



Council of the
European Union

Brussels, 27 April 2015
(OR. en)

8149/15

LIMITE

SOC 246
ANTIDISCRIM 1
JAI 245
MI 247
FREMP 79

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

NOTE

From: Presidency
On: 8 May 2015
To: Working Party on Social Questions

No. prev. doc.: 6499/15 SOC 94 EGC 3 JAI 106 MI 107 FREMP 30

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 set of drafting suggestions with a view to the meeting of the Working Party on Social Questions on 8 May 2015.

Changes in relation to the previous versions¹ are indicated as follows: new text is in **bold** or **bold** **underlined** and deletions are marked "[...]".

¹ For Article 3 and for all the recitals, the previous version is 6499/15. For Article 2, the previous version is 15705/14 ADD 1 REV 2.

Proposal for a

COUNCIL DIRECTIVE

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

(...)

(17-a) This Directive does not alter the division of competences between the European 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 European 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, 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 883/2004/EC on the coordination of social security systems², as well as schemes providing for benefits or services granted for reasons related to the lack of financial resources or risk of social exclusion.

(17c)

(17d)

(17e)

(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. [...]

² OJ L 166, 30.4.2004, p.1.

(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 individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. An individual who provides goods or services may have a number of subjective reasons for his or her choice of contractual partner. 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 individual's freedom to choose a contractual partner. The prohibition of discrimination should apply to persons providing goods and services, 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.**
[...]

CHAPTER I
GENERAL PROVISIONS

(...)

Article 2

Concept of discrimination

(...)

6. (a) Notwithstanding paragraphs 1 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.
- (b) Differences of treatment where more favorable conditions of access are offered to persons belonging to specific age groups in order to promote their economic, cultural or social integration, are presumed to be non-discriminatory for the purpose of this Directive.
- (c) **Preferential charges, fees or rates in respect of anything offered, or provided to, or in respect of persons in a specific age group do not constitute discrimination for the purpose of this Directive.**
- 6a. Notwithstanding paragraphs 1 and 2, this Directive shall not preclude 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.

(...)

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, and 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 these areas.

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, 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.