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From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a COUNCIL DIRECTIVE on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

I. INTRODUCTION

On 2 July 2008, the Commission submitted to the Council and the European Parliament a proposal for a Council Directive aiming to extend the protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation to areas outside employment. Complementing existing Union legislation¹ in this area, the proposed horizontal equal treatment Directive would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; education; and access to goods and services, including housing.

¹ In particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal now falls under Article 19 of the Treaty on the Functioning of the European Union (TFEU) (special legislative procedure); thus unanimity in the Council is required, following the *consent* of the European Parliament.

The European Parliament adopted its Opinion on 2 April 2009² under the Consultation Procedure. The Council will have to request the European Parliament's consent on the final text.

Although the proposal has been under discussion for almost sixteen years, and almost every Presidency has placed the file on the agenda of the Council, it has so far not been possible to reach an agreement. The most recent Progress Report³ was submitted to the EPSCO Council on 12 June 2023, when the Council also held a policy debate on the proposal.⁴

While a very large majority of delegations has long supported the Directive, endorsing the fact that it aims to complete the existing legal framework by addressing all four grounds of discrimination through a horizontal approach, certain others have expressed concerns and requested clarifications as relating to the perceived lack of legal certainty, the division of competences and compliance with the principle of subsidiarity, and the impact, in particular in terms of financial impact, of the proposal.

Important redrafting has been undertaken to meet the concerns expressed, including by clarifying the legal obligations both on substance and in terms of the division of competence, and by limiting the potential financial impact of the draft Directive.

The Commission has supported the search for a compromise, while maintaining a scrutiny reservation on any changes to its original proposal at this stage.

² See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) has been appointed Rapporteur by the current Parliament.

³ 9043/23

⁴ 9544/23

II. STATE OF PLAY IN THE COUNCIL

A. WORK UNDER THE BELGIAN PRESIDENCY

During the Belgian Presidency, the proposal has been discussed in three meetings of the Working Party on Social Questions⁵ and in Coreper.⁶ The Presidency has presented three sets of drafting suggestions, with a view to addressing all the outstanding concerns expressed by delegations.⁷

The most important modifications tabled by the Presidency concern the following elements:

1. The text was re-drafted so as to clarify the scope of Member States' obligations regarding *reasonable accommodation* for persons with disabilities (Article 4 and Recitals 19a through 20d), to be distinguished from an obligation to ensure accessibility, which had previously been deleted.
2. Member States *competences in the areas of education*, including with respect to the setting of fees as well as age limits, have been delineated more explicitly (Article 3(2)(d) and Recital 17g).
3. The text was further clarified by referring to Member States' wide discretion in providing, commissioning and organising services of general interest, confirming that variations in the provision of *services of general interest* between regional or local levels as such do not constitute discrimination (Article 3(5a) and Recital 11).
4. The text was amended by providing for the possibility for Member States to address the *demographic challenge* of declining birth rates (Article 3(4a) and Recital 19-a).

⁵ Meetings took place on 20 February, 14 March and 9 April.

⁶ 18 April 2024.

⁷ Docs. 5552/24, 7220/24 and 7549/24.

5. The Presidency has furthermore clarified the conditions for *differences of treatment on the grounds of age or disability* (Articles 2(5a) and 2(6), as well as and Recitals 14-a and 14a).
6. In the same vein, the Presidency has clarified the provisions concerning differences *in treatment based on a person's age or health condition specifically in the area of financial services* (Article 2(7a)-(7) and Recital 15ab).
7. The *transposition period* has been reduced to 3 years compared to the previous draft (Article 15(2)), in the light of the extended period of time that has already elapsed since the proposal first saw the light of day, and the relevant provision was reworded in line with existing practice. The *reporting obligation period*, on the other hand, has been extended to 4 years.
8. Recital 9 has been reworded so as to explicitly confirm that a careful assessment had been carried out regarding the principles of subsidiarity and proportionality.
9. A number of changes have also been made to *update* the text and to improve its internal consistency and clarity.

In Coreper on 18 April, a very large majority of delegations supported the Presidency's text and the aim of reaching a general approach in the Council on 7 May 2024. Certain delegations requested more time in order to complete their internal decision-making processes and so as to have the opportunity to send any outstanding comments. However, no comments were received by the Presidency.

B. PRESIDENCY COMPROMISE PROPOSAL

Given that there were no additional comments, the Presidency has made no changes to the compromise proposal as discussed in Coreper on 18 April 2024.⁸

III. CONCLUSION

The Permanent Representatives Committee is invited to:

- examine and confirm the Presidency's compromise text as set out in the Annex to this note; and
 - forward it to the Council (EPSCO) in order to reach a general approach at its session on 7 May 2024.
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⁸ Doc. 8616/24.

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 Commission⁹,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament¹⁰,

Acting in accordance with a special legislative procedure,

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

Whereas:

- (1) In accordance with Article 2 of the Treaty on European Union (TEU), the 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 ('the Charter of Fundamental Rights'). 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.
- (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 United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 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 reasonable accommodation, respects the fundamental principles recognised in the UNCRPD and in the United Nations Convention concerning the Protection of the World Cultural and Natural Heritage.

- (2a) As of 23 December 2010, the Union is a party to the UNCRPD. The provisions of the UNCRPD form, in accordance with Article 216(2) of the Treaty on the Functioning of the European Union (TFEU), an integral part of the European Union legal order and Union legislation should therefore be interpreted in a manner that is consistent with the UNCRPD. In particular, the UNCRPD includes, in its Article 2, the denial of reasonable accommodation in its definition of discrimination and, in its Article 9, obligations on accessibility. In its Communication 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030', the Commission highlights the persistent inequalities and discrimination against persons with disabilities outside the field of employment, such as social protection, healthcare, education, and access to goods and services, including housing, and the need for further progress in EU legislation on these matters. This Directive contributes to address those issues, along with other actions taken at Union and Member States level in the implementation of the UNCRPD.
- (3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights. Article 10 of the Charter of Fundamental Rights 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)
- (5) The European Council, in Brussels on 14 December 2007, invited Member States in its Conclusions to strengthen efforts to prevent and combat discrimination inside and outside the labour market.

- (5a) In order to build a Union of Equality, the Commission adopted key strategies and action plans¹¹ in 2020 and 2021 which promote the principle of equal treatment and contribute to the fight against discrimination through a combination of targeted measures and mainstreaming equality in all policy areas, while also referring to the importance of an intersectional approach.
- (5ab) On 4 March 2022, the Council adopted conclusions on combating racism and antisemitism to address the alarming rise in racist and antisemitic incidents in EU Member States¹². In addition, the Commission’s Joint Communication to the European Parliament and the Council “No place for hate: a Europe united against hatred” aims to step up EU efforts to fight hatred in all its forms, by reinforcing action across a variety of policies. In particular the Communication is a call for action to ensure that Europe is a place where the Union’s founding values are enjoyed by everyone. Equality and non-discrimination are among such founding values and fundamental rights, as enshrined in Article 2 of the Treaty and in the EU Charter on Fundamental Rights. They are the foundation for ensuring that all people, whoever they are, can live together without fear. The Union is committed to building a society in which everyone enjoys an equal opportunity to flourish and is free to express their individuality. Fostering such a society is a powerful way to protect against hatred and intolerance¹³.

¹¹ Gender Equality Strategy 2020-2025, EU Anti-Racism Action Plan 2020-2025, Roma Strategic Framework for equality, inclusion and participation 2020-2030, LGBTIQ Equality Strategy 2020-2025, and Strategy for Rights of Persons with disabilities 2021-2030. In addition, the Commission adopted a Strategy on combating antisemitism and fostering Jewish life.

¹² pdf (europa.eu)

¹³ JOIN (2023) 51 final, 6.12.2023

- (5ac) In response to the European Council Conclusions of June 2023¹⁴, the Commission Communication ‘Demographic change in Europe: a toolbox for action’ of 11 October 2023¹⁵, sets out a comprehensive approach to demographic change, presenting a set of policy tools available to Member States and calling on Member States to have equality, non-discrimination and intergenerational fairness at the heart of policy choices.
- (6) The European Parliament has called for the extension of the protection against discrimination in European Union law in its Resolution of 20 May 2008, in its Resolution of 8 September 2015, and its Resolution of 19 April 2023.
- (6a) Discrimination has a serious impact not only on individuals but also on society including on gross domestic product, tax revenue and social cohesion. The protection against discrimination as provided for in this Directive can contribute to a better health status, educational outcomes and, for all these reasons, to an increase in the Member States' gross domestic product.

¹⁴ European Council Conclusions 29-30 June 2023.

¹⁵ COM (2023)577 final, 11.10.2023.

- (7) The European Commission has affirmed in its Communication ‘Renewed social agenda: Opportunities, access and solidarity in 21st century Europe’ 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. The European Commission has further underscored and renewed its commitment to combat discrimination and to promote equal opportunities in its Communication 'Non-discrimination and equal opportunities: A renewed commitment'. In 2017 the European Parliament, the Council, and the European Commission proclaimed the European Pillar of Social Rights which includes as its third principle the right of every person, regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public¹⁶. In its action plan implementing the European Pillar of Social Rights, the Commission confirms that equal treatment and access require an effective, properly enforced and up-to-date legal framework, referring in particular to this Directive¹⁷.

¹⁶ Interinstitutional Proclamation on the European Pillar of Social Rights (2017/C 428/09) (OJ C 428/10, 13.12.2017).

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Pillar of Social Rights Action Plan* (COM/2021/102 final), 4.3.2021.

(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 of the TFEU, and one legal instrument based on Article 19 of the TFEU. The first three legal instruments are Directive 2000/43/EC¹⁸, Directive 2000/78/EC¹⁹ and Directive 2004/113/EC²⁰, which aim to prevent and combat discrimination on grounds of sex, racial or 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 vary between the different Member States. Directive 2000/43/EC protects persons against discrimination on the grounds of their racial or ethnic origin in the access to and supply of goods and services, social protection as well as education, whereas Directive 2004/113/EC offers protection against discrimination on the ground of sex in the access to and supply of goods and services, with the exclusion of the content of media and advertising as well as education. Besides these three legal instruments, Directive 2024/XXX (*Directive adopted on the basis of COM/2022/689 final*) establishes and sets standards for equality bodies with the aim of ensuring proper enforcement of these and other Directives in the field of equal treatment.

¹⁸ 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).

¹⁹ 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).

²⁰ 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) The purpose of this Directive is, therefore, based on a careful assessment in light of the principles of subsidiarity and proportionality, in respect of the grounds it covers, to extend the degree and the form of protections against discrimination beyond the areas of employment into the specific areas set out in this Directive. Thus, Union legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, namely 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) This Directive should be without prejudice to the competences of the Member States, in particular in the areas of education, social security and health care. It should also be without prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general interest, which may include varying levels of services between national, regional or local levels, depending, for example, on the division of competences within Member States and on regional and local circumstances. Differences of treatment resulting from regional or local variations in the level of such services thus do not constitute discrimination within the meaning of this Directive.
- (12) Discrimination is understood to include direct discrimination, indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation to persons with disabilities. Discrimination is also understood to occur based on multiple grounds.

- (12a) As can be derived from the case-law of the Court of Justice of the European Union, discrimination occurs, inter alia, when a person is treated less favourably, 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. Discrimination also occurs when a person is treated less favourably or harassed because of a religion or belief, disability, age or sexual orientation which that person is simply assumed to have.²¹
- (12ab) It can be important to take into account the specific situations of disadvantage resulting from multiple discrimination, including intersectional discrimination, in order to reflect the complex reality of discrimination cases as well as in order to enhance the protection of its victims. Intersectional discrimination is understood as discrimination, in any of its forms, occurring on the basis of any combination of two or more of the following grounds, including where taken separately the situation would not give rise to discrimination against the person concerned: religion or belief, disability, age or sexual orientation, as well as a combination of one or more of these grounds and any of the grounds protected under Directive 2000/43/EC, Directive 2004/113/EC or Directive 79/7/EEC.
- (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.

²¹ Judgments of the Court of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480 and of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415.

(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 discrimination on multiple grounds.

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.

(14-a) Differences of treatment on grounds of age may be permitted under certain circumstances if they are justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary. This may include restricted access to social protection for persons belonging to specific age groups or differentiation of such protection due to different needs of different age groups.

(15ab) The situation of persons in different age groups may not be comparable for the purpose of assessing the risk in the context of certain insurance, banking and other financial services. The same applies to the situation of persons with specific health conditions, which may be a determining factor in the risk assessment conducted in the context of such services. This Directive should therefore lay down conditions under which differences in treatment within its scope are possible if they are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

- (14a) Preferential treatment in connection with disability or age may be permitted as a form of differential treatment under certain circumstances if it is 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 inclusion of persons with disabilities or 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 with disabilities or persons belonging to specific age groups, should be appropriate and necessary. Measures relating to disability or age that offer more favourable conditions to persons with disabilities or of a certain age than are available to others, such as free or reduced tariffs for the use of public transport, museums, or sport facilities, are presumed to be compatible with the principle of non-discrimination and do not constitute discrimination on the ground of disability or age.
- (15)
- (15b) It is important that customers and relevant judicial and complaints bodies can be informed, upon request, about the reasons explaining differences of treatment based on age or health condition in financial services in individual cases. Without financial service providers being obliged to disclose commercially sensitive data, it is important that the information provided is useful and understandable to a general public and that it explains differences in individual risk for the service in question.
- (16) All individuals enjoy the freedom of 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 are carried out in the context of private or family life.

- (17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms in line with the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the protection of private and family life, the rights of the elderly, freedom of religion, freedom of association, freedom of expression, freedom of the press, freedom of information, freedom to contract and the freedom to conduct a business. This Directive should not prejudice measures laid down in national law which, in a democratic society, are appropriate and necessary for achieving a legitimate aim, including the maintenance of public security or of public order, the prevention of crime, the protection of health, and the protection of the rights and freedoms of others.
- (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, funding 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 all rights, entitlements and benefits which are derived from general or special social security, social assistance and healthcare schemes, and which are statutory or provided either directly by the State, or by private parties. 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 883/2004²² 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.
- (17f) The 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 arrangements 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, including age limits, as well as for the adjustment of those conditions in order to ensure the sustainability of public finances.
- (17g) The 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 education to persons with special educational needs, 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 in public and private educational institutions, including, for example, the setting of fees as well as age limits for schools, courses, or scholarships, student grants and loans.

²² Regulation (EC) No 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).

- (17h) This Directive does not apply to matters covered by family law including marital status and adoption and to laws on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.
- (18)
- (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 it equally respects the status of philosophical and non-confessional organisations.
- (19-a) This Directive should be without prejudice to targeted national measures granting non-discriminatory preferential treatment as regards certain social benefits where and as long as this is necessary to address the demographic challenge of declining birth rates as evidenced by accurate data demonstrating such a decline in birth rates. Such measures may include, for instance, financial or housing support for families.
- (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. The definition of "long term" in relation to the concept of disability should be seen in the light of the case law of the Court of Justice of the European Union, in particular its judgement in Case C-395/15.

(19ab) The principle of accessibility is established in the United Nations Convention on the Rights of Persons with Disabilities. The Convention provides in this respect that to enable persons with disabilities to live independently and participate fully in all aspects of life, Member States as State Parties are to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public both in urban and in rural areas.

(19b)

(19c)

(19ca) In order to promote equality and eliminate discrimination, Member States should, pursuant to this Directive and in line with the UNCRPD, take all appropriate steps to ensure that reasonable accommodation is provided. The obligation to offer reasonable accommodation, provided that it does not give rise to any disproportionate burden, is already established in Directive 2000/78/EC and in the UNCRPD. In line with these instruments, as interpreted by the Court of Justice of the European Union, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. It is usually provided on a case-by-case basis to a person in the form of modifications and/or support in specific circumstances, in order to allow that person to have access to non-accessible situations or environments or to exercise a right. Reasonable accommodation can be temporary, for example, a removable ramp for small steps, computer screen-reading software, a sign language interpreter for a specific event, adjusting curricula, learning materials and teaching strategies, or enabling access to support personnel.

(19cb)

(19cc) The measures of reasonable accommodation are only required to the extent that they do not impose a disproportionate burden. Exemptions from one or more requirements of equal treatment due to the disproportionate burden that they impose should not go beyond what is strictly necessary in order to limit that burden with respect to each individual case. Measures that would impose a disproportionate burden should be understood as measures that would impose an additional excessive organisational or financial burden, while taking into account the likely resulting benefit for the persons with disabilities concerned. Only legitimate reasons should be taken into account in any assessment.

(19d)

(20)

(20-a) 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 or services, 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.

- (20aa) However, 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.
- (20-b) Member States are encouraged to develop and implement innovative measures to ensure reasonable accommodation.
- (20ab)
- (20b) In assessing whether measures to ensure 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) In order to allow for sufficient time to comply with the requirements to ensure reasonable accommodation for persons with disabilities set out in this Directive, it is appropriate that a longer transposition period for such measures is provided.

(20d) This Directive is without prejudice to Union legal acts setting out specifications to ensure accessibility or reasonable accommodation for persons with disabilities. Such specifications are provided for, *inter alia*, in Commission Regulation (EU) No 1300/2014²³, Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁴, and Regulation (EC) No 1107/2006 of the European Parliament and of the Council²⁵, and Regulation (EU) 2021/782²⁶. Furthermore, Directive (EU) 2019/882 lays down accessibility requirements for persons with disabilities in regard to certain products and services and Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies lays down accessibility requirements of the websites and mobile applications of public sector bodies, thereby enabling those websites and mobile applications to be more accessible to users, in particular to persons with disabilities. Other legal requirements are established, *inter alia*, in Regulation (EU) No 1303/2013 of the European Parliament and of the Council and in Directive 2014/24/EU of the European Parliament and of the Council. Where Union legal acts providing for detailed standards or specifications on reasonable accommodation in respect of particular goods or services are complied with, the requirements of this Directive with respect to reasonable accommodation should be deemed to be complied with.

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- ²³ 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 (OJ L 356, 12.12.2014, p. 110).
- ²⁴ 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 (OJ L 55, 28.2.2011, p. 1).
- ²⁵ 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).
- ²⁶ Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on passengers' rights and obligations (recast), OJ L172, 17.5.2021, p. 1.

- (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 grounds of discrimination. Such measures may include support of organisations of and for 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 inclusion, 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) In line with the existing EU acquis on equality and non-discrimination, the rules on the burden of proof should 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 should shift 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/EC²⁷ shows that protection against discrimination on the grounds covered by this Directive would be strengthened by extending the mandate of the existing equality body or bodies in each Member State to the matters covered by this Directive. Council Directive (EU) 2024/XXX (*Directive adopted on the basis of COM/2022/689 final*) establishes and sets minimum standards for the functioning of equality bodies, in particular in regard to their effectiveness and independence. Council Directive (EU) 2024/xxx should therefore also apply to the matters covered by this Directive and be amended to this end. In addition, the Commission Recommendation on Standards for Equality Bodies of 22 June 2018 may be used by the Member States as guidance to help improve the effectiveness and independence of these bodies.

²⁷ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

(28) Member States should promote the collection of data on equal treatment and discrimination, with the aim notably of monitoring and evaluating the effectiveness of the measures taken to comply with this Directive. For this purpose, Member States may for instance set baselines or measurable targets, or engage in the collection of qualitative and/or quantitative data. For the purpose of this Directive, data on equal treatment and discrimination should be understood as including any information that is useful and relevant for the purpose of describing and analysing the state of equality, in the sense that it provides indications of the existence and/or extent of discrimination and/or equality. The data collected may include baseline data, such as demographic and socio-economic data, data on material and experienced inequalities, or data which allows for the assessment of current policies or data based on human rights indicators. Data should be collected in accordance with national legislation and practice and in accordance with the applicable Union law, in particular Regulation (EU) 2016/679 (the General Data Protection Regulation). Data on equal treatment and non-discrimination can constitute special categories of personal data within the meaning of Article 9 of Regulation (EU) 2016/679. When transposing this Directive, the Member States should ensure that the national legislation include appropriate safeguards applicable to the processing of personal data, in particular special categories of personal data. The Member States should also ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Directive.

- (29) Member States should provide for effective, proportionate and dissuasive penalties in the event of breaches of national provisions adopted pursuant to this Directive. Penalties can include administrative and financial sanctions such as fines or the payment of compensation, as well as other types of sanctions.
- (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 of 13 April 2016 on Better Law-Making²⁸, 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:

²⁸ OJ L 123, 12.5.2016, p. 1.

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 this Directive.

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.
2. For the purposes of this Directive, "discrimination" means:
 - (a) direct discrimination on one of the grounds referred to in Article 1, that 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;
 - (b) indirect discrimination on one of the grounds referred to in Article 1, that shall be taken to occur where an apparently neutral provision, criterion or practice, would put persons of a certain religion or belief, disability, age, or 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 related to one of the grounds referred to in Article 1, that shall be taken to occur where unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States;
- (d)
- (d-b) instruction to discriminate against persons, on one of the grounds referred to in Article 1;
- (e) denial of reasonable accommodation for persons with disabilities, that shall be taken to occur where there is a failure to comply with Article 4a of this Directive;
3. Discrimination under this Directive includes discrimination based on a combination of the grounds of discrimination set out in Article 1, as well as a combination of one or more of those grounds and any of the grounds of discrimination protected under Directive 2000/43/EC, Directive 2004/113/EC, or Directive 79/7/EEC.
- 4.
- 5.
- 5a. Differences of treatment on grounds of age may be permitted if they are justified by a legitimate aim, including legitimate social and health policy objectives, and if the means of achieving that aim are appropriate and necessary.

- 7a. Differences in individuals' premiums, insurance benefits, prices, charges or fees in the provision of insurance, banking and other financial services based on age shall not constitute age discrimination in case such differences are objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This shall be the case only if the use of age is a determining factor in the assessment of risk for the service in question and only to the extent the assessment of the risks is based on accurate, relevant and up-to-date actuarial or statistical data or—if this data is not available or is insufficient—based on relevant and reliable medical knowledge and the assessment of the risks takes account of the individual situation of the applicant for the insurance, banking or other financial service.
7. Differences in individuals' premiums, insurance benefits, prices, charges or fees in the provision of insurance, banking and other financial services based on a health condition shall not constitute discrimination within the meaning of this Directive in case such differences are objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This shall be the case only if the use of health condition is a determining factor in the assessment of risk for the service in question and shall be the case only to the extent the assessment of risks is based on accurate, relevant and up-to-date actuarial or statistical data or—if this data is not available or is insufficient—based on relevant and reliable medical knowledge and the assessment of the risks takes account of the individual situation of the applicant for the insurance, banking or other financial service.
6. Preferential treatment based on age or disability may be permitted if it is objectively justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. Preferential treatment to ensure inclusion, integration or participation in society on an equal basis with others may take the form of free access, reduced tariffs or preferential access and may be permitted under this Directive as a justified, appropriate and necessary treatment.

8. This Directive shall be without prejudice to measures laid down in national law which, in a democratic society, are appropriate and necessary for the maintenance of public security or 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 fundamental rights and freedoms of others as protected under the Charter of Fundamental Rights, including the protection of private and family life, the rights of the elderly, the right to freedom of religion, freedom of association, freedom of expression, freedom of the press, freedom of information, the freedom to contract and the freedom to conduct a business.

Article 3

Scope

1. Within the limits of the competences conferred upon the European Union and within the limits set out in paragraph 2 and in full respect of the principles of subsidiarity and proportionality, 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, 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 services, including housing, which are available to the public.

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 reproductive rights, nor to related entitlements to social security benefits linked to marital status;
- (b) the organisation and funding of Member States' social protection systems, the setting up and management of such systems and related arrangements 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, including age limits;
- (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, including the setting of fees as well as age limits for schools, courses or scholarships, student grants and loans;
- (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.
- (f) access to and supply of goods and services, including housing, which are offered within the area of private and family life and the transactions carried out in this context.

- 3.
- 3a. This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols and does not limit the 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 of churches and other organisations based on religion or belief and does not limit the competence of Member States in these matters as recognised by Article 17 of the Treaty on the Functioning of the European Union.
- 4a. This Directive is without prejudice to targeted national measures granting non-discriminatory preferential treatment as regards certain social benefits where and as long as this is necessary to address the demographic challenge of declining birth rates as evidenced by accurate data demonstrating such a decline in birth rates.
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.
- 5a. Differences of treatment resulting from regional or local variations in the level of services of general interest do not constitute discrimination within the meaning of this Directive.

Article 4

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 ensure the person with a disability the enjoyment or exercise on an equal basis with others of access to social protection measure, access to education, and access to and supply of goods and services within the scope of this Directive.
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 housing provider shall accept such alterations if they are funded otherwise and do not impose a disproportionate burden.
4. The provisions of this Article shall be without prejudice to the provisions of Union law covering accessibility or reasonable accommodation in respect of particular goods or services.

5. For the purposes of assessing whether measures necessary to comply with this Article would impose a disproportionate burden, account shall be taken, in particular, of:
- a) the size, resources, nature, and net turnover and profit of the duty bearer;
 - aa) the negative impact on the person with a disability affected by the fact that the appropriate and necessary measure is not provided;
 - b) the estimated cost of the appropriate and necessary measure;
 - 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;
 - ca) the amount of public funding available to the duty bearer for taking the appropriate and necessary measure;
 - d)
 - e) the historical, cultural, artistic or architectural value of the movable or immovable property in question; and
 - f) the safety and practicability of the measures in question.

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

2.

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 where they deem it appropriate alternative dispute resolution procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.
4. This provision is without prejudice to the application of Article 10 of Council Directive (EU) 2024/xxx (*Directive adopted on the basis of COM/2022/689 final*).

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 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

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

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties 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

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 14b
Amendments to Directive (EU) 2024/xxx
(Directive adopted on the basis of COM/2022/689 final)

Directive (EU) 2024/XX (*Directive adopted on the basis of COM/2022/689 final*) is amended as follows:

- (1) In Article 1(1) and (2), Article 4, Article 5(1) and (2), Article 8(1), Article 10(1), Article 15 and Article 16(2), (4) and (5), “Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC” is replaced by “Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC and XX/XX (*Directive adopted on the basis of COM/2008/0426 final*)”.
- (2) In Article 6(1), “Article 4 of Directive 79/7/EEC, Article 2 of Directive 2000/43/EC, Article 2 of Directive 2000/78/EC, and Article 4 of Directive 2004/113/EC” is replaced by “Article 4 of Directive 79/7/EEC, Article 2 of Directive 2000/43/EC, Article 2 of Directive 2000/78/EC, Article 4 of Directive 2004/113/EC and Article 2 of Directive XX/XX (*Directive adopted on the basis of COM/2008/0426 final*)”.

Article 15
Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [3 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. With respect to Article 4a, Member States shall be entitled to benefit from an extension of the transposition period referred to in paragraph 1 by up to 2 years. For that purpose, Member States shall notify the Commission of such decision and communicate the relevant transposition date by [3 years after adoption].
- 3.
4. Member States shall promote the collection of data on equality treatment and non-discrimination. Data shall be collected in accordance with national legislation and practice and in accordance with the applicable Union law, in particular Regulation (EU) 2016/679 (the General Data Protection Regulation).

Article 16

Report

1. Member States shall communicate to the Commission, by [four 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.
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 as laid down in Article 8 of the Treaty on the Functioning of the European Union, 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 14b shall apply from ... [*end of the transposition period of this Directive*].

Article 18

Addressees

This Directive is addressed to the Member States.
