

Consolidated proposal for amendments

on the Commission's proposal
for a council directive on implementing the principle of equal
treatment between persons irrespective of religion or belief,
disability, age or sexual orientation

This is a working document subject to revision on a regular basis as the proposal for a directive evolves within the European Council. It was jointly prepared by the five European anti-discrimination networks dealing with the grounds of religion and belief, disability, age and sexual orientation with some inputs of the European Women's Lobby (EWL).

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Social Platform is an alliance of 40 Pan-European NGO networks fighting for social justice

Recitals

Comment Proposal for a decision Recital 2	
<p>Text proposed by the Commission</p> <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.</p>	<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, <i>the United Nations Convention on the Rights of the Child, the UN convention on the Rights of Migrants Workers and their Families,</i> the United Nations 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.</p> <p>Leading organisations: ILGA-Europe, ENAR</p>
	<p>Why?</p> <p>A directive on anti-discrimination that includes age, and therefore also deals with children's rights, must make a reference to the Convention, which has been ratified by all EU Member States. This reference is also relevant because the scope of this directive include education, which is of fundamental importance to children (up to the age of 18 according to the Convention on the Rights of the Child (CRC)). The right to education is protected under the CRC, arts. 28-29 and that CRC also contains a ban on discrimination (art. 2) which has been interpreted by the UN Committee on the Rights of the Child as including also sexual orientation and gender identity.</p>

	<p>Similarly, the UN Convention on the Rights of Migrant Workers and their Families is recognised as one of the 7 'core' Human Rights Treaties and as such must be seen as part of the context for the Directive and for the implementation of the right to equal treatment.</p>
<p>Comment Proposal for a decision Recital 3</p>	
<p>Text proposed by the Commission</p> <p>(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.</p>	<p>(3) This directive respects <i>and implements</i> 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.</p> <p>Leading organisation: ENAR</p>
	<p>Why?</p> <p>Non-Discrimination is a core part of the human rights framework. Provisions guaranteeing the right to non-discrimination are found in all European and International Human Rights Instruments. It is important that the proposed Directive is viewed as a part of the protection of fundamental rights in order to further enable the use of that framework in the implementation of the provisions, including for example in balancing the rights to freedom of religion with the rights to non-discrimination on grounds of religion or belief.</p>

Comment
Proposal for a decision
Recital 4

<p>Text proposed by the Commission</p> <p>(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.</p>	<p>(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 <i>the need to promote</i> the benefits of diversity.</p> <p>Lead organisation: YFJ</p>
	<p>Why?</p> <p>These initiatives have rather raised the awareness on the need to promote the benefits of diversity. A follow-up on these initiatives is very much needed in order to effectively promote the benefits of diversity.</p>

Comment
Proposal for a decision
New Recital 7 a

	<p><i>(7a) 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 developing the European Union as an area of freedom, security and justice.</i></p> <p>Leading organisations: ILGA-Europe, ENAR.</p>
	<p>Why?</p> <p>Unlike previous EU directives on equal treatment, the current proposal does not have a recital in the preamble acknowledging the significance of the principle of equal treatment in the EU law. We propose the inclusion of a new</p>

	<p>recital based on the text taken from the Race Directive (2000/43, recital 9). This text highlights the right to equal treatment as a fundamental principle in the EU and clearly establishes the relationship between equal treatment and the achievement of objectives of the EC treaty.</p>
<p>Comment Proposal for a decision New Recital 7 b</p>	
	<p><i>(7b). “Effective legal procedures must be available to deal with situations of multiple discrimination, that is where discrimination occurs on two or more grounds listed in Articles 12 and 13 EC. In particular national legal procedures shall ensure that a complainant can raise all aspects of a multiple discrimination claim in a single procedure.”</i></p> <p>Leading organisations: ILGA-Europe, ENAR, EDF, YFJ, AGE and EWL.</p>
	<p>Why?</p> <p>Specific procedural difficulties can arise in cases of multiple discrimination. In some states, there are separate judicial or non-judicial adjudicatory bodies for different grounds of discrimination (eg separate forums for claims of sex or race discrimination). In order to avoid a situation where the individual has to ‘split’ their claim, the amendment requires Member States to provide procedures which allow a victim of multiple discrimination to present all aspects of their case in a single legal procedure.</p> <p>The amendment also recognises that legal redress is only one aspect of effective protection against multiple discrimination and that complementary non-legislative means also need to be adopted.</p>

Comment
Proposal for a decision
Recital 8

<p>Text proposed by the Commission</p> <p>(8) The Community has adopted three legal instruments¹ on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.</p>	<p>(8) The Community has adopted three legal instruments² on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment. <i>Further the need to explore other grounds for discrimination to be included in the future also remains.</i></p> <p>Leading organisation: YFJ</p>
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	<p>Why?</p> <p>In particular considering article 21 of the Charter of Fundamental Rights of the European Union, which includes a non-exhaustive list of grounds.</p>
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Comment
Proposal for a decision
New recital 9 a

	<p><i>(9a) By Article 5 of the Political Declaration agreed at the conclusion of the United Nations World Conference on Ageing in Madrid 2002 it was agreed to reaffirm the commitment to spare no effort, to eliminate all forms of discrimination, including age discrimination, to recognize that persons, as they age, should enjoy a life of</i></p>
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¹ Directive 2000/43/EC, Directive 2000/78/EC and Directive 2004/113/EC

² Directive 2000/43/EC, Directive 2000/78/EC and Directive 2004/113/EC

	<p><i>fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies, and to enhance the recognition of the dignity of older persons, and to eliminate all forms of neglect, abuse and violence</i></p> <p>Leading organisation: AGE</p>
	<p>Why?</p> <p>It is essential that age discrimination is eliminated and that older people are given all opportunities to lead full and active lives and to contribute to all aspects of society.</p>
<p>Comment Proposal for a decision Recital 15</p>	
<p>Text proposed by the Commission</p> <p>(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be determining for the assessment of risk.</p>	<p>(15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be determining factors for the assessment of risk, <i>and where the service provider can fully demonstrate significantly higher risks, by recent relevant and accurate statistical or actuarial data.</i></p> <p>Leading organisations: AGE and EDF</p>
	<p>Why?</p> <p>This recital is used to reinforce the provisions in Article 2(7).</p>
<p>Comment Proposal for a decision New Recital 15.a</p>	
	<p>(15a) <i>This Directive shall not prevent Member States to allow differences of treatment on the ground of age, provided that any of these differences fulfils the test</i></p>

for justification set out in article 2.6.

These differences may include exceptions, laws or administrative provisions dealing with inter alia:

- The access to films, plays, books and other media which are not suitable by reason for instance of the portrayal of pornography or violence,*
- The special needs of children in the delivery of preventative or other health care,*
- The sale of dangerous products such as alcohol or tobacco*
- exceptions in relation to primary and secondary education, however no discrimination on the grounds of age may be permitted in relation to the provision of all forms of university, adult, or fresh start education,*
- Shared private accommodation in cases such as the provision of accommodation by a person in a part of that person's home*
- Membership of religious bodies and rules relating to religious governance and observance.*
- the participation to competitions and sports,*
- the use and the cost of all means of transport,*
- charities, trusts, foundations, not-for-profit organisations and similar bodies, and their controlled subsidiaries or governmental bodies which have as a main purpose the welfare of a specific age group or age band.*
- social security insofar as they are designed to take into account the different needs and circumstances of different age groups or age bands, such as young children, youth, parents with children below certain ages and people over the relevant age requirement for eligibility for a pension.*

Age organisations should be closely consulted at the national level in the process of transposing the Directive, in particular in Member States where differences of treatments on the ground of age will be specifically described by national law. This consultation should help in identifying differences of treatments on the ground of age which have legitimate

	<p><i>aims or aim at compensating disadvantages experienced by the youth and older people.</i></p> <p>Leading organisations: AGE and YFJ</p>
	<p>Why?</p> <p>This list is going to provide guidance for Member States when transposing the Directive at the national level. However, this list should be considered as non-exhaustive. This recital together with article 2.6 (where the test for justification has been strengthened) aim at reaching a good balance between the principle of equal treatments and differences of treatment on the ground of age.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Recital 16</p>	
<p>Text proposed by the Commission</p> <p>(16) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. This Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their commercial activity.</p>	<p><i>(16) It is important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context.</i></p> <p>Leading organisations: ILGA-Europe, ENAR and YFJ.</p>
	<p>Why?</p> <p>The text proposed as an amendment is taken from the Race Directive (2000/43, recital 4). It would arguably allow for the protection of private and family life in relation to transactions carried out in the provisions of goods and services, while limiting the scope of exemptions to this Directive. This text would also contribute to consistency of interpretation between EU directives on equal treatment.</p> <p>Limiting the application of the Directive to professional or commercial activities would de facto imposing more exceptions than those already openly included in the text. It would mean for example that a young person could be refused to rent a flat just because he/she is young or he/she is a student etc if this renting does not constitute a professional activity for the</p>

	owner (of if the financial gain from this transaction does not constitute a considerable part of the owner's revenue)
Comment Proposal for a decision Recital 17	
<p>Text proposed by the Commission</p> <p>(17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context, the freedom of religion, and the freedom of association. This Directive is without prejudice to national laws on marital or family status, including on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.</p>	<p><i>(17) This Directive is without prejudice to national laws on marital status. As held by the Court of Justice, in the exercise of that competence the Member States must comply with Community law and, in particular, with the provisions relating to the principle of non-discrimination.</i></p> <p>Leading organisation: ILGA-Europe, ENAR and EWL.</p>
	<p>Why?</p> <p>This recital deals with three very different issues which should be addressed separately. Reference to the protection of family life and of freedom of religion, to marital status and reproductive rights in the same recital opens the door to interpretation which could easily lead to discrimination.</p> <p>This is why we consider that:</p> <ul style="list-style-type: none"> -The first sentence in the original text should be covered by the proposed recital 16. -The reference to the secular nature of the State should not be addressed in this recital. It should rather be merged with recital 19. <p>While national competence in the field of marital status law cannot be challenged, it is important to acknowledge that Member States must comply with the principle of non-discrimination in exercising this competence.</p>

Comment
Proposal for a decision
Recital 18

<p>Text proposed by the Commission</p> <p>(18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. Member States may also allow or prohibit the wearing or display of religious symbols at school.</p>	<p><i>(18) Member States, being responsible for the organisation and content of education, should ensure effective protection against discrimination on the ground of religion or belief, disability, age or sexual orientation in the field of education.</i></p> <p>The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs.</p> <p><i>In the exercise of their discretion, in the area of equal treatment in education, on grounds of religion and belief, Member States must ensure that this does not lead to a denial of the right to education nor to discrimination on any other ground.</i></p> <p>Leading organisations: ENAR, ILGA-Europe, EDF and YFJ.</p>
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	<p>Why?</p> <p>The principle according to which discrimination is unacceptable in the field of education should be reiterated. The fact that the competence for organising education lies with Member States should not be used as justification for allowing the denial of the right to education or discrimination in this field.</p>
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Comment
Proposal for a decision
New Recital 18 a

	<p><i>(18 a) in determining which form of education or training is appropriate, the views of the person with a disability are respected. Where the person is a child or adult who is unable to represent himself, the views of their parents, guardians or designated advocates will be considered as a significant factor.</i></p> <p>Leading organisation: EDF</p>
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	<p>Why?</p> <p>In accordance with the UN Convention on the Rights of Persons with Disabilities, the respect for the wishes of the person with a disability is paramount to determining the most appropriate type of schooling. Failure to respect their wishes may amount to denial of equal access to education.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Recital 19a</p>	
<p>Text proposed by the Commission</p> <p>(19) The European Union in its Declaration No 11 on the status of churches and nonconfessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In neither case are measures required that would impose a disproportionate burden.</p>	<p>(19 a). <i>Prohibiting discrimination is an important part for the respect of fundamental rights and freedom</i> including the protection of private and family life, the freedom of religion, and the freedom of association.</p> <p>The European Union in its Declaration No 11 on the status of churches and nonconfessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. <i>The directive respects the ability of Member States to use national legislation to ensure the secular nature of the state.</i></p> <p>Leading organisations: ENAR, EDF, and YFJ.</p>
	<p>Why?</p> <p>The proposed amendment places the recognition of the limits of EU competence in this area clearly within the framework of fundamental rights and recognises the status of the proposed Directive as a fundamental rights instrument that not only respects but implements fundamental rights and respects the competence of the Member States.</p>

Comment
Proposal for a decision
New Recital 19b

<p>Text proposed by the Commission</p> <p>In assessing whether the burden is disproportionate, account should be taken of a number of factors including the size, resources and nature of the organisation. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.</p>	<p>In assessing whether the burden is disproportionate, account should be taken of <i>whether the measure in question is unfeasible or unsafe and could not be made feasible and safe by a reasonable modification of rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services.</i></p> <p>Leading organisation: EDF</p>
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	<p>Why?</p> <p>This recital should be separated into two. The first part deals with churches and the second, seemingly unrelated, deals with the very particular issue of reasonable accommodation for persons with disabilities. The latter part should be numbered recital 19b.</p> <p>This amendment suggests establishing an appropriate, realistic and measurable definition of disproportionate burden, which, at the same time, can be easily adapted to national contexts. Following the precedent of the Employment Directive, it is appropriate to include such definition in the Preamble.</p>
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Comment
Proposal for a decision
New Recital 19c

	<p><i>Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with attitudinal or environmental barriers may hinder their full and effective participation in society on an equal basis with others.</i></p> <p>Leading organisation: EDF</p>
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	<p>Why?</p> <p>While recognising that there is no European Community definition of 'disability' contained in legislation, the definition contained in the UN Convention on the Rights of Persons with Disabilities (to be ratified and implemented by the Community as well as the EU Member States) would serve as a helpful guidance in establishing the personal scope of the Directive.</p>
<p style="text-align: center;">Comment Proposal for a decision New Recital 19d</p>	
	<p><i>Persons with disabilities frequently face discrimination in the form of inaccessible public transportation and the built environment, as well as inaccessible communications and information. Member States must take measures to ensure accessibility in these areas in order to put into effect the principle of equal treatment.</i></p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>This recital is to propose a logic link between Recitals 19c and 19b.</p>
<p style="text-align: center;">Comment Proposal for a decision New Recital 19e</p>	
	<p><i>Effective non-discriminatory access can be provided by a variety of means, including through the design for all and including through facilitating the use of assistive devices by persons with disabilities, including aids to mobility and access, such as recognised guide dogs and other assistance dogs.</i></p> <p>Leading organisation: EDF</p>

	<p>Why?</p> <p>This recital is to propose a logic link between Recitals 19c and 19b.</p>
<p style="text-align: center;">Comment Proposal for a decision New Recital 19f</p>	
	<p><i>Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice, furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In neither case are measures required that would impose a disproportionate burden.</i></p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>The proposed amendment establishes a fair balance between the right of people with disabilities to accessibility and reasonable accommodation on the one hand, and the safeguard of disproportionate burden on the other hand.</p>
<p style="text-align: center;">Comment Proposal for a decision New recital 19g</p>	
	<p><i>(a) age includes chronological age, age group or age banding, where</i></p> <ul style="list-style-type: none"> <i>i. Chronological age means a specific age in length of years or months measured from birth such as 10 or 10 years and 3 months.</i> <i>ii. age banding means a specific age band such as over 65, or under 30 or teens, or born between two dates, or after or before a specific date.</i> <i>iii. age group means a group identified by a general description such as old or elderly, young or middle aged.</i> <p><i>(b) treatment of a person shall be</i></p>

	<p><i>considered to be based on age whether or not the treatment is based on a correct knowledge of the person's age, or correct inclusion in an age group or band, if it is based on an assumption as to, or guess or estimate of, or the perception of that person's age, or inclusion in an age group or band.</i></p> <p>Leading organisation: AGE</p>
	<p>Why?</p> <p>Age should be defined as expressed in this recital to avoid misunderstanding and/or misperception of what it represents.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>New recital 20a</p>	
	<p><i>Large institutions which permanently or for a long period of time provide housing and living facilities and services exclusively to persons with disabilities, and which do not further the goal of self-determination and equal participation in the life of the community of persons with disabilities, should be dismantled and replaced, when required, by community-based services that further the above-mentioned goals.</i></p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>This recital is an attempt to address the goal of de-institutionalisation of persons with disabilities and ensure that the provision of goods and services in the community promotes equality of persons with disabilities.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Recital 26</p>	
<p>Text proposed by the Commission</p> <p>(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</p>	<p>(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</p>

<p>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.</p>	<p>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. <i>All actors should ensure that this involvement takes effectively place and that the structures for participation are further developed.</i></p> <p>Leading organization: YFJ</p>
	<p>The recognition of this principle by the Council is crucial but needs to be effectively followed-up and implemented when the EU designs, adopts and implements both legislative and non-legislative measures aimed at fighting against discrimination</p>
<p>Comment Proposal for a decision Recital 29</p>	
<p>Text proposed by the Commission</p> <p>(29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.</p>	<p>(29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive. <i>In implementing this obligation, Member States must ensure national provisions are in line with Community law which expressly prohibits the setting of a fixed upper limit to financial compensation in discrimination cases.</i> Member States should also have regard to the fact that effective protection can require the possibility of recourse to pre-emptive judicial procedures where urgency is required.</p> <p>Leading organisation: ENAR</p>
	<p>Why?</p> <p>The proposed directive requires that sanctions be effective, proportionate and dissuasive. Evidence from the transposition and implementation of the “Race Equality directive” (200/43/EC) demonstrates that the fixing of upper limits for compensation violates this principle. This is supported by case law of the ECJ under sex discrimination law.</p>

Chapter 1: General provisions

Comment

Proposal for a decision

Article 1

Text proposed by the Commission

Article 1

Purpose

1. This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Article 1

Purpose

1. This Directive lays down a framework for combating discrimination, ***including multiple discrimination***, on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

2. Multiple discrimination occurs when discrimination is

(a) on any combination of the grounds of religion or belief, disability, age, or sexual orientation, or

(b) any one or more of the grounds set out in Article 1(1), and also on the ground of any one or more of

(i) sex (in so far as the matter complained of is within the material scope of 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 as well as this Directive),

(ii) racial or ethnic origin (in so far as the matter complained of is within the material scope of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin as well as this Directive), or

(iii) nationality (in so far as the matter complained of is within the scope of Article 12 EC).

3. In this Directive multiple discrimination and multiple grounds shall be construed accordingly

	<p>Leading organisation: ENAR, ILGA-Europe, YFJ, AGE and EWL.</p> <p><i>Assessment of alleged discrimination</i></p> <p><i>1. Where an individual alleges that he or she has been the victim of multiple discrimination on the grounds of two or more of the characteristics referred to in Article 13 of the EC Treaty, the judicial or administrative authority shall compare the individual alleging discrimination with an individual who possesses none of the characteristics covered by Article 13 of the EC Treaty which the complainant alleges motivated the discrimination. This provision applies to instances of alleged direct and indirect discrimination.</i></p> <p><i>2. Harassment and an instruction to discriminate which is motivated by two or more of the characteristics covered by Article 13 of the EC Treaty shall be regarded as discrimination and fall under the scope of this Directive.</i></p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>In recent years, research has increasingly recognised the phenomenon of multiple discrimination. The structure of anti-discrimination legislation often creates barriers to dealing with this in a comprehensive fashion. EU legislation has created separate rules for race and ethnicity, religion and belief, age, disability, sexual orientation and gender even these are frequently intertwined. Having the same level of legal protection as the Racial Equality Directive, but covering the grounds of religion or belief, disability, age and sexual orientation is therefore an essential starting point for addressing multiple discrimination.</p> <p>Alongside the overlap between religion and ethnicity, it is also evident that religion is closely connected to nationality. Many Muslim, Sikh, Hindu and other religious minority communities in Europe are composed of third country nationals or their descendents. Therefore, discrimination on grounds of nationality may be difficult to disentangle from discrimination based on religion or ethnicity. This has been recognised in ECRI's recommendation on</p>

	<p>national legislation to combat racism; it calls for comprehensive laws prohibiting discrimination on ethnic origin, religion and nationality.</p> <p>At the same time, simply having a new Directive on all four grounds will not be sufficient. Difficulties can arise with the manner in which EU Directives are transposed into national legislation. Member States remain free to implement the Directives via separate legislation for each discrimination ground, or to create different avenues for enforcement. For example, in Austria, the Equal Treatment Commission is divided into three 'senates': one dealing with gender discrimination in employment; one dealing with discrimination in employment on grounds of racial or ethnic origin, religion or belief, age and sexual orientation; and one dealing with discrimination outside employment on grounds of racial or ethnic origin. Separate institutional structures exist in relation to disability.</p> <p>It is therefore essential that the Directive explicitly confronts the issue of multiple discrimination and requires Member States to address this in their national legal frameworks.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Article 2.1</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination <i>whatsoever based</i> on any of the grounds or <i>multiple grounds</i> referred to in Article 1.</p> <p>Leading organisation: ENAR</p>
	<p>Why?</p> <p>The word "based" comes from the Race Equality Directive and "whatsoever" from the Employment Framework Directive.</p>

Comment
Proposal for a decision
Article 2.2

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>2. For the purposes of paragraph 1:</p> <p>(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;</p> <p>(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.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>2. For the purposes of paragraph 1:</p> <p>(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 or multiple grounds referred to in Article 1;</p> <p>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, or any combination of characteristics based on multiple grounds referred to in Article 1 or persons who are associated with such persons, 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.</p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>This amendment is necessary to make explicit the inclusion of 'discrimination by association' in the scope of the Directive, and combat discrimination resulting from false assumptions about an individual relating to a prohibited ground.</p>

Comment
Proposal for a decision
Article 2.3

<p>Text proposed by the Commission</p> <p>3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph</p>	<p>3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the</p>
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<p>1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.</p>	<p>grounds or multiple 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.</p>
	<p>Why?</p> <p>This amendment is necessary to extend the protection against harassment on multiple grounds, considering that direct and indirect discrimination on multiple grounds is covered by article 2.2.</p>
<p>Comment Proposal for a decision Article 2.4</p>	
<p>Text proposed by the Commission</p> <p>4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.</p>	<p>4. An instruction to discriminate against persons on any of the grounds or multiple grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.</p>
	<p>Why?</p> <p>This amendment is necessary to extend the protection against instruction to discriminate on multiple grounds, considering that direct and indirect discrimination and harassment on multiple grounds are covered by article 2.2 and 2.3.</p>
<p>Comment Proposal for a decision New Article 2.4.a</p>	
	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p><i>Discrimination within the meaning of paragraph 1 include discrimination on the grounds that a person is assumed to have, or associates with or is assumed to associate with a person who has, a particular religion or belief, disability, age, or sexual orientation.</i></p>

	<p>Leading organisation: EDF</p>
	<p>Why?</p> <p>This amendment is necessary to make explicit the inclusion of 'discrimination by association' in the scope of the Directive (following the ECJ judgment in the 'Coleman' case), and combat discrimination resulting from false assumptions about an individual relating to a prohibited ground.</p>
<p>Comment Proposal for a decision Article 2.5</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities, <i>or persons who associate with a person with a disability, where accommodation is needed to enable such person to provide personal assistance to a person with a disability</i>, shall be deemed to be discrimination within the meaning of paragraph 1.</p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>This amendment extends the obligation to provide a reasonable accommodation to individuals who associate with a person with a disability and provide personal assistance to that person. The accommodation in question is only required where it enables an individual to (continue) to provide personal assistance, and the amendment is designed to prevent disadvantage being experienced by the person with a disability.</p>

Comment
Proposal for a decision
New Article 2.5a

	<i>Member States shall provide that where multiple grounds are established a claim can only be defeated by reason of a justification or other defence which is applicable to all of those grounds on which the claim is made. However if only one ground is established then the claim may be defeated by any justification or defence relevant to that ground.</i>
	<p>Why?</p> <p>See justification of article 1.</p>

Comment
Proposal for a decision
Article 2.6

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to education and certain goods or services.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are objectively and reasonably justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to education and certain goods or services.</p> <p>Leading organisation: YFJ, AGE.</p>
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	<p>Why?</p> <p>This amendments aim at bringing further legal certainty on differences of treatment on the ground of age allowed by Member States. Indeed, the test for justification is made more stringent by this amendment as it requires objective and reasonably justification. This</p>
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	<p>formulation is also consistent with article 6 of the Framework Employment Directive on differences of treatment on the ground of age.</p>
<p>Comment Proposal for a decision Article 2.7</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>7. Notwithstanding paragraph 2, Member States may permit proportionate differences in individuals' premiums and benefits where the use of age or disability is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>2 positions:</p> <p>7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit <i>(deletion of proportionate)</i> differences in treatment where, <i>for the product in question,</i> the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data <i>and the difference in treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of age and disability as a determining factor are compiled, published and regularly updated. These Member States shall review their decision five years after the deadline for the transposition of the Directive, taking into account the Commission report [on the transposition of the directive] and shall forward the results of this review to the Commission.</i></p> <p>Leading organisations: ENAR, EDF, and YFJ.</p> <p>OR</p> <p><i>7. Member States may make exceptions for the use of age as an actuarial factor, in the provision of insurance, banking and other financial services, only where, for the product in question, it can be demonstrated that the use of age is a determining factor in the assessment of risk based on recent relevant and accurate actuarial and statistical data.</i></p>

	<p><i>The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of age and disability as a determining factor are compiled, published and regularly updated. These Member States shall review their decision five years after the deadline for the transposition of the Directive, taking into account the Commission report [on the transposition of the directive] and shall forward the results of this review to the Commission.</i></p> <p>Leading organisation: AGE</p>
	<p>Why?</p> <p>EDF: This reinforced wording aims to avoid the misuse of statistical information that may result in the exclusion of people with disabilities from access to financial services. It provides for a transparent system of reviewing the information used to justify the difference in treatment, and is along the similar provision in the Gender Goods and Services Directive 2004.</p> <p>AGE: our proposal is more stringent and will allow differences of treatment only in exceptional cases when it can be proved that “age” or “disability” increases significantly the risk covered.</p>
<p>Comment Proposal for a decision Article 2.8</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.</p>	<p style="text-align: center;"><i>Article 2</i> <i>Concept of discrimination</i></p> <p>8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary and proportionate for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others. <i>It is equally without prejudice to national legislation promoting equality between men and women.</i></p> <p>Leading organisations: ILGA-Europe, ENAR, EDF, YFJ and EWL.</p>

	<p>Why?</p> <p>It is clearly important to question whether there is a legitimate need for such a blanket exception. It should be done by keeping in mind that this clause is based on ECHR language, and that it may bear significance for other grounds of discrimination. But if this clause is kept, we call on the introduction of a proportionality test. This would ensure that states would have to show that measures do not go beyond what is necessary in order to achieve this objective.</p> <p>We think that the without prejudice clause on gender equality legislation is better dealt with in this article than in article 3.4.</p>
<p>Comment Proposal for a decision Article 3.1</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>Subparagraph (d) shall apply to individuals only insofar as they are performing their commercial activity.</p>	<p><i>Deleted</i></p> <p>Leading organisations: ILGA- Europe, ENAR, YFJ.</p>
	<p>Why?</p> <p>While it is important to protect article 3 (1)(a) to (d), we ask for deletion of the qualifier to subparagraph (d). First, this sentence introduces an exemption which is not included in the Race Directive. It also creates a double limitation to the scope of the directive given that subparagraph (d) already limits the application of the directive to goods and other services which are "<u>available to the public</u>". Moreover, there are concerns about reference to "professional or commercial activity" which creates uncertainty and ambiguity.</p>

Comment
Proposal for a decision
Article 3.2

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>2. This Directive is without prejudice to national laws on marital or family status and reproductive rights.</p>	<p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>Deleted</p> <p>Leading organisation: ILGA-Europe and EWL.</p>
	<p>Why?</p> <p>There is no precedent for introducing this kind of exception in the operative paragraph of an Article 13 directive. This article creates inconsistencies with Directive 2000/78 which included a similar exception only in its recital (recital 22). Moreover, this broad exception is not consistent with case law from the ECJ (Maruko - C-267/06) and the European Court of Human Rights (E.B. v. France; Karner v. Austria).</p>

Comment
Proposal for a decision
Article 3.3

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in admission to educational institutions based on religion or belief.</p>	<p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>2 positions</p> <p>3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching and the organisation of their educational systems, <i>[including the provision of special needs education (to be deleted)]</i>. Member States may provide <i>for necessary and proportionate differences in treatment based on a person's religion or belief in access to educational institutions whose ethos is based on religion or belief where this is necessary to protect religious ethos of the educational institution and does not lead to a violation of the right to education - or discrimination on any other ground.</i></p>
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	<p>Leading organisations: ILGA-Europe, ENAR, EDF</p> <p>OR</p> <p><i>Delete</i></p> <p>Leading organisation: YFJ</p>
	<p>Why?</p> <p>Explicit exclusion of special needs education from the scope of the Directive will result in the de facto denial of access to education to many people with disabilities. The proposed deletion aims to avoid this situation, while ensuring that the organisation of teaching remains a Member State competence.</p> <p>The proposed amendment would acknowledge the fact the content of teaching and the organisation of education systems (EC treaty, Art 149(1)) are the responsibility of member states but in the exercise of this competence, member states must comply with the provisions relating to the principle of non-discrimination.</p> <p>The balance between the right to freedom of religion and the right to non-discrimination on grounds of religion or belief is a delicate one, and the discretion of the Member State in responding to this balance must be exercised with full respect for all fundamental human rights. In education, this brings some specific challenges.</p> <p>In some (mostly rural) areas of a number of EU Member States, the only school in the vicinity is a religious school, often a Christian one. In this situation, where there is no local alternative for the religious school, that school must be obliged to take all local pupils, without consideration of their religion. In these cases it is important that the right to an education takes precedence over the school's right to choose its pupils.</p> <p>On the other hand, there is a strong argument that minority religious schools serve an important purpose in protecting the heritage of those groups. Some, though not all, religious schools prefer to create a supportive school-wide atmosphere by admitting only students of the same faith. This does not allow religious schools</p>

	<p>to discriminate against people in any other way: these schools cannot exclude students based on their sexual orientation, skin colour etc.</p> <p>It is essential to find alternative wording, to avoid opening for discrimination based on religion in non-religious schools (which can hardly be the purpose of the provision) or discrimination based on the other grounds in religious schools – which should not be allowed, in conformity with the provision of the Employment directive, which allows for religion (but not other grounds) to sometimes be considered a genuine occupational requirement with faith based employers</p> <p>YFJ</p> <p>The responsibility of Member States as regards the content of teaching or the organisation of the educational system has been already highlighted in recital 18. Although outside the scope of this Directive, the YFJ find inadmissible to allow gender stereotypes or biased sexual education in formal education curricula, as well as insensitive education and lack of mainstreaming of cultural and other diversities of the Member states.</p> <p>Access to any kind of school should be based on non-discriminatory practice as falling within the fundamental right to education, therefore the exception on access to institutions based on religion or belief should be taken out.</p>
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Comment
Proposal for a decision
Article 3.4

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>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 of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.</p>	<p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>Delete</p> <p>Leading organisation: ENAR</p>
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	<p>Why?</p> <p>The intention is to clarify the competence of the Member States. We think that this is far better dealt with in the recital and that its inclusion here adds unnecessary confusion to the text.</p> <p>We propose to move “It is equally without prejudice to national legislation promoting equality between men and women” to article 2.8</p>
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Comment
Proposal for a decision
Article 3.5

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>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.</p>	<p style="text-align: center;"><i>Article 3</i> <i>Scope</i></p> <p>Delete</p> <p>Leading organisation: ENAR</p>
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	<p>Why?</p> <p>While the Race Equality Directive made important steps forward in protection against discrimination by applying the principle of non-discrimination on grounds of race and ethnic origin to third country nationals, the ENAR Shadow Reports demonstrate that the lack of protection against nationality discrimination on the one hand and the exclusion of immigration matters on the other have left third country nationals unprotected from much discrimination. They also demonstrate that this “sends a message that discrimination against third country nationals is acceptable</p> <p>Derogations and exemptions allowed under existing anti-discrimination legislation have been mis-used by Member States to evade their obligation to ensure that asylum and immigration laws are neither discriminatory nor have discriminatory effects. It has also been used to evade “political commitment to ensure fair treatment of third country nationals, for</p>
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	<p>example regarding access to jobs, social housing criteria, welfare limitations, discretionary controls and detention centres”.</p> <p>OR</p> <p>It would be unacceptable to allow differences of treatment on the ground of nationality in the field of education as well as in the access to basic health care and other social services.</p>
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Comment
Proposal for a decision
Article 4

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 4</i> <i>Equal treatment of persons with disabilities</i></p> <p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <p>a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.</p> <p>b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation, shall be provided unless this would impose a disproportionate burden.</p>	<p style="text-align: center;"><i>Article 4</i> <i>Equal treatment of persons with disabilities</i></p> <p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <p>a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and telecommunication, information, including information in accessible formats, financial services, culture and leisure, buildings open to the public, transport modes and other public spaces and facilities shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alterations to <i>nature of the goods or services in question or the nature of the trade, profession or business in question. An alteration is fundamental if it so alters the goods or services or the nature of the trade, profession or business, to the extent that the provider of the goods or services is effectively providing a completely different kind of goods or services.</i></p> <p>b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation, shall be provided unless this</p>
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	<p>would impose a disproportionate burden.</p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>All the proposed areas are as important to persons with disabilities as 'housing and transport', originally proposed by the Commission, and should be explicitly included. The exception of 'fundamental alteration' should apply to specific goods and services, not to the whole scope of the Directive – the proposed amendment makes that clear and explicit.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>New Article 4.1.c</p>	
	<p><i>4.1.c: For the purpose of paragraph 1, effective non-discriminatory access involves the identification and elimination of obstacles and barriers, whether attitudinal or environmental, and the prevention of new obstacles and barriers that hamper the access of persons with disabilities, to goods, services and facilities available to the general public, irrespective of the nature of the obstacle, barrier or disability. Subject to the provisions of this Directive, and regardless of the measures chosen to remove the obstacles or barriers, effective non-discriminatory access for persons with disabilities must be provided under the same terms and conditions as for persons without disabilities wherever possible and facilitate the use of assistive devices by persons with disabilities, including aids to mobility and access, such as recognised guide dogs and other assistance dogs wherever necessary. Where effectively non-discriminatory access cannot be provided under the same terms and conditions, and subject to the provisions of this Directive, a meaningful alternative to ensure access must be provided.</i></p> <p>Leading organisation: EDF.</p>

	<p>Why?</p> <p>The inspiration for the definition of what constitutes 'access' is drawn from the UN Convention on the Rights of Persons with Disabilities and is needed to provide guidance to Member States as to their obligations under the Directive. The obligation to provide 'effective non-discriminatory access' is not sufficiently clear and precise to be implemented without a definition thereof.</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Article 4.2</p>	
<p>Text proposed by the Commission</p> <p>2. For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.</p>	<p>2. For the purposes of <i>paragraph 1</i>, the burden shall not be <i>deemed</i> disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.</p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>The definition of disproportionate burden is not needed in the body of the text – EDF proposes to give a measurable indication of what constitutes 'disproportionate' in the recital (as was the case in the Employment Directive) and leave it up to Member States to decide what is disproportionate in their national context and for a specific product or service.</p>

Comment
Proposal for a decision
Article 4.3

<p>Text proposed by the Commission</p> <p>3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.</p>	<p>3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services. However, wherever possible, Member States shall take measures to encourage providers of services and goods, in particular, manufactured goods, to design accessible solutions, for instance through public procurement practices. Accessibility means the design of products and services so that they can be used by all users.</p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>Inclusion of the accessible design of products</p>

Comment
Proposal for a decision
Article 5

<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 5</i> <i>Positive action</i></p> <p>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.</p>	<p style="text-align: center;"><i>Article 5</i> <i>Positive action</i></p> <p>2 positions</p> <p>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 or from allowing these measures to be taken by the public, private or voluntary sector to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.</p> <p>Leading organisations: ILGA-Europe, ENAR, EDF, and YFJ</p> <p>OR</p>
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	<p><i>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 the grounds set out in Article 1.</i></p> <p><i>Nothing in this Directive shall be construed as prohibiting preferential treatment or the taking of positive measures which are bona fide intended to cater for the special needs of persons, or a category of persons, who, because of their circumstances, may require facilities, arrangements, services or assistance not required by persons who do not have those special needs.</i></p> <p><i>In this context:</i></p> <p><i>1) public private and non governmental providers of goods, facilities and services may impose and maintain and provide a proportionate preferential fee, charge or rate in respect of anything offered to persons in a particular age band where such provision aims to compensate for a specific disadvantage suffered by those in that age band or encourage the social inclusion of a substantial proportion of such an age band.</i></p> <p><i>2) public and private providers of health care services can target their resources for preventative health care treatments to specific age groups or age bands within the population where it is shown that there is a particular health risk linked to the age group.</i></p> <p>Leading organisation: AGE</p>
	<p>Why?</p> <p>The existing anti-discrimination Directives permit Member States to allow positive action within their national legal frameworks, but there is no obligation either to take positive action or to permit it in relation to public or private organisations. A small step forward would be to require states to allow public or private organisations to take positive action.</p> <p>The same provision was included in the</p>

	<p>Framework Employment Directive (article 7). As in the Employment Directive only measure adopted or maintained by Member States are mentioned. In some countries (for example the Netherlands) voluntary policies adopted by employers have not been considered as justified. Differences of treatment included in policies undertaken by the private sector could be important to compensate for disadvantages related to age and therefore should not be excluded a priori.</p>
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Chapter 2: Remedies and enforcement

<p>Comment Proposal for a decision New Article 7.1a</p>	
	<p><i>Article 7 1.a (new)</i></p> <p><i>Member States shall ensure that the means of enforcement of obligations under this Directive are available to all persons who consider themselves to be victims of multiple discrimination.</i></p>
<p>Comment Proposal for a decision Article 7.2</p>	
<p>Text proposed by the Commission</p> <p>2. Member States shall ensure that associations, organisations or other legal entities, which have 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.</p> <p>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.</p>	<p>2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, <i>are empowered to engage in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive, including on behalf of, or in support of, any victim.</i></p> <p>Leading organisation: ILGA-Europe and ENAR</p>

	<p>Why?</p> <p>Article 7 (2) currently fails to ensure full legal standing to organizations by restricting their role to acting on behalf or in support of individual litigants.</p> <p>Allowing NGOs to take cases – on behalf of individuals without the obligation for the individual to be named – is therefore essential to ensuring effective access to justice.</p> <p>Moreover, allowing NGOs to have autonomous legal standing also allows for the possibility to challenge discriminatory practices without individual litigants³</p>
<p>Comment</p> <p>Proposal for a decision</p> <p>Article 12. 2</p>	
<p>Text proposed by the Commission</p> <p style="text-align: center;"><i>Article 12</i> <i>Bodies for the Promotion of Equal treatment</i></p> <p>1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.</p> <p>2. Member States shall ensure that the competences of these bodies include:</p> <ul style="list-style-type: none"> –without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, –conducting independent surveys concerning discrimination, –publishing independent reports and making recommendations on any issue relating to such discrimination. 	<p style="text-align: center;"><i>Article 12</i> <i>Bodies for the Promotion of Equal treatment</i></p> <p>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 <i>independent</i> agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.</p> <p>2. Member States shall ensure that the competences of these bodies include:</p> <ul style="list-style-type: none"> –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, <i>including engaging in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive, including on behalf of, or in support of, any victim.</i>

³ See recent ECJ case “Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn” NV (C-54/07)” which addresses litigation in the absence of an individual complainant.

	Leading organisation: ILGA-Europe, ENAR, EDF YFJ and AGE
	<p>Why?</p> <p>The importance of having equality bodies independent from Governments, in accordance with the United Nations Paris Principles mentioned in the recital, should be stressed here</p>

Chapter 3: Final provisions

Comment Proposal for a decision Article 15.2	
<p>Text proposed by the Commission</p> <p>2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to provide effective access as set out in Article 4 has to be complied with by ... [at the latest] four [years after adoption].</p> <p>Member States wishing to use this additional period shall inform the Commission at the latest by the date set down in paragraph 1 giving reasons.</p>	<p><i>2. In order to comply with the obligation to provide effective access as set out in Article 4, Member States shall submit to the European Commission a plan for progressive implementation of the obligation, including targets, means, and timeline.</i></p> <p>Leading organisation: EDF</p>
	<p>Why?</p> <p>Schedules for progressive realisation of the obligation to provide access would be more appropriate and flexible means to address the issue of accessibility of facilities that need long-term attention (such as public transportation system, historic buildings, etc).</p>