barriers that hamper the access of persons with disabilities, to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible. Where access cannot be provided under the same terms and conditions, and subject to the provisions of this Directive, a meaningful alternative to ensure access must be provided.

Amendment 9

Proposal for a directive
Recital 12

Text proposed by the Commission	*Amendment*
(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.	(12) Discrimination is understood to include direct and indirect discrimination, ***multiple discrimination,*** harassment, instructions to discriminate and denial of reasonable accommodation.

Amendment 10

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) Discrimination can occur on the grounds that a person has a particular religion or belief, disability, age, or sexual orientation, or a combination thereof and on the grounds that a person is assumed to have a, or associates with or is assumed to associate with a person who has a, particular religion or belief, disability, age, or sexual orientation.

Amendment 11

Proposal for a directive
Recital 13

Text proposed by the Commission	*Amendment*
(13) ***In*** implementing the principle of equal treatment ***irrespective of religion or belief, disability, age or sexual orientation***, 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.	(13) ***As discrimination can occur on multiple grounds, in*** implementing the principle of equal treatment, the Community should, in accordance with ***Articles*** 3(2) ***and 13*** of the EC Treaty, aim to eliminate inequalities ***relating to sex, race or ethnic origin, disability, sexual orientation, religion or belief or age, or a combination of these,*** and to promote equality, ***whatever combination of characteristics relating to sex, race or ethnic origin, disability, sexual orientation, religion or belief or age, a person may have. When implementing the provisions of this Directive, Member States should take into account the problem*** of multiple discrimination.

Justification

This extends the current recital 13 which refers to multiple discrimination experienced by women to cover all the grounds contained in Article 13.

Amendment 12

Proposal for a directive
Recital 15

Text proposed by the Commission	*Amendment*
(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.	(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should ***reflect the positive changes in life expectancy and active ageing as well as increased mobility and accessibility for people with disabilities, and not operate as blanket*** discrimination ***on these grounds. The*** assessment of risk ***by the service provider must conclusively justify a finding of significantly higher risks, using recent, regularly updated and accurate published statistical or actuarial data***.

Justification

This amendment aims at restricting the possibility of discrimination in access to financial services by ensuring that all data used in such decision making is transparent, authoritative and up-to-date, and requiring objectivity by service providers in demonstrating this.

Amendment 13

Proposal for a directive
Recital 19

Text proposed by the Commission	*Amendment*
(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons	(19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons

with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure ***such*** access. In neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of ***a number of factors including the size, resources and nature of the organisation.*** The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.

with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure access. In neither case are measures required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of ***whether the measure in question is unfeasible or unsafe and could not be made feasible and safe by a reasonable modification of rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services . Reasonable accommodation would not necessarily require significant structural changes to buildings whose structure is protected specifically under national law on account of their historical, cultural or architectural value.*** The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities.

Amendment 14

Proposal for a directive
Article 2 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.	5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards person with disabilities ***and young children, or persons who associate with a person with a disability, where the accommodation is needed to enable such persons to provide personal assistance to a person with a disability,*** shall be deemed to be discrimination within the meaning of

paragraph 1.

Justification

This amendment extends a requirement for reasonable accommodation to children.

Amendment 15

Proposal for a directive
Article 2 - paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. Discrimination shall be deemed to occur where eligibility for welfare benefits, in cash or in kind, granted on account of disability or sickness is subject to a specific age criterion.

Justification

As regards invalidity benefits such as hospital care or money payments (pensions), granting them to sufferers of a given age while denying them to others not that age constitutes another form of discrimination.

Amendment 16

Proposal for a directive
Article 2 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. ***In particular, this Directive shall not preclude*** the fixing of a specific age for access to social benefits***,*** education ***and certain goods or services***.	6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are ***objectively and reasonably*** justified by a legitimate aim, and if the means of achieving that aim are ***proportionate*** and necessary. ***Such differences of treatment shall not preclude measures aimed at protecting the rights of children or*** the fixing of a specific age for access to ***entitlements,*** social benefits, ***financial services and*** education, ***excluding benefits***

in cash or in kind in the event of sickness or incapacity for work,

Amendment 17

Proposal for a directive
Article 2 – paragraph 7

Text proposed by the Commission	*Amendment*
7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit ***proportionate*** differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.	7. Notwithstanding paragraph 2, in the provision ***of insurance, banking and other*** financial services ***due regard must be given to increased life expectancy and active ageing, as well as increased mobility and accessibility for disabled people, and*** Member States may permit differences in treatment where, for the product in question, the use of age or disability is a ***determining*** factor in the assessment of risk based on relevant and accurate actuarial or statistical data. ***The service provider must be able to objectively demonstrate significantly higher risks and ensure that the difference in treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Member States concerned shall ensure that any data relied on in the assessment of risk are recently compiled and relevant, regularly updated and published. The Member States concerned shall inform the Commission and ensure that accurate data relevant to use of age and disability as a determining actuarial factor are compiled, published and regularly updated. Such Member States shall review their decision five years after transposition of this Directive.***

Amendment 18

Proposal for a directive
Article 3 – point d

Text proposed by the Commission	*Amendment*
(d) Access to and supply of goods and other services which are available to the public, including housing. ***Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.***	(d) Access to and supply of goods and other services which are available to the public, including housing ***and transport***.

Justification

This clarifies the scope of the directive to make it clear that transport is included.

Amendment 19

Proposal for a directive
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:	1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities***, 'disability' is to be understood in light of the UN Convention on the Rights of Persons with Disabilities and persons with chronic diseases are included***:

Amendment 20

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

Text proposed by the Commission	*Amendment*
(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of	(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of

goods and services which are available to the public, including housing ***and transport***, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental ***alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto***.	goods and services which are available to the public, including housing, ***telecommunication and electronic communications, information including information provided in accessible formats, financial services, culture and leisure, buildings open to the public, transport modes and other public spaces and facilities***, shall be provided by anticipation, including through appropriate modifications or adjustments***. Where discrimination arises from practice, policy or procedure, measures need to be taken so that it no longer has that effect.*** Such measures should not impose a disproportionate burden, nor require fundamental ***alterations to the nature of the goods, services, trade, profession or business in question. An alteration is fundamental if it alters the goods or services or the nature of the trade, profession or business to the extent that the provider of the goods or services is effectively providing a completely different kind of goods or services***.

Amendment 21

Proposal for a directive
Article 4 - paragraph 1 - point b

Text proposed by the Commission	*Amendment*
(b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.	***deleted***

Amendment 22

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

Text proposed by the Commission	*Amendment*
	(ba) For the purposes of paragraph 1, effective non-discriminatory access involves the identification and elimination of obstacles and barriers, whether attitudinal or environmental, and the prevention of new obstacles and barriers that hamper the access of persons with disabilities to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, effective non-discriminatory access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible, and the use of assistive devices by persons with disabilities facilitated, including aids to mobility and access, such as recognised guide dogs and other assistance dogs wherever necessary. Where effective non-discriminatory access cannot be provided under the same terms and conditions, and subject to the provisions of this Directive, a meaningful alternative to ensure access must be provided.

Amendment 23

Proposal for a directive
Article 4 –paragraph 2

Text proposed by the Commission	*Amendment*
2. For the purposes of ***assessing whether measures necessary to comply with*** paragraph 1 ***would impose a disproportionate burden, account shall be taken, in particular, of the size and***	2. For the purposes of paragraph 1 ***the*** burden shall not be ***deemed*** disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of

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

Amendment 24

Proposal for a directive
Article 4 - paragraph 3

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

Amendment 25

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	Multiple discrimination
	1. Multiple discrimination occurs when a person is discriminated against on a combination of two or more of the grounds set out in this Directive.
	2. Member States shall ensure that the means of enforcement of obligations

	under this Directive are available to all persons who consider themselves to be victims of multiple discrimination.
	3. Member States shall provide that where multiple grounds are established, a claim can be defeated only by reason of a justification or another defence which is applicable to all of those grounds on which the claim is made. However if only one ground is established then the claim may be defeated by any justification or defence relevant to that ground.

Justification

This introduces an article on multiple discrimination which is restricted to Recital 13 in the Commission text.

Amendment 26

Proposal for a directive
Article 11

Text proposed by the Commission	*Amendment*
Article 11	Article 11
With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, ***organisations representing civil society, churches, and religious, philosophical, and non-denominational organisations,*** which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive ***and such consultation should also include monitoring of the implementation of the Directive***.

Justification

Given that the involvement of non-governmental organisations is being explicitly secured to help promote the principle of equal treatment, it is equally necessary to refer to the role of, on the one hand, civil society organisations and, secondly, churches and religious, philosophical, and non-denominational organisations so as to bring the directive into line with, respectively, Article 11 of the Treaty on European Union and Article 17 of the Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon.

PROCEDURE

Title	Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation
References	COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	EMPL 2.9.2008
Associated committee(s) - date announced in plenary	23.10.2008
Drafts(wo)man Date appointed	Elizabeth Lynne 6.10.2008
Discussed in committee	5.11.2008 2.12.2008 20.1.2009
Date adopted	21.1.2009
Result of final vote	+: 28 –: 11 0: 7
Members present for the final vote	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Ona Juknevičienė, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Őry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Rovana Plumb, Bilyana Ilieva Raeva, Elisabeth Schroedter, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Françoise Castex, Richard Howitt, Rumiana Jeleva, Magda Kósáné Kovács, Sepp Kusstatscher, Viktória Mohácsi, Csaba Sógor, Evangelia Tzampazi, Anja Weisgerber
Substitute(s) under Rule 178(2) present for the final vote	Adrian Manole