

## JOINT NGO STATEMENT

### EU equal treatment law: the time is now!

Brussels, 16 June 2015 – six months ago, organisations<sup>1</sup> representing millions of EU citizens at risk of discrimination called on EU Member States to show clear commitment on the proposed Horizontal Directive on equal treatment. In the meantime, some progress has been made and the Directive should now be adopted without further delay. Equality for All wants to debunk the lingering excuses that are still used by some Member States and remind that there are still millions of people in the EU suffering daily from preventable discrimination.

In 2008, the Commission proposed to complete EU legislation on equal treatment. Seven years later, the proposed Directive is still stuck in negotiations, due to strong resistance from a few Member States. This is unacceptable, as **fundamental rights are not up for negotiation or cherry picking**. We all deserve equality, and the Directive is key to making that happen.

In the annexed paper, **we debunk the main excuses** that we still hear from Member States:

- The ‘subsidiarity’ argument completely overlooks the fact that similar legislation covering racial and gender equality already exists.
- The ‘burden on Member States’ argument is totally invalid, particularly now that the scope and implementation period of the directive have been amended in the latest text.
- The ‘too costly’ argument is incompatible with existing human rights obligations and ignores the numerous economic gains that will be made.

The Directive is needed to tackle the daily **discrimination experienced by many people across the EU**:

- Discrimination and bullying at school, leading to stigmatisation, social exclusion, dropping out of school and even to elevated suicide rates.
- Denying same-sex couples basic rights, such as the right to visit his or her partner in the hospital or to sleep together when on holiday in a hotel.
- People with disabilities not being given essential information in accessible formats when treated in hospital.
- The refusal of insurance policies to cover elderly people and people with disabilities, including even children with disabilities.

Equality for All again urges all EU governments to show **unanimous leadership** and **adopt a strong anti-discrimination Directive** protecting all people in their daily lives as soon as possible!

<sup>1</sup> The Equality for All coalition is comprised of: AGE Platform Europe; European Disability Forum (EDF); European Network Against Racism (ENAR); European Youth Forum; ILGA-Europe - the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association; Social Platform; European Women’s Lobby; International Lesbian, Gay, Bisexual, Transgender and Queer Youth and Student Organisation (IGLYO); European Network on Religion and Belief (ENORB); Eurochild.

## **ANNEX 1: Debunking myths and concerns on the Equal Treatment Directive**

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### **Does the EU really need to legislate on this? The subsidiarity argument**

Article 19 (1) TFEU sets out that the EU should “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation“. It is unacceptable that the EU fails to do so outside the labour market.

- Member States approved the Race Equality Directive (2000/43/EC), which provides stronger protections, not limited to access to education and social protection. Hence they should not be opposed to the Equal Treatment Directive on the basis of subsidiarity or encroachment of national competence.
- National legislations differ a lot from one Member State to another. The only way for member states to ensure that their citizens are equally protected across the EU when enjoying free movement, for holidays or residing in another member state, is a clear EU directive ensuring non-discrimination.
- The proposed anti-discrimination directive is also the only way to create more equal conditions and fewer obstacles for all companies operating in the internal market. Did you know that the EU, decades ago, adopted its first gender equality measures particularly for that reason?

### **Is the Directive’s scope a burden for Member States?**

Article 3 of the draft Directive, which defines its scope, has been modified a number of times by the States’ negotiators in the Council over the last years. Many concerns were taken into consideration.

- In the area of education and social protection, the Directive would only prohibit discrimination with respect to the access to such services. Member States retain the competence to organise their social security, social assistance, social housing and healthcare services, and to organise their education systems.
- As regards the provisions related to disability and accessibility, the Directive does not go further than the UN Convention on the Rights of Persons with Disabilities (CPRD), but creates a harmonised framework with common minimum standards for all Member States to comply with the UN CRPD. On top of this, the CPRD, as an international human rights treaty, stands above secondary legislation, and thus above the Directive in the hierarchy of the EU legal order.

### **Is it too costly? Let’s ask (and answer) the right questions!**

Equal treatment is a fundamental right, recognised by the Charter and many international human rights instruments, including the UN CRPD ratified by the EU. Human rights are indivisible and must be granted regardless of their cost.

- Both the European Commission and the European Parliament have undertaken extensive needs and cost assessments regarding the legislative proposal<sup>1</sup>. The changes to the initial text do not significantly modify the likely implementation costs.
- The long-term costs of discrimination and exclusion are much higher than the short term costs of non-discrimination and integration, for the state, public authorities and companies alike. Discrimination leads to isolation, social exclusion and poverty, and results in a burden for social systems. For example:
  - Special education per-capita costs are around 2.5 times those of regular education. For example, in Germany, 70 % of pupils with disabilities attend special schools where the costs were 15.700 €/pupil in 2012 in special schools, compared to 6.500 €/pupil in regular schools. Also, the costs in special schools increased from 12.000€ in 2005 to 15.700 € in 2012 per pupil per year<sup>2</sup>.
  - 8.4 million persons with disabilities are estimated to face discrimination when accessing health services. Resulting ill-health is calculated to effect of a loss of 599 million euro in net wage per year. Ill health leads to lower economic performance and a loss of GDP as a result of diminishing work force, estimated at 812 million euro per year. The direct tax revenue foregone is estimated to reach 213 million euro a year.<sup>3</sup>
- Many measures are not completely new but entail mainly a change in policy and a shift of funding since inclusive settings are generally less expensive than segregated settings. Adapting to a more age-friendly and accessible environment as well as inclusive education will be necessary sooner or later, considering the demographic change in Europe. Retro-fitting inaccessible buildings at a later stage to comply with the UNCRPD will be much more costly than already including accessibility features from the beginning.
- The EU and 25 out of 28 Member States have already subscribed to extensive obligations with regard to reasonable accommodation and accessibility by ratifying the UN CRPD. It is cost efficient for the Member States to work through the EU to comply with these legal obligations.

### **Is it necessary to wait for the EU Accessibility Act to be on the table?**

The EU Accessibility Act is a long awaited legislative initiative aiming at improving the accessibility of goods and services in the internal market. The Act will be a practical tool for the implementation of the CPRD by the EU and its Member States. And indeed, the Directive also deals with equal treatment and accessibility in relation to disability.

- The Directive aims at enforcing a fundamental rights principle, while the Accessibility Act will be potentially based on the Internal Market and focused on practical measures to ensure the enjoyment of free movement, consumer protection and access to specific sectors such as transports, communications or

<sup>1</sup> See for instance: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008SC2180&from=EN> (by the Commission) and [http://www.europarl.europa.eu/ReqData/etudes/etudes/join/2014/514088/IPOL-JOIN\\_ET%282014%29514088\\_EN.pdf](http://www.europarl.europa.eu/ReqData/etudes/etudes/join/2014/514088/IPOL-JOIN_ET%282014%29514088_EN.pdf) (by the Parliament).

<sup>2</sup> German National education report 'Bildung in Deutschland 2014', p. 196 on <http://www.bildungsbericht.de/>

<sup>3</sup> 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), p. 75

justice. It will be for the Accessibility Act to conform to the principles set out in the Directive and the two are thus complementing each other.

- All EU Member States<sup>4</sup> already have some kind of accessibility rules in place so it will not necessarily mean a huge amount of extra costs and a European Accessibility Act will harmonise these national accessibility legislations facilitating the free movement of goods and services in the EU internal market.
- The delay in proposing the Act should not hamper the Directive's adoption. However, equality civil society networks urge the Commission to finally launch its Accessibility Act proposal. This has been promised for years, it is time to deliver!

### **Will it remain possible to offer preferential treatment to specific age groups?**

Across Europe, many social protection mechanisms function based on age thresholds. This is the case for pensions, as well as for policies promoting the social insertion of young people or policies to guarantee children enjoy the same rights, opportunities and protection, in application of article 2 of the UNCRC.

- Article 2 (2) of the Directive's draft clarifies that "differences of treatment on grounds of age shall not constitute discrimination, if they are objectively justified by a legitimate aim [...]. Differences of treatment where more favourable conditions of access are offered to persons belonging to specific age groups in order to promote their economic, cultural or social integration, are presumed to be non-discriminatory [...]."<sup>5</sup>
- Importantly, this provision also applies to private businesses.

### **How to avoid disproportionate burden? Already adapted implementation deadlines**

Legitimate concerns have emerged as regards implementation deadlines. In the short term, some adaptation measures, for instance in the area of accessibility, have a cost. Council negotiators have already touched upon this question. As a result, it should be reminded that:

- In the draft Directive, the transposition period is of four years, far more than for the majority of EU directives (Article 15 of the Directive).

Member States are given five years to comply with the obligation to ensure accessibility regarding new buildings, facilities, transport services and infrastructure. When it comes to existing buildings, facilities, transport services and infrastructure, this implementation deadline rises to 20 years, based on an action plan and progress reporting. In addition, Article 4, which defines the objectives to be reached in terms of accessibility, rules out imposing measures that would amount to a disproportionate burden. Most Member States already have accessibility legislation in place that partly fulfils the provisions of the Directive. Increasing the deadlines again would only delay the implementation unnecessarily.

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<sup>4</sup> Academic Network of European Disability Experts (ANED), extract from DOTCOM database, <http://bit.ly/1eN1Olj>

<sup>5</sup> The Employment and Social Affairs Committee endorsed an amendment making clear that the Directive does not preclude "measures aimed at protecting the rights of children."

## **ANNEX 2: The positive impact of non-discrimination and the harm done by discrimination in the EU**

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### **The positive impact of non-discrimination**

Non-discrimination will have a huge positive impact on the lives of individual EU citizens, on society as a whole, and on the economy. Some examples:

- Inclusion for people with disabilities does not only benefit persons with disabilities, but also other individuals and the society as a whole. Accessible public transport also benefits older people, parents with children or people with temporary reduced mobility.
- Inclusion in public education is key to ensuring access to the labour market and more broadly to social inclusion in general.<sup>6</sup> The loss of GDP due to low participation of people with disabilities in the labour force is estimated to add up to 40.3 billion euro per year.<sup>7</sup>
- The Directive would be an efficient solution to implement both the EU treaties and the UN Convention, and would ensure that different national responses do not create barriers and hurdles to free movement and to the internal market.
- Inclusive settings are generally less expensive than segregated systems.<sup>8</sup>

### **The harm done by discrimination: cases and figures in each area of life.**

#### *Income and employment*

- Persons with disabilities face a high risk of living in poverty and social exclusion. In the EU, one in five disabled persons live in households with a disposable income less than 60% of the average. 37% of disabled people aged 16-59 are at risk of poverty or social exclusion, almost twice as high as non-disabled people.<sup>9</sup>
- When children with disabilities have to stay at home, their parents' employment can be severely hindered.<sup>10</sup>

#### *Healthcare*

- In several EU Member States, same-sex partners are denied the visiting rights in hospital that different-sex partners have, and thus cannot support their partner in the same way.
- Persons with disabilities tend to receive health care of lower quality that is not adapted to their needs. Research shows the strong correlation between

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<sup>6</sup> [http://www.non-discrimination.net/content/media/Segregation%20of%20Roma%20Children%20in%20Education%20\\_en.pdf](http://www.non-discrimination.net/content/media/Segregation%20of%20Roma%20Children%20in%20Education%20_en.pdf). The following report demonstrates how the segregation and structural discrimination of Romani children in European schools can be tackled under EU law. [Report on discrimination of Roma children in education](#), Lilla Farkas, European Network of Legal Experts in the Non-Discrimination Field, European Commission, April 2014.

<sup>7</sup> According to the impact assessment study of the European Commission.

<sup>8</sup> Including children with disabilities in regular class rooms is 7 to 9 times less costly than maintaining a separate system (1994 OECD study). With regard to housing, the availability of accessible social and private housing for people with disabilities as an alternative to an institution is much more cost effective.

<sup>9</sup> [Academic Network of European Disability Experts \(ANED\), IDEE - Indicators of Disability Equality in Europe, prepared by Stefanos Grammenos/CESEP](#), October 2011, p. 108-109

<sup>10</sup> In Belgium, the mother of a child complained that she had to give up her job to care for her disabled child at home (case reported to the Belgian Interfederal Centre for Equal Opportunities).

disability and ill health, especially for women with disabilities.<sup>11</sup> Thus, a deaf pregnant woman in Belgium did not receive the necessary sign language interpretation at the hospital and missed essential information on her pregnancy and delivery.

- In the UK, the Royal College of Surgeons in the U.K. reported that patients over the age of 75 living with breast and colorectal cancer, osteoarthritis of the knee and gallstones are less likely to receive surgical treatment for their conditions than their over-65 counterparts.
- Children in Northern Ireland suffer disproportionately high rates of mental ill health.<sup>12</sup>

## Education

- In school, young LGBTI people experience severe bullying and harassment due to their sexual orientation.<sup>13</sup>
- In the EU, 23.3% young disabled people leave school early compared to 12.4% and non-disabled young people.<sup>14</sup>
- The combined wage loss in the EU, caused by the lower education level of people with disabilities is estimated to reach 28 billion per year.<sup>15</sup>
- Young people in schools experience severe school bullying and harassment due to their (perceived) religion or belief, and Muslim pupils are often stigmatised at school.<sup>16</sup> The existing EU legislation can be used only proving that there is indirect discrimination based on ethnicity, which not always the case.
- General bans of headscarves in public schools have a disproportionate impact on female Muslims wearing a headscarf and boys wearing turban (Sikhs). These bans can discriminate in accessing education and career opportunities, and they do furthermore limit the exercise of rights to freedom of expression and religion or belief.<sup>17</sup>
- Roma children and children with disabilities are often being discriminated against and sent to segregated education.<sup>18</sup>

<sup>11</sup> Fundamental Rights Agency, Inequalities and multiple discrimination in access to and quality of health care, 2013.

<sup>12</sup> Over 20% of children under 18 years of age suffer significant mental health problems and this comprises the commonest form of severe disability in childhood. Statistics relating to allocation of resources to Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland clearly point to age based discrimination in resource allocation. In Northern Ireland in 2013/14, only £19.4m was allocated to Child and Adolescent Mental Health Services (CAMHS), which equates to 7.8% of the total planned mental health expenditure for that period, despite the fact that children and young people under 18 represent nearly a quarter of Northern Ireland's population.

<sup>13</sup> <http://www.iglyo.com/wp-content/uploads/2012/04/IGLYO-Bullying-Research-2013.pdf>

<sup>14</sup> On education, Academic Network of European Disability Experts (ANED) reported that This disadvantage (or equality gap) is 10 or more percentage points in 15 Member States. The Europe 2020 strategy however sets a target of 10% or less early school leavers by 2020. When it comes to tertiary education, the disadvantage (or equality gap) for persons with disabilities amounts to 14.3 percentage points at the EU level. The share of persons who have completed tertiary or equivalent education aged 30-34 in 2009 was 21.4% for disabled people and 35.1% for non-disabled people. [Academic Network of European Disability Experts \(ANED\), IDEE - Indicators of Disability Equality in Europe, prepared by Stefanos Grammenos/CESEP](#), October 2011, p. 106

<sup>15</sup> According to the impact assessment study of the European Commission.

<sup>16</sup> E.g. <http://www.laprovence.com/article/actualites/3262385/avignon-harcelee-depuis-la-rentree-esther-devra-changer-de-lycee.html> and <http://www.ciepiemonte.it/index.php/news/289-enar-condanna-la-circolare-dell-assessore-dnazzan>.

<sup>17</sup> Europe: Choice and prejudice: a summary: Discrimination against Muslims in Europe. By Amnesty International, 24 April 2012, Index number: EUR 01/002/2012; p.6f.

<sup>18</sup> Romani children are often concentrated in sub-standard schools or classes that follow substandard curricula, which clearly amounts to direct discrimination. While blatant forms of segregation in new Member States may result

### *Access to goods and services*

- In Austria, a lesbian couple was kicked out of a bar because they were kissing.<sup>19</sup>
- In Germany, an almost blind woman had been able to use the municipal swimming pool for 10 years without difficulties before the owner changed and with him the general terms of usage. The new terms established a need for an assistant for blind visitors.<sup>20</sup>
- In Sweden, a disabled child and her mother were discriminated against by an insurance company. The woman applied for a child insurance policy for her daughter and was refused by the insurance company because of the child's condition.
- Across Europe, older people face barriers to their freedom of movement and to tourism opportunities.<sup>21</sup>
- Discriminating bank practices deny older people access to credit, consumer loans and mortgages. If it's not on the mere basis of age, the absence of income from work at pension age is often taken into account to reject older clients.<sup>22</sup>
- In the UK, a government strategy noted the challenges faced by children in accessing public transport and the, often prohibitive, costs of bus fares in some areas.<sup>23</sup>

### *Access to public places*

- In the UK, ultrasonic devices were increasingly reported, emitting a high-pitched sound that can only be heard by people below the age of 25. It can be argued that such measures aimed specifically at children is discriminatory.

### *Intersectional cases*

- The case of Romani children in Europe has been highlighted as a case study because evidence illustrates how these children frequently experience discrimination on the basis of their age, ethnicity and also gender and disability in combination.

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from exclusionary policies, issues of early drop-out and underachievement are indicators of structural or institutional discrimination in old ones.

<sup>19</sup> <http://www.vice.com/alps/read/schmusen-in-wiener-cafes-prueckel-test-201>

<sup>20</sup> <http://www.sueddeutsche.de/bayern/diskriminierung-blinde-frau-darf-nicht-allein-ins-schwimmbad-1.2352603> and <http://www.welt.de/vermischtes/article137472166/Frau-darf-nicht-ins-Schwimmbad-weil-sie-blind-ist.html>. See also the See the fact sheet by Equinet on barrier-free services [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Factsheets/factsheet\\_engl\\_Barrierefreie\\_Dienstleistungen.pdf?\\_\\_blob=publicationFile](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Factsheets/factsheet_engl_Barrierefreie_Dienstleistungen.pdf?__blob=publicationFile)

<sup>21</sup> In Ireland, many separate travel insurance providers have age limits, ranging from over 45 years old to over 90 years. In Greece, not one travel insurance broker provides travel insurance coverage in case of accident for travel outside of Greece beyond the age of 70. Such restrictions cannot be justified by allegations about older people's increased health risks, as in case of need for emergency medical care within the EU, all EU citizens are covered by the coordination of statutory health insurance systems.

<sup>22</sup> E.g. a bank in Belgium stopped renewing credit cards for people over the age of 80. Such cases were also for example reported in a survey undertaken by the Czech Defender of Rights, which revealed that some providers refused access to credit and consumer loans solely on grounds of age, whereas age barriers to mortgages were considerably more widespread.

<sup>23</sup> Department for Children, Schools and Families' Aiming High Strategy.

# EQUALITY

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jah kyllä oui vai  
iva tak sim äno

**FOR ALL**



European Network Against Racism  
Réseau européen contre le racisme



**Eurochild**



ILGA  
EUROPE



**IGLY30**

30 years of LGBTQ activism



EUROPEAN WOMEN'S  
**LOBBY**  
EUROPÉEN DES FEMMES



**socialplatform**

**enorb**

European Network on Religion & Belief