



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 July 2011**

**12446/11**

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**Interinstitutional File:  
2008/0140 (CNS)**

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**LIMITE**

**SOC 622  
JAI 476  
MI 348**

**NOTE**

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from : The Presidency

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to : The Working Party on Social Questions

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No. prev. doc. : 10615/11 SOC 433 JAI 352 MI 276

No. Cion prop. : 11531/08 SOC 411 JAI 368 MI 246

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Subject : Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

- Consolidated text

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Delegations will find attached a consolidated text of the draft Directive reflecting the current state of play. This document is provided for convenience and is without prejudice to delegations' positions as expressed during the discussions.

It is based on the following texts:

Recitals 15 and Article 2(7): doc. 13972/10.

Recitals 17 and 17d, and Articles 3(1) and 4: doc. 16005/10.

Recitals 20a, 20aa, 20b, 20c and Articles 4a and 4b: 10369/1/11 REV 1.

All other elements: doc. 10511/2/10 REV 2.

Proposal for a

**COUNCIL DIRECTIVE**

**on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 19(1) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the consent of the European Parliament<sup>2</sup>,

Whereas:

- (1) In accordance with Article 2 of the Treaty on European Union, the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, values which are common to all the Member States. In accordance with Article 6 of the Treaty on European Union, the European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, and fundamental rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, to which [all] Member States are signatories. In particular, the UN Convention on the Rights of Persons with Disabilities includes the denial of reasonable accommodation in its definition of discrimination.
- (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.
- (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.
- (5) The European Council, in Brussels on 14 December 2007, invited Member States to strengthen efforts to prevent and combat discrimination<sup>3</sup> inside and outside the labour market<sup>3</sup>.
- (6) The European Parliament has called for the extension of the protection of discrimination in European Union law<sup>4</sup>.

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<sup>3</sup> Presidency conclusions of the Brussels European Council of 14 December 2007, point 50.

<sup>4</sup> Resolution of 20 May 2008 P6\_TA-PROV(2008)0212.

- (7) The European Commission has affirmed in its Communication ‘Renewed social agenda: Opportunities, access and solidarity in 21st century Europe’<sup>5</sup> that, in societies where each individual is regarded as being of equal worth, no artificial barriers or discrimination of any kind should hold people back in exploiting these opportunities. Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living, and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of abolishing of obstacles to the free movement of persons, goods and services between Member States.
- (8) Existing European Union legislation includes three legal instruments<sup>6</sup> adopted on the basis of Article 13(1) of the EC Treaty, which aim 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, the degree and the form of protection against discrimination on these grounds beyond the areas of employment varies between the different Member States.
- (9) Therefore, EU 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. Services should be taken to be those within the meaning of Article 57 of the Treaty on the Functioning of the European Union.
- (10) Directive 2000/78/EC prohibits discrimination in access to vocational training; it is necessary to complete this protection by extending the prohibition of discrimination to education which is not considered vocational training.

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<sup>5</sup> COM (2008) 412

<sup>6</sup> Directive 2000/43/EC, Directive 2000/78/EC and Directive 2004/113/EC

(11)

(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation to persons with disabilities. Discrimination within the meaning of this Directive includes direct discrimination or harassment based on assumptions about a person's religion or belief, disability, age or sexual orientation.

(12a) In accordance with the judgment of the Court of Justice in Case C-303/06<sup>7</sup>, it is appropriate to provide explicitly for protection against discrimination by association on all grounds covered by this Directive. Such discrimination occurs, *inter alia*, when a person is treated less favourably, or harassed, because, in the view of the discriminator, he or she is associated with persons of a particular religion or belief, disability, age or sexual orientation, for instance through his or her family, friendships, employment or occupation.

(12b) Harassment is contrary to the principle of equal treatment, since victims of harassment cannot enjoy, on an equal basis with others, access to social protection, education and goods and services. Harassment can take different forms, including unwanted verbal, physical, or other non-verbal conduct. Such conduct may be deemed harassment in the meaning of this Directive when it is either repeated or otherwise so serious in nature that it has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the European Union should, in accordance with Article 8 of the Treaty on the Functioning of the European Union, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

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<sup>7</sup> Case C-303/06, *Coleman v. Attridge*, judgment of 17 July 2008.

- (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.
- (14a) Differences in treatment in connection with age may be permitted under certain circumstances if they are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. In this context, differences of treatment under national regulations fixing age limits, or providing for more favourable conditions of access for persons of a given age, in order to promote their economic, cultural or social integration, for example in connection with the supply of goods and services specifically designed for certain age groups, enjoy a presumption of not being discriminatory.
- (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 service providers are able to show by relevant actuarial principles and statistical data or medical knowledge, that such factors are determining factors for the assessment of risk. Differences of treatment on grounds of age and disability should be proportionate. [Age limits and age bands in financial services can be proportionate differences of treatment on grounds of age if they are set in a reasonable manner.] Consumers and relevant judicial and complaints bodies should have the right to be informed about the reasons justifying differential treatment, [in advance or upon request,] and the information provided should be [useful and understandable to a general public].
- (16)
- (17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life, the freedom of religion, the freedom of association, the freedom of expression, the freedom of the press and the freedom of information.

(17a) This Directive covers the application of the principle of equal treatment in the fields of social protection, education and access to goods and services within the limits of the competences of the European Union.

The Member States are responsible for the organisation and content of systems of social protection, health care and education, as well as for the definition of who is entitled to receive social protection benefits, medical treatment and education.

(17b) Social protection includes social security, social assistance, social housing and health care. Consequently, this Directive applies with regard to rights and benefits which are derived from general or special social security, social assistance and healthcare schemes, which are statutory or provided either directly by the State, or by private parties in so far as the provision of those benefits by the latter is funded by the State. In this context, the Directive applies with regard to benefits in cash, benefits in kind and services, irrespective of whether the schemes involved are contributory or non-contributory. The abovementioned schemes include, for example, [access to] the branches of social security defined by Regulation 883/2004/EC on the coordination of social security systems<sup>8</sup>, as well as schemes providing for benefits or services granted for reasons related to the lack of financial resources or risk of social exclusion.

(17c)

(17d) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. The Directive only covers the access to and supply of goods and services, including housing, which are available to the public and which are offered outside the context of private and family life.

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<sup>8</sup> OJ L 166, 30.4.2004, p. 1.

(17e) This Directive does not [alter the division of competences between the European Union and the Member States] in the areas of education and social protection. It is also without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

(17f) The exclusive competence of Member States with regard to the organisation of their social protection systems includes decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and health services and the conditions of eligibility. In particular Member States retain the possibility to reserve certain benefits or services to certain age groups or persons with disabilities. The Member States also retain their competences in respect of the definition and organisation of their social housing services, including the management or allocation of such services and determining the conditions of eligibility.

Moreover, this Directive is without prejudice to the powers of the Member States to organise their social protection systems in such a way as to guarantee their sustainability.

(17g) The exclusive competence of Member States with regard to the organisation of their educational systems and the content of teaching and of educational activities, including the provision of special needs education, includes the setting up and management of educational institutions, the development of curricula and other educational activities and the definition of examination processes. In particular Member States retain the possibility to set age limits for certain education activities. However, there may be no discrimination in the access to educational activities, including the admission to and participation in classes or programmes and the evaluation of students' performance.

(17h) This Directive does not apply to matters covered by family law including marital status and adoption, and the legal benefits dependent thereon, and to laws on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.



(18)

(19a) 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.

(19b) Measures to ensure accessibility for persons with disabilities, on an equal basis with others, to the areas covered by this Directive play an important part in ensuring full equality in practice. Such measures should comprise the identification and elimination of obstacles and barriers to accessibility, as well as the prevention of new obstacles and barriers. They should not impose a disproportionate burden.

(19c) Such measures should aim at achieving accessibility including with regard to, *inter alia*, the physical environment, transportation, information and communication technology and systems, and services, within the scope of the Directive as defined in Article 3. The fact that access might not always be possible to achieve in full equality with others may not be presented as a justification for not adopting all measures to increase as far as possible accessibility to persons with disabilities.

(19d) Improvement of accessibility can be provided by a variety of means, including application of the "universal design" principle. According to the United Nations Convention on the Rights of Persons with Disabilities, "universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest possible extent, without the need for adaptation or specialised design. "Universal design" should not exclude assistive devices for particular groups of persons with disabilities where this is needed.

(20) Legal requirements<sup>9</sup> and standards on accessibility have been established at European level in some areas while Article 16 of Council Regulation 1083/2006 of 11 July 2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999<sup>10</sup> requires that accessibility for disabled persons is one of the criteria to be observed in defining operations co-financed by the Funds. The Council has also emphasised the need for measures to secure the accessibility of cultural infrastructure and cultural activities for people with disabilities<sup>11</sup>.

(20a) In addition to general anticipatory measures to ensure accessibility, individual measures to provide reasonable accommodation in a reactive manner play an important part in ensuring full equality in practice for persons with disabilities to the areas covered by this Directive. Reasonable accommodation can include adjusting the conditions in which a service is provided, adapting the provider's usual policies and procedures, and providing specific assistance, taking into account the particular needs of a person with a disability, with a view to achieving an equal outcome. [Physical alterations to premises or equipment can be required if the contractual or other relationship between the provider and the person with a disability is long-term.].

(20aa) In the provision of housing, reasonable accommodation includes the duty of the provider to adjust or modify practices, policies and procedures that may represent barriers to persons with disabilities. The provider should not be required to make structural alterations to the premises or to pay for them, but should accept such alterations, if they are funded otherwise.

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<sup>9</sup> Regulation (EC) No. 1107/2006 and Regulation (EC) No 1371/2007.

<sup>10</sup> OJ L 210, 31.7.2006, p.25. Regulation as last amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p.6).

<sup>11</sup> OJ C 134, 7.6.2003, p.7

- (20b) In assessing whether measures to ensure accessibility or reasonable accommodation would impose a disproportionate burden, account should be taken of a number of factors including, *inter alia*, the size, resources and nature of the organisation or enterprise, as well as the estimated costs of such measures. A disproportionate burden would arise, for example, where significant structural changes would be required in order to provide access to movable or immovable property which is protected under national rules on account of their historical, cultural, artistic or architectural value.
- (20c) The principle of accessibility is established in the United Nations Convention on the Rights of Persons with Disabilities. The principles of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC<sup>12</sup> and the United Nations Convention on the Rights of Persons with Disabilities.
- (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.
- (22) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

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<sup>12</sup> OJ L 303, 2.12.2000, p. 16.

- (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.
- (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.
- (25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (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.
- (27) Experience in applying Directives 2000/43/EC<sup>13</sup> and 2004/113/EC<sup>14</sup> show that protection against 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.
- (28)

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<sup>13</sup> OJ L 180, 19.7.2000, p. 22.

<sup>14</sup> OJ L 373, 21.12.2004, p. 37.

- (29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (30) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union, the objective of this Directive, namely ensuring a common level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the European Union. This Directive does not go beyond what is necessary in order to achieve those objectives.
- (31) In accordance with paragraph 34 of the interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the European Union, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### *Purpose*

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 within the scope of Article 3.

### *Article 2*

#### *Concept of discrimination*

1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no discrimination on any of the grounds referred to in Article 1.

For the purposes of this Directive, discrimination means:

- (a) direct discrimination;
- (b) indirect discrimination;
- (c) harassment;
- (d) instruction to discriminate against persons on any of the grounds referred to in Article 1;
- (e) denial of reasonable accommodation for persons with disabilities;
- (f) direct discrimination or harassment by association.

2. For the purposes of paragraph 1, the following definitions apply:
- (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;
  - (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;
  - (c) harassment shall be taken to occur where 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. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States;
  - (d) denial of reasonable accommodation for persons with disabilities shall be taken to occur where there is a failure to comply with Article 4a of the present Directive;
  - (e) direct discrimination or harassment by association shall be taken to occur where a person is discriminated against or harassed due to his or her association with persons of a certain religion or belief, with a disability, of a given age, or of a certain sexual orientation.

3.

4.

5.

6. Notwithstanding paragraph 2, differences of treatment on grounds of age shall not constitute discrimination, if they are objectively justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary.

[In this context,] differences of treatment under national regulations fixing a specific age for access to social protection, including social security, social assistance and healthcare; education; and certain goods or services which are available to the public, or providing for more favourable conditions of access for persons of a given age, in order to promote their economic, cultural or social integration, are presumed to be non-discriminatory.

7. Notwithstanding paragraph 2, in the provision of financial services, [Member States may provide that] proportionate differences in treatment on the grounds of age or disability shall not be considered discrimination for the purposes of this Directive, if age or the health condition underlying the disability is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable statistical data, or, [where no such data is available] for a certain health condition, on relevant and reliable medical knowledge.

Providers of financial services who decide to apply proportionate differences of treatment on the grounds of age or disability shall provide information on the reasons justifying those differences of treatment.

8. This Directive shall be without prejudice to 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 protection of health and safety and the protection of the rights and freedoms of others.



## *Article 3*

### *Scope*

1. Within the limits of the competences conferred upon the European Union, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
  - (a) social protection, including social security, social assistance, social housing and healthcare;
  - (b)
  - (c) education;
  - (d) access to and supply of goods and other services, including housing, which are available to the public and which are offered outside the context of private and family life.
  
2. Notwithstanding paragraph 1, this Directive does not apply to:
  - (a) matters covered by family law, including marital status and adoption, as well as laws on reproductive rights;
  - (b) the organisation of Member States' social protection systems, including decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and services and the conditions of eligibility;
  - (c) the competences of the Member States to determine the type of health services provided and the conditions of eligibility;
  - (d) the content of teaching, and the organisation and funding of the Member States' educational systems, including the organisation of education for people with special needs.

3. Member States may provide that differences of treatment based on a person's religion or belief in respect of admission to educational institutions, the ethos of which is based on religion or belief, in accordance with national laws, traditions and practice, shall not constitute discrimination.

These differences of treatment shall not justify discrimination on any other ground referred to in Article 1.

- 3a. This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols.
4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief.
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.

#### *Article 4*

##### *Accessibility for persons with disabilities*

1. Member States shall take the necessary and appropriate measures to ensure accessibility for persons with disabilities, on an equal basis with others, within the areas set out in Article 3. These measures should not impose a disproportionate burden.
  - 1a. Accessibility includes general anticipatory measures to ensure the effective implementation of the principle of equal treatment in all areas set out in Article 3 for persons with disabilities, on an equal basis with others[, and with a medium or long-term commitment].

2. Such measures shall comprise the identification and elimination of obstacles and barriers to accessibility, [as well as the prevention of new obstacles and barriers] in the areas covered in this Directive.
- 3.
- 4.
- 5.
6. Paragraphs 1 and 2 shall apply to housing only as regards the common parts of buildings with more than one housing unit. This paragraph shall be without prejudice to Article 4(7) and Article 4a.
7. Member States shall progressively take the necessary measures to ensure that sufficient housing is accessible for people with disabilities.

*Article 4a*

*Reasonable accommodation for persons with disabilities*

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided within the areas set out in Article 3, unless this would impose a disproportionate burden.
2. Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities [the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms].

3. In the provision of housing, paragraphs 1 and 2 shall not require the provider to make structural alterations to the premises or to pay for them. Without prejudice to paragraphs 1 and 2, the provider shall accept such alterations, if they are funded otherwise.

*Article 4b*

*Provisions concerning accessibility and reasonable accommodation*

1. For the purposes of assessing whether measures necessary to comply with Articles 4 and 4a would impose a disproportionate burden, account shall be taken, in particular, of:
  - a) the size, resources and nature of the organisation or enterprise
  - b) the estimated cost;
  - c) the estimated benefit for persons with disabilities[, and the discriminatory impact of not providing the measures], taking into account the frequency and duration of use of the relevant goods and services;
  - d) the life span of infrastructures and objects which are used to provide a service;
  - e) the historical, cultural, artistic or architectural value of the movable or immovable property in question; and
  - f) the safety and practicability of the measures in question.

The burden shall not be deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

2. Article 4 shall apply to the design and manufacture of goods, unless this would impose a disproportionate burden. For the purpose of assessing whether a disproportionate burden is imposed in the design and manufacture of goods, account shall be taken of the criteria set out in Article 4b(1).

3. Article 4 and 4a shall not apply where European Union law provides for detailed standards or specifications on the accessibility or reasonable accommodation regarding particular goods or services.

#### *Article 5*

##### *Positive action*

1. 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.
2. In particular, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt more favourable provisions for persons with disabilities as regards conditions for access to social protection, including social security, social assistance and healthcare; education; and certain goods or services which are available to the public, in order to promote their economic, cultural or social integration.

#### *Article 6*

##### *Minimum requirements*

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## CHAPTER II

### REMEDIES AND ENFORCEMENT

#### *Article 7*

#### *Defence of rights*

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.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

#### *Article 8*

#### *Burden of proof*

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.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Member States need not apply paragraph 1 to proceedings in which the court or other competent body investigates the facts of the case.
5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with Article 7(2).

*Article 9*  
*Victimisation*

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment

*Article 10*  
*Dissemination of information*

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.

## *Article 11*

### *Dialogue with relevant stakeholders*

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, 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.

## *Article 12*

### *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.
2. Member States shall ensure that the competences of these bodies include:
  - (a) 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,
  - (b) conducting independent surveys concerning discrimination, and
  - (c) publishing independent reports and making recommendations on any issue relating to such discrimination.



## CHAPTER III

### FINAL PROVISIONS

#### *Article 13*

#### *Compliance*

Member States shall take the necessary measures to ensure that the principle of equal treatment is respected within the scope of this Directive and in particular that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (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.

#### *Article 14*

#### *Sanctions*

Member States shall lay down the rules on sanctions applicable to infringements of 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.

#### *Article 14a*

#### *Gender mainstreaming*

In accordance with Article 8 of the Treaty on the Functioning of the European Union, the Member States shall, when implementing this Directive, take into account the aim of eliminating inequalities, and of promoting equality, between men and women.

*Article 15*  
*Implementation*

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by .... at the latest [4 years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to ensure accessibility as set out in Articles 4 and 4b has to be complied with by, at the latest, [5 years after adoption] regarding new buildings, facilities, vehicles and infrastructure, as well as existing buildings, facilities and infrastructure undergoing significant renovation and by [20 years after adoption] regarding all other existing buildings, facilities, vehicles and infrastructure.

Member States wishing to use any of these additional periods shall inform the Commission at the latest by the date set down in paragraph 1 giving reasons. Member States shall also communicate to the Commission by the same date an action plan laying down the steps to be taken and the timetable for achieving the gradual implementation of Article 4 [, including its paragraph 7]. They shall report on progress every two years starting from this date.

*Article 16*

*Report*

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.
2. The Commission's report shall take into account, as appropriate, the viewpoints of national equality bodies and relevant stakeholders, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

*Article 17*

*Entry into force*

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

*Article 18*

*Addressees*

This Directive is addressed to the Member States.

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