EUROPEAN PARLIAMENT

2004 *2009*

Committee on Culture and Education

2008/0140(CNS)

20.1.2009

OPINION

of the Committee on Culture and Education

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: Lissy Gröner

PA_Legam

SHORT JUSTIFICATION

With its draft directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the Commission aims to further supplement European legislation in the area of equality.

The 1997 Treaty reform adopted in Amsterdam, in particular the creation of Article 13 of the EC Treaty, granted the EU new possibilities as regards shaping an equal opportunities policy. As a result, four directives have already come into force in recent years relating to:

– equal treatment in employment and occupation[1]
– equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions[2]
– the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin[3]
– the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services[4].

A large number of important concepts and principles for the implementation of the principle of equal treatment are already defined in the above texts. This is the case, for example, for the concepts of 'direct and indirect discrimination', 'harassment', 'unwanted conduct' or 'instruction to discriminate', and the principle of the reversal of the burden of proof from the plaintiff to the respondent in the case of legal proceedings, dissuasive but proportionate penalties and protection against victimisation (adverse treatment of victims of discrimination who have lodged a complaint or launched legal proceedings). The present draft directive also incorporates these basic rules.

The purpose of the present proposal is to expand the principle of equal treatment to cover the following further areas of life in society:

– social protection, including social security and health care,
– social advantages,
– and access to goods and services which are available to the public, including housing.

The rapporteur for the opinion proposes the following amendments:

Gender discrimination

As it stands, the draft directive does not include a key element that is of crucial importance in equal opportunities policy in the area of employment and access to goods and services: the ban on discrimination based on gender. The rapporteur is proposing that the scope of the directive be expanded accordingly.

Access to the media

[1] 2000/78/EC, revised in 2006
[2] 2002/73/EC
[3] 2000/43/EC
[4] 2004/113/EC

Access to the media remains especially problematic for people with disabilities. The rapporteur takes the view that audiovisual service providers should take greater account of the situation for people with hearing loss in particular. Digital audiovisual services make options such as the subtitling of television programmes technically possible. This idea was also addressed by Parliament in its declaration on the subtitling of all public service television programmes in the EU[1] and should be incorporated as an explicit component of the directive.

Access to education

The draft directive underlines the subsidiarity principle and hence the extensive autonomy enjoyed by the Member States in the field of education. It should nevertheless be stressed that, when shaping their respective education policy, the Member States must take account of the higher principle of equal treatment in access to education, even though unequal treatment on grounds of religion or belief is admissible in the case of religious schools in particular.

Multiple discrimination

Multiple discrimination describes a situation where discrimination takes place separately for several different reasons. This concept should be incorporated into the directive.

Legal practice shows that, in most European Member States, the reality of the discrimination experienced by those affected is not paid sufficient attention when dealing with complaints relating to multiple discrimination.

Studies indicate that women from minority groups appear to be most vulnerable to multiple discrimination. The social reality requires that measures be adopted to ensure that legal action can be taken against discrimination on grounds of gender and disability.

AMENDMENTS

The Committee on Culture and Education 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
Title

Text proposed by the Commission	*Amendment*
Proposal for a Council Directive on implementing the principle of equal	Proposal for a Council Directive on implementing the principle of equal

[1] PT_TA(2008)0127

treatment between persons irrespective of religion or belief, disability, age ***or*** sexual orientation	treatment between persons irrespective of religion or belief, disability, age***,*** sexual orientation ***or gender***

Amendment 2

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age ***or*** sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.	(3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age***,*** sexual orientation ***or gender***; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

Amendment 3

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***,*** sexual orientation ***or gender*** in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing***, and access to the media***. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.

Amendment 4

Proposal for a directive
Recital 21

Text proposed by the Commission	*Amendment*
(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age ***or*** sexual orientation. Such measures may permit organisations of persons of a particular religion or belief, disability, age ***or*** sexual orientation where their main object is the promotion of the special needs of those persons.	(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age***,*** sexual orientation ***or gender***. Such measures may permit organisations of persons of a particular religion or belief, disability, age***,*** sexual orientation ***or gender*** where their main object is the promotion of the special needs of those persons.

Amendment 5

Proposal for a directive
Recital 23

Text proposed by the Commission	*Amendment*
(23) Persons who have been subject to discrimination based on religion or belief, disability, age ***or*** sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.	(23) Persons who have been subject to discrimination based on religion or belief, disability, age***,*** sexual orientation ***or gender*** should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 6

Proposal for a directive
Recital 24

Text proposed by the Commission	*Amendment*
(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.	(24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation ***or gender***.

Amendment 7

Proposal for a directive
Article 1

Text proposed by the Commission	*Amendment*
This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, ***or*** sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.	This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, sexual orientation ***or gender***, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Amendment 8

Proposal for a directive
Article 2 – paragraph 2 – subparagraph (b)

Text proposed by the Commission	*Amendment*
(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a	(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a

particular disability, a particular age, ***or*** a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.	particular disability, a particular age, a particular sexual orientation ***or gender*** at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Amendment 9

Proposal for a directive
Article 2 – paragraph 2 – subparagraph b a (new)

Text proposed by the Commission	*Amendment*
	(ba) multiple discrimination shall be taken to occur where a person is discriminated against on two or more of the grounds referred to in Article 1 at the same time and these grounds accumulate;

Amendment 10

Proposal for a directive
Article 2 – paragraph 2 – subparagraph b b (new)

Text proposed by the Commission	*Amendment*
	(bb) where a difference of treatment occurs on several of the grounds referred to in Article 1, this difference of treatment can be justified only if the justification applies to all the grounds on which the difference of treatment is based;

Amendment 11

Proposal for a directive
Article 2 – paragraph 2 – subparagraph b c (new)

Text proposed by the Commission	*Amendment*
	(bc) when applying the principle of equal treatment pursuant to Article 13 of the

Treaty, the Community has an obligation to combat multiple discrimination on the basis of several of the grounds referred to in Article 13 of the Treaty.

Justification

The concept of multiple discrimination was brought into being at the UN World Conference against Racism held in South Africa in 2001 and refers to unequal treatment on the grounds of several factors on which the discrimination is based (e.g. discrimination against Jewish women on the grounds of their gender - female - or their religion - Jewish - or both; or discrimination against a homosexual Kurdish man on the grounds of his ethnic origin - Kurdish - or his sexuality - homosexual - or both).

Amendment 12

Proposal for a directive
Article 3 – paragraph 1 – subparagraph d a (new)

Text proposed by the Commission	*Amendment*
	(da) Access to the media.

Justification

The European Union must ensure that all citizens have equal access to information, media, education and culture. (See Written Declaration 0099/2007 on the subtitling of all public service television programmes in the EU.)

Amendment 13

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission	*Amendment*
3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief.	3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education***; however, there may be no discrimination as regards access to education***. Member States may provide for differences in treatment in access to educational institutions based on religion

or belief.

Justification

The European Union must ensure that all citizens have equal access to information, media, education and culture. (See Written Declaration 0099/2007 on the subtitling of all public service television programmes in the EU.)

Amendment 14

Proposal for a directive
Article 5

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

Amendment 15

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation 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 relationship in which the discrimination is alleged to have occurred has ended.	1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation 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 relationship in which the discrimination is alleged to have occurred has ended. ***Member States shall ensure that the various grounds for discrimination are not dealt with separately.***

Amendment 16

Proposal for a directive
Article 12 – paragraph 1

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

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	CULT 2.9.2008
Drafts(wo)man Date appointed	Lissy Gröner 15.9.2008
Discussed in committee	1.12.2008
Date adopted	20.1.2009
Result of final vote	+: 25 –: 1 0: 0
Members present for the final vote	Maria Badia i Cutchet, Ivo Belet, Guy Bono, Marie-Hélène Descamps, Věra Flasarová, Milan Gaľa, Vasco Graça Moura, Lissy Gröner, Luis Herrero-Tejedor, Ruth Hieronymi, Mikel Irujo Amezaga, Ramona Nicole Mănescu, Manolis Mavrommatis, Ljudmila Novak, Doris Pack, Zdzisław Zbigniew Podkański, Pál Schmitt, Hannu Takkula, Thomas Wise, Tomáš Zatloukal
Substitute(s) present for the final vote	Gyula Hegyi, Nina Škottová, László Tőkés, Ewa Tomaszewska, Cornelis Visser
Substitute(s) under Rule 178(2) present for the final vote	Maria Berger