


Policy Department C  
Citizens' Rights and Constitutional Affairs



**PROPOSAL FOR A COUNCIL DIRECTIVE  
ON IMPLEMENTING THE PRINCIPLE OF EQUAL  
TREATMENT BETWEEN PERSONS IRRESPECTIVE  
OF RELIGION OR BELIEF, DISABILITY, AGE  
OR SEXUAL ORIENTATION**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**





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**Directorate-General Internal Policies**

**Policy Department C**

**Citizens Rights and Constitutional Affairs**

# **PROPOSAL FOR A COUNCIL DIRECTIVE ON IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION**

## **BRIEFING NOTE**

### Summary:

This proposed directive will increase the protection from discrimination for age, disability, religion or belief or sexual orientation to the same level as that currently applicable in relation to discrimination on grounds of sex and race. This proposal should lead to a more consistent standard of protection from discrimination across the European Union for all the prohibited grounds of discrimination. In order to achieve the maximum common understanding of the standards for non-discrimination the same terms, definitions and principles as in the existing directives should be used. Where the proposed directive suggests a lesser standard than the existing standards for sex and race this is noted.

Provisions on multiple discrimination are needed and consideration should be given to the need to increase legal certainty in greater definition of the material scope of the proposed directive.

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## 1. INTRODUCTION

The Treaty of Rome sought to 'ensure the economic and social progress' of Member States and the 'constant improvement of their living and working conditions'. In 1999 the Treaty of Amsterdam added Article 13 clarifying powers 'to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Directives currently prohibit discrimination on sex and on racial or ethnic origin in relation to both employment and the wider social fields and on religion or belief, disability, age or sexual orientation in relation to the employment related fields only. These directives are referred to in this paper as the Racial Equality Directive<sup>1</sup>, the Employment Equality Directive<sup>2</sup>, the Gender Goods and Services Directive<sup>3</sup> and the Recast Gender Directive<sup>4</sup> and these directives are referred to collectively in this paper as the 'equality directives'.

The Commission has explained that the purpose of the proposed directive is to increase the protection from discrimination for age, disability, religion or belief or sexual orientation to the same level as that currently applicable in relation to discrimination on grounds of sex and race. This proposal should therefore lead to consistent standards of protection from discrimination across the European Union for all the prohibited grounds of discrimination. In order to achieve the maximum common understanding of the standards for non-discrimination the same terms, definitions and principles as in the existing directives should be used and this is mostly what is proposed, where a lesser standard is suggested this is noted in the report. However there are also specific issues relating to (i) the specific protected grounds, (ii) the changes in the *acquis communautaire* as seen in the case law of the Court of Justice, and (iii) as arising from the relationship between this proposed directive and the other measures, that have to be addressed. While Parliament and the Council will have to consider the proposed texts it seems inevitable that this will not be the last anti-discrimination directive and that in due course a consolidating measure will be necessary bringing together these equality directives into one text which resolves conflicts and addresses issues arising from multiple ground discrimination.

## 2. COMMENTS ON THE RECITALS

Selected recitals only will be commented on in this section.

### 2.1 Recital 2

This recital locates the right to equality before the law as a universal right recognised by a number of important human rights agreements. Unfortunately, it omits to mention the UN Convention on the Rights of the Child which should be included here.

### 2.2 Recital 13

This is the only recital which mentions multiple discrimination. It recognises that women can be victims of multiple discrimination, however, it does not appear to recognise that multiple

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<sup>1</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>2</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>3</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

<sup>4</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

discrimination can occur in relation to a multiplicity of different combinations of prohibited grounds. Any recital on this topic should seek to ensure that Member States should put in place effective legal procedures to counter multiple discrimination, that is discrimination that occurs on two or more prohibited grounds. For further comments see also paragraph 3.8 below.

### 2.3 Recital 15

This recital on the actuarial and risk factors related to age and disability used in the provision of insurance, banking and other services echoes clause 2(7). These provisions are significantly weaker than those provided in relation to gender in the Gender Goods and Services Directive. For comments on this see paras 3.1.4- 3.1.5 below.

### 2.4 Recitals 16 and 17

See para 3.2.7 below.

## 3. COMMENTS ON THE ARTICLES

### 3.1 Article 2

- 3.1.1 This article sets out the definition and concept of discrimination for the purposes of this directive. *Sub clauses (1) to (4)* deal with the concept of direct and indirect discrimination, harassment and instructions to discriminate and they reflect the same definitions found in the other article 13 directives as well the gender directives. These definitions are widely understood across the Member States.
- 3.1.2 The European Court of Justice (ECJ) has recently ruled in the case of *Coleman v Attridge Law*<sup>5</sup> that the concept of direct discrimination includes discrimination resulting from an association with a disabled person. It should follow from this that direct discrimination will be found wherever discrimination results from adverse treatment received as a result of an association with a person of a particular age, disability, religion or belief or sexual orientation.
- 3.1.3 *Sub clause (5)* makes provision for reasonable accommodation to be made for people with disabilities as provided for in article 4(1)(b). This is further considered below, see para 3.3 below.
- 3.1.4 *Sub clause (6)* makes provision for differences in treatment on grounds of age if ‘they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary’. The similar clause in article 6(1) of the Employment Equality Directive adds the requirement that to be permissible any differences in treatment must be ‘**objectively and reasonably** justified by a legitimate aim...’ For coherence it might be thought better to use exactly the same text. Defining a legitimate aim can always be

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<sup>5</sup> Judgment of 17 July 2008 in Case C-303/06 *Coleman v Attridge Law*.

difficult and some guidance may well help to achieve legal certainty. However, clarification that the justification must be objectively assessed would help to reduce the risk of undesirably wide interpretation being given to this provision. It would also ensure that the same standards were being applied to both employment situations and those involving goods and services. At present this clause might be thought to offer not much predictive value. In this new area for legislation there is not necessarily a common understanding of what might provide objective justification. Accordingly there is a question of legal certainty about the material scope of the directive.

3.1.5 *Sub clause (7)* deals with the provision of financial services when age or disability is a key factor in the assessment of risk. This provision is markedly wider than the similar provision in article 7(2) of the Gender Goods and Services Directive in that the Gender Goods and Services Directive requires that the factor concerned in the assessment of risk is a ‘**determining**’ factor whilst this draft only requires that it is a ‘**key**’ factor. A ‘determining’ factor must be one which is overwhelming in its impact, whereas a ‘key’ factor whilst important may be one of a number of different factors being considered. This lack of coherence is likely to be problematic if adopted as proposed.

3.1.6 The Gender Goods and Services Directive also makes requirements for the Member States to publish, and regularly update, relevant and accurate actuarial and statistical data relevant to the use of sex as a determining factor<sup>6</sup>. There may be justifiable reasons for differential provision for financial services on the basis of age or disability, for young people or older people. However, many of these people have experienced adverse treatment which appears to be unjustifiable. The addition of such a provision requiring the publication of relevant and accurate actuarial data would facilitate greater public accountability and transparency and enable those who consider that they have been subjected to discrimination to assess the basis for their treatment.

3.1.7 *Sub clause (8)* contains a ‘without prejudice’ provision which ensures that the terms of the directive do not impede any national legal provisions made by Member States which are necessary in a democratic society ‘for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others’. This provision mirrors that in the Employment Equality Directive although no such provision is found in the Racial Equality Directive. Such qualifications are widely understood in Europe as they are similar, but not identical, to the qualifications to Articles 9 - 11 of the European Convention on Human Rights (ECHR). Whilst it is possible to see why a ‘without prejudice’ clause is suggested in respect of public security, the maintenance of public order and the prevention of criminal offences and possibly the protection of health it is not obvious why it is necessary to include a ‘without prejudice’ clause in respect of the protection of the rights and freedoms of others if all the appropriate checks and balances have been included in the directive. A Member State wishing to minimise the effect of

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<sup>6</sup> Article 5(2).

the directive might seek to use this provision to attempt to justify national provisions which limit the effectiveness of the directive, although, as a derogation from the principle of equality such limitations should be narrowly interpreted.

### 3.2 Article 3

3.2.1 This article is the principle provision which sets out the scope of the directive. It is welcome that *sub clauses (1) (a-d)* replicate the non-employment scope of the Racial Equality Directive article 3(1) (e-h). These cover the areas of social protection, including social security and healthcare; social advantages; education and access to and supply of goods and other services which are available to the public’.

3.2.2 *Sub clause 1(a)* covers ‘social protection, including social security and healthcare’. The Community has a clear interest in the improved living and working conditions of its citizens which goes back to the genesis of the Treaty of Rome. Competence in this area is found in article 137 (1) EC which requires the Community to support and complement the activities of Member States in ‘(c) social security and social protection of workers’ and ‘(k) the modernisation of social protection systems without prejudice to point (c).’ This is qualified by the requirement in sub clause (4) that any such provisions ‘shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof’. It has been concluded by the European Court of Justice (ECJ) that while Community law does not detract from the powers of the Member States to organise their social security systems, they must nevertheless comply with Community law when exercising those powers<sup>7</sup>. Thus a health system, for example, once established cannot discriminate in the way that it operates. However, it may be appropriate for the directive to state this more explicitly.

3.2.3 *Sub clause 1(b)* covers ‘social advantages’. According to European Court of Justice case-law, social advantages are those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community<sup>8</sup>. Social advantages are generally determined by individual Member States. They can include travel cards issued by national rail companies to larger families, the possibility for workers to get permission for their unmarried partners (non-nationals of the host Member State) to live with them in that Member State<sup>9</sup>, interest-free child birth loans<sup>10</sup>, benefits to cover funeral expenses<sup>11</sup> as well as

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<sup>7</sup> See case no C-158/96, *Kohll v Union des Caisses de Maladie*, [1998] ECR I-1931.

<sup>8</sup> Case no C-249/83 *Hoeckx v Openbaar Centrum voor Maatschappelijk Welzijn Kalnthout* [1985] ECR 973, paragraph 20.

<sup>9</sup> Case no 59/85 *Netherlands v Reed* [1986] ECR 1873.

<sup>10</sup> Case no Case no 65/81 *Reina v Landeskreditbank Baden-Wurttemberg* [1982] ECR 33.

<sup>11</sup> Case no C-237/94 *O’Flynn v Adjudication Officer* [1996] ECR I-2617.



a number of other welfare benefits which will overlap with social security.

- 3.2.4 *Sub clause 1(c)* covers education. Article 3(1)(q) EC states that the EC explicitly has a role as contributing to ‘education and training of quality’. The Treaty also sets out in article 149 that the ‘Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity’.
- 3.2.5 While the EC clearly does have competence to address education, however as with other areas, it is subject to the EC rules on subsidiarity. In particular, the content of teaching and the structure and organisation of educational systems is to be decided at national level. However, this does not mean that there is no continuing EC concern in prohibiting discrimination in the way that education is delivered on any of the prohibited grounds. This proposed directive seeks to balance respect for national competencies with the upholding of the prohibition of discrimination.
- 3.2.6 *Sub clause 1(d)* covers ‘access to and supply of goods and other services which are available to the public, including housing’. This clause is identical to the parallel clause in the Racial Equality Directive however in view of the inclusion of disability in this proposed directive perhaps there is a need to add ‘transport’ specifically here in the same way that it is added in article 4(1)(a). On the other hand this would make it inconsistent with the terms of the Racial Equality Directive.
- 3.2.7 The ambit of the proposed directive in relation to sub clause (d) is limited to ‘professional or commercial activities’. This phrase is not included in equivalent provisions of the Racial Equality Directive and its ambit is ill defined and unclear. Arguably the existing provision stating that the relevant services are only available to the public should be sufficient. Any services that are open to the public generally should not be delivered in a discriminatory way whether or not they entail a professional or commercial activity. It is worth noting that a further balance is provided by Recital 17 which provides ‘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’.
- 3.2.8 *Sub clause 3(2)* of the proposed directive is expressed to be ‘without prejudice to national laws on marital or family status and reproductive rights’. In the application of this provision the ECJ will seek to balance national competences with the need to uphold the prohibition on discrimination. It has recently ruled that ‘civil status and the benefits flowing therefrom are matters which fall within the competence of the Member States and Community law does not detract from that competence. However, it must be recalled that in the exercise of that competence the Member States must comply with

Community law and, in particular, with the provisions relating to the principle of non-discrimination'<sup>12</sup>.

- 3.2.9 The effect of the inclusion of 'reproductive rights' in this sub clause is unclear and attention will need to be paid to how it interacts with the UN Convention on the Rights of Persons with Disabilities<sup>13</sup>. Reproductive rights will mainly affect the provision of health care where there is evidence of discrimination on grounds of age, disability and sexual orientation.
- 3.2.10 *Sub clause 3(3)* qualifies the operation of sub clause 3(1)(c) by making it clear that the 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'. This largely reflects the wording of article 149 EC (see para 3.2.4 above) and in doing so it is careful to keep within the powers of the EC. Once these systems have been put in place they must not operate in a way that discriminates on any of the grounds set out in this directive. However, it may be appropriate for the directive to state this more clearly.
- 3.2.11 The explicit exclusion of special needs education may give rise to concerns in view of the fact that an allegation of 'special educational needs' has at times been used as a tool for discriminating against specific classes of people. The facts examined in the judgment of the European Court of Human Rights in *D.H and others v Czech Republic*<sup>14</sup> exposed the way in which special needs education can be used as an instrument of discrimination.
- 3.2.12 *Sub clause 3(4)* expresses the proposed directive to be without prejudice to national legislation on the secular nature of the state and its institutions, education or the status and activities of organisations based on religion or belief. Throughout the EC Member States have a wide variety of constitutional settlements in these areas which are protected by the principle of subsidiarity.
- 3.2.13 In a similar way the proposed directive is also expressed to be without prejudice to national legislation promoting equality between women and men, which, in turn, will already be subject to the Recast Gender Directive and the Gender Goods and Services Directive.
- 3.2.14 *Sub clause 3(5)* makes it clear that this directive does not affect differences of treatment based on nationality. EC nationals are already protected from discrimination on grounds of their nationality by Article 39 EC. It is third country nationals and stateless persons who have no protection on grounds of their nationality. Thus this directive does not affect any treatment which is a direct result of their status as third country nationals or stateless persons. This sub clause is identical to article 3(2) of the Racial Equality Directive.

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<sup>12</sup> Case no C-267/06 *Maruko v Versorgungsanstalt der deutschen Bühnen*, para 59.

<sup>13</sup> See, for example, Article 23.

<sup>14</sup> Grand Chamber judgment 13.11.2007 (case no 5735/00).

### 3.3 Article 4

- 3.3.1 Article 4 deals with the specific provisions necessary in order to ensure that people with disabilities receive equal treatment. In order to ensure that people with disabilities can live, as far as possible, in a barrier-free environment it is sometimes necessary to put in place specific provisions to anticipate the difficulties that they may experience in accessing goods, facilities and services on an equal basis with people who do not have a disability.
- 3.3.2 This proposed Directive contains no indication of the way in which the ground of disability is to be interpreted. The UN Convention on the Rights of Persons with Disabilities contains a non inclusive definition of the meaning of this ground, namely ‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’<sup>15</sup>. Such a definition could be usefully included either within the text of the directive or referred to as a Recital.
- 3.3.3 *Clause 4(1)(a)* requires that Member States should put in place measures to enable people with disabilities to have non-discriminatory access. These measures have to be provided ‘by anticipation’. So that those who provide social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public must consider what provisions they need to take in order to ensure that any person with a disability can access their services. This is a welcome new provision but one that may entail significant work to be done in some Member States. Recognising this the directive includes additional provisions in sub-clause 15(2) enabling Member States to apply for an extra four years within which to comply with the anticipatory duty in Article 4. However, it is important that this extension should not prevent an individual disabled person from requiring that reasonable accommodation should be made for his or her needs during this transition period.
- 3.3.4 The provisions of *Clause 4(1)(a)* are qualified. The measures to be provided by anticipation should not impose (i) a disproportionate burden, or (ii) require fundamental alteration of the social protection, social advantages, healthcare, education, or goods and services in question or (iii) require the provision of alternatives. A ‘disproportionate burden’ is further considered in clause 4(2) as well as in Recital 19. Clause 4(2) states that account should be taken of ‘the size and 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 people with disabilities’. However, there is no interpretive guidance on the remaining qualification provisions (ii) and (iii) which appear to be ill-defined and could be used to undermine the anticipatory duty.

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<sup>15</sup> UN Convention on the Rights of Persons with Disabilities, Article 1.

3.3.5 *Clause 4(1)(b)* clarifies that notwithstanding the duty to make anticipatory adjustments to accommodate the needs of people with disabilities there is a requirement for reasonable accommodation to be made for a person with a disability unless this would impose a disproportionate burden. This is similar to the provisions on reasonable accommodation in the Employment Equality Directive article 5. Recital 19 also refers to the principle of reasonable accommodation in the Employment Equality Directive and in the UN Convention on the Rights of Persons with Disabilities.

### 3.4 Article 5

3.4.1 Article 5 deals with positive action. It is similar to the equivalent provisions in the other equality directives<sup>16</sup>. At present there is some confusion among jurists as to what this text permits<sup>17</sup>. This article is permissive only and does not require Member States to take any action.

### 3.5 Article 7

3.5.1 This article deals with the defence of rights. *Sub clause 7(1)* requires Member States to have in place the necessary judicial or administrative provisions to facilitate the enforcement of the provisions of this draft directive. It is identical to similar provisions in the other equality directives<sup>18</sup>.

3.5.2 *Sub clause 7(2)* requires Member States to ensure that ‘associations, organisations or other legal entities [...] may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure[...]’. This clause does not make it clear that such proceedings can be brought either in the name of the complainant or in the name of the relevant organisation. Such a clarification could ensure that those who were fearful of bringing proceedings in their own name could allow a relevant organisation to bring proceedings on their behalf.

### 3.6 Articles 8-11

3.6.1 These provisions reflect the similar provisions on Burden of Proof, Victimisation, Dissemination of Information and Dialogue with Relevant Stakeholders found in the other equality directives.

### 3.7 Article 12

3.7.1 This article provides that Member States should make provision for a ‘body or bodies for the promotion of equal treatment’ on the

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<sup>16</sup> Racial Equality Directive Article 5, Employment Equality Directive Article 7(1), Recast Gender Directive Article 3 and Gender Goods and Services Directive Article 6.

<sup>17</sup> See *European Court of Justice and Anti-discrimination Law*, Professor Miguel Pioares Maduro, *European Anti-discrimination Law Review*, 2005, Issue 2, pages 24-26.  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/05lawrev2\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/05lawrev2_en.pdf)

<sup>18</sup> Racial Equality Directive Article 7(1), Employment Equality Directive Article 9(1), Recast Gender Directive Article 17 and Gender Goods and Services Directive Article 8(1).

prohibited grounds set out in this draft directive. This provision is identical to the provisions in the Racial Equality Directive article 13 and the Gender Goods and Services Directive article 12 and similar to those in the Recast Gender Directive article 20. Recital 28 sets out that these bodies should operate in a manner consistent with the United Nations Paris Principles. These principles set out at some length how national human right institutions should operate and the importance of their independence. The provisions in Article 12 require that these equal treatment bodies have a minimum of three capacities that must operate independently; however, there is no provision in the draft directive to ensure that the body itself is independent. If an Equality Body is to be effective in preventing discrimination it is vital that it can operate without any outside interference. Thus the addition of a requirement that the body itself must be independent would strengthen these provisions and prevent the setting up of Equality Bodies as part of a Government department or under the supervision of a Government Minister.

### 3.8 Omissions

3.8.1 The omission of any provisions to deal with multiple discrimination is a substantial omission. Multiple discrimination is discrimination on more than one or a combination of grounds. There is a body of evidence revealing the breadth of this as an increasing problem area within Europe. The European Commission Study *Tackling Multiple Discrimination: Practices, policies and laws*<sup>19</sup> examined the extent of multiple discrimination within Europe. They concluded that new legislation should include 'specific provisions to combat Multiple Discrimination'<sup>20</sup>. The Impact Assessment Report on this proposed Directive<sup>21</sup> observes:

'Although it is now widely recognised as a serious problem, little has been done so far to lay down coherent rules or specific strategies to address it<sup>22</sup> [...] though three EU Member States have included specific provisions on ways of handling it in their national laws<sup>23</sup>. In the absence of such provisions, legal counsel of victims of discrimination must apply a pragmatic and tactical approach by picking the 'strongest' grounds, e.g. race or gender, even where the two are inextricably linked<sup>24</sup> [...] According to a Flash Eurobarometer survey conducted in February 2008<sup>25</sup>, discrimination based on a combination of factors (religion or belief, disability, age, sexual orientation, gender, and race or ethnic origin) has been personally experienced by a relatively high proportion of EU citizens.'

Additionally, the organisation of European Equality Bodies, EQUINET, in its opinion on the European Commission proposals for

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<sup>19</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/multidis\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multidis_en.pdf)

<sup>20</sup> Ibid page53.

<sup>21</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/org/impass\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/org/impass_en.pdf)

<sup>22</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/multidis\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multidis_en.pdf)

<sup>23</sup> Austria, Germany and Romania. Spanish law does refer to multiple discrimination but does not give guidance on how to deal with cases.

<sup>24</sup> See, for example, *Bahl v The Law Society*, UK [2004] EWCA Civ1070.

<sup>25</sup> Flash EB 232

this new directive<sup>26</sup> considered that the ‘new Directive should include in the definition of discrimination an explicit prohibition of multiple discrimination defined as discrimination based on more than one of the grounds covered’<sup>27</sup>. It is therefore important to include provisions that specifically require Member States to provide an effective remedy for cases of multiple discrimination, as well as to include a Recital on this.

## 4. CONCLUSIONS

- 4.1 Provision for an effective remedy for multiple discrimination needs to be included within the body of the directive together with a recital recognising that multiple discrimination can occur on all the article 13 grounds. (para 3.8)
- 4.2 Any justification for age discrimination must be shown to be objectively and reasonably justifiable. (para 3.1.4)
- 4.3 In dealing with financial services when age or disability are a factor – the factor must be a determining factor. (para 3.1.5)
- 4.4 Member States should be obliged to publish and regularly update accurate data relevant to the use of age or disability as a determining factor for financial services. (para 3.1.6)
- 4.5 The directive should have the same scope as the Racial Equality Directive, as is proposed. (para 3.2.1)
- 4.6 The restriction to services that are ‘professional or commercial activities should be removed. (para 3.2.7)
- 4.7 The restriction in relation to ‘reproductive rights’ should be deleted. (para 3.2.9)
- 4.8 The directive should make clear that whereas the structure and content of education systems is a matter for Member States discrimination in access to the system and in the way that they are run is not permissible. (para 3.2.10)
- 4.9 The requirement that measures provided in anticipation to counter disability discrimination must not require fundamental alteration of the social protection, social advantages, healthcare, education or goods and services in question or require the provision of alternatives should be removed. (para 3.3.4)
- 4.10 The directive should make it clear that the additional transition period for anticipatory measures in the case of disability does not apply to the duty to make reasonable accommodation for the needs of a specific individual. (para 3.3.3)

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<sup>26</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/org/equi\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/org/equi_en.pdf)

<sup>27</sup> Ibid page 7.