Council of the European Union

Brussels, 29 June 2017
(OR. en)

10780/17

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

**SOC 515**
**ANTIDISCRIM 35**
**JAI 644**
**MI 526**
**FREMP 78**

**NOTE**

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| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 9288/17 SOC 375 ANTIDISCRIM 23 JAI 473 MI 427 FREMP 61 |
| No. Cion doc.: | 11531/08 SOC 411 JAI 368 MI 246 - COM(2008) 426 final |
| 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 |

Delegations will find attached a consolidated text of the 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.

Please note that the text in the Annex is the same as in doc. 10779/17, but the footnotes indicating delegations' positions have been removed.

**ANNEX**

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 European Commission[1],

Having regard to the consent of the European Parliament[2],

Whereas:

(1) In accordance with Article 2 of the Treaty on European Union (TEU), 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 TEU, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Pursuant to the same Article, 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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1 OJ C , , p. .
2 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. This Directive, and in particular the provisions regarding accessibility and reasonable accommodation, respects the fundamental principles recognised in the UN Convention concerning the Protection of the World Cultural and Natural Heritage. 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 of Fundamental Rights of the European Union 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 inside and outside the labour market[3].

[3] Presidency conclusions of the Brussels European Council of 14 December 2007, point 50.

(6) The European Parliament has called for the extension of the protection of discrimination in European Union law[4].

(7) The European Commission has affirmed in its Communication 'Renewed social agenda: Opportunities, access and solidarity in 21st century Europe'[5] 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 Union as they are laid down in the Treaties, 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 based on Article 13 of the Treaty establishing the European Community, which has been replaced by Article 19 TFEU. They are Directive 2000/43/EC [6], Directive 2000/78/EC[7] and Directive 2004/113/EC[8], 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. The purpose of this Directive is, therefore, in respect of the aforementioned grounds, to extend the degree and the form of protections in those three legal instruments beyond the areas of employment into the specific areas set out in Article 3 of this Directive.

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4 Resolution of 20 May 2008 P6_TA-PROV (2008)0212.

5 COM (2008) 412.

6 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

7 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

8 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 (OJ L 373, 21.12.2004, p. 37).

(9) Therefore, Union legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including access to social protection, access to 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 TFEU.

(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.

(11)

(12) Discrimination is understood to include direct discrimination, including multiple discrimination, 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) Discrimination is also understood to include discrimination due to association with a discriminatory ground, as confirmed by the Court of Justice in Case C-303/06[9] and Case C-83/14.[10] Such discrimination occurs, inter alia, when a person is treated less favorably, or harassed, because of an association which that person has, or is perceived to have, with persons of a particular religion or belief, disability, age or sexual orientation, or with organisations dedicated to the promotion of the rights of these persons. It is therefore appropriate to provide explicitly for protection against such discrimination in this Directive.

(12ab) Discrimination on the basis of religion or belief, disability, age or sexual orientation may be compounded by or intersect with discrimination on grounds of sex or gender identity, racial or ethnic origin, and nationality.

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[9] Case C-303/06, Coleman v. Attridge, judgment of 17 July 2008.

[10] Case C-83/14, CHEZ Razpredelenie (Nikolova), judgment of 16 July 2015.

(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 Union should, in accordance with Article 8 of the TFEU, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

In the preparation or review of the laws, regulations and administrative provisions necessary to comply with this Directive, Member States should take account of the differential impact on men and women.

(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 and/or scientific 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 if the means of achieving that aim are appropriate and necessary. In this context, the promotion of economic, cultural or social integration of persons belonging to specific age groups should constitute a legitimate aim. The means of achieving this aim, such as the offer of more favourable conditions of access to persons belonging to specific age groups, should be appropriate and necessary.

(15) Risk factors related to age are used in the provision of insurance, banking and other financial services, to assess the individual risk and to determine premiums and benefits. In certain financial services, persons of different ages are not in a comparable situation for the assessment of risk. Proportionate differences of treatment on the grounds of age therefore do not constitute discrimination if the person's age 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. 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.

(15a) Risk factors related to disability, and in particular to a disability's underlying health condition, are used in the provision of insurance, banking and other financial services, to assess the individual risk and to determine premiums and benefits. In certain financial services, persons with a disability are not in a comparable situation for the assessment of risk with that of persons without such a disability. Proportionate differences of treatment on the grounds of disability therefore do not constitute discrimination if 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 relevant and reliable medical knowledge.

(15b) Customers and relevant judicial and complaints bodies should have the right to be informed, upon request, about the reasons explaining differences of treatment on the grounds of age or disability in financial services. The information provided should be useful and understandable to a general public and it should explain differences in individual risk for the service in question. Providers of financial services should, however, not be obliged to disclose commercially sensitive data.

(16)

(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms in line with the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the protection of private and family life, freedom of religion, freedom of association, freedom of expression, freedom of the press and freedom of information. This Directive should not prejudice measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order, for the prevention of crime for the protection of health and for the protection of the rights and freedoms of others.

(17-a) This Directive does not alter the division of competences between the Union and the Member States as defined by the Treaties, including 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.

(17a) This Directive covers the application of the principle of equal treatment in the access to social protection, access to education and access to and supply of goods and services within the limits of the competences of the Union. The concept of 'access' does not include the determination, in accordance with national law and practice, of whether a person is eligible to receive social protection or education, since the Member States are responsible for the organisation and content of their social protection and educational systems, and also for the definition of who is entitled to receive social protection or education.

(17b) Social protection, within the meaning of this Directive, should cover social security, including statutory pension schemes, social assistance, social housing and health care. Consequently, this Directive should apply 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 should apply 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, the branches of social security defined by Regulation (EC) No 883/2004[11] of the European Parliament and of the Council,, as well as schemes providing for benefits or services granted for reasons related to the lack of financial resources or risk of social exclusion. Given that Directive (EC) No 2000/78 does not apply to state social security or social protection schemes and that the CJEU has held in its judgement of the case C-267/06 *Tadao Maruko* that less favourable treatment of a registered partner in benefiting from a supplementary pension scheme, insofar as it was considered remuneration, constituted direct discrimination on the grounds of sexual orientation, this directive should also apply to all statutory supplementary pension schemes.

(17c)

(17d)

(17e)

[11] Regulation (EC) n°883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems **(**OJ L 166, 30.4.2004, p.1**)**.

(17f) The exclusive competence of Member States with regard to the organisation of their social protection systems includes competence for the setting up, financing and management of such systems and related institutions as well as the competence for determining the substance, the amount, the calculation and the duration of benefits and services, and for the setting of the conditions of eligibility for benefits and services, as well as for the adjustment of those conditions in order to ensure the sustainability of public finances. For example, Member States retain the possibility to reserve certain benefits or services to certain age groups or persons with disabilities.

(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 competence for the setting up, financing and management of educational institutions, for the development of curricula and other educational activities, for the definition of examination processes and for the setting of the conditions of eligibility, including, for example, age limits regarding eligibility for schools, scholarships or courses. In particular Member States retain the possibility to set age limits in the area of education.

(17ga) All persons, be they natural or legal persons, enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. As long as the choice of partner is not based on that person's religion or belief, age, disability and sexual orientation, this Directive should not prejudice the person's freedom to choose a contractual partner. The prohibition of discrimination on these grounds should apply to persons providing goods and services within the Union which are available to the public and which are offered outside the area of private and family life and the transactions carried out in this context.

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

(17i)

(18)

(19) According to Article 17 of the TFEU, the Union 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.

(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. Measures to ensure accessibility for persons with disabilities should not impose a disproportionate burden. [Accessibility should be considered to have been achieved in a proportionate manner if persons with disabilities are able, effectively and on an equal basis with others, to access the services that particular buildings, facilities, transport services and infrastructure are meant to supply or offer to the public, even if they cannot have access to the entire building, facility or infrastructure concerned.]

(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 this Directive. 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.[12] Member States should undertake or promote research and development of universally designed goods and services falling within the scope of this Directive, with the aim of meeting the specific needs of persons with disabilities while reducing the need for adaptation and the cost as much as possible, and to promote their availability and use. Member States should also promote universal design in the development of standards and guidelines so as to progressively ensure accessibility of goods and services.

(19e) Where Union law providing for detailed standards or specifications on accessibility or reasonable accommodation in respect of particular goods or services is complied with, the requirements of this Directive with respect to accessibility or reasonable accommodation should be deemed to be complied with.

[12] Article 2 of the UNCRPD.

(20) Union law already establishes detailed specifications or standards on accessibility in some areas. Such specifications or standards are provided for, *inter alia*, in Commission Regulation (EU) 1300/2014[13], Regulation (EU) 181/2011[14] of the European Parliament and of the Council Regulation (EC) No 1107/2006 of the European Parliament and of the Council[15] and Regulation (EC) No 1371/2007 of the European Parliament and of the Council[16] […][…]. Union law also already establishes legal requirements to ensure accessibility, without providing for specification or standards of this requirement. Such legal requirements are established, *inter alia*, in Regulation (EU) No 1303/2013 of the European Parliament and of the Council[17] and in Directive 2014/24/EU of the European Parliament and of the Council[18]. For example, Article 7 of Regulation (EU) No 1303/2013 requires that accessibility for disabled persons is one of the criteria to be observed in defining operations co-financed by the Funds.

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13 Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility

14 Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

15 Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p.1).

16 Regulation (EC) No 1371/2007 Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

17 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 OJ L 347, 20.12.2013, p. 320).

18 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

(20-aa) Member States are encouraged to adopt innovative measures to secure the accessibility of cultural infrastructure and cultural activities for people with disabilities, the need for such measures having been emphasised by the Council.[19] Such measures may be inspired by the principle of universal design and Member States' best practices.

(20-a) In addition to general anticipatory measures to ensure accessibility, measures to provide reasonable accommodation in individual cases play an important part in ensuring full equality in practice for persons with disabilities in the areas covered by this Directive. In the context of a contractual or other relationship of long duration between the provider and the person with a disability, structural alteration to premises or equipment could be deemed a reasonable accommodation. Reasonable accommodation can include adjusting or modifying the provider's usual policies, procedures and practices, adapting conditions of access and providing specific assistance, taking into account the particular needs of a person with a disability, with a view to achieving an equal outcome. Measures to provide reasonable accommodation should not impose a disproportionate burden.

(20-b) Member States are encouraged to develop and implement innovative measures to ensure reasonable accommodation.

(20aa) In the provision of housing, the provider should not, in order to comply with the reasonable accommodation provisions set out in this Directive, be required to make structural alterations to the premises or to pay for such alterations. In accordance with national law and practice, a provider should accept such alterations, if they are funded otherwise-and do not impose disproportionate burden of some other kind.

[19] Council resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, OJ C 134, 7.6.2003, p. 6.

(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 or the (technical and/or economic) life span of infrastructures and objects which are used to provide a service. Furthermore, a disproportionate burden could arise in particular where significant structural alterations would be required in order to provide access to movable or immovable property which is protected under national rules on account of its 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 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, or having a combination of characteristics relating to these specific factors. Such measures may include support for organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the economic, cultural or social integration, of those persons, or catering for their particular needs.

(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.

(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 claimant 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, 2004/113/EC and 2006/54/EC 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 of discrimination. In accordance with the purpose of extending the degree and the form of protection against discrimination based on sex and racial or ethnic origin to the grounds covered by this Directive, the competences of this body or bodies should include also the areas covered by Directive 2000/78/EC.

(28) Periodic reporting and monitoring of progress made, including by collecting statistical data, should be considered for the purposes of this Directive.

(29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

(30) Since 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 at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective..

(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 Union, their own tables, which will, as far as possible, illustrate the correlation between this 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 and furthers the promotion of that principle in the field of employment and occupation as provided for in Directive 2000/78/EC.

*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.

1a. For the purposes of this Directive, discrimination means:

(i) direct discrimination;
(ii) indirect discrimination;
(iii) harassment;
(iv) direct discrimination and harassment by association;
(v) denial of reasonable accommodation for persons with disabilities; and
(vi) instruction to discriminate against persons on any of the grounds referred to in Article 1.

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 one or more of the grounds referred to in Article 1;

(b) indirect discrimination on one or multiple grounds shall be taken to occur where an apparently neutral provision, criterion or practice, or a combination of several such, would put persons of a particular religion or belief, a particular disability, a particular age, and/or a particular sexual orientation at a particular disadvantage compared with other persons, unless the 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;

(e) direct discrimination or harassment by association shall be taken to occur where a person is discriminated against or harassed due to an association which that person has with persons of a certain religion or belief, persons with a disability, persons of a given age, or persons of a certain sexual orientation.

(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;

3.

4.

5.

6. Notwithstanding paragraphs 1, 1a and 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.

The promotion of the economic, cultural or social integration of persons belonging to specific age groups shall constitute a legitimate aim pursuant to the first subparagraph.

6-a Preferential charges, fees or rates in respect of anything offered, or provided to **[…]** persons in a specific age group shall not constitute discrimination for the purpose of this Directive.

6a. Notwithstanding paragraphs 1, 1a and 2, differences of treatment consisting in more favourable provisions for persons with disabilities as regards conditions of access to the areas set out in Article 3 which are adopted in order to promote their economic, cultural or social integration, or to cater for the particular needs of such persons shall not constitute discrimination for the purpose of this Directive.

7. In the provision of financial services,

a) proportionate differences in treatment on the grounds of age do not constitute discrimination for the purposes of this Directive, if age 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;

b) proportionate differences in treatment on the grounds of disability do not constitute discrimination for the purposes of this Directive, if 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 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, upon request, provide information to customers and relevant judicial and complaints bodies on the reasons explaining 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, for the prevention of crime, for the protection of minors, for the protection of health and safety and for the protection of the rights and freedoms of others, including the right to freedom of expression and the freedom of the press. This Directive does not limit the competence of Member States nor extend that of the Union in the areas mentioned in this paragraph.

*Article 3*

*Scope*

1. Within the limits of the competences conferred upon the European Union and within the limits set out in paragraph 2, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

   (a) access to social protection, in so far as it relates to social security, including statutory supplementary pension schemes, and to social assistance, social housing and healthcare.

   Access under this point shall include the process of seeking information, applying and registration as well as the actual provision of social protection measures.

   (b)

(c) access to education.

Access under this point shall include the process of seeking information, applying and registration as well as the actual admission to and participation in educational activities;

(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.

Access under this point shall include the process of seeking information, applying, registration, ordering, booking, renting and purchasing as well as the actual provision and enjoyment of the goods and services in question.

2. 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 organization and funding of Member States' social protection systems, including the setting up and management of such systems and related institutions as well as the substance, the amount, the calculation and the duration of benefits and services, and the conditions of eligibility for these benefits and services, such as, for example, age limits for certain benefits;

(c)

(d) the organisation and funding of the Member States' educational systems, including the setting up and management of educational institutions, the content of teaching and of educational activities, the development of curricula, the definition of examination processes, and the conditions of eligibility, such as, for example, age limits for schools, scholarships or courses;

(e) 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.

3.

3a. This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols and does not limit the exclusive competence of Member States in these matters.

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 and does not limit the exclusive competence of Member States in these matters.

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. However, 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 for persons with disabilities in the areas set out in Article 3.

2. The measures referred to in paragraphs 1 and 1a of this Article 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, 1a and 2 of this Article 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.

8. Member States shall undertake or promote research and development of universally designed goods and services in accordance with national specificities and conditions.

9. The provisions of this Article shall be deemed to be complied with where Union law providing for detailed standards or specifications on accessibility in respect of particular goods or services is complied with.

*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.

2. For the purpose of paragraph 1, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate burden, where needed in a particular case, to accommodate the specific needs of a person with a disability so as to allow that person access on an equal basis with others to the specific social protection measure, educational activity, good or service concerned.

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. In accordance with national law and practice, a provider shall accept such alterations if they are funded otherwise and do not impose a disproportionate burden of some other kind.

4. The provisions of this Article shall be deemed to be complied with where Union law providing for detailed standards or specifications on reasonable accommodation in respect of particular goods or services is complied with.

*Article 4b*

*Provisions common to 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;

aa) the negative impact on the person with a disability affected by the fact that the measure is not provided;

b) the estimated cost;

c) the estimated benefit for persons with disabilities generally, taking into account the frequency and duration of use of the relevant goods and services and the frequency and the duration of the relationship with the seller or provider;

d) the life span of infrastructures and objects which are used to provide a service; [20]

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.

[20] This criterion may be appropriate only to accessibility.

2.

3.

*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.

*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 conciliation procedures, where they deem it appropriate, 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 equal 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 claimants.

3. Paragraph 1 shall not apply to criminal procedures.

4. Member States may decide not to 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 of this Article 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 safeguarding 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, organisations 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.

3. Member States shall also ensure that the competences of the body or bodies referred to in paragraph 1 include both the areas covered in this Directive and the areas covered by Directive 2000/78.

# 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 bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by …. [4 years after adoption]. They shall immediately inform the Commission thereof and shall communicate to the Commission the text of those provisions.

   When Member States adopt those measures, they shall contain a reference to this Directive or shall 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. Member States may establish that the obligation to ensure accessibility as set out in Article 4 has to be complied with by, at the latest, [5 years after adoption] regarding new buildings, facilities, transport services and infrastructure.

2a. Member States may establish that the obligation to ensure accessibility as set out in Article 4 has to be complied with by [20 years after adoption] regarding existing buildings, facilities, transport services and infrastructure. Where a Member State does so it shall ensure the progressive implementation of that obligation over that period.

3. Any Member State which chooses to use the additional period set out in paragraph 2a shall communicate to the Commission by the date set out in paragraph 1 of this Article an action plan laying down the steps to be taken and the timetable for achieving the progressive implementation of that obligation.

3a. Member States shall inform the Commission, by the date set out in paragraph 1 of this Article, of their plans for the progressive implementation of the obligation provided for in Article 4(7).

4. Member States shall collect data, as appropriate, and monitor and evaluate the effectiveness of relevant measures. This could be done by means of measures such as setting baselines or measurable targets or by collecting relevant qualitative or quantitative data, in line with applicable national and Union law, particularly regarding the protection of personal data.

*Article 16*

Report

1. Member States shall communicate to the Commission, by [two years after the date provided for in Article 15(1)] 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, including information on the implementation of the plans mentioned in Article 15(3) and (3a).

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.