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Committee on Women's Rights and Gender Equality

2008/0140(CNS)

11.2.2009

OPINION

of the Committee on Women's Rights and Gender Equality

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: Donata Gottardi

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AMENDMENTS

The Committee on Women's Rights and Gender Equality 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 treatment between persons irrespective of religion or belief, disability, age ***or*** sexual orientation	Proposal for a Council directive on implementing the principle of equal 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 ***Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Articles 9 and 10 thereof, and by*** the Charter of Fundamental Rights of the European Union***, particularly*** Article 10***, Article 12(2),*** and ***Articles 21 and 26 thereof.***

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 ***direct and indirect*** discrimination***, multiple discrimination and discrimination by association,*** but also the benefits of diversity.

Amendment 4

Proposal for a directive
Recital 8

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

Amendment 5

Proposal for a directive
Recital 8

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

Amendment 6

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 ***direct and indirect*** discrimination***, multiple discrimination and discrimination by association*** based on religion or belief, disability, age or 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, ***such as*** housing***, transport and associations***. It should provide for measures to ensure the equal access to the areas covered ***of persons of a particular religion or belief, disability, age or particular sexual orientation, or a combination of these specific***

characteristics, and of persons associated with them.

Amendment 7

Proposal for a directive
Recital 11

Text proposed by the Commission	*Amendment*
(11) This Directive should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.	(11) ***The aim of*** this Directive ***is to combat discrimination and safeguard the processes of inclusion and integration. This*** should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

Amendment 8

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***, multiple discrimination and discrimination by association*** is understood to include direct and indirect discrimination, harassment ***and sexual harassment***, instructions to discriminate and denial of reasonable accommodation.

Amendment 9

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) Discrimination may be based on religion or belief, disability, age or sexual orientation of a given person or on a

	combination of these factors, as well as on the presumed religion, belief, disability, age or sexual orientation of a given person or of a person with whom the latter is associated or presumed to be associated.

Amendment 10

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) In implementing the principle of equal treatment irrespective of religion or belief, disability, age***, gender*** 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 ***and discrimination by association***.

Amendment 11

Proposal for a directive
Recital 14

Text proposed by the Commission	*Amendment*
(14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination should remain a matter for the national judicial or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.	(14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination***, multiple discrimination and discrimination by association*** should remain a matter for the national judicial ***bodies, the European Court of Justice,*** or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.

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 not be regarded as constituting discrimination ***only in cases*** where the factors are shown to be key factors for the assessment of risk ***and do not result in disproportionate and unjustified differences in treatment***.

Amendment 13

Proposal for a directive
Recital 16

Text proposed by the Commission	*Amendment*
(16) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. This Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their professional or commercial activity.	***deleted***

Amendment 14

Proposal for a directive
Recital 17

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

family status, including on reproductive rights. ***It*** is ***also*** without prejudice to the secular nature of the State, state institutions or bodies, or education.	***This Directive shall also apply to de facto partnerships and civil unions where these are recognised by the Member States' legislation and to the social benefits deriving therefrom.***

Amendment 15

Proposal for a directive
Recital 18

Text proposed by the Commission	*Amendment*
(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. Member States may also allow or prohibit the wearing or display of religious symbols at school.	(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief ***provided that these are necessary and proportionate and do not represent an infringement of the right to education***. Member States may also allow or prohibit the wearing or display of religious symbols at school.

Amendment 16

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***, persons who care for them and persons associated with them,*** 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 ***the same way, with regard to age, effective non-discriminatory access must be ensured through appropriate measures, including*** the ***elimination*** of ***physical barriers, particularly in*** the ***case*** of ***public buildings and means of public transport, for minors and*** the ***elderly*** and ***those who care for them.***

Amendment 17

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 persons of a particular religion or belief, disability, age or sexual orientation***, or a combination of these specific characteristics, and persons associated with them. This may be accompanied by measures designed to promote equal treatment and equal opportunities which take account of the gender dimension and affirmative actions aimed at meeting the special needs of persons or categories of persons who, because of their characteristics, require structures, services and assistance not required by others***. Such measures ***shall be accompanied by the establishment of independent*** 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 18

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 ***direct and indirect*** discrimination***, multiple discrimination or discrimination by association,*** 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 19

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 ***providing sufficient*** proof must shift back to the respondent***.*** The ***Member States may adopt provisions*** that ***are more favourable to*** the plaintiff.

Amendment 20

Proposal for a directive
Recital 26

Text proposed by the Commission	*Amendment*
(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels.	(26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels. ***With this in view, the Commission and Member States should take steps to ensure that the provisions laid down in this Directive and those already in force in this sector are brought to the notice of the public and stakeholders – through information and press campaigns aimed inter alia at eliminating stereotypes – by appropriate, adequate and accessible means (such as sign language or special websites for the visually impaired).***

Amendment 21

Proposal for a directive
Recital 27

Text proposed by the Commission	*Amendment*
(27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.	(27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of ***an independent*** body or bodies in each Member State, ***for each of the various factors of discrimination,*** with competence to analyse the problems involved, to study possible solutions***, provide information and training*** and to provide concrete

assistance for the victims***, including in cases of multiple discrimination so that persons who consider themselves to be victims of multiple discrimination can choose which body to apply to - and also appoint to defend them in judicial or administrative proceedings***.

Amendment 22

Proposal for a directive
Recital 29

Text proposed by the Commission	*Amendment*
(29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.	(29) Member States should provide for effective, proportionate and dissuasive sanctions ***which result in the cessation of the discriminatory conduct and the removal of its effects*** in case of breaches of the obligations under this Directive.

Amendment 23

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***, including multiple discrimination and discrimination by association,*** 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.

Justification

Reference needs to be made to multiple discrimination since it applies to all grounds for discrimination, and to discrimination by association, which affects women in particular.

Amendment 24

Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission	*Amendment*
1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.	1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination***, multiple discrimination or discrimination by association*****,** on any of the grounds referred to in Article 1.

Justification

The concepts of multiple discrimination and discrimination by association need to be introduced in order to deal effectively with cases where two or more forms of discrimination occur, placing the victim in an even more vulnerable position and creating major difficulties as regards legal redress.

Amendment 25

Proposal for a directive
Article 2 – paragraph 2 - point a

Text proposed by the Commission	*Amendment*
(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on ***any*** of the grounds referred to in Article 1;	(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on ***one of more*** of the grounds referred to in Article 1;

Justification

The notion of multiple discrimination, which is defined below, needs to be introduced with reference to direct discrimination.

Amendment 26

Proposal for a directive
Article 2 – paragraph 2 - point 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	(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.	persons of a particular religion or belief, a particular disability, a particular age, a particular sexual orientation ***or gender, or having a combination of these specific characteristics – or persons associated with them –*** 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, ***there is such a thing as discrimination by association, whereby a person is unfavourably affected as a result of being in a direct relationship with people having a particular religion or set of beliefs, or a disability, or of a certain age or sexual orientation. Discrimination by association can arise, for example, when people are, or are thought to be, in a relationship, without necessarily cohabiting, and independently of any legal links of marriage or affiliation, to persons professing a particular religion or set of beliefs, having a disability or being of a certain age or sexual orientation.***

Justification

The concept of indirect discrimination should include both multiple discrimination and discrimination by association, which affects persons connected with the victim of the discrimination.

Amendment 27

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

Text proposed by the Commission	*Amendment*
	(ba) multiple discrimination shall be taken to occur when the discrimination is based on a combination of two or more of the grounds referred to in Articles 12 and 13 of the EC Treaty.

Justification

The concept of multiple discrimination needs to be included in the definitions in this proposal

for a directive.

Amendment 28

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

Text proposed by the Commission	*Amendment*
	(bb) discrimination by association shall be taken to occur when a person suffers adverse effects as a result of being directly associated with persons of a particular religion or belief, disability, age or sexual orientation. Discrimination by association shall concern persons associated – or presumed to be associated – by emotional ties – not necessarily living together and regardless of formal legal status through marriage or affiliation – with persons of a particular religion or belief, disability, age or particular sexual orientation.

Justification

Discrimination by association needs to be defined.

Amendment 29

Proposal for a directive
Article 2 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to ***any*** of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.	3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to ***one or more*** 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.

Justification

In the interests of consistency, the notion of 'multiple grounds' should also be introduced with relation to harassment.

Amendment 30

Proposal for a directive
Article 2 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Sexual harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct with sexual connotations, expressed in physical, verbal or non-verbal form, 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.

Justification

It is important to include sexual harassment in this Directive, with particular reference to discrimination on grounds of sexual orientation.

Amendment 31

Proposal for a directive
Article 2 – paragraph 4

Text proposed by the Commission	*Amendment*
4. 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.	4. An instruction to discriminate against persons on ***one or more*** of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

Justification

In the interests of consistency, the notion of 'multiple grounds' should also be included with reference to instructions to discriminate.

Amendment 32

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 ***shall be deemed to be discrimination within the meaning of paragraph 1, as in the*** particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities ***or persons connected to them,*** shall be deemed to be discrimination ***or persons associated with them*** within the meaning of paragraph 1.

Justification

In the interests of consistency, provision should also be made in this connection for discrimination by association.

Amendment 33

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 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.

Amendment 34

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 financial***, banking and insurance*** services Member States may permit proportionate differences in treatment ***only*** where, for the product***s*** in question, ***it has been demonstrated that*** the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data. ***The Member States concerned shall inform the Commission and ensure that accurate and relevant data on the use of age or disability as key factors in the assessment of risk are gathered, published and updated regularly.*** ***Member States shall be required to carry out an assessment five years after the date of transposition of the Directive, taking into account the Commission report, and forward the findings of that assessment to the Commission.***

Justification

It is vital to ensure that, when it comes to access to and use of financial, insurance and banking services, factors such as age and disability are not used as grounds for unjustified (less favourable) and discriminatory treatment.

Amendment 35

Proposal for a directive
Article 2 – paragraph 8

Text proposed by the Commission	*Amendment*
8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the	8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary ***and proportionate*** for public security, for the maintenance of public order and the prevention of criminal

protection of health and the protection of the rights and freedoms of others.	offences, for the protection of health and the protection of the rights and freedoms of others. ***It shall also be without prejudice to national legislation promoting equality between men and women.***

Amendment 36

Proposal for a directive
Article 2 – paragraph 8 a (new)

Text proposed by the Commission	*Amendment*
	8a. This Directive recognises that the right to privacy is an instrument for combating the discrimination referred to in this article.

Justification

The value of the right to privacy as an instrument for combating discrimination needs to be stressed, until such time as society is able to reject stereotypes and overcome its fear of difference.

Amendment 37

Proposal for a directive
Article 3 – paragraph 1 – 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.	(d) Access to and supply of goods and other services which are available to the public, ***such as*** housing ***and transport, where the Community is competent for the matter concerned***.

Justification

Reference should be made to specific sectors such as housing and transport by way of example rather than as an exhaustive list.

Amendment 38

Proposal for a directive
Article 3 - paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
Subparagraph (d) shall ***apply to individuals only insofar as they are performing a professional or commercial activity.***	***In applying*** subparagraph (d)***, it*** shall ***be ensured that individuals' privacy is respected.***

Amendment 39

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

Text proposed by the Commission	*Amendment*
	(da) affiliation to and activities in associations and the services provided by such organisations.

Justification

Associations need to be included within the scope of the directive.

Amendment 40

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission	*Amendment*
2. ***This Directive is*** without prejudice to ***national laws on*** marital or family status and reproductive rights.	2. Without prejudice to ***the competence of the Member States for matters relating to*** marital or family status and reproductive rights***, this Directive shall apply to de facto partnerships and civil unions, where these are recognised by the laws of the Member States, and to the social benefits deriving therefrom.***

Justification

A reference to this should be included to comply with the case law of the Court of Justice.

Amendment 41

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. ***Notwithstanding the powers of*** the Member States ***in respect of education, teaching and training, and their responsibilities*** for the content, activities and organisation of their educational systems, ***this Directive shall aim to guarantee processes of inclusion and integration, and*** the provision ***to people with disabilities*** of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief, ***provided that these differences do not constitute discrimination on one or more other grounds, that they are necessary and proportionate and that they do not of themselves constitute a violation of the right to education.***

Justification

It is important that the scope of the directive should take appropriate account of education, teaching and training in order to avoid discrimination.

Amendment 42

Proposal for a directive
Article 3 – paragraph 5

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

Justification

There is already a specific body of law on this subject.

Amendment 43

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
Equal treatment ***of persons with*** disabilities	Equal treatment ***and*** disabilities
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 ***and of persons associated with them or who care for them***:

Justification

Account should be taken of the need for equal treatment for the disabled and those who care for them.

Amendment 44

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***, in which connection 'disability' is to be understood as it is defined in the UN Convention on the Rights of Persons with Disabilities and includes persons with chronic diseases***:

Amendment 45

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

Text proposed by the Commission	*Amendment*
	2a. The Member States shall take into

consideration the interests and needs of different groups of disabled persons with reference to both their various disabilities and their gender, age, race or ethnic origin, religion or personal belief, sexual orientation, and other factors of discrimination.

Justification

With regard to equal treatment for persons with disabilities, account needs to be taken of all factors - horizontal and otherwise - which may be associated with disabilities.

Amendment 46

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission	*Amendment*
	Article 4a
	Age and access to buildings and services
	The Member States shall take appropriate measures to ensure effective non-discriminatory access, including the elimination of physical barriers, particularly in the case of public buildings and means of public transport, for minors and the elderly and those who care for them.

Justification

The amendment draws attention to the requirement for appropriate measures to be taken to combat age-related discrimination affecting minors and the elderly.

Amendment 47

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	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.	to prevent or compensate for disadvantages linked to religion or belief, disability, age, sexual orientation ***or gender***.

Amendment 48

Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The Member States shall adopt measures to promote equal treatment and equal opportunities - taking account of the gender dimension - for persons of a particular religion or belief, disability, age or sexual orientation.

Justification

Affirmative action needs to be made effective by promoting activities to ensure equal treatment.

Amendment 49

Proposal for a directive
Article 5 – paragraph 1 b (new)

Text proposed by the Commission	*Amendment*
	1b. This Directive is without prejudice to the possibility for Member States to provide for preferential treatment or adopt affirmative action aimed at meeting the special needs of persons or categories of persons who, because of their characteristics, require structures, services and assistance not needed by others.

Justification

Affirmative action needs to be made effective by promoting equal treatment and measures tailored to specific needs.

Amendment 50

Proposal for a directive
Article 7 – paragraph 1 b (new)

Text proposed by the Commission	*Amendment*
	1b. Member States shall stipulate that, where multiple causes of discrimination have been identified, a complaint may be rejected only on the basis of a justification or other argument applicable to all the grounds referred to in the complaint. However, if a single ground has been identified, the complaint may be rejected on the basis of a justification or argument relating only to that ground.

Justification

Member States must guarantee the possibility of adequate means of redress for victims of multiple discrimination.

Amendment 51

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission	*Amendment*
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 prohibition of discrimination.	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 prohibition of ***direct and indirect*** discrimination***, multiple discrimination and discrimination by association***.

Justification

The aim is to include multiple discrimination and discrimination by association within the prohibition of discrimination.

Amendment 52

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Paragraph 1 shall not prevent Member States from introducing rules ***of evidence*** which are more favourable to plaintiffs.	2. Paragraph 1 shall not prevent Member States from introducing rules which are more favourable to plaintiffs.

Justification

Provisions should be made for the Member States to adopt rules more favourable to plaintiffs as part of the redress procedure.

Amendment 53

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission	*Amendment*
Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout ***their*** territory.	***The Commission and the*** Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of ***the public and*** the persons concerned ***- via information and press campaigns designed also to overcome stereotypes -*** by appropriate***, adequate and accessible*** means throughout ***European*** territory.

Justification

In order to ensure that the principle of equal treatment is known, respected and effectively applied, wide-ranging information campaigns are needed using appropriate means such as sign language or special websites for the visually impaired.

Amendment 54

Proposal for a directive
Article 11

Text proposed by the Commission	*Amendment*
With a view to promoting the principle of	Member States shall encourage dialogue

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 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***.

Justification

The Member States must support dialogue with relevant stakeholders, which should be extended to all those concerned and involved in the promotion of equal treatment and equal opportunities.

Amendment 55

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall designate ***a*** body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.	1. Member States shall designate ***an independent*** body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or 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. ***Where various independent equality bodies are set up to deal with the various factors of discrimination, persons believing themselves to be victims of multiple discrimination may choose which body to apply to – and to appoint to defend them in judicial or administrative proceedings – and this body shall be responsible for considering the alleged discriminatory situation as a whole.***

Justification

The way in which equality bodies are organised needs to be adapted to deal properly with cases of multiple discrimination.

Amendment 56

Proposal for a directive
Article 12 – paragraph 2 – indent 2

Text proposed by the Commission	*Amendment*
	– carrying out information campaigns and training activities,

Justification

The remit of equality bodies should be extended to include information and training.

Amendment 57

Proposal for a directive
Article 13 – letter b

Text proposed by the Commission	*Amendment*
(b) any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.	(b) any contractual provisions, internal rules of ***public bodies and*** undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

Justification

Measures to ensure respect for the principle of equal treatment should also cover public bodies.

Amendment 58

Proposal for a directive
Article 14

Text proposed by the Commission	*Amendment*
Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this	Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this

Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.	Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive ***and result in the cessation of the discriminatory conduct and the removal of its effects***.

Justification

To ensure effective compliance with the principle of equal treatment an appropriate definition of the application of sanctions is required.

Amendment 59

Proposal for a directive
Article 16 a (new)

Text proposed by the Commission	*Amendment*
	16a. The Commission shall, by ……., prepare and set in motion the procedure for approval of a proposal aimed at coordinating the present directive with the directives in force in the areas of equal opportunities and prevention of discrimination.

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	FEMM 2.9.2008
Drafts(wo)man Date appointed	Donata Gottardi 9.10.2008
Date adopted	10.2.2009
Result of final vote	+: 15 –: 11 0: 1
Members present for the final vote	Edit Bauer, Hiltrud Breyer, Edite Estrela, Ilda Figueiredo, Věra Flasarová, Lissy Gröner, Urszula Krupa, Roselyne Lefrançois, Pia Elda Locatelli, Astrid Lulling, Siiri Oviir, Doris Pack, Marie Panayotopoulos-Cassiotou, Zita Pleštinská, Anni Podimata, Christa Prets, Teresa Riera Madurell, Eva-Riitta Siitonen, Eva-Britt Svensson, Britta Thomsen, Corien Wortmann-Kool, Anna Záborská
Substitute(s) present for the final vote	Gabriela Crețu, Ana Maria Gomes, Donata Gottardi, Elisabeth Jeggle, Maria Petre