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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

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

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Delegations will find attached Commission document SEC(2008) 2180.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.7.2008  
SEC(2008) 2180

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

**COUNCIL DIRECTIVE**

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

**Impact Assessment**

{COM(2008) 426 final}  
{SEC(2008) 2181}

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## 1. EXECUTIVE SUMMARY

The right to equal treatment is a general principle of Community law<sup>1</sup>. Article 13 of the Treaty specifically allows action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. Yet discrimination still exists in many areas, such as access to goods and services, housing, education, social services and health care.

The present EC legal framework<sup>2</sup> provides much more extensive protection from discrimination on grounds of race or ethnic origin than from discrimination on grounds of religion or belief, disability, age or sexual orientation. The current Commission committed itself early in its mandate to examining the case for extending the legal framework based on Article 13 EC, starting with the 2004 Green Paper 'Equality and non-discrimination in an Enlarged European Union' and continuing through to its 2008 legislative work programme<sup>3</sup>.

- This Impact Assessment Report shows evidence of discrimination outside the labour market on grounds of religion or belief, disability, age and sexual orientation, based on a study commissioned by the Commission and evidence gathered during an extensive consultation process. A substantial number of people in the European Union suffer from or are at risk of discrimination, which can limit greatly their ability to participate fully in education or work, and can lead to isolation, poverty and welfare dependency. Some of these effects can be quantified, some have a clear financial costs, others are equally serious but subjective. The legal protection people can expect varies according to the grounds for discrimination concerned, to whether it takes place in employment or in other areas of life, or to where they live.

The table below summarises the existing legal framework at European level:

Grounds \ Field	Race	Religion	Disability	Age	Sexual orientation	Sex
Employment & vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes + Equality body
Education	Yes + Equality body	No	No	No	No	No
Goods and services	Yes + Equality body	No	No	No	No	Yes + Equality body
Social protection	Yes + Equality body	No	No	No	No	Yes + Equality body

This difference in protection from discrimination at EU and national level has practical consequences: it means that the incidences of discrimination identified in this Report are not addressed in a coherent manner. It means that victims of discrimination have unequal means of redress depending on their Member State. It also means that differences in protection

<sup>1</sup> Case 203/86 Spain v Council, (paragraph 25, and Case C-15/95 EARL de Kerlast, paragraph 35), Case C-144/04 Mangold (paragraph 75).

<sup>2</sup> Directives 2000/43/EC, 2000/78/EC and 2004/113/EC.

<sup>3</sup> COM (2007) 640.

afforded by the Member States may affect people's mobility as well as the cross-border marketing of goods and services. How should these issues be tackled?

The objectives of any action would be to step up the protection of individuals from discrimination, achieve greater social inclusion and full participation by all groups in society and the economy, and provide a clear legal framework across the Member States that can stimulate cross-border trade and unfetter movement.

A number of possibilities were looked at, and then narrowed down to a list of six options to be examined more fully:

- no new action at EU level
- self-regulation dealing with insurance and/or financial services
- a recommendation dealing specifically with the competences of the equality bodies and multiple discrimination
- a general recommendation encouraging the Member States to increase the level of protection against discrimination outside employment
- a directive prohibiting discrimination based on disability
- a directive prohibiting discrimination based on age, disability, sexual orientation and religion or belief

Each option is analysed to assess the extent to which it can meet the objectives. As far as possible, figures are provided to illustrate costs and benefits to individuals, providers of goods and services, and society as a whole, although it should be pointed out that reliable data on discrimination and the related costs can be difficult to find.

The conclusion is that not acting is not an option: society, individuals and the economy would continue to bear the costs of discrimination. The most effective way to achieve the stated objectives would be new legislation at EU level, since relying solely on national developments may result not only in those differences in the levels of protection being left in place but also in their widening. The experience with the existing Directives was positive and resulted in a much higher level of protection against discrimination in many Member States than was the situation previously, or would have been without the impetus of EU action.

Taking into account the results of the consultation process and the extent of discrimination reported, **the option of a Directive prohibiting discrimination outside the employment sphere based on religion or belief, disability, age or sexual orientation is considered to be the most appropriate response.** Any new legislation would build on the concepts contained in the existing EU non-discrimination legislation. As with those directives, justified exceptions and limitations of scope would be allowed. Member States which already have extensive non-discrimination legislation would need to make only minor, if any, changes.

A new Directive cannot tackle the problem shown by the table above that no Equality Body exists for certain types of discrimination in certain fields, and in addition, the protection of people who suffer from discrimination on more than one ground is unclear. This could be achieved by replacing or amending the existing legislation. However, that would bring legal uncertainty to economic operators and public authorities who are now implementing the

legislation as well as overburdening the EU and the national legislative process and so this approach is not recommended. Rather, new legislation should be coupled with an encouragement from the Commission to Member States to act in these areas as well as the launch of a dialogue with the insurance and banking sectors about perceived discrimination which could possibly lead to self-regulation.

## 2. BACKGROUND AND INSTITUTIONAL CONTEXT

In 2004, five years after the Amsterdam Treaty came into force, the Commission issued a Green Paper<sup>4</sup> to take stock of achievements in the area of non-discrimination policy and to gather input from a broad range of stakeholders on the way ahead. In 2005 the Commission adopted a framework strategy on non-discrimination and equal opportunities for all<sup>5</sup> on the basis of the feedback received.

The strategy established a set of priorities to strengthen action against discrimination, including support for effective implementation of the existing legislation, such as through training for lawyers and judges; increasing general awareness of legal rights, for example by designating 2007 as the European Year of Equal Opportunities for All; and assessing the need for further action to supplement the existing legal framework.

On this last point, the Commission acknowledged there was a strong call for action to address differences in the level and scope of protection from discrimination on the different grounds. While it concluded that the time was not yet ripe for proposing new legislation, the Commission undertook to carry out a study into the relevance and feasibility of new measures to supplement the current legal framework.

That study<sup>6</sup>, completed in late 2006, looked both at existing national legislative measures in tackling discrimination outside employment and at their impact. It showed that, on the one hand, most countries provide legal protection in some form that goes beyond the current EC requirements in most of the areas examined, and on the other hand, there was a good deal of variety between countries as to the degree and nature of the protection. It also showed that very few countries carried out ex-ante impact assessments on non-discrimination legislation.

On the basis of that information and in line with its earlier commitment to the European Parliament, the Commission announced its intention in the 2008 Annual Policy Strategy to 'propose new initiatives designed to prevent and combat discrimination outside the labour market based on gender, religion, belief, disability, age or sexual orientation'. This was confirmed in the Commission's legislative work programme<sup>7</sup> adopted on 23 October 2007, and a road map<sup>8</sup> was prepared for this priority initiative<sup>9</sup>. The Parliament has repeatedly called on the Commission to present a proposal to complete the non-discrimination legislative package, most recently in May 2008<sup>10</sup>.

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<sup>4</sup> COM (2004) 379 final 'Equality and non-discrimination in an Enlarged European Union'.

<sup>5</sup> COM (2005) 224 final.

<sup>6</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/mapstrand1\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf)

<sup>7</sup> COM(2007) 640

<sup>8</sup> [http://ec.europa.eu/atwork/programmes/docs/clwp2008\\_roadmap\\_priority\\_initiatives.pdf](http://ec.europa.eu/atwork/programmes/docs/clwp2008_roadmap_priority_initiatives.pdf)

<sup>9</sup> Work Programme reference: 2008/EMPL/017.

<sup>10</sup> P6\_TA(2008)0212

For its part, the Employment and Social Affairs Council meeting in December 2007 adopted a resolution on the follow-up to the European Year and noted the calls from the Parliament and civil society to extend legal protection from discrimination to areas beyond employment and occupation; in this document, the Council of the European Union also invited Member States and the European Commission, in accordance with their respective competencies, to strengthen efforts to prevent and combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation, inside and outside the labour market<sup>11</sup>;

At its February 2008 meeting, the Council<sup>12</sup> invited the Commission to step up efforts to prevent and combat discrimination based on disability both on the labour market and outside it. It also called an examination of any gaps that may exist in the current Community legislative framework of protection against discrimination, in particular on the grounds of disability, and for appropriate and targeted responses to be considered.

### 3. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

#### 3.1. Organisation and timing

In preparing this initiative, the Employment, Social Affairs and Equal Opportunities DG has sought to associate all stakeholders with a potential interest. Within the Commission, an Interservice Group was established<sup>13</sup> following the February 2007 agreement within the Group of Commissioners on Fundamental Rights, Anti-Discrimination and Equal Opportunities to launch an impact assessment. Bilateral meetings were also held with the departments most closely concerned.

With regard to external stakeholders, the Commission has combined targeted consultation with an open public consultation in line with the timetable set out below.

June 2007	Member States informed of public consultation and invited to provide updated information on non-discrimination measures
July/August: 2007	European Business Test Panel consultation
July/October 2007	Public on-line consultation
July/October 2007	Consultation of NGOs and social partners
October/December 2007	Consultation of European Network of Equality Bodies (Equinet)
November/December 2007 – February 2008	Consultation of specific sectors (insurance, tourism, hotels)

In parallel, the European Year of Equal Opportunities for All provided many occasions throughout 2007 for the Commission to draw the attention of a broad range of audiences in different Member States to the fact that the Commission was considering new measures and

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:308:0001:0005:EN:PDF>

<sup>12</sup> Resolution of the Council of the European Union and the representatives of the governments of the Member States, meeting within the Council, on the situation of persons with disabilities in the European Union (2008/C 75/01), formally adopted on 17 March 2008

<sup>13</sup> SG, SJ, ECFIN, EAC, JLS, TREN, ESTAT, MARKT and SANCO.



was interested in their views. In addition, the Commission held a conference at the European Parliament in October 2007 with a range of stakeholders on the implementation of existing non-discrimination laws and on evidence of discrimination in access to goods and services and in education and social protection.

### 3.2. External expertise and information gathering

The study commissioned by the Commission in 2005, referred to above on existing national measures going beyond the EU requirements and their impact was received, in 2006. In June 2007 the Commission wrote to the Member States to draw their attention to the study, announcing the public consultation, and asking them to provide further information on measures taken or planned to go beyond the 2000 Directives.

To supplement that information, the Commission commissioned a further study<sup>14</sup> in 2007 from the European Evaluation Policy Consortium. The result, entitled "Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment" (hereinafter "the EPEC study"), looks at the nature and extent of discrimination outside employment in the EU, and the potential (direct and indirect) costs this may have for individuals and society. Annex IV gives more details of the study, its methodology and findings.

In addition, this Report takes account of the reports from the European Network of Independent Experts in the non-discrimination field, and in particular their overview 'Developing Anti-Discrimination Law in Europe'<sup>15</sup>. It also takes into account a specific study prepared for the Commission on 'Tackling Multiple Discrimination: practices, policies and laws'<sup>16</sup>. Also relevant to this Report are the results of a special Eurobarometer survey carried out in February/March 2008 on discrimination and inequality in Europe<sup>17</sup> and a more narrowly focussed Eurobarometer flash survey in February 2008<sup>18</sup>.

#### 3.2.1. Public consultation

A public on-line consultation<sup>19</sup> ran from 4 July to 15 October 2007. There were 5378 responses, four fifths coming from individuals and the remainder from organisations. The main points to note are that:

- 35% of respondents claimed to have suffered discrimination in education, social protection or health care on grounds of age, disability, religion or sexual orientation; and 20% claimed they had experienced discrimination in access to goods, services or housing.

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<sup>14</sup> EPEC, Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment, available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/org/imass\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm)

<sup>15</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#leg](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#leg)

<sup>16</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/multdis\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multdis_en.pdf)

<sup>17</sup> Special Eurobarometer Survey 296 on discrimination in the EU, to be published in July 2008 on the following web pages: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm) and [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

<sup>18</sup> Flash Eurobarometer 232; the full results are available online at: [http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf)

<sup>19</sup> The full results of the consultation can be accessed at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/news/news\\_en.htm#rpc](http://ec.europa.eu/employment_social/fundamental_rights/news/news_en.htm#rpc)

- 69% said that the lack of uniform protection against discrimination would influence their decision to visit or work in another Member State.
- 90% felt that everyone in the European Union should enjoy the same level of protection from discrimination on grounds of age, disability, religion or belief and sexual orientation.
- 91% of respondents agree that more money should be spent on eliminating physical obstacles which make the lives of those who have a disability difficult

### 3.2.2. *Business sector consultation*

A representative cross-section of the business sector was consulted from 11 July to 31 August 2007 via the European Business Test Panel. 512 responses were received<sup>20</sup>. The main points to note are that:

- 63% of those who answered thought it mattered that there were different levels of protection between the Member States from discrimination in access to goods, services and housing.
- 26% thought a difference in the level of protection from discrimination would affect their ability to do business in another Member State.
- 89% thought the EU should legislate to guarantee the same level of protection; and 69% did not believe such new rules would have a financial impact on their firms.

The Commission contacted the European-level organisations representing the business sectors which could be affected by the initiative, in particular CEA (Comité européen d'assurance) for the insurance sector, the EBIC (European banking industry committee) for the banking sector, HOTREC (Confederation of national hotel associations in the EC and EEA), ECTAA (the European Travel Agents and Tour Operators Association), BITS (bureau international du tourisme social) and ETAG (European travel and tourism action) for the tourism and hospitality sectors. The Commission also outlined the initiative to representatives of all Member States' finance ministries at the November 2007 meeting of the European Insurance and Occupational Pensions Committee. A summary of the views received from the specific sectors is given in Annex I.

### 3.2.3. *Civil society organisations*

The main EU-level NGOs active in the field of discrimination were consulted in writing, followed by a round-table meeting on 23 October 2007. In short, all the organisations were in favour of legislative action to supplement the framework for protection under Article 13. There were different views on whether this should involve a single directive or directives covering specific grounds. Most favoured a single directive, while the representatives of people with disabilities and of women advocated respectively a disability-specific directive and a gender-specific directive. A number of NGOs submitted their own draft directives. In parallel, the main EU-level NGO representing people with disabilities presented a petition calling for legislation signed by more than 1.3 million people.

A summary of the NGOs' views is given in Annex I, while their written submissions, which contained evidence of discrimination, are available online.

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<sup>20</sup> The full results are available at: [http://ec.europa.eu/yourvoice/ebtp/consultations/2007\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/2007_en.htm)

### 3.2.4. *Social partners*

Since the legal framework already prohibits discrimination on the labour market, any new proposal will have no impact on the social partners in their employer/employee relationship and no effect on recruitment practices or labour costs. Nonetheless, it was decided to involve the social partners in the consultation, initially at a meeting on 17 April 2007. At that and subsequent meetings, the business organisations were encouraged to consider any sectoral impact of a new initiative. A written consultation of the social partners was followed by a round-table meeting on 23 October 2007.

The trade unions were in favour of a new directive prohibiting discrimination outside the labour market on grounds of age, disability, religion or sexual orientation, and pointed out that discrimination outside the labour market affected their members' ability to work (owing to a lack of accessible transport for disabled workers, problems in finding housing close to work, unaffordable insurance for older workers etc.).

The business representatives were against new legislation in principle, which they saw as increasing red tape and costs. BusinessEurope took the view that there is no evidence of discrimination on any of the grounds covered by Article 13 of the Treaty against which people have no legal protection. The public-sector representatives and UEAPME<sup>21</sup>, however, acknowledged that there was discrimination in access to goods and services but did not think that binding legislation was necessarily the best way to tackle it.

A summary of the social partners' views is given in Annex I and their written submissions are available on line.

### 3.2.5. *Equality bodies*

Equinet<sup>22</sup>, the European network of specialised equality bodies, brings together the equality bodies of 24 Member States for the exchange of legal expertise, enforcement strategies, training and good practice. In response to the Commission's consultation, Equinet provided an opinion in January 2008<sup>23</sup>. As well as setting out the areas where they believe discrimination to be most widespread, they were in favour of new legislation, which should require the Member States to promote equality and mainstream equality positively in all policy-making, and to prohibit multiple discrimination explicitly. The Equality and Human Rights Commission of Great Britain also sent a separate submission, in which they gave evidence of discrimination and explained why they were in favour of new legislation at European level.

### 3.2.6. *Consultation of the Impact Assessment Board*

The Impact Assessment Board's observations have been taken into account, notably by:

- Providing more information on the scope and effect of the UN Convention on the Rights of Persons with Disabilities and the EU Charter of Fundamental Rights as part of the baseline scenario;

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<sup>21</sup> Union Européenne de l'artisanat et des petites et moyennes entreprises

<sup>22</sup> <http://www.equineteurope.org>

<sup>23</sup> <http://www.equineteurope.org/publications/2698.html>

- More detailed presentation of the concept of ‘reasonable accommodation’, including more information on the costs, as well as practical examples, and information on mitigating factors;
- Providing more information on the cross border aspects of the problem, with examples;
- Emphasising the added value of EU action by pointing to the positive effect of a coherent implementation of parts at least of the UN Convention, as well as the positive effect of the transposition of the previous directives in improving the level of protection against discrimination;
- Making clearer the limits of EC competence and the areas that a directive could not cover, such as the organisation and content of education, questions of marital status and family law;
- Making clearer the transposition aspects of a new directive (concepts and deadlines) for the Member States;
- Clarifying for each option the impact on the baseline scenario.

#### 4. PROBLEM DEFINITION

Before looking in turn at the various types of discrimination, the population affected, the legal context and foreseeable developments if no new action is taken, a word is needed on the availability of data in the field of discrimination.

Policies and practices in all areas of life, including political, administrative and business life, should be based on objective and reliable data. Data and statistics are also essential to individuals seeking redress, particularly in the area of indirect discrimination<sup>24</sup>. Yet collecting data on certain grounds of discrimination (for example on grounds of race or ethnic origin, disability, religion or belief, and sexual orientation) remains an extremely sensitive issue, and is not undertaken systematically by the Member States. The Commission has taken a number of initiatives to address this problem, in particular by co-financing the MERA<sup>25</sup> project led by the Finnish Ministry of Labour, which resulted in the drafting and publication in February 2007 of a European handbook on equality data which seeks to improve the national compilation of equality data.<sup>26</sup> Similarly, although comprehensive information on the impact and cost of discrimination is not readily available, the EPEC study carried out for the Commission made a first attempt to assess it.

In the face of the lack of reliable data on discrimination the decision was therefore taken to look not just at reported instances of discrimination, but also at perceptions of discrimination (see the above mentioned Eurobarometer surveys that were commissioned in 2007 and conducted in early 2008).

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<sup>24</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/hb07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf)

<sup>25</sup> Making Equality a Reality with Adequate Data

<sup>26</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#stud](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud)

#### 4.1. An outline of the problem

The right to equal treatment is a general principle of Community law, and Article 13 EC gives power to adopt measures to prevent and combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all areas within its competence.

However, the existence of the Treaty article does not, in itself, provide a basis for citizens to assert their right not to be subject to discrimination. Enacting legislation is necessary to make those rights enforceable. While legislation banning discrimination does not automatically eliminate discrimination, it does provide the victims of discrimination with the possibility of redress and it discourages discriminatory behaviour. At present, legal protection from discrimination outside employment only covers sex and racial or ethnic origin.

Unfortunately, discrimination on the other four grounds persists. A major EU-wide survey carried out in early 2008<sup>27</sup> showed that many Europeans believed that discrimination was widespread, in particular on grounds of sexual orientation (51%) and disability (45%), age (42%) and religion (42%). In terms of areas beyond the labour market, a January 2008 survey<sup>28</sup> found that discrimination was *perceived* to be most widespread in the housing area, but it was also significant in education on certain grounds. As for services, 40% felt people buying insurance policies were likely to face discrimination because of their age and as many felt the same regarding disability. When asked whether they or a family member had *experienced* discrimination<sup>29</sup>, 16% of respondents said they had on grounds of their age, or a combination of factors, 14% because of disability, 11% on grounds of religion and 8 % because of sexual orientation.

Although some evidence exists on the extent of discrimination in the different Member States, as explained in section 9 below, caution must be exercised when looking at such figures. A large number of complaints can mean that there is a lot of discrimination, or that the Member State in question has a well functioning and user friendly complaints mechanism, or that people are more aware of their rights. It should also be borne in mind that people complain more readily about some types of discrimination than others. For example, the effect of losing a job is so great that people are much more likely to challenge a discriminatory dismissal in court than a case of discrimination in a shop or restaurant<sup>30</sup>.

As the following sections explain, there is clear evidence of the existence of discrimination and its effects on the well-being and life chances of the individuals concerned. These wider effects can be seen, for example, in the lower educational achievement and employment rates of people with disabilities and the rate of suicides and school drop-outs among young victims of homophobic bullying.

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<sup>27</sup> Special Eurobarometer Survey 296 on discrimination in the EU, to be published in July 2008 on the following web pages: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm) and [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

<sup>28</sup> Flash Eurobarometer 232 ([http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf))

<sup>29</sup> Flash Eurobarometer 232 ([http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf))

<sup>30</sup> For example, the 2007 Initial Regulatory Impact Assessment on proposals to simplify and modernise discrimination law in the UK found that there was an annual average of 2000 employment cases alleging disability discrimination, compared to an estimated 10-20 in the field of access to goods and services.

As a consequence, in addition to being contrary to the fundamental values of the European Union, the persistence of discrimination undermines the Union's social cohesion and its economic interests.

## 4.2. Nature and impact of discrimination

### 4.2.1. Discrimination based on disability

*An example: A user of a wheelchair was twice denied access to a nightclub. The first time the security guard informed him there were no more places in the club, whereas another person who had initially been together with the claimant was later on permitted to enter without any obstacle. Two weeks later the claimant accompanied by a television crew again attempted to enter the club; this time the reason given for the refusal was that it was a private party that night, but yet again another person was later permitted to enter freely.*

*Source: Riga regional court, case No.04386004, C 20203.*

Directive 2000/78/EC does not define 'disability' but the European Court of Justice did so partly in 2006<sup>31</sup>. Depending on the definition of disability used, the percentage of disabled persons in the total population has been estimated at around 16% (covering physical limitations such as reduced mobility, sensory limitations such as hearing and seeing difficulties, and intellectual and mental-health impairments)<sup>32</sup>. According to a Flash Eurobarometer survey conducted in February 2008, 14 % of Europeans have or somebody from their closed-knit circle of family, friends, and acquaintances has personally experienced discrimination on the basis of disability<sup>33</sup>.

As disability often occurs or increases with age, the current demographic trend will result in a higher percentage not only of older people in the population, but also of disabled people. The EPEC study estimates that average of 31% of people over 65 in the EU is disabled.

The same study found four main types of discrimination on grounds of disability: (1) lack of adaptations; (2) lack of capacity-building for staff in contact with disabled people; (3) lack of awareness; and (4) deliberate discrimination.

According to the Special Eurobarometer survey on discrimination in the EU conducted in February/March 2008, 45% of EU citizens believe that discrimination against people with disabilities is very or fairly widespread in their country<sup>34</sup>. When it comes to areas beyond the labour market, 40% of EU citizens believe that discrimination against people with disabilities is very or fairly widespread in the area of housing, 37% of respondents think the same is true when buying insurance policies. 34% consider discrimination against people with disabilities to be widespread in education; 31% think the same is true about buying products or using services, and 15% share the same opinion about the health-care system<sup>35</sup>. 18% of those who replied to the public consultation claimed to have been discriminated against on grounds of

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<sup>31</sup> Case C-13/05 Chacon Navas, para 43: "the concept of "disability" must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"

<sup>32</sup> The EPEC study estimates, on the basis of Eurostat figures on the prevalence of longstanding health problems or disability, that the number of people affected is 84.4 million in EU-27, representing about 17% of the total population.

<sup>33</sup> Flash Eurobarometer 232

<sup>34</sup> Special Eurobarometer Survey 296 on discrimination in the EU

<sup>35</sup> Flash EB 232

disability in access to goods and services, the figure being 20% for education, health care and social services.

The submission from the European Disability Forum highlighted examples of discrimination in access to goods and services including transport, information and communication technologies, mainstream education, and care in the community.

In its submission, Equinet<sup>36</sup> reported that the discriminatory issues dealt with by national equality bodies on disability grounds included access to and participation in educational establishments, access to health services, local authority services, social protection, rented accommodation, banking and financial services, insurance, shops, transport, goods and services, and stereotyping and access to decision-making. Complaints alleging discrimination outside employment on grounds of disability make up the *largest share* of complaints received by Equality Bodies on the grounds covered by this Report, representing on average 9.2% of their workload.

The impact of discrimination on the basis of disability is especially severe in the area of **education**. Member States have different approaches and policies regarding the issue of separate or integrated education of children with disabilities, and Community law does not interfere with these choices. However, most countries already favour the integration of students with disabilities into mainstream education, whether or not they prohibit 'discrimination' in this context, and most countries make provision both for special and integrated education for students with disabilities whether or not these are required by law<sup>37</sup>. It is estimated that about 2% of all pupils in Europe are educated in special schools<sup>38</sup>.

People born with a disability tend to attain lower levels of education than those who acquire a disability later in life, and people with disabilities participate less in education and have lower educational qualifications than those without<sup>39</sup>. In the European Union, some 58% of disabled women had basic schooling only, compared with 38% of the non-disabled and only 10% of disabled women had tertiary-level education, compared with 21% of the non-disabled.

While there is no evidence to attribute this discrepancy solely to discrimination, it seems very likely that discrimination plays a role. The consequence of lower educational attainment is that disabled people will find it much more difficult to reach their full potential on the labour market. The employment rate of disabled people (50%) remains below that for the rest of the population (65%)<sup>40</sup>.

With respect to **health care**, disabled people often face health inequalities<sup>41</sup> and may be less likely to be believed when they report their symptoms<sup>42</sup>. This seems to be especially the case for people with mental-health problems. The participation of persons with intellectual

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<sup>36</sup> European Network of Equality Bodies

<sup>37</sup> 2006 'mapping' study: see footnote 5

<sup>38</sup> European Agency of Special Needs Education

<sup>39</sup> COM (2007)738 Situation of Disabled People in the European Union. Annex 1. See also Study on men and women with disabilities in the EU: statistical analysis of the LFS ad hoc module and the EU-SILC Published 2007 [http://ec.europa.eu/employment\\_social/index/7002\\_en.html](http://ec.europa.eu/employment_social/index/7002_en.html)

<sup>40</sup> Ibid

<sup>41</sup> <http://www.equalityhumanrights.com/en/publicationsandresources/Disability/Pages/Formalinvestigations.aspx>

<sup>42</sup> Tackling attitudes of health care professionals towards disabled people (October 2005) [Http://www.bris.ac.uk/news/2005/810](http://www.bris.ac.uk/news/2005/810)

disabilities in screening programmes for the general population is reported as poor<sup>43</sup>. The EPEC study identified negative or biased attitudes of health-care providers as a major problem. Complaints in the area of **social services** concern difficulties in accessing information in appropriate formats, assumptions that disabled people are dependent and unable to operate independently, issues of degrading treatment for the mentally disabled and lack of integration with other social-service users.

**Transport** is an area where accessibility problems for disabled persons and other persons with reduced mobility constitute a barrier to full participation in the economy and society. The case for EU-level action in this area underlay the adoption of Regulations covering the access of disabled persons and persons with reduced mobility to air<sup>44</sup> and rail transport<sup>45</sup>. As many disabled people are unlikely to drive their own cars, they are more dependent on public transport than the non-disabled. The results may be unemployment, welfare dependency, poverty, isolation and social exclusion. Research for the European Commission has shown that restrictions in mobility to and from work have a greater effect on participation in the labour market than restrictions affecting the kind or amount of work<sup>46</sup>.

The evidence points to a number of problems facing the disabled when accessing **goods and services**. In the insurance field, complaints often allege that a person's disability plays a role when quotes are given for insurance, even if it is totally irrelevant (for example, disability is irrelevant to home-contents insurance, but might be relevant for health-insurance purposes). Ordering goods and services over the Internet can be very difficult for people with certain disabilities, and a formal investigation by the previous UK's Disability Rights Commission<sup>47</sup> found that 81% of Internet sites failed to meet the most basic accessibility needs of disabled people. A recent European study<sup>48</sup> tested a similar sample of key public and sectoral/commercial websites in each Member State, and only a very small percentage were found to meet accepted international accessibility standards. An overview of the effects and impacts of discrimination on grounds of disability is set out in the extract from the EPEC study in Annex IV.

#### 4.2.2. Discrimination based on age

*An example: A leading retailer offers annual multi-trip insurance cover only to travellers up to the age of 70. For those aged 66 and over, there is a premium loading of 100 per cent. In contrast, the premium loading for winter sports is 35 per cent. Frances, from Surrey, used to get family travel insurance cover for £50. She reported: 'As soon as my husband turned 65 it went up to £130. From one day to the other he's no less fit!'*

*Source: AGE – the European Older People's Platform*

<sup>43</sup> 2003 Manifesto Basic standards of health care for people with intellectual disabilities Erasmus Universitair Medisch Centrum Rotterdam

<sup>44</sup> Regulation (EEC) No 1107/2006 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)

<sup>45</sup> Regulation (EEC) No 1371/2007, of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007)

<sup>46</sup> Study on men and women with disabilities in the EU: statistical analysis of the LFS ad hoc module and the EU-SILC Published 2007 [http://ec.europa.eu/employment\\_social/index/7002\\_en.html](http://ec.europa.eu/employment_social/index/7002_en.html)

<sup>47</sup> See: [http://www.equalityhumanrights.com/Documents/DRC/Useful%20Documents/The%20Web\\_Access%20and%20inclusion%20for%20disabled%20people.pdf](http://www.equalityhumanrights.com/Documents/DRC/Useful%20Documents/The%20Web_Access%20and%20inclusion%20for%20disabled%20people.pdf)

<sup>48</sup> [http://ec.europa.eu/information\\_society/activities/einclusion/library/studies/meac\\_study/index\\_en.htm](http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm)



Discrimination on grounds of age affects younger and older age groups. 22% of the EU-27 population were below 19 on 1 January 2006 and 21% were 60 or over. The population of the European Union is ageing, and according to Eurostat projections, the share of the total population over 80 will rise from 4% of the total population in 2006 to 6% in 2025 and 11% in 2050. According to the Flash Eurobarometer survey conducted in February 2008, 16 % of Europeans have or somebody from their closed-knit circle of family, friends, and acquaintances has personally experienced discrimination on the basis of age<sup>49</sup>.

42% of respondents in the EU think that discrimination on the basis of age is widespread in their country<sup>50</sup>. When it comes to areas beyond the labour market, the percentage of EU citizens who think there is very or fairly widespread discrimination based on age in the area of insurance policies is 40%; 31% think the same about the housing area; 20% about buying products or services; 19% about using the health-care system and 17% about the educational system<sup>51</sup>.

Age-Platform's submission highlighted examples of discrimination in access to insurance and financial services, and to health care. They also drew attention to negative comments about older people in the media. The submission from the European Youth Forum highlighted stereotyping of young people and gave examples of age-based discrimination in education and health.

Equinet reported discrimination in access to health services, social protection provision, private rented accommodation, financial services, insurance, goods and services and stereotyping and access to decision-making.

In **access to goods and services**, complaints of discrimination based on age are primarily concentrated in the insurance and financial services area. Premiums for travel insurance are often very high for people over a certain age or within certain age groups (over 65, 65-70), and one fifth of customers over 65 fail to find any company prepared to sell them travel insurance<sup>52</sup>. 29% of attempts by people aged 75 to obtain insurance quotations were unsuccessful, compared with 3% of those in the 30-49<sup>53</sup> age group. 31% of those aged 80 and over felt discriminated against when trying to obtain quotations for motor insurance, travel insurance and car hire, compared with 2% of those in the 30-49<sup>54</sup> age group.

Age discrimination is also experienced in loan and mortgage services; for example, mortgages may not be available to persons under or over specific ages and persons above a certain age may be refused overdrafts, regardless of their financial circumstances.

Complaints about differences in treatment in **social services** concern financing (seemingly less money spent on the elderly than on other age groups), difficulties in accessing

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<sup>49</sup> Flash Eurobarometer 232 ([http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf))

<sup>50</sup> Special Eurobarometer Survey 296 on discrimination in the EU, to be published in July 2008 on the following web pages: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm) and [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

<sup>51</sup> Flash EB 232 ([http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf))

<sup>52</sup> Source: Association of British Insurers (ABI) report on Insuring Older People (March 2007) and Age Concern England: Discrimination - Does it matter? (response to European Commission Consultation on equality and discrimination, September 2007)

<sup>53</sup> Source: Age Concern England: Discrimination - Does it matter? (response to European Commission Consultation on equality and discrimination, September 2007) 1843 persons were consulted.

<sup>54</sup> *ibid*

information about social services and the fact that the limited mobility of older people may not be sufficiently taken into account (services difficult to get to). **Health care** is a further area where allegations of discrimination based on age seem to be backed up by evidence, in particular in the area of mental health. There appears to be little development of targeted services for mental health and depression, perhaps because it is assumed that older people suffer from dementia alone. In addition, according to Age-Concern<sup>55</sup>, women over 70 are not invited for breast-cancer screening, and there is age-based rationing (whether covert or open) of certain treatments.

It is clear that health problems will have a major impact on the individual concerned as well as on their immediate families, with diminished employment capacity and even the need for a full-time carer (often a female relative who gives up work) or private or public institutional care. The financial impacts on the individuals and the State of providing long-term care are significant. An overview of the effects and impacts of discrimination on grounds of age is set out in the extract from the EPEC study in Annex IV

#### 4.2.3. *Discrimination based on sexual orientation*

*An example: "When I went back she [the doctor] took out my file as such and written across the top of the page, in big, bold print, capital letters, was 'LESBIAN'. So I didn't feel very good about that ... you don't want to be labelled and put into a box and everything else kind of irrelevant. This to me, to some degree, showed she didn't really understand what it might be like coming in to see that"*

*Source: Irish Equality Authority Report on 'Recognising LGB Sexual Identities in Health Services' 2008*

Sexual orientation is taken to cover homosexuality and bisexuality. Estimating the percentage of homosexual or bisexual people in the overall population is especially difficult for a variety of reasons and estimates range from 1.5% to 10%. The EPEC study uses 3% as the basis for assessing costs.

According to the Flash Eurobarometer survey conducted in February 2008, on average 8% % of Europeans have or somebody from their closed-knit circle of family, friends, and acquaintances has personally experienced discrimination on the basis of sexual orientation<sup>56</sup>. 51% of respondents in the EU think that discrimination on the basis of age is widespread in their country<sup>57</sup>. Outside the labour market, 31% of EU citizens believe that there is very or fairly widespread discrimination on grounds of sexual orientation in the housing area; 26% in the educational system; 22% when buying products or services; 14% in the health-care system and 13% when buying insurance policies<sup>58</sup>.

The EPEC study reported that discrimination on grounds of sexual orientation occurs in a number of areas, but its effects in education and health may be especially severe. ILGA-Europe's submission gave examples of discrimination in these and other areas, in particular housing and access to services.

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<sup>55</sup> Source: Age Concern England: Discrimination - Does it matter?

<sup>56</sup> Flash Eurobarometer 232

<sup>57</sup> Special Eurobarometer Survey 296 on discrimination in the EU, to be published in July 2008 on the following web pages: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm) and [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

<sup>58</sup> Flash EB 232

Equinet's members reported discrimination in social-welfare provision, harassment in educational establishments, access to insurance and financial services, recognition for same-sex partners and the consequences of non-recognition in areas such as accommodation, taxation and social-welfare provision, succession rights and State-sector immigration functions.

There is considerable evidence of discrimination on grounds of sexual orientation in **schools**, primarily involving homophobic bullying. Under the current directives, 'harassment' is a type of discrimination and is defined as conduct which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Bullying can therefore be seen as discrimination, it being a form of harassment. A European-wide study found that 61.2% of young lesbian, gay or bisexual (LGB) people in Europe had experienced discrimination at school<sup>59</sup>. A UK study<sup>60</sup> gave similar figures, and reported that seven out of ten young gay people said that bullying affected their school work, and half had skipped school to avoid bullying. A further UK study found that 82% of teachers were aware of verbal homophobic bullying, and 26% were aware of physical homophobic bullying, and that these incidences lead to absenteeism, limited achievement and a limited desire to stay on at school<sup>61</sup>. This may have a severe effect on the health and education of the individuals concerned, and may limit their future earning capacity.

Discrimination on grounds of sexual orientation is often experienced in access to **housing**. People are denied housing where they are perceived to be gay or lesbian, even if they are not<sup>62</sup>. Close to two thirds of LGB people hide their sexual orientation from their neighbours and at least half do so even though they live with a same-sex partner. Amongst those respondents who openly admitted their sexual orientation, 30% had experienced problems connected with housing<sup>63</sup>. This discrimination induced people to live where they might not choose to or to pay more for housing.

Complaints in the **social-services** area often seem to be related to questions of recognition of same-sex couples and/or non-typical families. For example, it may be very difficult for older same-sex couples to live together in residential care homes.

In the **health-care** area, many LGB people fear stigma and prejudice from health-care providers<sup>64</sup>. The latter may treat LGB people in a degrading and demeaning manner that may even extend to the extreme of physical assaults<sup>65</sup>. One third of those who participated in the 2006 investigation by the Swedish Institute for Public Health into homo- and bisexuals' health indicated that they had been subject to discrimination in the last 12 months owing to

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<sup>59</sup> 2006 Europe-wide survey by ILGA-Europe in partnership with the International Gay and Lesbian Youth Organisation (IGLYO), corroborated by the "Homophobia in the Educational System" research project in Spain (2005) and the Observatório de Educação in Portugal.

<sup>60</sup> The School Report—the experiences of young gay people in Britain's schools, Stonewall 2007.

<sup>61</sup> Homophobia: sexual orientation and schools: a review and implications for action, Thomas Coram Research Unit, Institute of Education, University of London 2004.

<sup>62</sup> Swedish Ombudsman on sexual orientation – <http://www.homo.se>.

<sup>63</sup> Source: Report on the situation of bisexual and homosexual persons in Poland 2005 and 2006 (Campaign against Homophobia and Lambda Warsaw Association, 2007).

<sup>64</sup> 2005 ILGA-Europe Study: accessing health: the context and challenges for LGBT people in central and eastern Europe, available at: <http://www.ilga-europe.org/europe/publications>.

<sup>65</sup> Røndahl, Gerd, Heteronormativity in a Nursing Context. Attitudes toward Homosexuality and Experiences of Lesbian and Gay Men, Uppsala universitet, 2005.

their sexual orientation<sup>66</sup>. Hesitancy in accessing health care can lead to long-term health problems for LGB people, leading to loss of working capacity, as well as costs related to loss of earnings and reduced tax revenue, increased State health-care and social-security costs.

Discrimination occurs in **access to goods and services**, for example where hotels refuse to give a room with a double bed to LGB couples. A Swedish study on how businesses treat homosexual and bisexual customers found that 50% of those who participated were doubtful about being treated well as customers and 20% could give examples of having been badly treated as customers<sup>67</sup>. A Stockholm court recently decided that a decision by a dog-breeder who refused to sell a dog to a lesbian (because she did not think homosexuals could be trusted to treat dogs correctly) was unlawful<sup>68</sup>.

When it comes to buying insurance policies, complaints from LGB people focus on their having to pay higher premiums because they are assumed to have higher health risks, rather than on the insurance companies' looking at individual customers. In this connection, the Association of British Insurers produced a Statement of Best Practice on HIV and Insurance<sup>69</sup>, and does not support exceptions to the principle of non-discrimination on the basis of sexual orientation. An overview of the effects and impacts of discrimination on grounds of disability is set out in the extract from the EPEC study in Annex IV

#### 4.2.4. *Discrimination based on religion or belief*

*An example: A woman in France was refused a room in a hotel because she was wearing a headscarf: the equality body found the hotelier's behaviour to be discriminatory.*

*Source : <http://www.halde.fr/IMG/alexandrie/2326.PDF>*

Figures on religious affiliation are not consistent. According to the Association of Religion Data Archives, in 2003, 84% of the EU population considered themselves Christian of various denominations, 1.7% Muslim and 0.2% Jewish. However, the European Union's Fundamental Rights Agency (FRA) estimates that 3.5% of the EU population are Muslim, and that the figure varies depending on the Member State in question<sup>70</sup>. According to a Eurobarometer survey of June 2005, 18% of EU citizens do not believe there is any sort of God or life force<sup>71</sup>. According to the Flash Eurobarometer survey conducted in February 2008, on average 11% of Europeans have or somebody from their closed-knit circle of family, friends, and acquaintances has personally experienced discrimination on the basis of religion<sup>72</sup>.

Assessing the nature and impact of discrimination on grounds of religion or belief is complicated. Discrimination based on religion presents two distinct problems: the first issue, which ENAR pointed out, is the potential link between discrimination on grounds of ethnicity and religion, and the second is discrimination based solely on religion or belief. The

<sup>66</sup> Knöfel Magnusson, A: Det syns inte utanpå men känns inuti. OM HETERONORMER OCH DISKRIMINERING I HÄLSO- OCH SJUKVÅRDEN (Artikelnummer 06-060, HomO 2006).

<sup>67</sup> Kristina Börjeson: Våningssäng på bröllopsresan - En kartläggning av hur bra svenska företag är på att bemöta homo- och bisexuella kunder (RFSL 2007).

<sup>68</sup> <http://www.homo.se/o.o.i.s/3656>.

<sup>69</sup> [http://www.abi.org.uk/Display/default.asp?Menu\\_ID=1140andMenu\\_All=1,946,1140andChild\\_ID=656](http://www.abi.org.uk/Display/default.asp?Menu_ID=1140andMenu_All=1,946,1140andChild_ID=656)

<sup>70</sup> For example, an estimated 10% of the population of France and Bulgaria are Muslim.

<sup>71</sup> Eurobarometer 225 on "social values, science and technology".

<sup>72</sup> Flash Eurobarometer 232

delimitation of 'religion' and 'belief' may prove problematic<sup>73</sup> where it is closely linked to ethnicity, either because a religious group is considered to have an ethnic character, or because members of a religion belong predominantly to particular ethnic groups.

These and other methodological issues caused EPEC to decide against identifying the effects on individuals and the costs to society. Instead they focused on identifying types of discrimination on the basis of religion or belief where overlap with ethnic or racial discrimination was minimal.

Nonetheless, there is a wide public perception that discrimination on grounds of religion or belief is common. 42% of EU citizens consider discrimination on grounds of religion or belief is widespread in their country<sup>74</sup>. When it comes to areas beyond the labour market, a third of respondents in the EU believes the same to be true in the education system (35%) and a quarter of respondents (27%) thought that discrimination on grounds of religion or belief was widespread when buying products or services (e.g. when going shopping or to restaurants, discos, pubs etc). 14% thought the same was true of the health-care system and 13% considered such discrimination very or fairly widespread when it came to buying insurance policies<sup>75</sup>.

According to the EPEC study, nearly 5% of complaints lodged with national equality bodies concerned discrimination outside the employment sphere on grounds of religion. Equinet reported discrimination in access to education, the State-sector policing and immigration functions and stereotyping.

In **education**, for example, complaints have been made in many Member States about the exclusion of children from educational institutions because they adhere to or practice a particular religion. In the area of **health**, discrimination may occur because health professionals lack knowledge about the way religious beliefs and associated behaviour have an impact on an individual's health. In **housing**, discrimination may take the form of a refusal to rent or sell, the imposition of extra conditions to secure housing, and the application of discriminatory criteria in the allocation of social housing<sup>76</sup>.

### 4.3. Legal context

While law itself cannot stop discrimination occurring, it provides effective remedies for victims, and has a preventative effect. The EU has the legal power to act on discrimination under Article 13(1) of the EC Treaty. Under this article, unanimity in the Council is required, with the consultation of the Parliament. This will not change under the Lisbon Treaty.

Three **Directives** have been adopted under Article 13(1) EC to prohibit discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation<sup>77</sup>.

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<sup>73</sup> For example, in the UK some religious groups (Sikhs, Jews) are regarded as ethnic groups but others, such as Muslims, are not

<sup>74</sup> Special Eurobarometer Survey 296 on discrimination in the EU

<sup>75</sup> Flash EB 232

<sup>76</sup> See also 'European Islam: challenges for Public Policy and Society' Centre for European Policy Studies, Brussels 2007, especially Chapter 6: Muslims and Discrimination' by Tufyal Choudhury

<sup>77</sup> Directives 2000/43/EC (racial or ethnic origin), 2000/78/EC (religion or belief, disability, age and sexual orientation in employment and occupation) and 2004/113/EC (sex, in the access to or supply of goods and services)

The Commission proposed the first two directives in 1999 to give practical effect to the new Article 13, following the entry into force of the Amsterdam Treaty in May 1999. In an accompanying Communication<sup>78</sup> the Commission explained that the aim was to achieve maximum impact in the area of employment, where discrimination was very evident, and where it was very damaging to individuals' chances of success in society. The second proposal, on more extensive protection against discrimination based on race or ethnic origin reflected the consensus among the Member States to act beyond the employment sphere for race.

As a result, race discrimination is the area where protection under EC law is greatest, covering not only employment but also social protection, education and access to goods and services, including accommodation, available to the public. There is no equivalent protection at EU level from discrimination on grounds of religion or belief, disability, age and sexual orientation other than in employment. However some Member States have gone further than EC law in prohibiting discrimination on all grounds in all non-employment areas (see Annex III for more details) and some others have plans to do so.

As to **sex discrimination**, the Article 13 legal framework in this area is not as comprehensive as for race. In the related impact assessment in 2003 accompanying the Commission proposal,<sup>79</sup> the Commission concluded that the evidence relating to sex discrimination in fields such as education was less clear-cut. The Directive provides that the Commission will report on its implementation no later than December 2009 with, where appropriate, proposals to modify it.

The transposition into national law of Directives 2000/43/EC and 2000/78/EC, dealing for the first time in EC law with discrimination on grounds of race, religion or belief, disability, age, and sexual orientation, has been very effective in improving the level of legal protection from discrimination in a large number of Member States, many of which did not previously have comprehensive non-discrimination legislation.

The Commission has had to take proceedings against some Member States to ensure that their national laws accurately reflect the content of the directives. But, as important as they are, the issues concerned are largely technical and do not put in doubt the effectiveness of the Directives. Indeed, the Commission regularly receives evidence (from citizens, legal experts and equality bodies) which shows that national law transposing those two EC directives has a positive, tangible effect in combating discrimination in the Member States. As these directives form part of the *acquis*, acceding countries were required to adapt their legislation and this had an impact on the development of non-discrimination policies in many of the Member States which joined in 2004 and 2007 and their alignment with the EU approach.

In addition to legal protection, EU-level action has resulted in greater assistance to victims through the establishment of '**equality bodies**': 20 Member States had no such body previously. Directive 2000/43/EC requires the Member States to establish a body (or bodies) to promote equal treatment of all persons without discrimination on grounds of racial or ethnic origin. An equivalent obligation, in terms of gender equality, both in the employment sphere and beyond, is set out in Directives 2002/73/EC and 2004/113/EC.

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<sup>78</sup> COM(1999)564

<sup>79</sup> SEC(2003) 1213 final.

These equality bodies have proved to be drivers in combating and preventing discrimination, providing victims with a source of advice and help, and contributing greatly to awareness-raising. They play a vital role in facilitating access to justice<sup>80</sup>. However, no such obligation to set up an equality body exists under Directive 2000/78/EC, so victims of discrimination in the labour market on grounds of age, disability, religion or belief and sexual orientation may have no equality body to turn to.

**The EC legal framework is thus, inconsistent, both in the material scope, and in terms of the mandate of equality bodies.**

The framework is not adapted, either, to deal with **multiple discrimination** - that is, discrimination on more than one or a combination of the Article 13 EC grounds - is not explicitly prohibited under European or national legislation. Although it is now widely recognised as a serious problem<sup>81</sup>, little has been done so far to lay down coherent rules or specific strategies to address it. The legal frameworks in the United States of America, Canada and Australia are more advanced in dealing with multiple discrimination, though three EU Member States<sup>82</sup> have included specific provisions on ways of handling it in their national laws. In the absence of such provisions, legal counsel of victims of discrimination must apply a pragmatic and tactical approach by picking the 'strongest' grounds, e.g. race or gender, even where the two are inextricably linked<sup>83</sup>. Dealing with discrimination on multiple grounds would be of special benefit to women, since most cases involve a combination of discrimination based on gender and on other grounds. According to a Flash Eurobarometer survey conducted in February 2008<sup>84</sup>, discrimination based on a combination of factors (religion or belief, disability, age, sexual orientation, gender, and race or ethnic origin) has been personally experienced by a relatively high proportion of EU citizens. At 16%, this is the second highest percentage (following "age") of the grounds for discrimination covered in the survey. In terms of specific areas outside the labour market, over a third (36%) of EU citizens believe that multiple discrimination is *very* or *fairly widespread* in the area of housing.

Beyond the EC Treaty, mention should be made of Article 21 of the EU **Charter of Fundamental Rights** which provides that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Furthermore, Article 26 states that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. As such, the EU Charter, and in particular its Article 21, does not provide the European Union the competence to enact legislation in its spheres of competence. Rather, its application is limited to the EU institutions when proposing and adopting acts but also to the Member States when enacting or implementing EU law. However, despite some decisions of

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<sup>80</sup> See report "Catalysts for Change? Equality bodies according to Directive 2000/43/EC", by Legal Experts' Group available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/06catalyst\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06catalyst_en.pdf)

<sup>81</sup> See the Report referred to in footnote 15. See also Equinet opinion on European Commission Proposals for new initiatives designed to prevent and combat discrimination outside the Labour Market, January 2008

<sup>82</sup> Austria, Germany and Romania. Spanish law does refer to multiple discrimination but does not give guidance on how to deal with cases.

<sup>83</sup> Cf Bahl v The Law Society, UK [2004] quoted *ibid*.

<sup>84</sup> Flash EB 232

the European Court of Justice or Tribunal of First Instance, for the time being the Charter has no legal force.

Finally, the **UN Convention on the Rights of Persons with Disabilities** entered into force on 3 May 2008 (See Annex V). This is the first human rights convention to which the European Community is a party and it has already been signed by the Community and 26 Member States. The Convention adopts a broad definition of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

The Convention sets out the general principle of non-discrimination and equality whereby it obliges State parties to 'prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds and to take all appropriate measures to ensure that reasonable accommodation is provided' (Article 5). In addition, it poses the principle of non-discrimination in the enjoyment of a number of human rights such as right to employment (Article 27), right to education (Article 24), accessibility (Article 9), liberty of movement (Article 18), right to health (Article 25), participation to cultural, recreation, leisure and sport (Article 30).

In accordance with the General obligations (Article 4 of the Convention), States parties undertake to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; and to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.

#### **4.4. Likely development of the situation in the absence of EU action (baseline scenario)**

The way the situation is likely to develop, all other things being equal and unless new initiatives are taken, is the subject of this section.

The **current EC directives** would continue to apply. Some but not all Member States would have detailed national legal provisions protecting people who experience discrimination outside the labour market, others have much more general constitutional provisions. While new measures may be adopted at national level, experience based on the existing EC Directives shows that in the absence of an EU obligation, major increases in the level of protection against discrimination seem unlikely.

The impact of the **UN Convention** within the EU will largely depend on the pace and the comprehensiveness of Member State ratification and implementation through the adoption of national law. It covers a broad array of themes relevant to the rights and the quality of life of people with disabilities, some of which overlap with areas covered by the EC Treaty (such as employment, education or health) while others clearly fall outside (such as family rights) As with other public international law treaties, the Member States choose how and when to ratify, and can put reservations on certain parts of the Convention when ratifying. While the principle of non-discrimination contained in the UN Convention is of immediate application, the economic, social and cultural rights set out in the Convention are to be implemented



progressively depending on available resources.<sup>85</sup> The UN Convention on the rights of persons with disabilities is part of the baseline scenario, as the Member States will have to implement it whatever action is taken at EU level to tackle discrimination based on disability. Member States would implement the UN Convention through adopting new legislation or amending existing national legislation. An EC Directive can therefore be seen as a way of facilitating implementation of parts of the Convention.

Discrimination is likely to continue unchecked and to result in the continuing **social exclusion** of groups at risk of discrimination, with no impact on such groups' under-achievement in education or reduced employment opportunities.

If no action is taken at EU level, there will still be untapped potential for businesses to develop markets for services in other countries. **Providers of goods and services** are faced with a complex mosaic of differing national provisions on discrimination when operating across borders. 63% of the businesses consulted via the European Business Test Panel thought it mattered that there were different levels of protection existing between the Member States from discrimination in access to goods, services and housing, and 26% thought that a difference in the level of protection from discrimination would affect their ability to do business in another Member State.

Differing levels of protection from discrimination continue to influence **individuals'** decisions to make use of their rights of free movement, for instance to travel, work or study in another Member State. 69% of those who replied to the public consultation said that differing levels of protection against discrimination would influence their decisions to go to another Member State. Examples, some based on the evidence submitted during the consultation exercise, and some more anecdotal, can be found in a number of areas. Difficulties experienced by older people in obtaining travel insurance or car hire can make it increasingly difficult for them to go on holiday abroad. A blind person who travels to another Member State and finds that taxis in the host State are not obliged to accept guide dogs, will have great difficulty getting to his/her destination..

Should the Lisbon Treaty be ratified, the **Charter of Fundamental Rights**, including Articles 21 and 26, will be an integral part of the Treaty and will be applicable not only to the institutions when proposing and adopting acts but also to the Member States when implementing EU law (with the exception of the United Kingdom and Poland). Yet, unlike Article 13 of the Treaty, the Charter of Fundamental Rights does not confer a competence to the European Union to act to combat discrimination on the grounds mentioned in Article 21. Consequently, such a provision could only be invoked by citizens to the extent that the facts disputed entail an element of EU dimension. For example, citizens could invoke Article 21 before a national court to contest any difference of treatment based on age, for example, in the access to a service in another Member State, to the extent that such service is provided by a public entity. This being said, Article 21 will not protect citizens against discrimination in accessing goods and services provided by domestic private economic operators.

The promotion of **non-legal measures** to combat discrimination, such as raising awareness of discrimination and training and exchange of good practice under the Progress programme, would continue<sup>86</sup>. However, these are primarily linked to the current EU legal framework, and

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<sup>85</sup> See Article 4 paragraph 2

<sup>86</sup> Total budget of €743.29 million for 2007-13, 23% of which is earmarked for non-discrimination and diversity.

while activities dealing with discrimination outside the labour market on grounds of age, disability, religion or belief or sexual orientation could be funded, this might be of limited practical value in the absence of new rights.

## Baseline scenario

If no action is taken at EU level:

- (1) Differences will remain in the level of protection provided at EU and Member-State level from discrimination on grounds of age, disability, religion or belief and sexual orientation, with some but not all of the Member States' legal systems protecting individuals from discrimination in these areas and granting effective legal remedies.
- (2) As regards discrimination on grounds of disability, these differences are likely to be exacerbated by the varying procedures and pace of national processes for the ratification and implementation of the UN Convention on the Rights of Persons with Disabilities.
- (3) Discrimination against individuals on grounds of age, disability, religion or belief and sexual orientation will continue to occur, creating distress for the individuals concerned and unnecessary costs and burdens for individuals, businesses and society as a whole.
- (4) Differences in the Member States' legislation continue to inhibit cross-border mobility and the provision of services.
- (5) The Charter of Fundamental Rights will not substantially increase the rights of individuals to challenge discrimination.
- (6) EU-funded non-discrimination measures will continue, such as awareness-raising and information campaigns to tackle prejudice and stereotyping.

## 5. OBJECTIVES

The evidence shows that people face discrimination on grounds of age, religion, sexual orientation and disabilities in a variety of non-employment contexts.

As a consequence, the policy response needs to meet certain **overall objectives**:

1. To increase protection from discrimination on grounds of age, disability, sexual orientation and religion or belief;
2. To ensure legal certainty for economic operators and potential victims across the Member States in terms of the extent of protection against discrimination outside the labour market on grounds of age, disability, sexual orientation and religion or belief;
3. To enhance social inclusion and promote the full participation of all groups in society and the economy.

In order to meet these overall objectives, specific objectives have been identified.

### Specific objectives

1. Ensure effective remedies are available to victims of discrimination on grounds of age, disability, sexual orientation and religion or belief;

2. Ensure effective protection is provided from multiple discrimination;
3. Ensure that national equality bodies can contribute to combating discrimination and providing effective assistance to victims of discrimination on grounds of age, disability, sexual orientation and religion or belief;
4. Ensure the public, service providers and other economic operators are informed of their rights and obligations regarding equality and non-discrimination.

These objectives are consistent with the horizontal objectives of the European Union, and in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. They will help to further the fundamental rights of citizens, will reduce discrimination and will contribute to the functioning of the internal market by helping to increase mobility and cross-border trade in goods and services.

## **6. POLICY OPTIONS**

This section outlines the policy options which have been considered for addressing the problems and meeting the objectives identified above. It screens the options and selects a number for further examination.

### **6.1. No new action at EU level**

Not taking new EU action does not necessarily mean there is no change. The existing Directives lay down minimum prescriptions, so the Member States are free to adopt or maintain provisions affording greater protection and some Member States could, on their own initiative, step up the level of protection provided nationally. The UN Convention would be implemented. Activities currently funded to combat discrimination and fight stereotypes would continue.

### **6.2. Non-legally binding measures**

Under the circumstances described, a certain number of legally non-binding measures could be contemplated, either alone or in combination with legally binding measures, to step up protection from discrimination, increase awareness of rights and obligations among the persons concerned, encourage the exchange of good practice and lay down sectoral guidelines and codes of conduct. Such measures could include the following:

- *Commission Recommendation*

The Council can adopt a recommendation only if the Treaty legal base expressly provides for this, which is not the case with Article 13 EC. The Commission however has a general power to issue recommendations under Article 211 EC.

A general recommendation could be addressed to the Member States to step up protection against discrimination outside the labour market on grounds of age, disability, sexual orientation and religion or belief, if necessary through new legislation – bearing in mind that some of them already have comprehensive legislation. The level of protection sought should be as extensive as that afforded in the case of discrimination on grounds of race or ethnic origin. The recommendation would request the Member States to prohibit multiple discrimination and provide a remedy for victims. It would also call for the mandate of all

national equality bodies to be broadened to cover discrimination on and outside the labour market on grounds of age, disability, sexual orientation and religion or belief.

Should a Directive be proposed, it could be accompanied by a more limited and specific recommendation on multiple discrimination and on the powers of equality bodies beyond the scope of the proposed directive. This would avoid reopening the existing Directives.

- *Self-regulation*

Self-regulation is defined as 'the creation of common guidelines by economic operators and/ other stakeholders' in the Single Market Review<sup>87</sup>, which regards it as a valuable complement or alternative to legislation. As the Review points out, measures set this way may be quicker to adopt and may lead to more acceptable results for stakeholders, who produce the rules themselves and may even use them as a 'marketing tool'. This could be an appropriate way to tackle discrimination in insurance and banking services and could lead to agreement on a code of conduct.

- *Stronger focus on non-discrimination under Open Methods of Coordination (OMCs)*

The objective would be to exploit the full potential of existing OMCs, such as for the European Strategy for Growth and Jobs or for social protection and social inclusion, rather than introducing a new specific OMC. The Member States would agree to identify common goals and promote their most effective policies in the field of non-discrimination, with the aim of learning from each others' experiences. They would report annually on developments in eliminating discrimination on the various grounds and the Commission would comment on each Member State's progress.

- *Dissemination of information and exchange of good practice*

Different measures could be considered, such as setting up a committee of high-level national civil servants, to assist the Commission in monitoring national non-discrimination policies, to exchange good practice between the Member States and the Commission, and to report annually to the Council on progress on non-discrimination, following broad discussion with all stakeholders at the annual Equality Summit. In addition, networks such as Equinet could continue to be funded.

- *Awareness-raising and capacity-building*

Existing activities, such as awareness-raising, capacity-building for NGOs and combating stereotypes, could be extended beyond the scope of the current Directives. For example, the training of judges, lawyers and NGOs could be extended to cover non-discrimination outside employment. Such flanking measures have accompanied the existing Directives.

### **6.3. Legally binding measures**

In accordance with Article 249 EC, recommendations have no binding force (and are therefore considered in Subsection 6.2 above) while regulations, directives and decisions do. To date, all legal texts based on Article 13(1) EC are directives but that Article does not impose a specific type of legal act.

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<sup>87</sup> [http://ec.europa.eu/citizens\\_agenda/docs/sec\\_2007\\_1518\\_en.pdf](http://ec.europa.eu/citizens_agenda/docs/sec_2007_1518_en.pdf)

A **decision**, which is binding on those to whom it is addressed, could also be considered. A decision could address issues in certain regulated sectors where it is possible to identify *all* operators, such as insurance and financial services.

A **regulation** is binding in its entirety and directly applicable in all Member States, without any need for transposing legislation. The Member States must follow the exact text, so they cannot go beyond its minimum requirements.

A **directive** sets down a minimum framework and gives the Member States flexibility in adapting the principles established to their domestic legal order.

#### **6.4. Preliminary screening of options**

The initial screening of the possible measures has taken account of subsidiarity (the Union does not take action unless it is more effective than action taken at national, regional or local level), proportionality (the extent of the action must be in keeping with the aim pursued), efficiency, effectiveness and consistency (with fundamental principles and other Commission policies).

##### *6.4.1. Legally non-binding measures*

Legally non-binding instruments could be effective in increasing the level of protection against discrimination generally as well as in specific commercial sectors or areas. As the Single Market Review pointed out, better results can be achieved by using non-binding tools as a supplement or alternative to legislation.

As far as achieving the objectives set out in Section 5 is concerned, an *OMC* is based on mutual learning and is not a tool for ensuring equal treatment. By its very nature it, cannot guarantee a clear legal framework prohibiting discrimination. Nonetheless, the EPEC study considers it a potentially useful tool for tackling certain problems, such as discrimination/bullying in education, and this could be included in other Commission initiatives. The reporting obligations it entails mean it will not be without administrative costs for the Member States and the Commission. In terms of subsidiarity, it allows each Member State to prioritise action where it sees fit, but does not put in place any EU minimum level.

*Dissemination of information* could be achieved through exchanges within a high-level group of Member State representatives. This has already been used, for example in the area of disability, and can provide a useful tool for promoting equality collectively and working on policies, as opposed to creating individual rights. There is no guarantee that the level of protection from discrimination will increase, and certainly not in any coherent or uniform manner. In terms of subsidiarity, it does not affect decision-making. (It should be noted that in parallel to the proposal for a new Directive, the Commission has decided to establish of a non-discrimination governmental expert group to strengthen the exchange of information on non-discrimination and equal opportunities.)

*Self-regulation* has been used successfully by the Commission in a variety of areas in the past, for example through codes of conduct in taxation and banking. Self-regulation could be an effective way of achieving the objectives identified in a specific sector, such as insurance and banking services. As section 4 above shows, this is an area which attracts many complaints of discrimination. This approach should be given further consideration, possibly in conjunction with a directive.

A *general recommendation* would lay down a clear framework for the Member States on ways of stepping up protection from discrimination, for example by adopting new legislation, as well as covering multiple discrimination and the powers of equality bodies. A *specific recommendation* could also cover multiple discrimination and the powers of equality bodies. A recommendation, whether general or specific, could be a good way to increase protection against discrimination either as an alternative to new legislation, or in addition to it (to deal with points that would or could be difficult to cover in legislation). This option should be given further consideration, both separately and in conjunction with a directive.

**In conclusion**, the best options for further analysis among legally non-binding measures are a *recommendation (general and/or specific)* and *self regulation*. These could be adopted in conjunction with a directive or separately. Exchanges of information and good practice, and increased capacity building and awareness-raising will be stepped up in any event in the next phase of the EU's non-discrimination policy.

#### 6.4.2. *Legally binding measures*

A legally binding instrument creates a clear framework of rights and obligations, and is the only way to ensure all victims of discrimination in the EU have an enforceable remedy. It clearly increases the general level of protection from discrimination. Whilst it cannot, of itself, stop discrimination, it can have a preventative effect and creates a clear, transparent framework.

A **decision** prohibiting discrimination would not achieve the above results because decisions are not of general application. A **regulation** would impose *uniform* obligations: using such a heavy instrument to achieve the objectives set would be disproportionate and contrary to the principle of subsidiarity. It would also create unnecessary difficulties for Member States that already have legal protection going beyond the EC directives.

As to **directives**, the working hypothesis is that any new legislation:

would build on the approach and concepts of the existing article 13 directives and notably 2000/43/EC and 2000/78/EC, for examples the definitions of discrimination, the obligation to provide reasonable accommodation, as well as procedural rules;

would only prohibit discrimination in the areas that fall within EC competence, so would not affect the organisation or content of education (e.g. special needs education), questions of marital status (e.g. same sex partnerships/marriages) or family law (e.g. adoption) or national rules on the secular nature of the State or its institutions;

would lay down minimum prescriptions, so that Member States are free to adopt or maintain provisions affording greater protection and some Member States could, on their own initiative, step up the level of protection provided nationally;

would not affect national constitutional provisions requiring equal treatment or prohibiting discrimination;

would not deal with protection from sex discrimination. The deadline for the transposition of Council Directive 2004/113/EC has only just passed and the Commission will report in 2010 on its implementation and, if appropriate, propose modifications. The Commission will in any

event press ahead with its efforts to achieve progress towards gender equality through the comprehensive programme set out in the Roadmap for Equality 2006-2010<sup>88</sup>.

Four different possibilities could be considered:

- a series of directives, delineated by ground

Specific directives, proposed either concurrently or consecutively, could allow the specificities of each type of discrimination to be addressed. In terms of legal efficiency, however, such an approach is likely to place a burden on the decision-making process and produce an uneven outcome with respect to the grounds covered. Having a series of different instruments adopted at different times could make legal transposition complicated but on the other hand many of the concepts in each piece of legislation would be similar if not identical, as well as being based upon the existing Article 13 directives.

- a series of directives, delineated by field
- Specific directives could cover discrimination on all four grounds in specific fields, such as access to goods and services, social protection, education etc. Whilst this would allow the particularities of each area covered to be taken into account, it too implies a rather complex and cumbersome decision-making and transposition process.
- a directive replacing and consolidating the existing Article 13 directives

A new directive could *replace and recast* the texts currently in force and extend the scope of protection from discrimination outside employment on grounds of age, sexual orientation, disability and religion or belief. This approach would have the advantage of legal clarity and would be in line with the better regulation agenda. It would also enable issues of multiple discrimination and the competence of equality bodies to be addressed. But re-opening a general discussion on the directives agreed relatively recently runs the risk of creating unnecessary legal and political uncertainty. The current directives have already transposed into national law and the Commission is discussing aspects of the transposition with some Member States. To withdraw, in effect, the current texts and replace them with a directive that would not have to be transposed for several years would leave a very unclear legal situation, for Member States, economic operators and citizens in the interim period. This therefore seems neither an advisable nor an effective approach.

- a directive to supplement the current legal framework

The last possibility is a *multi-ground directive* prohibiting discrimination outside employment on grounds of age, sexual orientation, disability and religion or belief. Such a directive would address the main inconsistencies identified in the EC legal framework and would largely end the perception that there is a hierarchy of grounds. It could include common rules as well as specific provisions covering discrimination on different grounds or certain parts of the material scope. It could make provision for extra time for transposition of certain provisions in the case of discrimination on certain grounds that are seen to be more difficult or more costly to tackle.

Such a directive would be a first step towards tackling multiple discrimination and extending the powers of the equality bodies, but a comprehensive approach would call for a limited

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<sup>88</sup> COM(2006) 92 final.



revision of the existing directives. A more gradual way to deal with these two issues could involve adopting a specific recommendation.

**In conclusion**, a *multiground directive* supplementing the current legal framework and prohibiting discrimination outside employment on grounds of age, sexual orientation, disability and religion or belief would be an effective way of increasing the level of protection against discrimination at EU level. However, *individual directives* covering discrimination on specific grounds could also be considered, if a step-by-step approach is preferred.

A directive could be combined with a *specific recommendation* covering multiple discrimination and the powers of the equality bodies, or a more general one covering discrimination on other grounds. These options should be selected for further analysis.

## 7. ANALYSIS OF IMPACTS

6.4.2. *Legally binding measures* After a preliminary screening of possible policy options, six have been selected for further

A legally binding instrument creates a clear framework of rights and obligations, and is the only way to ensure all victims of discrimination in the EU have an enforceable remedy. It clearly increases the general level of protection from discrimination. Whilst it cannot, of itself, stop discrimination, it can have a preventative effect and creates a clear, transparent

- a recommendation dealing specifically with the competences of the equality bodies and multiple discrimination
- a general recommendation
- single ground directive(s)
- a multi-ground directive

Each option has been assessed for its economic, social and environmental impacts and on the extent to which it meets the objectives defined in Section 5 as well as to broader EU objectives and, finally, its cost-effectiveness and the impact on the baseline scenario. For the sake of simplicity and clarity, the options have been analysed separately, but this does not mean they cannot or should not be used in combination.

Regardless of the option(s) retained, the Progress Programme, which will run until 2013, will continue to fund activities under the Commission's non-discrimination policy. Relevant activities include training for NGOs, service-providers and networks (for example the Equinet network of the national equality bodies), and awareness-raising and combating stereotypes. This would be a good way to increase awareness of rights (among potential victims of discrimination) and of obligations (among service-providers and sellers of goods) and should constitute a flanking measure, whatever the approach is decided.

Three observations apply to all options:

- Member States will in any event need to implement the UN Convention on the Rights of Persons with Disabilities. This is likely to increase protection from discrimination on grounds of disability. Also, the costs linked to the obligation to provide accessibility and

make reasonable accommodation, as explained under Option 5, will occur in any event in the implementation of the Convention.

- As set out in Annex III, nearly all Member States have national legislation which goes beyond the existing non-discrimination framework at EU level to some degree. The majority of Member States will therefore not need to implement major legislative changes to implement new rules at EU level.
- No impact outside the EU has been identified under any of the options.

Finally it is important to stress that it is difficult to provide reliable and comprehensive information on the costs of discrimination or of the measures to combat it. The EPEC study gives figures on the possible costs to society if discrimination results in lower educational attainment, lower employment rates, less taxes paid, greater health care costs etc. It also tries to assess the costs to individuals, for example of lower wages, higher accommodation costs, higher transport costs etc. It should be borne in mind that other consequences of discrimination, such as stigmatisation, isolation and loss of self esteem, while impossible to quantify, can have a devastating effect on the individuals concerned.

As to the costs associated with measures to combat discrimination, these are mainly related to disability-related discrimination. Measures will need to be taken by Member States in any event in respect of the UN Convention and notably its provisions on reasonable accommodation. By definition reasonable accommodation is subject to a test that it does not represent a disproportionate burden, and they cannot be measured in advance with any degree of accuracy.

### **7.1. Option 1: No new action at EU level**

This option means that the current situation would continue to apply. The level of protection from discrimination outside the labour market would continue to be determined by national legislation in each Member State. In some Member States, legislation would develop and the current level of protection from discrimination could be increased. However, in the absence of an approach agreed at EU level, this cannot be guaranteed. Past experience tells us that the current level of protection from discrimination in most Member States has been the result of transposing the EC non-discrimination directives.

As to subsidiarity, this option leaves it to Member States whether to take any new action to protect people from discrimination outside the labour market but it would not increase the level of protection from discrimination in a coherent way.

#### ***Economic impact***

Three types of economic costs—to individuals, to providers of goods and services, and to society—have been identified. Some of these costs are quantifiable while others are very difficult to estimate.

In terms of direct and indirect costs to *individuals*, the instances of discrimination outlined in the Section 4 and in Annex IV are likely to continue. For example, some consumers will not be able to benefit from the internal market as their ability to travel in Europe is reduced by difficulties in obtaining certain insurance products (e.g. travel insurance and motor insurance for older people).

The EPEC study estimates that if LGB people drop out of school early because of discrimination on grounds of sexual orientation, this will reduce their earning capacity by 14.3%, an annual loss of €452 million. EPEC estimates that discrimination on grounds of sexual orientation in housing means that LGB people pay on average 10% more than the rest of the population, amounting to €4.1 billion extra for the LGB community.

Without knowing what sort of legal obligations might apply to *service providers* under national law, it is impossible to estimate economic costs. If under national law a Member State required providers of goods and services to make reasonable accommodation, this would impose a cost, as set out under Option 5 below. Correspondingly, increasing access to goods and services for groups currently discriminated against could have positive financial effects.

In terms of the economic costs to *society*, the consequences of failing systematically to tackle discrimination that has been shown to exist in various areas should be taken into account. For example, people will continue to leave school early because of homophobic bullying, and disabled people will continue to have lower educational qualifications than their non-disabled fellows. Those who manage to enter the labour market find themselves in less qualified positions than if there were no discrimination. This has negative consequences on the individuals concerned and on society as a whole and the financial loss resulting from increased welfare dependency and lower tax revenue will continue. The EPEC study puts the loss in GDP due to the lower earning capacity of disabled people at €40.3 billion a year.

### ***Social impact***

This option would perpetuate the inability (or limited ability) of certain persons or groups to participate fully in the labour market and society, and would continue to have a negative impact on the job quality of certain persons or groups, owing to their lower educational attainment as a result of discrimination. The risk of welfare dependency and social exclusion identified in the Section 4 would continue.

No specific ***environmental impacts*** have been identified although if public transport remains inaccessible for many people, they will continue to have recourse to private car use.

## Assessment of Option 1: no new action at EU level

Objective to be achieved/problem addressed	Comments
Increase protection	Uncertain. Protection might increase at Member State level, but no guarantee.
Legal certainty	No. Current situation of varying levels of protection would continue
Enhance social inclusion	No though implementation of UN Convention might enhance social inclusion of disabled people
Effective remedies for victims	Possible but uncertain. Improvements at national level are possible, particularly for victims of discrimination based on disability, but cannot be predicted as the UN Convention does not guarantee an effective redress mechanism.
Protection against multiple discrimination	No. People discriminated against on two or more grounds in access to goods and services, for which the scope of protection is different, would, as at present, have no explicit remedy under EC law
Extension of Equality Bodies' competence	Unlikely. Member States may individually decide such an extension, in particular under Article 33.2 of the UN Convention on Rights of Persons with Disabilities, but no guarantee.
Information on rights and obligations	Likely not to be enough. Existing awareness-raising and training activities could increase knowledge, but there would be no new legal duties to increase awareness of equality legislation. In the case of disability rights the UN Convention addresses the obligation to provide information.
Consistency with EU's general objectives	No additional positive contribution to objectives of Partnership for Growth and Jobs, free movement of persons and cross-border trade is not stimulated, and no additional protection of fundamental rights
Cost effectiveness	Low. Victims of discrimination and indirectly the whole society would suffer an economic loss. Economic operators in general would not have extra costs, but certain market opportunities could be lost.
Impact on the baseline scenario	No change

### 7.2. Option 2: Self-regulation

Self-regulation, e.g. in the form of codes of conduct, can be an effective way to address issues of discrimination in a particular sector. It may be used, separately or in combination with legislation, to target very specific issues for which the general nature of legislation is not always suitable. This approach is not appropriate for all sectors but it could be relevant in the area of insurance and banking services, sectors which are already highly regulated, and where it is possible to identify the main economic operators involved. As noted earlier, there is a widespread perception that providers of these services use factors such as age to determine the nature and price of a service even when it is not relevant.

In some Member States, codes of conduct already exist in this area: in the Netherlands, for example, the Bankers' Association have adopted an "Integrity Code" which prohibits discrimination<sup>89</sup> and in the UK the British Association of Insurers has established an Older Customers Task Force as well as adopting the Statement of Good Practice on HIV mentioned in Subsection 4.2.3.

Thus, as these industries already have experience of codes of conduct, and it is an area in which there are a high number of complaints, self-regulation could be an appropriate means to encourage sectors to improve protection from discrimination while enabling the specificities

<sup>89</sup> See for example:  
[http://www.rabobank.com/content/about\\_us/corporate\\_social\\_responsibility/vision\\_and\\_mission/Codes\\_and\\_guidelines.jsp](http://www.rabobank.com/content/about_us/corporate_social_responsibility/vision_and_mission/Codes_and_guidelines.jsp)

of the sector to be taken into account. In particular, a mechanism could be introduced to confirm that age (and disability where appropriate) to be used as a factor in determining risk where it can be shown that age (or disability) really does increase risk and is not being used simply as a proxy.

The Single Market Review<sup>90</sup> encourages the use of non-legislative measures but notes that there are potential drawbacks that must be managed, in particular the risk of anti-competitive collusion amongst industry members to the detriment of consumers, as well as the risk of non-respect. To overcome these drawbacks, all stakeholders should be involved in drawing up the rules and monitoring and enforcement mechanisms should be included.

The effectiveness of this tool depends on the degree of consensus among those operating in the sector in question. It calls for those most affected to be involved in drawing up the text and means that measures adapted to the sector are adopted.

In terms of subsidiarity, this option provides for decision-making at the level of the sector concerned. This is important, in particular for areas that are both technically complex and rapidly changing, such as insurance. In terms of proportionality, a code of conduct does not go further than necessary and can effectively achieve results in specific areas. However, there is a risk of incomplete sectoral and/or geographical coverage. In addition, the highly targeted nature of self-regulation means it would have an impact only on certain types of discrimination.

### ***Economic impact***

For *providers of goods and services*, a code of conduct would have costs linked to its implementation. However, the costs of adopting a code of conduct for the banking and insurance sectors, for example, could be limited by an exception allowing age and disability to be taken into account where this is strictly relevant to the risk in question.

There would be benefits: *individuals* would be able to obtain insurance or banking products which they were not able to previously, or at a lower price, since costs of insurance and banking products should more accurately reflect the risk individuals represent. Although it is difficult to quantify the economic effect this would have for consumers, increasing protection from discrimination in specific sectors would clearly benefit consumers. For example, according to the EPEC study, 38 million older people cannot currently obtain travel insurance.

### ***Social impact***

Self-regulation should have the effect of increasing access to insurance and other financial services for people who may have experienced difficulty in the past owing to discriminatory practices. For example, motor insurance could be easier to obtain and would have a direct effect on the ability of the individual concerned to participate in economic and social life.

No specific **environmental impacts** have been identified.

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<sup>90</sup> COM 2007) 724

## Assessment of Option 2 – Self-regulation

Objective to be achieved/problem addressed	Comments
Increase protection	Protection against discrimination would increase in field(s) covered by a code of conduct.
Legal certainty	No. Code of conduct would set in place an approach applying to whole sector across EU but is does not alter varying levels of general protection from discrimination in general among Member States.
Enhance social inclusion	Possible but partial. By reducing discrimination in a specific sector, a code of conduct could help some people participate more fully in economic and social life.
Effective remedies for victims	Uncertain. In the sector(s) covered by a code of conduct, an enforcement mechanism should provide remedies for individuals, but difficult to say how effective it would be. In general, improvements at national level are possible, but cannot be predicted.
Protection against multiple discrimination	No. People discriminated against on two or more grounds in access to goods and services, for which scope of protection is different, would, as at present, have no explicit remedy under EU law.
Extension of Equality Bodies' competence	No.
Information on rights and obligations	Partial. Information on code of conduct would have to be disseminated by sector involved, the Member State and Commission. Existing awareness-raising and training activities could increase knowledge of existing rights.
Consistency with EU's general objectives	Yes, but partial. In sectors concerned, there could be a positive contribution to objectives of Partnership for Growth and Jobs, with encouragement of mobility and cross-border trade in services concerned. No additional protection of fundamental rights.
Cost – effectiveness	Depends on degree of consensus of economic operators and stakeholders but potentially high for the sectors/grounds concerned.
Impact on the baseline scenario	Positive for item 1 (level of protection)

### 7.3. Option 3: Specific Commission recommendation

A recommendation would supplement a directive and could be used to address the two limited points, multiple discrimination and the powers of equality bodies, which would be difficult to tackle fully in a directive. It would call on the Member States to ensure that protection from multiple discrimination also extended to situations covered by the existing directives adopted under Article 13(1) EC<sup>91</sup>. It would also ask the Member States to extend the powers of their equality bodies, so they could offer assistance to victims of discrimination on grounds of age, disability, sexual orientation and religion or belief where this is not already the case.

If protection from multiple discrimination were improved under national law, people would have a remedy they did not previously enjoy. In addition, extending the powers of equality bodies would give individuals greater access to advice and help with cases of discrimination. A higher level of protection, and of access to justice, would ensue. It would also give economic operators as source of information and guidance on their obligations.

If the recommendation were limited to these two issues, it would be highly focused but still leave the detail to the Member States, so they could take suitable targeted action. This complies with the requirements of subsidiarity and makes a specific recommendation a proportionate instrument to accompany a directive. In addition, it is less burdensome than opening the existing directives, as referred to in Subsection 6.4. But, on its own, this option

<sup>91</sup> Directives 2000/43/EC, 2000/78/EC & 2004/113/EC

does not go very far towards addressing the overall problem of the different levels of protection from discrimination.

### ***Economic impact***

A recommendation dealing specifically with multiple discrimination and the powers of equality bodies in the Member States would have minimal economic impact on providers of goods and services, but Member States might face costs relating to the possible extension of the powers of equality bodies. This depends, however, on the specific action taken to increase the powers of equality bodies and on the mandate of existing equality bodies, so it cannot be calculated but is likely to be marginal. .

### ***Social impact***

Extending protection from multiple discrimination should improve the situation for people discriminated against on multiple grounds, who should therefore find they have better access to, say, education and health care, which should increase their ability to participate actively in society and avoid becoming a burden in welfare terms.

Extending the powers of equality bodies to deal with discrimination, both in the labour market and outside, on grounds of age, disability, sexual orientation and religion would have a positive effect in terms of combating and preventing discrimination as well as improving such bodies' efficiency and effectiveness. They would be able to deal with workplace discrimination on grounds of age, disability, sexual orientation and religion or belief, which could have a positive effect on labour retention<sup>92</sup>.

No specific **environmental impacts** have been identified.

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<sup>92</sup> According to a study by Lloyds TSB in the UK, the costs of maintaining in post a disabled manager are far less than the costs related to dismissing the person and hiring someone new. According to the Social Market Foundation in the UK, improving the employability of disabled workers would be worth £13 billion to the British economy.

## Assessment of Option 3 - Specific Commission recommendation

Objective to be achieved/problem addressed	Comments
Increase protection	Possible but uncertain. To the extent that Member States prohibited multiple discrimination, protection against discrimination would be increased.
Legal certainty	Partly. This option would encourage but not guarantee a levelling up of protection against multiple discrimination, and could contribute to close gaps in EC legal framework.
Enhance social inclusion	Yes, possible but uncertain. In prohibiting multiple discrimination, social exclusion should be reduced.
Effective remedies for victims	Possible. To the extent that Member States prohibit multiple discrimination and widen remits of their equality bodies, effective remedies would be ensured.
Protection against multiple discrimination	Possible. Recommendation would specifically encourage protection against multiple discrimination on all grounds.
Extension of Equality Bodies' competence	Possible, but would depend on Member States' follow up.
Information on rights and obligations	Possible. Member States could be encouraged to disseminate information on new rights to protection from multiple discrimination and on new powers of equality bodies.
Consistency with EU's general objectives	Limited. May lead to additional protection of fundamental rights.
Cost-effectiveness	Some costs related to extending the remits of the equality bodies, depending on Member State follow up.
Impact on baseline scenario	Positive for item 1 (level of protection) but not assured

### 7.4. Option 4: General Commission recommendation

In this option, the Commission would recommend Member States to ensure that there is adequate legal protection/remedy for victims of discrimination outside the labour market on the grounds of age, sexual orientation and religion. It would also recommend that they provide effective protection against multiple discrimination, and ensure that their existing equality bodies are empowered to help all victims of discrimination on Article 13 EC grounds. For those Member States which already plan changes to their current non-discrimination laws, the contents of the recommendation would provide them with a benchmark against which to assess their proposals.

In terms of subsidiarity, a Commission recommendation at EU level backed up by Council conclusions would show that there is an agreed approach to protecting people from discrimination across the Member States while leaving it to the Member States to decide the details and the pace of the adjustments.

It is difficult to assess the effectiveness as it cannot be known to what extent or over what timescale the Member States would give effect to the goals set out in the recommendation. If the take-up was low, there would be very little increase in the level of protection against discrimination on grounds of age, sexual orientation and religion outside the labour market. Despite being limited by its non-binding nature, a general recommendation could be considered a proportionate instrument for achieving the objectives set, especially if Member States implemented the recommendation correctly and in a timely way.

If a single ground directive were adopted, then a general recommendation would be a way to encourage an increase the level of protection against discrimination on the other grounds, in the absence of a consensus on binding Community wide measures.

#### *Economic impact*



The economic impact of a general recommendation is difficult to assess in advance as neither the extent to which it will be implemented nor the timescale for implementation can be predicted accurately. Any compliance costs, such as initial spending on training staff, for example, would probably decline over time as non-discriminatory practices become routine. These costs would in any event be marginal since it can be expected that organisations would already have taken steps to ensure that their staff are trained in non-discriminatory practices in line with the current EU legal framework.

The extension of the scope of the equality bodies would have a cost, in those Member States where the bodies do not already have a broad scope, but the cost would be marginal since these bodies already exist. Where such bodies have the powers to mediate solutions to allegations of discrimination, they will reduce the costs for victims and economic operators of seeking redress through the courts.

### Social impacts

Like its economic impact, the social impact of a general recommendation is difficult to assess effectively. Implementing the recommendation would have a beneficial impact upon the level of protection from discrimination, but this would vary in each Member State, depending on which areas or actions were prioritised and to what extent they were complied with.

No specific **environmental impacts** have been identified although if public transport remains inaccessible for many people, they will continue to have recourse to private car use.

#### Assessment of Option 4 – General Commission recommendation

Objective to be achieved/problem addressed	Comments
Increase protection	Could lead to increased legal protection at national level, but difficult to predict;
Legal certainty	Recommendation could improve current situation of varying levels of protection from discrimination among the Member States, but would depend on Member States follow-up.
Enhance social inclusion	Uncertain. Depends on Member States' follow up.
Effective remedies	Possible but uncertain. Improvements at national level are possible, but cannot be predicted
Protection against multiple discrimination	Depends. If Member States effectively prohibited multiple discrimination, there could be positive impact, but no certainty.
Extension of Equality Bodies' competence	Depends on Member States follow up, no guarantee.
Information on rights and obligations	Member States would be responsible for dissemination of information on action taken to implement recommendation; existing EU awareness-raising and training activities could increase knowledge of existing rights
Consistency with EU's general objectives	Possible positive contribution to objectives of Partnership for Growth and Jobs, but free movement of persons and cross-border trade may not be stimulated. May lead to additional protection of fundamental rights.
Cost – effectiveness	Likely low. It would depend on each Member State's follow-up.
Impact on baseline scenario	Potentially positive on items 1,2, 3, 4 and 5 but not assured

### 7.5. Option 5: Single-ground directive

Completing the legal framework at EU level and ensuring protection from discrimination on grounds of age, disability, sexual orientation and religion or belief could be achieved by adopting individual directives on discrimination on specific grounds as part of a more gradual approach to addressing the inconsistencies in the legal framework.

If it were decided to present only one ground specific directive at this stage, there are reasons to justify choosing disability: the population at risk is around 16% and this will increase as the population ages. Complaints alleging disability discrimination make up over 9% of all complaints to equality bodies (a higher percentage than for discrimination based on age, religion or belief and sexual orientation<sup>93</sup>). Disability discrimination is the area where there is most information available on the impact and costs of implementing legislation. Lastly the conclusions of the February 2008 Employment and Social Affairs Council meeting invited the Commission to step up efforts to prevent and combat disability discrimination<sup>94</sup>.

It should also be recalled that the UN Convention on the Rights of Persons with Disabilities will need in any event to be concluded and implemented by the EC and the Member States. Although there is no obligation to use EC-level legislation to implement the rights and obligations arising from the UN Convention, this would be a logical step, and this coordinated approach was confirmed in the disability Ministerial meeting of May 2008<sup>95</sup>. Through transposing an EC directive prohibiting disability the Member States would implement those parts of the Convention which are included in the directive, such as the prohibition of discrimination in access to goods and services, health care, education, as well as the obligation to provide reasonable accommodation. Such partial implementation of the UN Convention by EC legislation could help mitigate the risk of divergent national implementation measures (see Section 4.4 above).

These reasons, especially the need to implement the UN Convention, explain why disability could be chosen for a single ground directive. Equivalent reasons do not exist for discrimination based on age, religion and belief, and this Option therefore only explores a disability specific directive.

A directive would set out specific rights and obligations, with a timetable for implementation, thus offering more certainty to disabled people and providers of goods and services. It would also provide scope for more effective legal redress for victims of discrimination. Prohibiting discrimination is usually a question of halting certain types of behaviour. However, tackling disability discrimination is *different* because it calls for positive steps to be taken to accommodate the needs of the disabled person. Such an obligation can consist of adapting the environment in order to achieve equal treatment to the extent that this does not create a disproportionate burden. A specific directive on disability could address the obligation to improve access and to make reasonable accommodation. As with the existing directives, positive action would be permitted, allowing the Member States, in accordance with their laws and practices, to pursue policies based on preferential treatment.

A ground-specific directive would respect the principles of subsidiarity (there is a case for European-level action on discrimination, as this report shows and already established with the adoption of three Article 13 directives) and of proportionality (a directive leaves the widest latitude to the Member States). Member States which already have detailed legal protection against discrimination on grounds of disability outside the labour market would not need to

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<sup>93</sup> EPEC, Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment, Annex, p. 49.

<sup>94</sup> Resolution of the Council of the European Union and the representatives of the governments of the Member States, meeting within the Council, on the situation of persons with disabilities in the European Union (2008/C 75/01), formally adopted on 17 March 2008

<sup>95</sup> [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_\\_pdf/ns\\_invalidi\\_sklepi\\_220508\\_en.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/ns_invalidi_sklepi_220508_en.pdf)

make major changes to their legislation, and many of the concepts would be identical to those in the existing Article 13 directives.

### **Improving access and reasonable accommodation**

As pointed out above, positive steps may be required to ensure disabled people have access to goods and services on an equal footing with the non-disabled. This may be achieved in two complementary ways. A provider of goods and services could take measures to improve access, such as better access for wheelchairs, better website design for the visually impaired, access for guide dogs, etc. As far as possible they should be taken in advance. However, a directive would not address the specific solutions.

Reasonable accommodation measures may be needed for a particular person with disabilities in order to allow them access to goods or services. These are measures needed in individual cases to allow the disabled person equal and effective access to the goods or services. The requirement to make reasonable accommodation may imply not only physical changes but also an *alternative means* of providing a service. For example, a restaurant could decide to produce its menus in Braille or its staff could read the menu to blind people. Likewise, a company that sells solely over the Internet could take steps to adapt its website for people with visual impairments, or could provide an alternative service by telephone. Another example of reasonable accommodation may entail pricing adjustments: for instance, where the only wheelchair accessible part of a music venue is at the front by the stage the management could make reasonable accommodation by offering tickets to wheel chair users at the normal price rather than a premium rate instead of physically altering the premises.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States and businesses therefore have practical experience in applying it under national law. Many, though not all, service providers are also employers, and will therefore have direct practical experience of implementing the concept of reasonable accommodation.

### **Non-discrimination and specific sectors**

Applying the principle of non-discrimination to **education** would not mean that all disabled pupils had to be taught in mainstream schools: the Member States alone are competent to organise their education systems. In the **transport** field service providers would have to consider measures of accessibility and reasonable accommodation, but this would be subject to the disproportionate burden test. Where specific EC instruments dealing with discrimination exist in a particular sector, for example those dealing with the rights of disabled persons when travelling by air<sup>96</sup> or rail<sup>97</sup>, the parts of those instruments dealing with accessibility would take precedence over a new Article 13 directive.

For **insurance and banking services**, a directive would confirm that disability could continue to be taken into account in determining risk where a specific disability is a determining factor in assessing the risk for specific products, such as private health insurance, life insurance, certain types of accident insurance and mortgages, provided the determining nature of the criterion was proven, on the basis of accurate and up-to-date data.

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<sup>96</sup> Regulation (EEC) No 1107/2006.

<sup>97</sup> Regulation (EEC) No 1371/2007, adopted on 3 December 2007.

This could mean that some complaints of discriminatory practice would in fact be found not to be unlawful: the aim is to ensure that decisions are made in relation to the specific customer and that disability is not used as a blanket justification for charging higher rates.

For example, a person with diabetes could be charged more health insurance if the company showed statistically that diabetics needed more frequent medical attention than other people. On the other hand, a case dealt with by the Hungarian Equal Treatment Authority illustrates what would not be acceptable; a blind client applying to his bank for a loan was categorised as a high-risk customer, which meant he had to sign a special paper before a notary. The Equal Treatment Authority found that there was no reason why a blind person should present a higher risk, and the bank agreed to stop the practice.

It should be noted that the concept of relevant risk factor is not new: it was used in Directive 2004/113/EC on equal treatment between men and women in access to goods and services, which was to be transposed into national law by the end of 2007<sup>98</sup>.

### **Economic impact**

As noted at earlier, since by definition reasonable accommodation is subject to a test that it does not represent a disproportionate burden, then the costs of associating it can be assumed to be disproportionate – but they cannot be measured in advance with any degree of accuracy.

However, experience shows that the costs of making *reasonable accommodation* need not be onerous. According to a study conducted for the Department for Work and Pensions<sup>99</sup> in the UK (where the principle of non-discrimination already applies outside employment), 74% of companies said it had been easy to make physical adjustments, while only 9% said that costs were an issue. In another study<sup>100</sup> covering 1000 companies, 40% had made some sort of adjustment and half of those had found it easy to do so. Other national experiences outside the EU show that the costs are not excessive and may represent an investment offering a return. In the United States<sup>101</sup> a study covering over 1000 adaptations reported that more than 80% of reasonable accommodation adjustments cost less than US \$500 but half of all those accommodations cost practically nothing.

A Swiss study<sup>102</sup> into the costs of a 2004 law on *accessibility* of public and other buildings put them at 1% of overall annual building costs, or approximately CHF 60 (€37) per person per year. It found that the adjustments made benefited not only the disabled but also people with pushchairs/prams and the elderly, so increasing the rental possibilities of certain buildings. The study also identified some objective costs, for example, that it costs 32€ a metre to install a hand-rail for the visually impaired, that a five-metre ramp with a hand rail costs 4,886€ and that widening an existing door costs 1,221€. This study also shows that the costs of incorporating accessibility solutions into buildings are low to negligible if the necessary transformations are taken into account at the planning stage.

Education providers would have to make reasonable accommodation for pupils and this would entail costs, such as for training personnel and making premises accessible. A Dutch

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<sup>98</sup> Article 5 of that Directive allows Member States to authorise the use of sex as a determining factor for the calculation of risk in insurance and related financial services, based on actuarial and statistical data.

<sup>99</sup> Research Report No 410: Organisations' responses to the Disability Discrimination Act.

<sup>100</sup> Costs and benefits to service providers of making reasonable adjustments under Part III of the Disability Discrimination Act.

<sup>101</sup> Accommodation Network of the US department of labour.

<sup>102</sup> Eidgenössische Technische Hochschule Zürich: [http://www.hindernisfrei-bauen.ch/kosten\\_d.php](http://www.hindernisfrei-bauen.ch/kosten_d.php)

study into the impact of the Act on Equal Treatment on the grounds of Disability or Chronic Illness in primary and secondary education found that the initial forecast of an annual cost of 20 million euros was in fact an overestimation<sup>103</sup>. As far as the general economic impact is concerned, however, it has been estimated that if bringing the educational level of disabled people across the EU up to that of disabled people in Germany would bring an economic gain in GDP of €40.3 billion<sup>104</sup>.

In the area of on line web services, accessible web sites can bring significant benefits to their organisations. According to the RNIB<sup>105</sup> when the UK supermarket chain Tesco spent £35 000 to make their on-line shopping website accessible to visually impaired people, this resulted in revenue of over £13 million a year.

Public and private transport providers would face additional costs, but there would also be benefits. Improved access would increase the numbers of disabled passengers and would facilitate access for non-targeted groups (e.g. the elderly and persons with prams). The passing-on to consumers of some of the additional operating costs cannot be ruled out. A study for the Energy and Transport DG on adapting coaches (long-distance buses) for disabled passengers estimated the cost of making coaches fully accessible to wheelchair users at 2.7% of the total industry revenue, of which 0.5% would be recouped by increased ticket revenue from wheelchair users. If the full cost were passed on in ticket prices, the average fare (€15.79) would rise by €0.35.

As mentioned above in Section 4.4 on the baseline scenario, a directive would have a narrower scope than the UN Convention and it is reasonable to assume that the additional costs of transposition would be relatively low, as they would be already covered by the costs of implementing the Convention. A directive would therefore not entail additional cost. In addition, by being precise about what factors can be taken into account in assessing whether a reasonable accommodation would be disproportionate or not, a directive sets out more precise parameters to costs than the Convention does.

In general, the cost to business should be balanced against increased access for consumers to goods and services, both in their own Member States and elsewhere in the EU. A study on "Tourism for All" commissioned by the German Ministry of Economics and Labour<sup>106</sup> found that disabled people spend 27 million € a year on holiday in Germany, leading to 65,000 full time jobs. So while the immediate beneficiaries are the groups currently discriminated against, businesses will benefit from the spending power of disabled people.

### Mitigating factors

As said before, when making reasonable accommodation, the provider does not need to do anything that would impose a **disproportionate burden** on the business. A directive could give an indicative list of factors such as such as cost, company size and resources, benefit to disabled people etc which could be taken into account in assessing whether making reasonable accommodation would be disproportionate. Clearly, what would be appropriate for a large corporation or a public body may not be for a small or medium-sized company. A number of Member States, including Belgium, the UK and Cyprus have set out **guidelines** to help assess whether or not the burden is disproportionate. The criteria used to assess whether

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<sup>103</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/mapstrand2\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand2_en.pdf), page 87

<sup>104</sup> EPEC, Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment, p. 101-2.

<sup>105</sup> Royal National Institute of the Blind

<sup>106</sup> <http://www.bmwi.de/BMWi/Navigation/Service/publikationen,did=28398.html>

or not making a reasonable accommodation would be disproportionate seem to be well understood at Member State level and the Commission has received no complaints to date from providers of goods and services that they have been obliged to make accommodation that is too expensive, or that they are unclear about their obligations.

If banks and insurance companies could prove that disability were a **determining factor** in the specific case, they could use it as such. The costs to the insurance and banking services sector would accordingly be limited. The Commission would, however, encourage the insurance and banking industry to explain the rules and methods it applies when using disability in assessing risk on the basis of accurate and updated data. This process could involve setting up working groups with the industry and relevant stakeholders to look at the rules and methods for using disability as a determining factor in assessing risk and price of particular products, while endeavouring to ensure that coverage is as wide as possible. This could eventually lead to self-regulation (see Option 2).

A further mitigating measure could be to allow **additional time** to the Member States to transpose some of the legal obligations relating to discrimination on grounds of disability: this would allow economic operators to take account of the requirements when preparing medium-term business plans and future infrastructure investment. This is important as the costs of making reasonable accommodation are very low if this taken into account at the design or refurbishment stage. The Member States would have two years to transpose the directive into national law, and could, if they wanted to, avail themselves of the possibility of an extra four years to transpose the disability discrimination aspects. This follows the example of Directive 2000/78/EC under which up to three extra years could be used to transpose the age and disability aspects. Only 3 (France, Denmark and the UK) of the original 15 Member States made use of the extra time available to implement the disability discrimination provisions of that directive, and none of the new Member States did<sup>107</sup>. This implies that for the vast majority of Member States, transposition of the requirement to provide reasonable accommodation was not seen as problematic, and this conclusion is borne out by the fact that no complaints have been received by the Commission (whether from employers or disabled people) about reasonable accommodation.

### **Social impacts**

The positive effect of reducing discrimination in **education** has been noted above. In the United States, the available data confirm that non-discrimination legislation, such as the 1990 Americans with Disabilities Act<sup>108</sup>, has had a positive impact in the education field. The proportion of first-time, full-time students with disabilities attending colleges and universities tripled between 1978 and 1994, rising from 2.6% to 9.2%. By 1998 students with disabilities had risen to 10.5% of the post-secondary student population.

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<sup>107</sup> Report on the Implementation of the age and disability discrimination provisions of Directive 2000/78/EC of 27 November 2000 SEC (2005)1176

<sup>108</sup> "The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA", U.S. National Council on Disability, 26 July 2007. This report describes a two-year retrospective study and review of the impact that such legislation had on the lives of Americans with disabilities over the previous sixteen years. The US National Council on Disability is an independent federal agency that makes recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. This report can be found at the following website: [http://www.ncd.gov/newsroom/publications/2007/ada\\_impact\\_07-26-07.htm](http://www.ncd.gov/newsroom/publications/2007/ada_impact_07-26-07.htm)

In 2004 a survey confirmed that more people with disabilities were participating in higher education than before the Americans with Disabilities Act. 40% of people with disabilities received some college education or a degree (compared with 52% of those without disabilities). In 1986 only 29% of people with disabilities were attempting college (compared with 48% of people without disabilities). The gap between those with disabilities and those without disabilities attending college narrowed from 19% points to 12% points.

The same evaluation concludes that many young people with significant disabilities who were previously thought unemployable are working in competitive jobs as a result of the education they have received. In 1999 nearly 60% of young men and women with disabilities were employed within five years of leaving school, compared with only 33% in the mid-1970s. One of the priorities of the European Youth Pact adopted by the March 2005 European Council is to reduce early school leaving<sup>109</sup>. Poor education may have a major impact on social exclusion, and according to Eurostat figures, the risk of social exclusion among young people is high<sup>110</sup>.

In terms of **health care**, the EPEC study considers that prejudice and negative attitudes play a large role in the discrimination disabled people face, a situation which would be improved by the adoption of legislation.

The social consequences of inaccessible **transport** are significant as various studies have pointed out<sup>111</sup>. The UK Disabled Persons Transport Advisory Committee (DPTAC) survey found that disabled adults travelled a third less often than the non-disabled. Half of disabled people had turned down a job offer or job interview owing to lack of accessible transport, and about half said that lack of transport had restricted their choice of jobs. 21% of respondents felt that inaccessible transport had limited the range of adult education and training courses available to them. The EPEC study estimates that 5.7 million wheelchair users and 1.6 million people with visual impairments have difficulty in accessing public transport. If public-transport systems were obliged to improve accessibility for the disabled, there would be clear benefits in terms of employability and social inclusion, as mentioned above.

The explanatory memorandum to the Commission proposal for a regulation on disabled persons and persons with reduced mobility when travelling by air pointed to the social benefits of making transport more accessible, noting that 'Without such opportunities, they would not only lose the direct benefits of air travel but also the indirect one of fuller inclusion in the economic and social life of the community'<sup>112</sup>.

### **Environmental impact**

If more disabled people were able to use public transport, this would have a positive environmental impact by reducing the use of private cars.

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<sup>109</sup> Commission Communication on European Policies concerning Youth (COM (2005) 206 final).

<sup>110</sup> European Social Statistics Second report on 'Income, poverty and social exclusion' notes that 'in 1997 children and young people as well as persons of retirement age had poverty risks which were approximately 25% higher than the average' 2nd report. Data 1994-1997.

<sup>111</sup> Cited in 'Evidence based review on mobility: Choices and barriers for different social groups' (UK Department for Transport:

<sup>112</sup> [http://www.dft.gov.uk/pgr/scienceresearch/social/evidence\\_base\\_review\\_on\\_mobility?page=5](http://www.dft.gov.uk/pgr/scienceresearch/social/evidence_base_review_on_mobility?page=5)  
COM(2005)047

## Assessment of Option 5 – single-ground directive

Objective to be achieved/problem addressed	Comments
Increase protection	Yes, but partial. Protection from discrimination would increase in field covered by the directive.
Legal certainty	Yes, but partial. Directive would prohibit one type of discrimination across EU, but would not affect different levels of protection from other types of discrimination among Member States
Enhance social inclusion	Yes, partly. By reducing one type of discrimination a specific directive would help some people participate more fully in economic and social life.
Effective remedies for victims	Yes, partly. In fields covered by directive, an enforcement mechanism should provide remedies for individuals.
Protection against multiple discrimination	Yes, but partial. Directive would specifically prohibit multiple discrimination on grounds covered, but would not solve general problem of gap in explicit protection.
Extension of Equality Bodies' competence	Yes, but partial, only in respect of the ground concerned.
Information on rights and obligations	Information on rights contained in directive would have to be disseminated; this could be done by Member State and/or Commission.
Consistency with European Union's general objectives	There would be some additional positive contribution to objectives of Partnership for Growth and Jobs, some free movement of persons and cross-border trade might be stimulated, and some additional protection of fundamental rights.
Cost – effectiveness	Higher costs for disability than for other grounds. Providers of goods and services would face costs, but would also benefit from the greater economic participation of disabled people. Effectiveness could be increased by providing for transitional periods & specific exceptions.
<b>Impact on baseline scenario</b>	<b>Positive on all items as regards disability</b>

### 7.6. Option 6: Multi-ground directive

A multi-ground directive would supplement the existing legal framework and provide a clear legal remedy for victims of discrimination. Such a directive would prohibit discrimination outside employment on grounds of age, disability, sexual orientation and religion or belief, thus leading to a clear increase in the level of protection. As was mentioned in Subsection 6.4, legislation cannot eradicate discrimination on its own, but it gives victims a remedy and may also have a preventative effect. There is no doubt that the existing EC directives had a major impact in the Member States and led to a definite increase in the level and effectiveness of protection from discrimination.

This option could ensure a common approach in areas such as definitions of discrimination, procedures and remedies. As far as possible, a new directive would build on concepts used in the previous directives adopted under Article 13 EC. These concepts, such as the definitions of discrimination and harassment and procedural rules such as those on the burden of proof<sup>113</sup> and sanctions, are already part of the national anti-discrimination framework which economic operators have to understand and observe. From the information available and through the experience of the transposition exercise for the previous directives, these points were not particularly problematic. It is logical to apply the same concepts to discrimination on all

<sup>113</sup> Under which if the person alleging that their rights have been breached must present facts from which it may be presumed there has been discrimination, it then falls to the other party to provide that there has been no breach of the principle of equal treatment



grounds, as the issues are very similar and to do otherwise risks implying that some types of discrimination are more worthy of protection than others. This greatly limits the new legal concepts which the Member States will have to transpose into national law, and which economic operators will have to understand and observe.

Although its horizontal nature could imply difficulty in dealing with the specificities of different types of discrimination, this was not a particular problem in Directive 2000/78/EC, the previous multi-ground directive adopted under Article 13 EC, and specific provisions could deal with the different types of discrimination as necessary. As with that directive, it might be necessary to have longer transitional periods for some measures related to aspects of discrimination that are potentially difficult or costly to deal with, such as age and disability. In relation to the prohibition of discrimination based on disability, the discussion under Option 5 on what might be required to improve access to goods and service for disabled people, as well as the economic and social impacts and possible mitigating factors, apply equally to this option.

A new directive prohibiting discrimination on grounds of age, disability, sexual orientation and religion and belief outside the labour market could address certain sensitivities that became apparent during the infringement procedures related to Directive 2000/78/EC, covering the same grounds in the employment context. The most sensitive issues are around the relationship between the right to non-discrimination and the enjoyment of other fundamental rights, such as the right to private life and freedom of religion. In addition, the scope of the directive could be limited, in relation to access to goods and services, to commercial transactions as opposed to purely private ones.

The EPEC study estimates that adopting EC legislation and making it a requirement for the Member States to have an equality body to help victims of discrimination could reduce the problems identified by anything from 5% to 20%. 16 Member States already have a body or bodies covering all forms of discrimination.

A directive would respect the principles of subsidiarity (there is a case for European level action on discrimination is shown in this report and already established with the adoption of three Article 13 directives) and of proportionality. Member States which already have detailed legal protection from discrimination outside the labour market would not need to make major changes to their legislation.

### ***Economic impact***

In terms of disability discrimination, there are costs associated with making "reasonable accommodation". These have been addressed under option 5.

Discrimination in access to goods and services may have a direct financial impact on *individuals* or a non-financial impact in terms of embarrassment and discomfort. The EPEC study estimates, for example, that across the EU, an estimated 652,000 openly gay or lesbian persons may experience discrimination in hotels, and an estimated 2,175,000 in bars or restaurants. It estimates too that up to 6 million people over 80 are excluded from consumer services. If discrimination on grounds of sexual orientation were reduced in education, the resulting loss of earning capacity, estimated at 14% in the EPEC study, would be reduced.

*Providers of goods and services* would be prohibited from discriminating against customers on grounds of age, disability, sexual orientation, religion or belief. There would be an obligation to ensure accessibility and provide reasonable accommodation for disabled people,

as explained in detail under option 5 above. Compliance costs would be marginal, except in the case of disability, for which, see option 5 above.

In the **insurance and banking sector**, a directive would confirm that age and disability could be maintained as factors for determining risk in certain types of products where age and/or disability is a **determining factor** in assessing the risk for specific products. The explanation of mitigating factors given in option 5 would apply equally to this option, as would the possibility of self-regulation.

In the **health sector**, complaints primarily concern the 'rationing' of treatment based on the age of patients. Any legislative proposal would need to make it clear that it was without prejudice to the right of the Member States to organise their social security and health-care systems. This provision, together with a general exemption for differences of treatment where the aim is legitimate and the measures are necessary and proportionate, would shield health-care providers from a significant financial impact.

As to **education**, prohibiting discrimination on grounds of religion, sexual orientation and age in the fields where the EU can act would cost very little and could have a very positive effect: according to the EPEC study, discrimination in education on grounds of sexual orientation is an area where legislation could have a very beneficial effect at little cost. The potential impact of prohibiting discrimination on grounds of disability in the education sector, and Member States' competences, is dealt with under option 5.

Concern about the impact of new age-discrimination legislation on **preferential treatment** has been raised by a number of organisations and MEPs. Preferential treatment is often available to people above or below a certain age and exists in a range of sectors, such as transport, culture and education. A directive would specify that such differences treatment would 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. It is less clear that a general exception should be granted for preferential treatment provided by commercial providers as a marketing tool. However, if the measure complies with the legitimate aim requirement and the means of achieving that aim are proportionate and necessary, then the difference in treatment might be acceptable.

### ***Social impact***

The impact of legislation on improving access to education, explained under Option 5, also applies to this option. The positive benefits of reducing discrimination in **education** accrue to individuals and society as a whole. Since people who currently suffer from discrimination would be better educated, they would get better jobs, and this would reduce the risk of social exclusion and welfare dependency. The effect of homophobic bullying in schools, and its consequences, was noted in Subsection 4.2.3 above.

Good **health** is a prerequisite for participating fully in education, employment and society in general. Poor health can lead to unemployment, welfare dependency, poverty, isolation and social exclusion. The EPEC study estimates that legislation prohibiting discrimination could have a very positive effect in this area and reduce problems by up to 20%. They estimate that the direct tax revenue foregone due to the reduced wage-earning capacity of LGB persons caused by ill-health is €166 million a year, and put the figure for the disabled at €213 million.

Discrimination on grounds of age in health care was highlighted in the submission from Age-Platform. Tackling this will contribute to the reduction of health inequalities which is

one of the goals of the recently adopted Second Programme of Community action in the field of health (2008-13)<sup>114</sup>. In its new health strategy (2008-13), the Commission has identified the need to foster good health in an ageing Europe as one of three strategic objectives<sup>115</sup>. The importance of achieving "active ageing" and increasing the active economic and social participation of the older population were underlined in the Commission's Communication 'The demographic future of Europe – from challenge to opportunity'<sup>116</sup>.

### ***Environmental impact***

Any measure that results in more people, in particular the elderly and the disabled, using public transport would have a positive environmental impact through a reduction in the use of private cars.

#### **Assessment of Option 6 - Multi-ground directive**

<b>Objective to be achieved/problem addressed</b>	<b>Comments</b>
<b>Increase protection</b>	This option would achieve this objective.
Legal certainty	EC legal framework would be completed, with protection from discrimination on all grounds listed in Article 13.
<b>Enhance social inclusion</b>	In prohibiting discrimination, social exclusion should be reduced.
Effective remedies for victims	Yes. Effective remedies would be available to victims of discrimination on grounds of age, disability, sexual orientation and religion or belief.
<b>Protection against multiple discrimination</b>	Yes, to a great extent. The directive would specifically prohibit multiple discrimination related to the grounds covered by the Directive.
Extension of Equality Bodies' competence	Yes
<b>Information on rights and obligations</b>	Information on rights contained in a directive would have to be disseminated; this could be done by Member State and/or Commission.
Consistency with EU's general objectives	This option would further the goals of Partnership for Growth and Jobs, free movement of persons and cross-border trade may be stimulated, and there is additional protection of fundamental rights.
<b>Cost – effectiveness</b>	This option would involve comparatively higher benefits and higher costs. Effectiveness could be increased by using justified specific exceptions and transitional periods to reduce costs.
<b>Impact on baseline scenario</b>	<b>Positive on all items</b>

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<sup>114</sup> Decision 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-13).

<sup>115</sup> COM (2007) 630 final.

<sup>116</sup> COM (2006) 571 final.

## 8. COMPARISON OF OPTIONS

The impact of the options examined in the preceding sections are summarised in the table below:

Overview table

Objective to be achieved/problem addressed	No new action	Self-regulation	Specific recommendation	General recommendation	Single-ground directive	Multi-ground directive
Increase protection	neutral	positive	positive	positive	positive	positive
Legal certainty	neutral	neutral	neutral	negative	positive	positive
Enhance social inclusion	neutral	positive	positive	positive	positive	positive
Effective remedies for victims	neutral	positive	positive	positive	positive	positive
Protection against multiple discrimination	neutral	neutral	positive	positive	positive	positive
Extension of Equality Bodies' competence	neutral	neutral	positive	neutral	positive	positive
Information on rights and obligations	neutral	positive	neutral/positive	positive	positive	positive
Consistency with EU's general objectives	neutral	positive	neutral/positive	positive	positive	positive
Cost – effectiveness	neutral	positive	neutral/positive	neutral/positive	positive	positive
Baseline scenario	neutral	positive	neutral/positive	neutral/positive	positive	positive

The option of not taking action would not tackle the problems which have been identified, would mean that the economic and societal costs remain, and would run the risk of allowing a widening of the gap in legal protection. In view of commitments made by the Commission, Council conclusions, calls from the European Parliament, and the expectations of stakeholders, this option would also be difficult to defend politically.

### *A combination of measures*

Among the courses of action discussed, no single option can meet the all objectives unless there is a wholesale revision of the legal framework including the current legislation. This would be a disproportional response given the degree of legal uncertainty it would create while a new framework was being negotiated.

However a combination of binding and non-binding measures would represent an important step forward, building on what has already been achieved with the current Article 13 directives and accompanying measures. An appropriate package could include a multi-ground directive, a recommendation on multiple discrimination and on equality bodies, and the launch of a dialogue with specific economic sectors to develop a self-regulation approach to tackling discrimination in the provision of services.

Whichever combination is decided, there would be a package of accompanying measures including the establishment of a more structured dialogue and exchange between Member

States as well as other relevant actors, and the intensification of awareness-raising and capacity building measures.

As already noted, the adjustments which Member States would need to make to their laws will vary since some are more advanced than others. Moreover, new legislation would use the same principles as in the current laws (for example on definitions and types of discrimination, reasonable accommodation, role of equality bodies, procedural rules such as sharing the burden of proof and right of interested associations to engage in legal procedures, and so on). So, where additional measures need to be taken by Member States, the related administrative and compliance costs will be marginal since they will build on the existing framework of legislation, implementation and reporting. In the case of companies, it is to be emphasised that administrative costs for companies would also be marginal since there would not be a requirement to gather and transmit information to national or other authorities.

#### *The added value of EU action*

As to the added value of EU action, the EU has a clear legislative competence in this area (Article 13 EC) and, as shown previously, part of the problem derives from the incompleteness of the EU legal framework.

The EU added value in this area is demonstrated by the previous intervention of the Community legislator in this field. The main driver for the adoption of the present non-discrimination laws at national level was the need to transpose the current EC Directives. In the absence of new legislation at EU level, it thus seems unlikely that national laws will be greatly extended. So, while a particular form of discrimination could be challenged before a court of first instance in one Member State on the basis of a civil law claim, the same case of discrimination could be difficult to mount in Member States with only a general constitutional provision prohibiting discrimination and not possible at all in others. Member State action alone, based on national constitutional and legal frameworks, is unlikely to lead to an increase in the level of protection against discrimination.

The reasons for previous legal acts remain valid and there is no reason to call into question the added value of EU action in this form. Indeed, legal experts<sup>117</sup> as well as the European Parliament have confirmed it.

Differences in implementation (in terms of timing and effectiveness) of the UN Convention on the rights of persons with disabilities could exacerbate the differences in the level of protection against disability discrimination across the Member States. Such differences could hinder the effective application of the freedom of movement of people but also of goods and services and thus alter the functioning of the internal market. Developing a consistent approach across the EU on what the principle of non-discrimination on grounds of disability entails as regards the rights and obligations for those concerned would thus bring legal certainty and clarity to people with disabilities and economic operators.

In addition, the UN Convention does not oblige a State Party to be a Party to the Optional Protocol that provides for competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from those subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention. The Committee on the Rights of Persons with Disabilities is not a judicial institution and its findings have no binding

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<sup>117</sup> See footnote 129 below

force in law<sup>118</sup>. The mechanisms of enforcement and redress are therefore weak, and could be better guaranteed in EC legislation, which would provide a uniform and minimal protection with reference to some of the obligations of the UN Convention.

At the informal ministerial meeting on disability issues in Slovenia in May 2008,<sup>119</sup> Member States confirmed their commitment to implementing the Convention and to maintaining close cooperation at EU level in doing so. They identified areas of common interest including the compliance of non-discrimination legislation with the Convention's provisions.

Furthermore, as shown in the baseline scenario (see Subsection 4.4.), EU intervention is needed in order to reach a level playing field which would allow citizens and businesses to exercise their internal market rights. If no action is taken at EU level, there will still be untapped potential for businesses to develop markets for services in other countries. Providers of goods and services are faced with a complex mosaic of differing national provisions on discrimination when operating across borders. As noted earlier in the Report, two-thirds of businesses consulted via the European Business Test Panel think this matters. And differing levels of protection from discrimination influence individuals' decisions to make use of their rights of free movement, for instance to travel, work or study in another Member State. Again, two-thirds of those who replied to the public consultation think this matters and it would affect their decision about whether to go to another Member State. The need for a level playing field also has an intuitive aspect - a person living in a country which has a high level of protection against discrimination is unlikely to go a country which has a much lower level of protection and would have no means of redress if they are discriminated against.

- In addition, the Flash Eurobarometer survey conducted in February 2008<sup>120</sup> highlighted that the majority of EU citizens (from 68 % to 77%) see a need in their country for specific legislation to protect people from discrimination in areas beyond the labour market such as education (77% in favour), healthcare (76%), housing (71%), when buying insurance policies (70%), when buying products or using services (68%).

Non-discrimination is a fundamental value of the EU, and a general principle of Community law, according to the European Court of Justice. Given the general right to equality, there should be a minimum and equivalent level of protection against discrimination outside the employment sphere, for the different types of discrimination covered by Article 13 EC, across all the Member States. Despite the signature by the Member States of the UN Convention on the Rights of Persons with Disabilities, the only certain way to achieve an EU wide minimum level of protection is through an EC legislative act.

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<sup>118</sup> based on ECJ judgment of 17 February 1998 in Case C-249/96, par 46 on the Human Right Committee  
<sup>119</sup> [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_pdf/ns\\_invalidi\\_sklepi\\_220508\\_en.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/ns_invalidi_sklepi_220508_en.pdf)

<sup>120</sup> Flash Eurobarometer 232 ; the full results are available online at:  
[http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf)

## Conclusion

As a community of people, based on shared values, the European Union has been given the means to combat discrimination on the grounds of race and ethnic origin, religion or belief, age, disability and sexual orientation in Article 13 EC-Treaty. Two directives were adopted in 2000, which triggered important improvements in national legislation and put Europe at the forefront of the fight against discrimination.

However, these two directives differ in their material scope, establishing a more far-reaching protection against discrimination on the ground of race and ethnic origin than for the other grounds, thus creating a *de facto* 'hierarchy of grounds' not reflected in Article 13. The question thus arises of how to match the scope of protection for all the grounds. This could be achieved in a comprehensive approach with one single legal instrument or with a more progressive, discrimination ground by ground approach.

After defining the main objectives of a new Community action - to increase protection against discrimination on grounds of age, disability, sexual orientation and religion or belief, to ensure legal certainty and to guarantee effective remedies - this impact assessment has considered the possible effects of six policy options: no new action at EU-level, self-regulation in specific sectors, a recommendation dealing specifically with the competences of the equality bodies and multiple discrimination, a general recommendation; a single ground directive and a multi-ground directive.

It comes to the conclusion that a legally binding measure at Community level extending the scope of protection against discrimination on grounds of age, disability, sexual orientation and religion or belief would be the best suited instrument to achieve the defined objectives.

## 9. MONITORING AND EVALUATION ARRANGEMENTS

### 9.1. Possible indicators

Using quantitative indicators in assessing the existence and scale of discrimination raises a number of difficulties. Discrimination involves complex social phenomena. It may occur in quite different environments—in schools, hospitals, shops, cinemas, restaurants—and in many other situations and settings of social life. In addition, assessing the existence of discrimination implies a value judgment of the actual facts (for example, what is justified and what is not). This latter exercise is usually at odds with the normal methods for collecting quantitative, aggregated data. What is more, it is often difficult to find reliable data, since this involves personal information of a particular delicate nature (such as a person's religion or sexual orientation) and, owing to restrictive practices and rules in a large majority of Member States, data in this area are scarce.

The isolated use of a single indicator can mislead. For example, the incidence and extent of discrimination may be gauged from the number of complaints of discrimination presented to national courts. But that figure may conceal the existence of victims who do not know their rights and do not make complaints, and of successful mediation arrangements arrived at in cases brought before equality bodies. Inversely, a sharp rise in the number of complaints brought before the courts, equality bodies or NGOs may simply indicate that action to raise awareness of the issues has been effective.

Nonetheless, careful use of a combination of selected indicators can provide an accurate idea of the facts with a view to suitable monitoring of the situation and correct assessment of measures taken.

Several indicators of different types, both quantitative (for example, the number of complaints) and qualitative (for example, the Commission's assessment of national legislation's conformity with the directive), should therefore be used and relevant information collected from different sources. This method should reduce the risk of overestimating or underestimating the phenomenon. A cross-analysis based on different sources should also cancel out any bias on the part of the body collecting or collating the information.

## 9.2. Monitoring

In line with the objectives set out above, Annex VII presents several proposals for indicators and sources of, or methods for collecting, information needed for purposes of monitoring. Such information is needed by the Commission as part of active follow-up to the transposition and implementation process in the Member States.

These proposals also draw inspiration from experience gained in monitoring implementation of the existing Directives (Directives 2000/43/EC and 2000/78/EC). Monitoring of those two Directives was carried out with assistance initially from the Community action programme to combat discrimination (2001-06) and subsequently from the Progress programme (2007-13)<sup>121</sup>.

Under those programmes, the EU set up and funds the European network of legal experts in the non-discrimination field, which supports the Commission's work by providing independent information and advice on relevant legal developments in the Member States, and in particular on the implementation of the two existing non-discrimination Directives.

In addition, the Progress programme also funds Equinet, the European network of EU equality bodies. It seeks to develop cooperation between specialised equality bodies and to facilitate effective exchange of experience and expertise. These bodies are and will continue to be sources of relevant information on implementation of the non-discrimination Directives, including that now proposed.

While other activities undertaken under the two programmes mentioned above were not designed primarily for information collecting, they may also provide useful data. This is the case, for instance, of training activities targeting legal professionals<sup>122</sup>, which provide an opportunity for the Commission to obtain detailed information from participants on implementation of the Directives in their countries.

Lastly, in accordance with the Commission Communication "A Europe of results – Applying Community law"<sup>123</sup>, the Commission suggests setting up an expert group of representatives of the Member States and the Commission (the "Legal Monitoring Group"), which would meet

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<sup>121</sup> Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress, OJ L 315/1 of 15 November 2006.

<sup>122</sup> For example, from 2003 to 2007, 781 people (471 judges and 310 lawyers and NGOs members), from 33 European countries, participated in training sessions on Directives 2000/43/EC and 2000/78/EC organised by the European Law Academy of Trier.

<sup>123</sup> COM(2007) 502 final



to discuss issues concerning the transposition of the proposed directive, along the lines of the Legal Working Group that met between 2001 and 2004 to consider the implementation of Directives 2000/43/EC and 2000/78/EC. The proposed expert group would ensure improved information flow between EU and national authorities on how the directive is implemented and is intended to help anticipate and resolve problems more effectively. By the same token, the Commission will also request that a contact point be designated for each Member State on the implementation of the proposed directive. In the case of a disability only directive the relevance of the existing Disability High level group and the forthcoming mechanisms to monitor the implementation of the UN Convention will need to be considered.

### **9.3. Transposition**

The time limit for transposing the directive would be two years, although a longer period could be considered for certain age and disability provisions. This could be justified by the fact that a directive covering discrimination on such grounds may be more complex for economic operators to put into effect in some areas.

It is suggested that six years after the adoption of the directive, the governments of the Member States and the national equality bodies send the Commission information for a report to Parliament and the Council on the application of the directive. The report may make proposals to revise and update the directive.

When drafting the report the Commission will also take due account of the opinion of and information provided by Parliament, relevant stakeholders (businesses, European NGOs, and social partners) and the EU Fundamental Rights Agency. The report should also take account of the results of the activities of the "Eurostat Task Force on discrimination statistics", set up recently with the overall aim of developing a general framework for the regular collection of statistics on the extent and impact of discrimination.

**ANNEX I: Summary of the consultation of the European level NGOs and social partners**

<b>Organisation</b>	<b>Main comments</b>
<b>European Older People's Platform (AGE-Platform)</b>	<p>Directive prohibiting discrimination on grounds of age, sexual orientation, disability and religion or belief in all the non-employment areas covered by directive 2000/43, but with special provisions for age discrimination.</p> <p>Differences of treatment should be based on specific risks, not use age as a simple proxy.</p> <p>Stereotyping and negative images of older people in the media should be tackled.</p> <p>Certain types of preferential treatment should be allowed, as should positive action.</p> <p>Protection against multiple discrimination should be included.</p> <p>The provision of information on any new rights should be strengthened, and awareness raising is essential.</p> <p>An Equality Body should be established.</p>
<b>European Disability Forum (EDF)</b>	<p>Directive prohibiting discrimination on grounds of disability in all the non-employment areas covered by directive 2000/43.</p> <p>The prohibition of discrimination should also cover access to information, transport, telecommunications, content of media, the built environment and public space. Goods should be designed with accessibility features.</p> <p>Strengthening of positive action provisions.</p> <p>An Equality Body should be established, but its expertise should not be "watered down" by inadequate resources and having to deal with all types of discrimination.</p>
<b>European Network Against Racism (ENAR)</b>	<p>Protection of 3<sup>rd</sup> country nationals against discrimination based on nationality, in particular concerning immigration and asylum.</p> <p>Protection against multiple discrimination should be included.</p> <p>Need to tackle institutional/structural discrimination more effectively.</p> <p>Protection against discrimination in criminal justice.</p> <p>Strengthening of positive action provisions.</p> <p>Non-discrimination should be mainstreamed in all EU</p>

	<p>policies.</p>
<p><b>European Women's Lobby</b> <b>(EWL)</b></p>	<p>New directive prohibiting discrimination on the basis of gender.</p> <p>Education, health care, the media should be expressly covered, as well as social advantages and social assistance.</p> <p>Protection against multiple discrimination should be included.</p> <p>Equality Bodies should be specifically required to address issues concerning gender discrimination.</p>
<p><b>International Lesbian and Gay Association</b> <b>(ILGA-Europe)</b></p>	<p>Directive prohibiting discrimination on grounds of age, sexual orientation, disability and religion or belief in all the non-employment areas covered by directive 2000/43.</p> <p>Protection against multiple discrimination should be included.</p> <p>Recognition of same sex couples, and removal of exception for rules related to marital status.</p> <p>Equality bodies should be adequately resourced and should be proactive in preventing discrimination.</p> <p>A European Fund for litigation to support test cases should be established.</p>
<p><b>BusinessEurope</b></p>	<p>Did not see any evidence of discrimination outside the labour market in respect of which people have no legal protection. The current EU and national frameworks are sufficient.</p> <p>All the non-discrimination rules are difficult to follow and should be explained simply.</p> <p>In access to goods and services, it should be possible to tailor treatment to the client in question.</p> <p>EU action should be limited to exchanges of experience and the promotion of good practice. Information and training for companies would be useful.</p>
<p><b>European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)</b></p>	<p>Discrimination does exist in some countries, and people have no legal protection against it.</p> <p>The cost of non-discrimination largely falls on public providers (hospitals, social security, public housing etc), and lack of sufficient resources is a key obstacle.</p> <p>Awareness raising is essential to combat ignorance of the law.</p> <p>Equal access to health, education and housing is essential to achieve greater social inclusion as well as employability and adaptability on the labour market.</p> <p>Need to look at situations where there is conflict between different types of discrimination.</p>

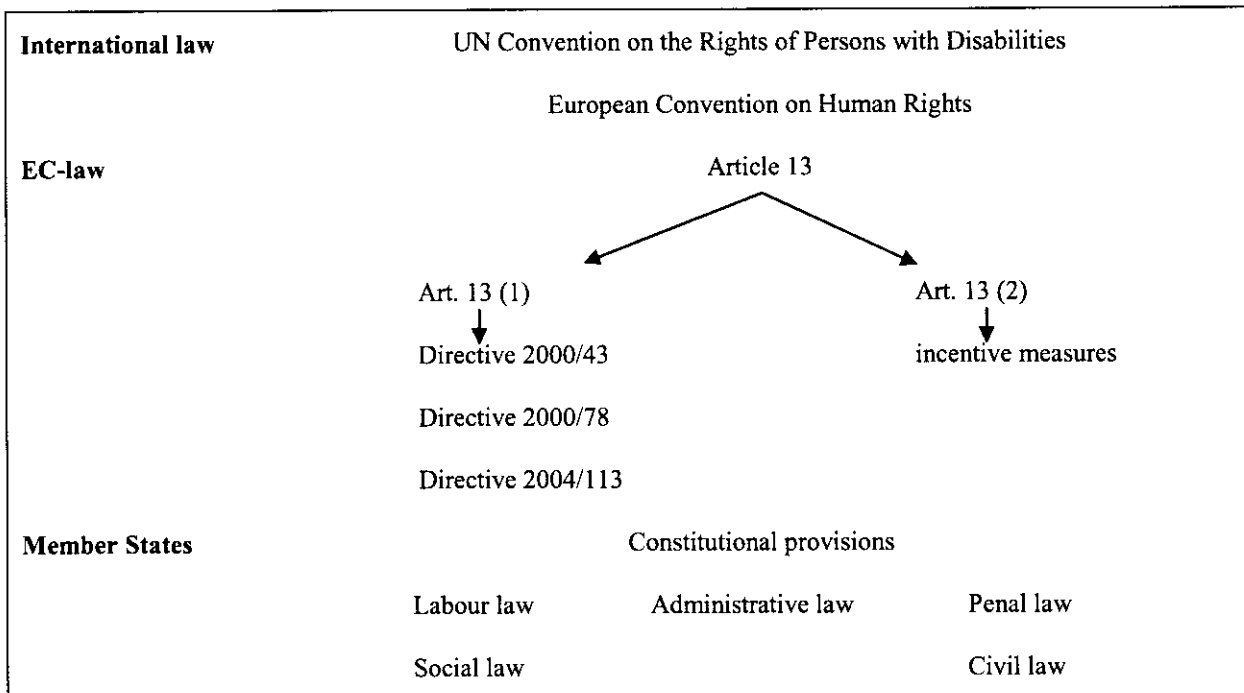
	Mainstreaming of the principle of non-discrimination.
<b>European Association of Craft, small and medium-sized enterprises (UEAPME)</b>	<p>There is a gap in the legislative protection against discrimination, but non-legislative measures such as awareness-raising are crucial in addressing discrimination and preventing it in the first place.</p> <p>Member States and professional organisations should provide support mechanisms and information for small businesses in particular.</p> <p>There should only be one Equality Body in each Member State (simpler, and would help tackle multiple discrimination).</p>
<b>Council of European Professional and Managerial Staff (Eurocadres)</b>	Did not see any particular evidence of discrimination outside the labour market, although there was a lot of discrimination against older workers as regards senior positions.
<b>European Trade Union Congress (ETUC)</b>	<p>New directive prohibiting discrimination on grounds of age, sexual orientation, disability and religion or belief in all the non-employment areas covered by directive 2000/43.</p> <p>Exclusion of discrimination on grounds of nationality should be reviewed.</p> <p>Tackling discrimination outside employment has strong links to the field of employment.</p> <p>Protection against multiple discrimination should be included as well as positive action.</p> <p>Equality bodies should be independent and adequately resourced, and should be empowered to general investigations of specific sectors.</p> <p>Need to look at situations where there is conflict between different types of discrimination.</p>

Submissions were also received from the following organisations and can be seen on [http://ec.europa.eu/employment\\_social/fundamental\\_rights/org/imass\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm)

Equinet
Equality and Human Rights Commission GB
COFACE (Confédération des organisations familiales de l'UE)
Help the Aged UK,
Age-Concern in the UK
The Equality and Diversity Forum (UK)
SOS Consumer Protection Association in the Czech Republic,
"Verbraucherrecht" (consumer rights) in Austria
The European Youth Forum
The European Blind Union
The Discrimination Law Association (UK)
HOTREC (Confederation of national hotel associations in the EC and EEA)
Association of British Insurers
Assuralia , Belgium
VV - Austrian insurance association
Test Achats (Association Belge des Consommateurs)
Care for Europe
ECTAA - The European travel agents' and tour operators' associations
Eurofinas – Specialised consumer credit providers in Europe

## ANNEX II: Legal Framework

### Antidiscrimination law in the EU



#### (7) European Union

**Article 13(1) of the EC Treaty** empowers the Council to adopt unanimously measures to combat discrimination on the basis of sex, racial or ethnic origin, religion or belief, age or sexual orientation. This is a closed list. Article 13(1) does not give a free-standing right to non-discrimination to individuals, nor is it directly applicable. Three directives have been adopted so far on the basis of Article 13(1) EC, Directives 2000/43/EC<sup>124</sup>, 2000/78/EC<sup>125</sup> and 2004/113/EC<sup>126</sup>. All three Directives prohibit direct discrimination, indirect discrimination and harassment as well as instructions to discrimination, which are considered a form of discrimination. **Article 13(2)** of the Treaty allows the Council to adopt Community incentive measures to support action taken under Article 13<sup>127</sup>.

**Directive 2000/43** protects people against discrimination on grounds of racial or ethnic origin not only in employment and vocational training but also in the fields of education, social protection, health care, social security and access to goods and services available to the public, including housing.

Under **Directive 2000/78** protection against discrimination on grounds of age, religion or belief, disability and sexual orientation only applies in employment and vocational training. There is a specific exception allowing direct discrimination on grounds of age in certain

<sup>124</sup> OJ L 180 of 19.7.2000, p.22.

<sup>125</sup> OJ L 303 of 2.12.2000, p.16.

<sup>126</sup> OJ L 373 of 21.12.2004, p. 37.

<sup>127</sup> Article 13(2) was the legal base used for the decision of the Parliament and Council setting up the European Year of Equal Opportunities for All (Decision No 771/2006/EC) as well as the Regulation establishing the European Institute of Gender Equality (Regulation (EC) n° 1922/2006)

circumstances. Employers are obliged to provide "reasonable accommodation" for disabled workers in order to allow them access to a job they are qualified for, as long as doing so would not impose a disproportionate burden on the employer.

There is a vast corpus of **gender equality legislation** at EC level, adopted under what is now Article 141 EC, prohibiting discrimination between men and women in employment, social security and occupational pensions. **Directive 2004/113** prohibits discrimination on grounds of gender outside employment in the supply of goods and services (excluding the content of media and advertising, and the education sector). It contains a specific provision allowing Member States to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk.

Directive 2000/43 requires the Member States to establish a body (or bodies) to promote equal treatment of all persons without discrimination on grounds of racial or ethnic origin. The Directive lays down three minimum competences for this body:

- to provide independent assistance to victims of discrimination
- to conduct independent surveys concerning discrimination
- to publish independent reports and make recommendations on issues relating to discrimination

An equivalent obligation, in terms of gender equality, both in the employment sphere and outside it, is contained in Directives 2002/73 and 2004/113. The creation of equality bodies has proved to be a key factor in combating discrimination, providing victims with a source of advice and help, as well as contributing greatly to awareness raising. In terms of access to justice the equality bodies play a vital role<sup>128</sup>. It should be noted that no such obligation exists under Directive 2000/78, with the result that victims of discrimination on grounds of age, disability, religion or belief and sexual orientation outside the labour market do not have an equality body to turn to for help.

The following table gives an overview over the material scope of the three directives adopted on the basis of Article 13(1).

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<sup>128</sup> See report "Catalysts for Change? Equality bodies according to Directive 2000/43/EC", by Legal Experts' Group available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/06catalyst\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06catalyst_en.pdf)

**Table: Overview of material scope of existing directives adopted on the basis of Article 13(1)**

Grounds Field	Race	Religion	Disability	Age	Sexual orientation	Sex
Employment & vocational training	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	No	No	No	No	No
Goods and services	Yes	No	No	No	No	Yes
Social protection	Yes	No	No	No	No	Yes

The presently existing regulatory architecture thus creates a hierarchy of discrimination grounds, whereas Article 13 defines all discrimination grounds as equally important and worthy of protection. This hierarchy of grounds is not simply a legalistic or academic problem: it means that in practice individuals can bring cases of race discrimination outside the employment area before national courts while, for example, an analogous case involving discrimination on the ground of religion leaves the concerned individual without a legal redress. It can thus be said that the present law "lacks clarity, consistency and coherency" and makes it difficult for perpetrators to know their obligations and for victims to know their rights<sup>129</sup>.

There are also detailed Community law rules on accessibility of air travel for passengers with reduced mobility<sup>130</sup> and an equivalent measure was adopted for railways on 3.12.2007<sup>131</sup>, which require transport providers to give all necessary assistance to individual disabled passengers who have given notice that they will be travelling.

The **EU Charter of Fundamental Rights** which forms part of the Treaty of Lisbon, provides in its Article 21 that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Article 26 addresses the rights of persons with disabilities.

(8) Member States

All Member States have transposed directives 2000/43/EC and 2000/78/EC into national law<sup>132</sup>. This required legislative changes in all Member States, and resulted in the introduction of specific protection against discrimination in areas where it had not existed before (primarily the non-employment aspects) and for certain groups which had not previously enjoyed protection against discrimination (in particular with respect to age and sexual orientation).

Whereas prior to transposition of Directives 2000/43/EC and 2000/78/EC many EU Member States provided protection against discrimination through a patchwork of – largely declaratory

<sup>129</sup> UK Equality and Human Rights Commission, Contribution to the European Commission's consultation, 2007.

<sup>130</sup> Regulation 1107/2006/EC

<sup>131</sup> Regulation 1371/2007/EC

<sup>132</sup> Report from the Commission on the application of Directive 2000/43: COM (2006) 643 final and on Directive 2000/78/EC; COM (2008) final.



–equality clauses in a series of legislative instruments, by now, most have adopted more visible specific non-discrimination legislation<sup>133</sup>.

To some extent, all the Member States go beyond the minimum required by the above-mentioned EC directives, whether through general constitutional provisions or detailed legislation covering prohibiting some or all types of discrimination. Five Member States have detailed legal protection against discrimination on grounds of age, religion or belief, disability and sexual orientation in all the non-employment areas listed in Directive 2000/43 (Ireland, Hungary, Luxembourg, Bulgaria and Slovenia).

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<sup>133</sup>

Mark Bell, Isabelle Chopin, Fiona Palmer for the European Network of Independent Experts in the non-discrimination field, *Developing anti-discrimination Law in Europe, the 25 EU Member States compared*, January 2007.  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07compan\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07compan_en.pdf)

### ANNEX III: Legal Situation in the Member States

Non-exhaustive comparison of legal protection beyond the existing directives <sup>134</sup>

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Goods & services	Housing
Austria <sup>135</sup>	Religion						
	Age						
	Disability					L	
	Sexual Orient.						
Belgium <sup>136</sup>	Religion	L	L	L		L	
	Age	L	L	L		L	
	Disability	L	L	L		L	
	Sexual Or.	L	L	L		L	
Bulgaria	Religion	L	L	L	L	L	L
	Age	L	L	L	L	L	L
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Cyprus	Religion	L x	L x	L x	L x	L x	L x
	Age	L x	L x	L x	L x	L x	L x
	Disability	L x	L x	L x	L	L	L x
	Sexual Or.	L x	L x	L x	L x	L x	L x

<sup>134</sup> The national constitutional or legislative protections against discrimination may be weaker than the protection provided by Directives 2000/43/EC and 2000/78/EC (which includes prohibition of all types of discrimination, legal standing of interested associations, share of the burden of proof, protection against victimisation, etc). In some cases, the national protection may also be subject to certain conditions and exceptions.

<sup>135</sup> Information in the table concerns federal legislation only. Meanwhile, the legislation of some Länder prohibits discrimination on grounds of religion, age, disability and sexual orientation outside the labour market.

<sup>136</sup> Information in the table concerns federal legislation only. Education and housing are regional competences. Regional legislation varies according to the Region or Community in question.

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Goods & services	Housing
Czech Republic <sup>137</sup>	Religion	(L)	(L)	(L)	L	L	(L)
	Age	(L)	(L)	(L)	L	L	(L)
	Disability	(L)	(L)	(L)	L	L	(L)
	Sexual Or.	(L)	(L)	(L)	L	L	(L)
Denmark <sup>138</sup>	Religion					Lx	Lx
	Age						
	Disability						
	Sexual Or.					L x	Lx
Estonia	Religion	C	C	C	C	C	C
	Age	C	C	C	C	C	C
	Disability	C	C	C	C	C	C
	Sexual Or.	C	C	C	C	C	C
Finland <sup>139</sup>	Religion	L	L	Lx	L	Lx	Lx
	Age	L	L	Lx	L	Lx	Lx
	Disability	L	L	Lx	L	Lx	Lx
	Sexual Or.	L	L	Lx	L	Lx	Lx

137

A new law adopted recently, but not yet in force as of 25/4/2008, prohibits discrimination on the grounds of sex, race, religion, age, disability and sexual orientation covering the full material remit of Directive 2000/43/EC. The remit of the new law is indicated between brackets.

138

Public authorities are subject to the unwritten principle of equality applicable under general administrative law. Protection on access to goods and services does not cover strictly private affairs, where an individual acts in a non commercial way.

139

In Finland, laws on social welfare and on rights of a patient provide for a general prohibition of discrimination. The criminal code also prohibits discrimination in a wide range of areas, under certain conditions.

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Goods & services	Housing
France <sup>140</sup>	Religion	C	C	C	C	CL	CL
	Age						
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Germany <sup>141</sup>	Religion	L	L	L	L	Lx	Lx
	Age	L	L	L	L	Lx	Lx
	Disability	L	L	L	L	Lx	Lx
	Sexual Or.	L	L	L	L	Lx	Lx
Greece	Religion	C	C	C	C	C	C
	Age	C	C	C	C	C	C
	Disability	C	C	C	C	C	C
	Sexual Or.	C	C	C	C	C	C
Hungary	Religion	L	L	L	L	L	L
	Age	L	L	L	L	L	L
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Ireland	Religion	L	L	L	L	L	L
	Age	L	L	L	L	L	L
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L

<sup>140</sup> In France, the legislation provides for special rights for disabled people, for example in education, and provides for accessibility to public spaces, buildings, transport and online services of the State.

<sup>141</sup> In Germany, protection in access to goods and services concerns only "mass [standard] contracts". Protection on housing has limitations; ex: it does not apply to renting by owners who have less than 50 apartments.

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Access to goods & services	Housing
Italy	Religion	L	L	L	L	L	L
	Age						
	Disability	L	L	L	L	L	L
	Sexual Or.						
Latvia	Religion	L		L	L		
	Age	L		L			
	Disability	L		L			
	Sexual Or.						
Lithuania	Religion	C	C	C	L	L	C
	Age				L	L	
	Disability				L	L	
	Sexual Or.				L	L	
Luxembourg	Religion	L	L	L	L	L	L
	Age	L	L	L	L	L	L
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Malta	Religion						
	Age						
	Disability				L	L	L
	Sexual Or.						

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Access to goods & services	Housing
Netherlands	Religion		L		L	L	L
	Age						
	Disability						
	Sexual Or.		L		L	L	L
Poland	Religion		C		L		
	Age		C		L		
	Disability		C		L		
	Sexual Or.		C		L		
Portugal	Religion	L	L	L	C	C	C
	Age	L	L	L	C	C	C
	Disability	L	L	L	C	C	C
	Sexual Or.	L	L	L	C	C	C
Romania	Religion	L	L	L	L	L	L
	Age						
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Slovakia <sup>142</sup>	Religion	Lx	Lx		Lx	Lx	Lx
	Age	Lx	Lx		Lx	Lx	Lx
	Disability	Lx	Lx		Lx	Lx	Lx
	Sexual Or.	Lx	Lx		Lx	Lx	Lx

<sup>142</sup>

In Slovakia, discrimination based on sexual orientation may be covered by the reference to "other status".

**Key:**

"L" = legislative protection against discrimination

"C" = constitutional protection against discrimination

"x" = partial protection against discrimination

Member State	Grounds of discrimination	Social security	Health Care	Social advantages	Education	Access to goods & services	Housing
Slovenia	Religion	L	L	L	L	L	L
	Age	L	L	L	L	L	L
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L
Spain	Religion	C	C	C	Lx	C	C
	Age	C	C	C	Lx	C	C
	Disability	C	C	C	Lx	L	C
	Sexual Or.	C	C	C	Lx	C	C
Sweden <sup>143</sup>	Religion	L	L	L	L	Lx	Lx
	Age						
	Disability				L	Lx	Lx
	Sexual Or.	L	L	L	L	Lx	Lx
United Kingdom	Religion	L	L	L	L	L	L
	Age						
	Disability	L	L	L	L	L	L
	Sexual Or.	L	L	L	L	L	L

<sup>143</sup>

In Sweden, protection in access to goods and services and housing applies only to commercial transactions.

**Non-exhaustive indication of the Member States legal protection (legislative and /or constitutional) from different types of discrimination outside the employment sphere (covering social security, health care, social advantages, education, and access to goods and services available to the public, including housing, unless specified otherwise)**

Member State	Legal situation
Austria	Federal law protects disabled people and their close relatives from discrimination in consumer protection. Transport & buildings have until 2016 to adapt accessibility. Legislation in Carinthia, Salzburg, Tyrol, Upper Austria & Burgenland, Vienna & Styria prohibits discrimination on grounds of religion, disability, age and sexual orientation in non-employment fields. Sign language is an officially recognised language.
Belgium	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability exists outside the labour market, except for education and housing which are regional competences. Regional laws vary.
Bulgaria	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability in <b>all</b> areas outside the labour market. The Protection Against Discrimination Act prohibits discrimination in the exercise of any right or freedom provided by the Constitution or by the law.
Cyprus	The Constitution provides for general protection against discrimination in the enjoyment of economic, social and cultural rights; but age, disability and sexual orientation are not explicitly mentioned. Law 13 (III) of 2002 provides that the enjoyment of any right set forth by law shall be secured without discrimination on any ground; but age, disability and sexual orientation are not mentioned explicitly. Specific legislation provides for equality for disabled persons in the provision of goods and services, including education.
Czech Republic	<p>The Charter of Fundamental Rights and Freedoms includes a general non-discrimination clause, but most social, economic and cultural rights the Charter provides for can be invoked only within the limits established by the laws implementing them. The School Act, covering primary, secondary and higher education prohibits discrimination, based, inter alia, on religion or belief and "other status". The Law on consumers has a general clause prohibiting discrimination in provision of goods and services, but with no reference to specified grounds.</p> <p>A new law adopted recently, but not yet in force as of 25/4/2008, prohibits discrimination on the grounds of sex, race, religion, age, disability and sexual orientation covering the full material remit of Directive 2000/43/EC.</p>
Denmark	Explicit protection against discrimination exists on grounds of religion and sexual orientation in access to goods and services (including housing) provided in a commercial manner. Public authorities are also governed by the unwritten principle of equality applicable under general administrative law.
Estonia	Constitutional protection against discrimination on grounds of religion, sexual orientation, age and disability outside the labour market.
Finland	Laws on social welfare and on rights of a patient provide for a general prohibition of discrimination. Discrimination in education is explicitly prohibited on grounds of religion, sexual orientation, age and disability. The criminal code prohibits discrimination in a wide range of areas, when it is based on religion, age, sexual orientation and state of health, where it is carried out in a trade or profession, service of the general public, or exercise of official authority. Within the remit of its competence, Åland Islands legislation prohibits discrimination on grounds of religion, sexual orientation, age and disability outside the labour market.



France	The criminal code provides for sanctions of refusal or conditioning of the provision of goods and services if it is based, inter alia, on religion, age, disability and sexual orientation. The law on disabled people provides for special rights, for example in education, and provides for accessibility to public spaces, buildings, transport and online services of the State.
Germany	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability applies outside employment, but in access to goods and services only for "mass" (ie standard) contracts". Protection regarding housing has some limitations of scope.
Greece	Constitutional protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas.
Hungary	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas.
Ireland	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas.
Italy	Legislative protection against discrimination on grounds of disability and religion in all areas.
Latvia	Legislative protection exists against discrimination based on religion in education. Besides, discrimination is also prohibited on the grounds of religion, age and disability in social security and social advantages. The Constitution provides also for a general principle of equality which can be invoked before the courts, but only in relations with the State.
Lithuania	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability exists in education and access to goods and services. The Constitution provides for a principle of equality on a list of exhaustive grounds including religion (not age, disability and sexual orientation) which can be invoked before the courts.
Luxembourg	Legislative protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas.
Malta	Protection against discrimination exists only if based on disability and occurs in education and access to goods and services (including housing).
Netherlands	Legislative protection against discrimination outside employment exists only if it is based on religion and sexual orientation and occurs in education and access to goods and services, including health care and housing.
Poland	The Constitution contains a general provision of non-discrimination and equal treatment. It also provides generally for equal access to health care services. No legislative explicit protection against discrimination on grounds of religion, sexual orientation, age and disability outside the labour market. The sole exception is the Act on Education, which prohibits discrimination generally - even if it does not include a separate, explicit non-discrimination provision listing protected grounds.
Portugal	Protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas. This protection derives partly from constitutional provisions.
Romania	Protection against discrimination on grounds of religion, sexual orientation and disability in all areas, but not for age.
Slovakia	Legislative protection against discrimination on grounds of religion, age, disability and sexual orientation, in social security, healthcare, education and provision of goods and services, including housing, but only in combination with the rights laid down in specific laws.
Slovenia	Legislative protection against discrimination on grounds of religion, sexual orientation, age

	and disability in <b>all</b> areas.
Spain	Protection against discrimination on grounds of religion, sexual orientation, age and disability in all areas. This protection derives primarily from constitutional provisions. The education law (on public and state-funded schools) prohibits discrimination, inter alia, on grounds of religion, disability or any other personal circumstance. Legislation on disabled persons provides for equality in access to goods and services, as well as for accessibility norms for public buildings and space. Sign language is an officially recognised language.
Sweden	Legislative protection against discrimination on grounds of religion and sexual orientation in all areas. For disability the protection applies to education and access to goods and services, including housing, but does not apply to social protection, health care or social advantages. In general, protection against discrimination in access to goods and services and housing applies only to commercial or professional transactions, not to those of a purely private nature (between two private individuals). Age discrimination is not covered.
United Kingdom	Legislative protection against discrimination on grounds of religion, sexual orientation and disability in all areas, but not for age.  Public authorities are under a duty to combat discrimination based on race, gender or disability and promote equality in their policies and services.

## ANNEX IV: EPEC Study – methodology and effects and impacts of discrimination

### 1. Methodology

EPEC gathered data via desk based research, country research of the 27 EU Member States, a survey of equality bodies, case studies of seven MS, participation in conferences, and brainstorming meetings with experts. They then assessed the scale and impact of discrimination before assessing the costs and benefits of legislative and non-legislative measures. The study gives details of the assumptions used and the challenges which the contractors faced.

### 2. Costs of discrimination

<b>Costs to individuals and society by policy domain</b>	
<b>Policy domain</b>	<b>Costs to individuals and society</b>
<b>Education</b>	<p><i>Sexual orientation</i></p> <p>Health problem faced by gay and lesbian pupils in upper-secondary education due to bullying and harassment in school has been estimated to later reduce their earning capacity by on average 14.3%. This corresponds to an annual loss of 3,584 euro for an individual, and 452 million euro altogether (based on an estimation of 126,000 victims).</p> <p>Early school leaving due to harassment in school leads to a reduction of net earning prospects by 10,706 euro on average per annum, adding up to 173 million euro (based on that 10% of gay or lesbian youth who have been harassed - 16,100 in the age group 15-19 - drops out of school).</p> <p>The loss in GDP due to lower participation rate or qualification levels of LGB persons in the labour force is estimated to be around 872 million euro (loss in net wage and loss in tax revenue).</p> <p>The direct tax revenue foregone due to lower earning capacity of harassed LGB youth with health problems is 1,275 euro per person, i.e. 161 million euro in total. The tax revenue foregone due to dropping out equals 76 million euro.</p> <p><i>Disabilities</i></p> <p>The combined wage loss in the EU-25 due to that 3,592,000 severely or moderately disabled persons may have achieved a lower level of education than they would if all countries were as successful in narrowing the education gap as much as the best performer (Germany) is estimated to reach 28 billion euro per annum.</p> <p>The lower economic performance (i.e. loss in GDP) due to lower participation rate or qualification level of individuals with disabilities in the labour force is estimated to add up to around 40.3 billion euro per annum.</p> <p>Furthermore, the change in the net transfers to individuals with disabilities (benefits minus taxes) is estimated to be 12.3 billion euro, as individuals with lower educational achievement are more likely to take lower-paid jobs.</p> <p><i>Age</i></p> <p>Scholarship not granted to students above 26 may result in a loss of 3,464 euro on average</p>

<b>Costs to individuals and society by policy domain</b>	
<b>Policy domain</b>	<b>Costs to individuals and society</b>
	to an individual.
<b>Housing</b>	<p><i>Sexual orientation</i></p> <p>A 10% hedonic surplus in housing expenditure of the gay and lesbian is attributed to the intention to avoid harassment and degrading treatment. This would correspond to a total of 4.1 billion euro for the gay and lesbian community.</p> <p><i>Disabilities</i></p> <p>For disabilities the key cost that lends itself to monetisation is the hedonic price surplus that owners/tenants would enjoy if they lived in amenities on upper floors. Estimating the share of wheelchair users affected to be 20%, and the surplus to be 10%, the total loss in consumer surplus is around 347 million euro.</p>
<b>Health</b>	<p><i>Sexual orientation</i></p> <p>For LGB individuals, the total loss in net earnings on the grounds of ill-health is 3,584 euro per person (an average loss of 14.3%); 466 million euro in total. (Around 847,000 people with homo- or bisexual orientation experience some form of discrimination in health services; significant health problems occur to 16,900 of them. Another 113,000 people may face health problems because they avoid going to the doctor regularly).</p> <p>The economic value of life, relevant for those who die because of discrimination at health services, is estimated at a conservative 4 million euro. This is not grossed up, as the number of individuals affected is not known.</p> <p>The loss of GDP as a result of the diminishing workforce (due to the gap in the average number of years spent on the labour market between LGB persons and the total population) is estimated at 632 million euro. The direct tax revenue foregone due to reduced wage-earning capacity of gays and lesbians caused by ill-health is 1,275 euro per person per annum, i.e. 166 million euro in total (contained in the loss of GDP figure).</p> <p><i>Disabilities</i></p> <p>8.4 million severely or very severely disabled individuals are estimated to face discrimination when accessing health services. Resulting ill-health is calculated to effect a loss of 599 million euro in net wage per year.</p> <p>Ill health leads to lower economic performance and a loss of GDP as a result of diminishing workforce, estimated at 812 million euro per year.</p> <p>The direct tax revenue foregone is estimated to reach 213 million euro a year.</p>
<b>Social security</b>	<p><i>Sexual orientation</i></p> <p>Social expenditure on survivors' benefits is estimated to increase by around 2%, or 2.5 billion euro, if widowers of same-sex marriages and partnerships were entitled to such benefits. Currently, these are often not granted, and are seen as the cost of discrimination in this area.</p>
<b>Social services</b>	<p><i>Sexual orientation</i></p> <p>The loss of income - if inaccessible social services prevent mothers with small children in</p>

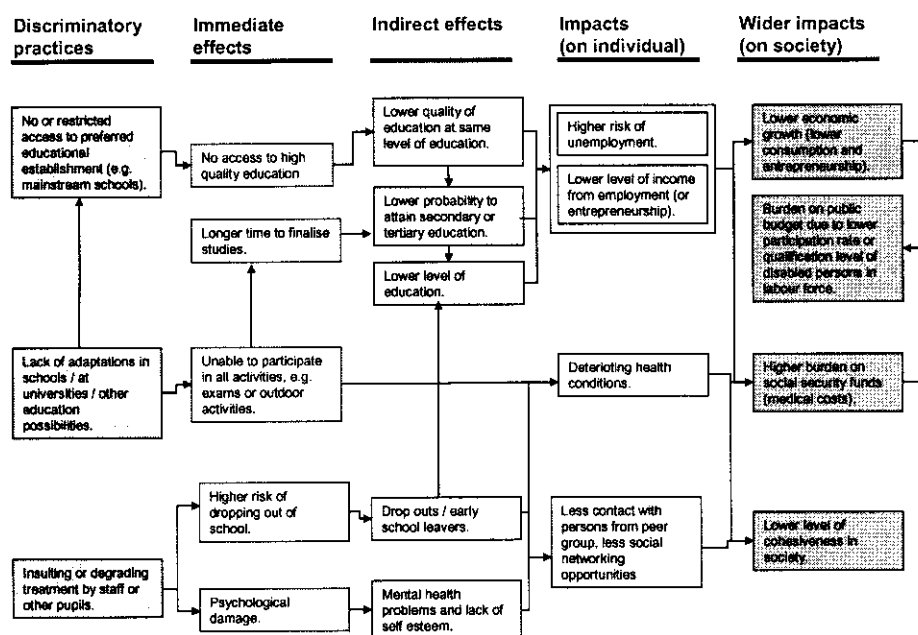
<b>Costs to individuals and society by policy domain</b>	
<b>Policy domain</b>	<b>Costs to individuals and society</b>
	same-sex relationships to enter the labour market - may amount to up to 90.8 million euro.
<b>Insurance and finance</b>	<p><i>Sexual orientation</i></p> <p>Access to health and incapacity insurance with an annual fee of about 201 million euro may be denied for gay and lesbian individuals.</p> <p><i>Disabilities</i></p> <p>Disabled persons are excluded from private health and incapacity insurance contracts worth about an estimated 6.45 billion euro in fees.</p>

### 3. Causal links of discrimination

#### DISABILITY

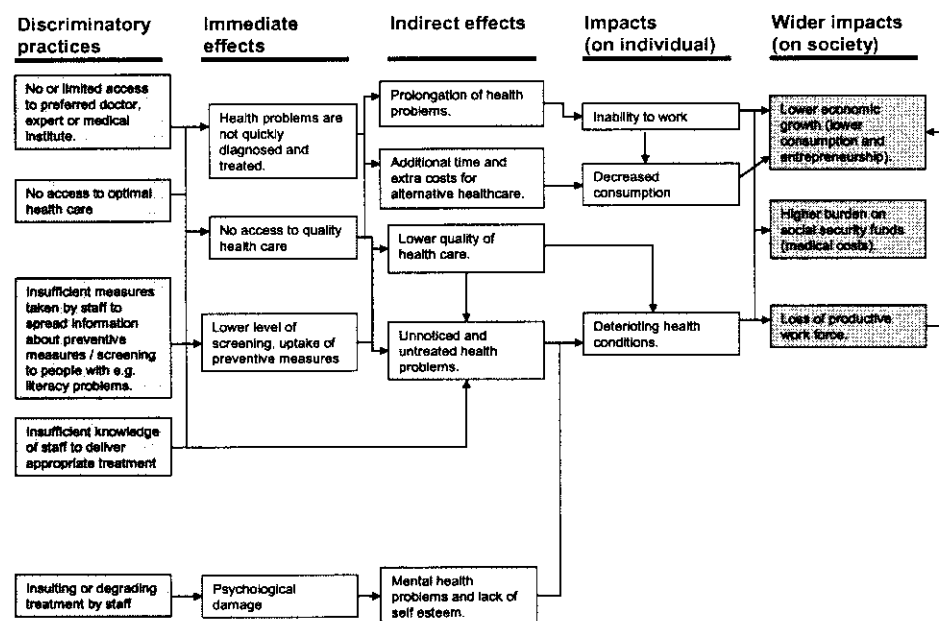
#### Discrimination on the ground of disabilities in education: Outline of causal links

##### Disabilities - education



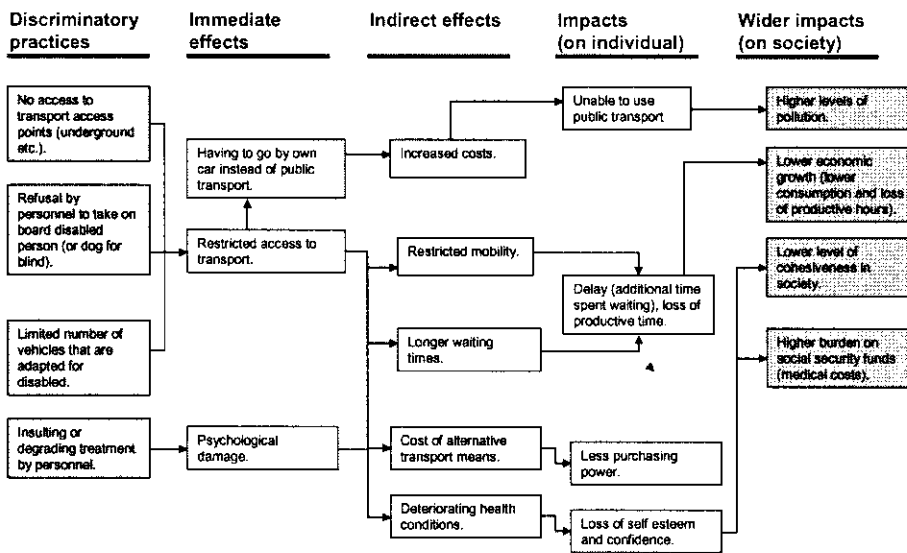
#### Discrimination on the ground of disabilities in health: Outline of causal links

##### Disabilities - health



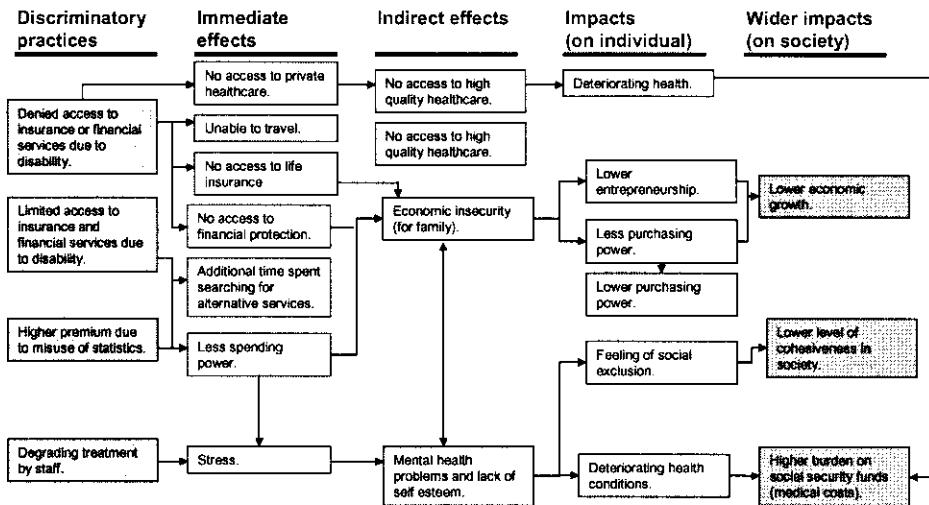
## Discrimination on the ground of disabilities in transport: Outline of causal links

### Disabilities - transport



## Discrimination on the ground of disabilities in insurance and financial services: Outline of causal links

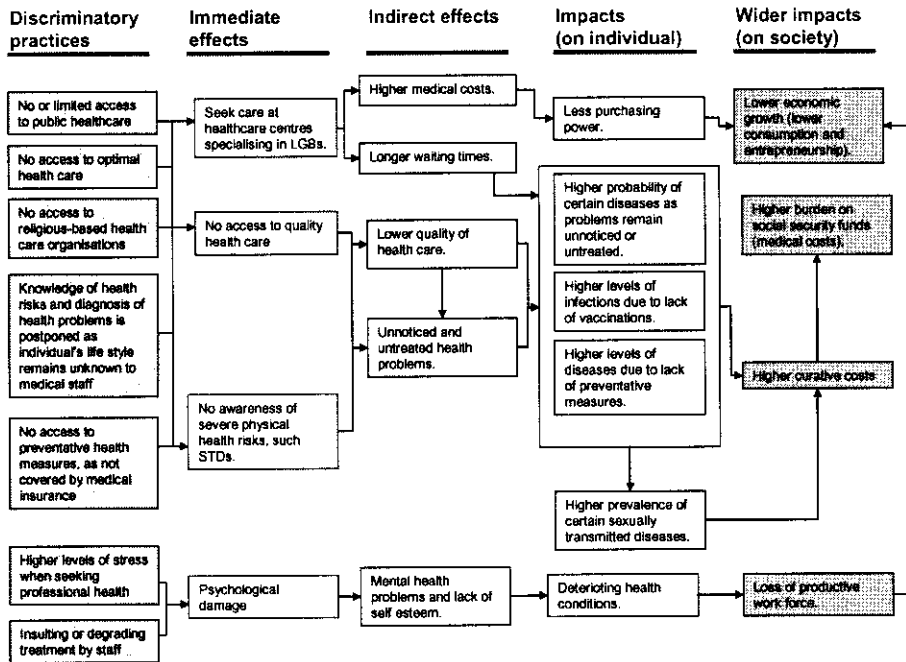
### Disabilities - insurance and financial services



# SEXUAL ORIENTATION

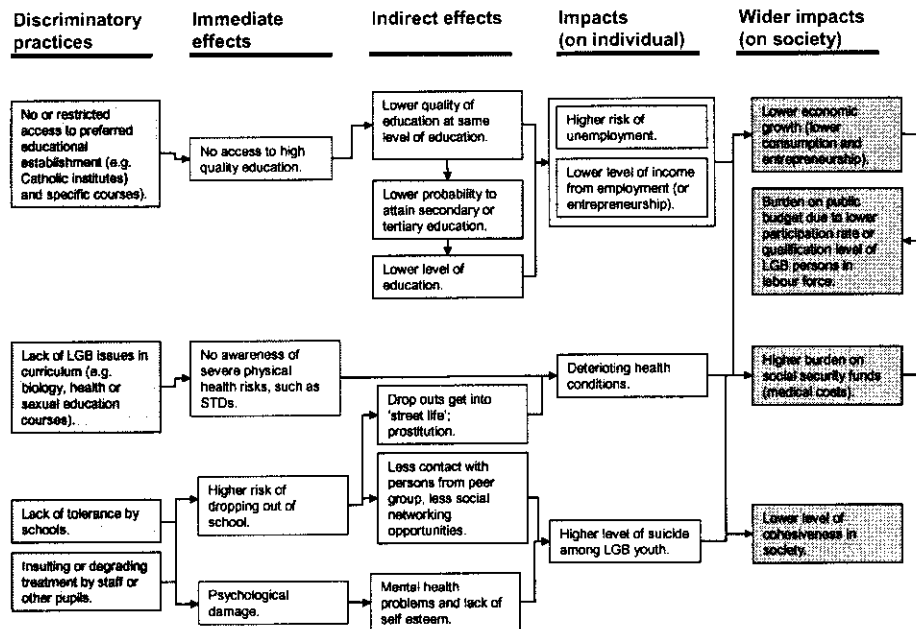
## Discrimination on the ground of sexual orientation in health: Outline of causal links

### Sexual orientation - health



## Discrimination on the ground of sexual orientation in education: Outline of causal links

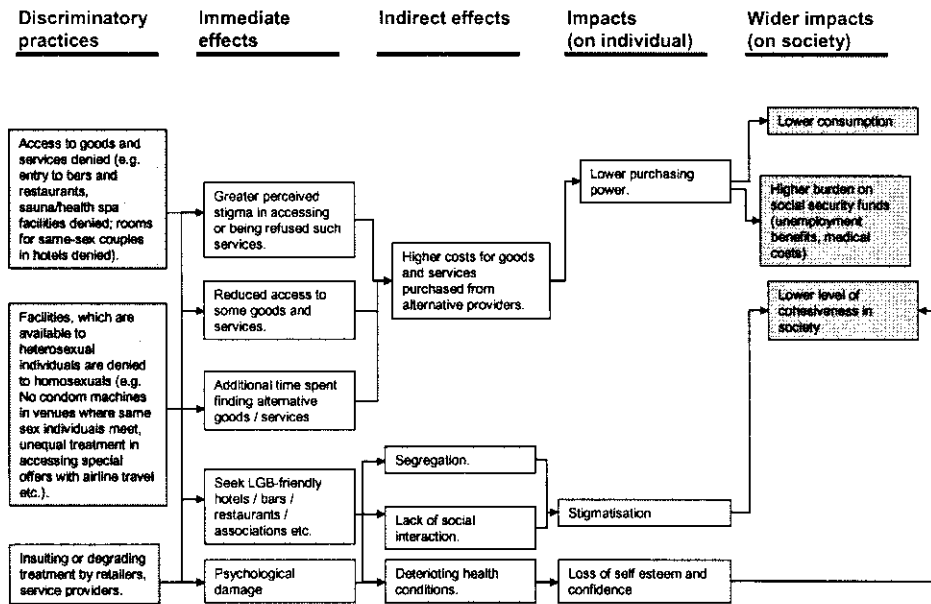
### Sexual orientation - education





## Discrimination on the ground of sexual orientation in goods and services: Outline of causal links

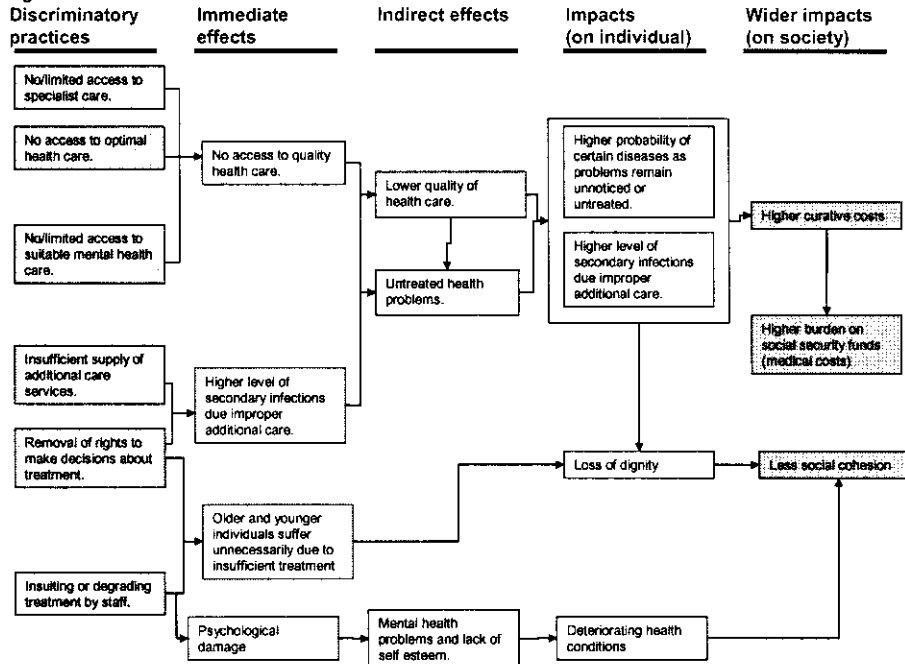
### Sexual orientation – goods and services



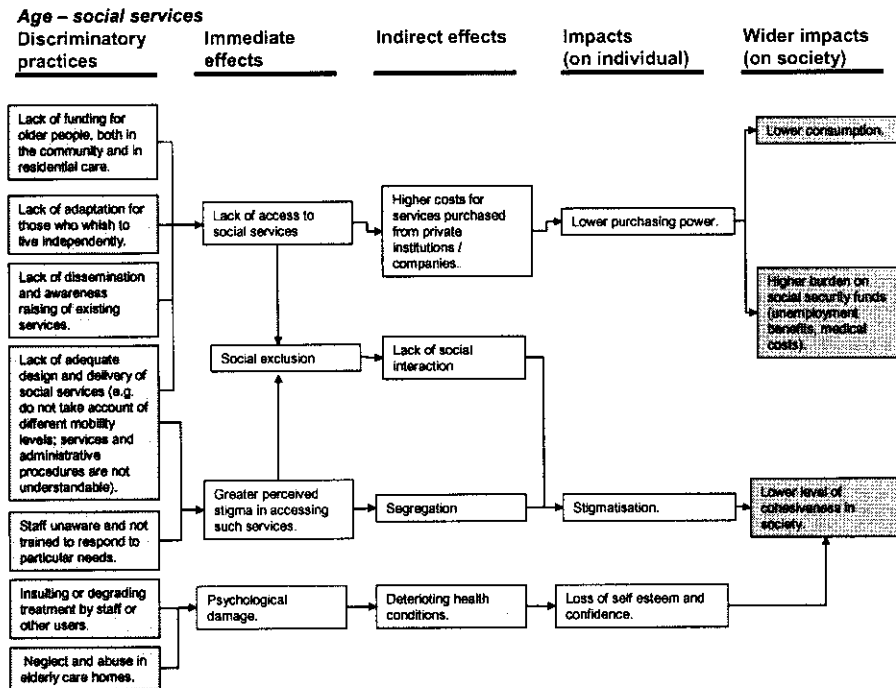
## AGE

## Discrimination on the ground of age in health: Outline of causal links

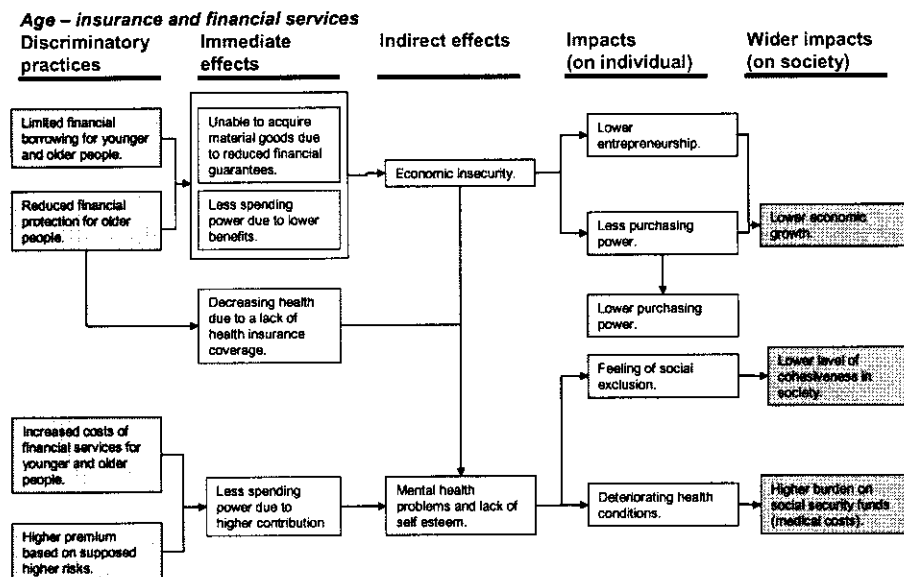
### Age – health



## Discrimination on the ground of age in social services: Outline of causal links



## Discrimination on the ground of age in insurance and financial services: Outline of causal links



## ANNEX V: UN Convention on the Rights of Persons with Disabilities

### 1. The UN Convention

The UN Convention on Rights of Persons with Disabilities and its Optional Protocol were adopted on 13 December 2006 at the United Nations. On the basis of a negotiation Directive adopted by the Council on 24 May 2004, the European Commission played a central role in the negotiation of the Convention.

Council Decision of 20 March 2007<sup>144</sup> authorised the Community to sign the Convention on the Rights of Persons with Disabilities, and issued a declaration on the Optional Protocol, stating that the Council shall reconsider the question of signing the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

The Convention on the Rights of Persons with Disabilities is the result of an increasing international recognition that the existing UN human rights treaties failed to fully protect people with disabilities. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

The Convention requires State Parties to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies. It also grants disabled people rights to education, to health, the right to work, the right to an adequate standard of living, the right to participate in political and public life, and right to participate in cultural life.

The Convention defines discrimination on the grounds of disability as:

"any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation".

"Persons with disabilities" are defined as including those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their effective participation in society on an equal basis with others". Furthermore the preamble recognises that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

The Convention includes an **Optional Protocol** that provides for a Committee on the Rights of Persons with Disabilities, which can receive and consider complaints from individuals. It also provides for an inquiry procedure giving the Committee authority to undertake inquiries of grave or systematic violations of the Convention. However, the Committee has no power to sanction State Parties nor to give redress to victims of discrimination. Even if a Member State ratifies the Optional Protocol, it is not clear how effective a remedy victims of discrimination will have.

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<sup>144</sup> ST07661/7

## 2. State of Play

The Convention entered into force on 3 May 2008. 127 States have signed it, 25 States also ratified it and 71 signed the Optional Protocol; 15 also ratified it (situation as of 15 May 2008). At EU level 26 Member States have signed the Convention and 16 signed the Protocol, three Member States (Hungary, Spain and Slovenia) have ratified both the Convention and the Protocol. The European Community signed the Convention but not the Optional Protocol. Latvia, which has not yet signed the Convention have confirmed that they plan to do so in 2008.

The Commission is drafting a proposal for a Council decisions on the conclusion (ratification) of the Convention and accession to its Optional Protocol by the Community, in which the areas where the Community is competent will be defined in the declaration of competences pursuant to Article 44.1 of the UN Convention annexed to the Decision, as well as the *modus operandi* as to the relation of the Community and the Member States to one another when implementing the Convention and its Optional Protocol. The principle of close co-operation between the Community and Member States with regard to the conclusion of such international agreements, which has been confirmed by the jurisprudence of the Court of Justice<sup>145</sup> is important for the ratification procedures for this Convention. The deposit of the instruments of ratification by all Members States parties to the agreement and by the Community should take place at the same time in order to ensure the unity in the international representation of the Community and its Member States as well as legal certainty and clarity in the division of competences.

The internal procedures required in Member States should be actively pursued in order to allow for an early deposit of all the instruments of ratification. In order to achieve the necessary co-ordination for the ratification of the Convention, the instrument of ratification by each Member State should not be deposited until all other Member States which are parties to the agreement and the Community are able to do so together.

## 2. What is the relation between the UN Convention and new legislation based on Article 13?

As such, the UN Convention does not create any obligation for the Community to provide for new legislation covering the matters it governs, as it applies to the Community only within the limits of already existing Community competence. Nevertheless if a new directive is adopted it will imply new competences for the Community vis à vis the UN Convention.

The Convention is a Human Rights instrument in which anti discrimination provisions are legally binding, whatever the nature of the rights concerned. Once in force, the Convention will require its parties, be it the EC or its individual Member States, to take measures to protect against discrimination and to make adaptations for disabled people in certain areas, such as education, health services, employment, social protection, public housing, culture, sport etc.

Member States will need to ensure that their legislation complies with their new obligations under the UN Convention. A systematic check is also being undertaken to see whether any adjustments might have to be made to Community legislation and/or policies before

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<sup>145</sup> Cf. opinion 1/78, ECR 1978, p. 2151 para. 36 ; opinion 2/91, ECR 1993, I-1061 paras 36 to 38; opinion 1/94, ECR 1994, I-5267, para 108.

concluding the Convention. Finally, action will be required by the Community institutions themselves as the UN Convention provision will be binding for them as well (pursuant to article 300.7 of the Treaty establishing the European Community).

A Directive would bring EU added value in relation to the implementation UN Convention in a number of areas:

1. Member States have already identified as a challenge (in the High Level Group Report prepared for the Ministerial meeting of 22 May 2008) that there could be legal uncertainty throughout the EU coming from possible differences in interpretations of the UN Convention principles by various Member States. Therefore the development of further EC non-discrimination legislation would improve coherence of the legal interpretations of some provisions of the UN Convention at the European level. In its Presidency conclusions of the Ministerial meeting,<sup>146</sup> the Slovenian Presidency identified the compliance of non-discrimination legislation with the Convention's provisions as one of the actions which would be of common interest and providing added value for a quick and effective implementation of the UN-Convention.

2. The UN Convention does not foresee adequate protection/redress for those who claim to be victims of a violation by a State Party of the provisions of the UN Convention:

a) The Convention does not oblige a State Party to become also a Party to the Optional Protocol that provides for competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention (article 1 of the Optional Protocol)

b) The Committee on the Rights of Persons with Disabilities is not a judicial institution and its findings have no binding force in law (the statement based on ECJ judgment of 17 February 1998 in Case C-249/96, par 46 on the Human Right Committee)

Therefore the development of further EC non-discrimination legislation would provide for a uniform and minimal approach to some of the obligations of the UN Convention.

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<sup>146</sup> [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_\\_pdf/ns\\_invalidi\\_sklepi\\_220508\\_en.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/ns_invalidi_sklepi_220508_en.pdf)

## **ANNEX VI: International Instruments**

As well as the recent UN Convention on the Rights of Persons with Disabilities, various other international instruments to which the Member States are party deal with discrimination and deserve mention.

Article 14 of the **European Convention on Human Rights** provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

This is not a free standing right to non-discrimination, and must be pleaded with a "substantive" right under the Convention for example the right to education, as was successfully argued in the "Ostrava" case<sup>147</sup>.

**Protocol 12 to the European Convention on Human Rights**, which entered in to force on 1 April 2005, provides a free standing right to non-discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. It has been signed by 19 Member States<sup>148</sup> of the EU, of whom 5 have ratified (Cyprus, Finland, Luxembourg, the Netherlands and Romania).

The 1996 Revised **Social Charter of the Council of Europe**<sup>149</sup> requires its State parties to guarantee various economic and social rights (such as the right to social welfare, protection from social exclusion, a right to housing, etc) and provides that:

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."<sup>150</sup>

The **United Nation's International Covenant on Civil and Political Rights** provides that:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination."<sup>151</sup>

The UN International Covenant on Economic, Social and Cultural Rights<sup>152</sup> provides that:

"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any

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<sup>147</sup> D.H.v Czech Republic (Application No 57325/00)

<sup>148</sup> Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxemburg, the Netherlands, Portugal, Romania, Slovenia, Slovakia and Spain.

<sup>149</sup> Ratified by all Member States except Germany and Latvia

<sup>150</sup> Article E.

<sup>151</sup> Article 26.

<sup>152</sup> Article 2 (2).

kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Other UN treaties deal with specific types of discrimination, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In its General recommendation No. 14 on the definition of discrimination, the CERD Committee held that:

"Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights."

## ANNEX VII: Proposals for indicators and sources of information

Objectives	Possible Indicators	Entities/methods providing the information
<p><b>Specific objective</b></p> <p><b>Ensure the existence of an effective legal remedy for victims of discrimination</b></p>	<p>Number of Member States which transposed the directive</p> <p>Conformity of the transposition with the directive</p> <p>Number of Member States with an Equality Body</p> <p>Number of Equality Bodies with sufficient resources to fulfil their tasks</p>	<p>For the first 4 indicators in this row :</p> <p>Member States' governments information obligations (on transposing legislation and implementing measures)</p> <p>European Network of legal experts in the non-discrimination field</p> <p>National Equality Bodies (individually or through Equinet)</p> <p>National NGOs (through each EU umbrella NGO)</p> <p>Complaints from individuals</p>
	<p>Number of court cases</p> <p>Number of complaints to the Commission</p> <p>Number of complaints to NGOs</p> <p>Number of complaints to Equality Bodies</p>	<p>- Member States' governments</p> <p>- European Commission</p> <p>- National NGOs</p> <p>- National Equality Bodies</p>
<p><b>General objectives</b></p> <p><b>Ensuring a minimum level playing field across the Member States</b></p>	<p>Increased cross-border activities by concerned groups</p>	<p>NGOs</p> <p>Consumer associations</p>
<p><b>Equal treatment of concerned groups</b></p> <p>in social protection, social advantages, education, and access to goods &amp; services</p>	<p>Percentage of general public estimating that discrimination exists</p> <p>Percentage of people of the concerned groups estimating that discrimination exists</p> <p>Percentage of people stating that they were victims of discrimination before and after the existence of new legislation</p> <p>Percentage of people of the concerned groups stating that the new legislation improved their life (or not)</p>	<p>For all indicators in this row :</p> <p>Eurobarometer</p> <p>Survey of relevant research on equal treatment</p> <p>Fundamental Rights Agency</p>