EUROPEAN PARLIAMENT

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Committee on Legal Affairs

2008/0140(CNS)

13.2.2009

OPINION

of the Committee on Legal 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: Monica Frassoni

SHORT JUSTIFICATION

This proposal for a directive establishes a general framework for action to combat discrimination on grounds of religion or belief, disability, age or sexual orientation, with a view to implementing the principle of equal treatment outside the labour market in the Member States. It is based on Directives 2000/43/EC, 2000/78/EC and 2004/113/EC and establishes a minimum standard level of protection within the EU for victims of discrimination.

This opinion merely clarifies a number of points, without making any substantive changes to the proposal for a directive. Your rapporteur nonetheless considers that Article 3(2) of the proposal, which states that 'this Directive is without prejudice to national laws on marital or family status and reproductive rights', presents a problem in that it fails clearly to identify the boundaries between Community law and national law. Furthermore, the term 'reproductive rights' is inappropriate. The committee responsible has asked Parliament's Legal Service for a legal opinion on both of these issues. That opinion is still in the process of being drawn up. Your rapporteur will closely monitor the committee responsible's discussions on these matters.

AMENDMENTS

The Committee on Legal 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
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 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	(a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care ***and*** education 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.

question or require the provision of alternatives thereto.

Justification

It is unreasonable to anticipate all necessary construction measures. In particular, it is not possible to assess which measures constitute an unreasonable burden. Article 4(1) provides no legal certainty in this regard.

Amendment 2

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 ***in practice*** 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.

Amendment 3

Proposal for a directive
Article 10

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.	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***, including the Internet,*** throughout their territory.

Amendment 4

Proposal for a directive
Article 12

Text proposed by the Commission	*Amendment*
Article 12	***deleted***
Bodies for the Promotion of Equal treatment	
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.	
2. Member States shall ensure that the competences of these bodies include:	
– without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,	
– conducting independent surveys concerning discrimination,	
– publishing independent reports and making recommendations on any issue relating to such discrimination.	

Justification

The Commission proposal contravenes the principle of subsidiarity. It is the responsibility of Member States to take measures enabling the principle of equal treatment to be put into effect. Member States must therefore decide whether, and to what extent, they will designate a body or bodies to promote equal treatment.

Amendment 5

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States ***and national equality bodies*** shall communicate to the Commission, by …. at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.	1. Member States shall communicate to the Commission, by …. at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Justification

The Commission proposal contravenes the principle of subsidiarity. It is the responsibility of Member States to take measures enabling the principle of equal treatment to be put into effect. Member States must therefore send a report to the Commission.

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	JURI 23.9.2008
Drafts(wo)man Date appointed	Monica Frassoni 22.9.2008
Discussed in committee	20.1.2009
Date adopted	12.2.2009
Result of final vote	+: 15 –: 0 0: 0
Members present for the final vote	Alin Lucian Antochi, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Alain Lipietz, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Rainer Wieland, Jaroslav Zvěřina
Substitute(s) present for the final vote	Sharon Bowles, Brian Crowley, Jean-Paul Gauzès, Kurt Lechner, Georgios Papastamkos