



The Horizontal Equal Treatment Directive: why it needs to be adopted

Professor Emerita Erica Howard
Middlesex University, London



Funded under the 'Citizens, Equality, Rights and Values programme 2021-2027' of the European Commission

1

Provisions against discrimination in the EU

- Race Directive: Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin [2000] OJ L 180/22: covers employment and occupation (Art. 3(a)-(d)) social protection, including social security and health care (e); social advantages (f); education (g); access to and supply of goods and services which are available to the public, including housing.
- Employment Equality Directive: Directive 2000/78/EC of 27 Nov. 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L 303/16: covers religion or belief, disability, age and sexual orientation discrimination in employment and occupation.
- Horizontal Equal Treatment Directive: COM(2008)426 final 2008/0140 (CNS) Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation: extends protection against religion and belief, disability, age and sexual orientation to the areas covered by Directive 2000/43/EC.

2

Compromise Proposal 2024

- Belgian Government Presidency.
- Compromise Proposal: Council of the European Union, Interinstitutional File: 2008/0140(CNS), Directive on implementing the principle of equal treatment (article 19) - Progress report, 10817/24, 14 June 2024.
- Announced withdrawal by Commission of horizontal equal treatment directive met with significant opposition from NGOs dealing with discrimination, from the European Parliament and from Member States.
- Commission then decided not to withdraw the proposal after all, and to redouble its efforts to get it adopted.
- However ...

Progress since then?

Council of the European Union, Interinstitutional File: 2008/0140(CNS), Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation - Progress report, 14921/25, 11 November 2025 states that three Member States still maintained general reservations and, thus, that the Presidency has been unable to put forward a new compromise text.

Objections/concerns of some Member States:

- perceived lack of legal certainty
- division of competences
- compliance with principle of subsidiarity
- possible financial implications

Comparison COM(2008)426 and Compromise Proposal

- added Articles and Recitals to clarify the material scope in areas seen as unclear and possibly outside EU competence, like social protection (Art. 3(2)(b), Rec. 17a, 17 b, 17f), education (Art. 3(2)(d), Rec.17a, 17g) and financial services (Art. 2(2)(7a) and 2(2)(7), Rec.15(ab)).
- added further explanations for justification of age and disability (Art. 2(5a) and 2(6), Rec. 14-a,14a).
- Added further explanation on the duty of reasonable accommodation for persons with disabilities (art. 4a, Rec. 19a-20d).
- The original proposal contained an anticipatory duty of accessibility, subject to the defence of imposing a disproportionate burden, but this duty has been dropped.
- Reports OECD, European Parliament Research Service (EPRS) and some MS: benefits of adoption outweigh costs.
- EPRS: compromise proposal complies with the principles of subsidiarity and proportionality

© Middlesex University

Slide
5

5

Arguments for adoption

political message on
importance of equality
and non-discrimination

EU values: Article 2 TFEU
and EU Charter of
Fundamental Rights

Reduces hierarchy of
discrimination grounds in
EU law

Goes long way
towards
implementing the
positive obligations
imposed by the
United Nations
Convention on the
Rights of Persons
with Disabilities
(CRPD) on States
parties and on EU

© Middlesex University

Slide
6

6

Hierarchy of discrimination grounds

Material scope: expanded by Compromise Proposal to all areas covered by Race Directive, although some exceptions in Art. 3(2) and Art. 3(3a-5a) of the Compromise Proposal mean some hierarchy remains.

Duty to designate equality body: in Race Directive, not in Employment Equality Directive; in original proposal, but now dropped. Suggestions are that duty extends to religion or belief, disability age and sexual orientation (see Directive 2024/1499 on Minimum Standards for Equality Bodies and Art. 14b and Rec. 27 Compromise Proposal).

General exception clause in Art. 2(8) Compromise proposal. Similar to general exception clause in Art. 2(5) Employment Equality Directive.

Article 2(8) Compromise Proposal

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

- Similar exception clause in Article 2(5) Directive 2000/78/EC.
- 'Appropriate' and 'necessary' indicates proportionality test: measures must serve one of the legitimate aims mentioned in the article and be appropriate to achieve that legitimate aim.
- The CJEU has consistently held, in a number of cases, that Article 2(5), as an exception to the principle of equal treatment, must be interpreted strictly and has applied the above proportionality test to the exception.

Convention on the Rights of Persons with Disabilities (CRPD)

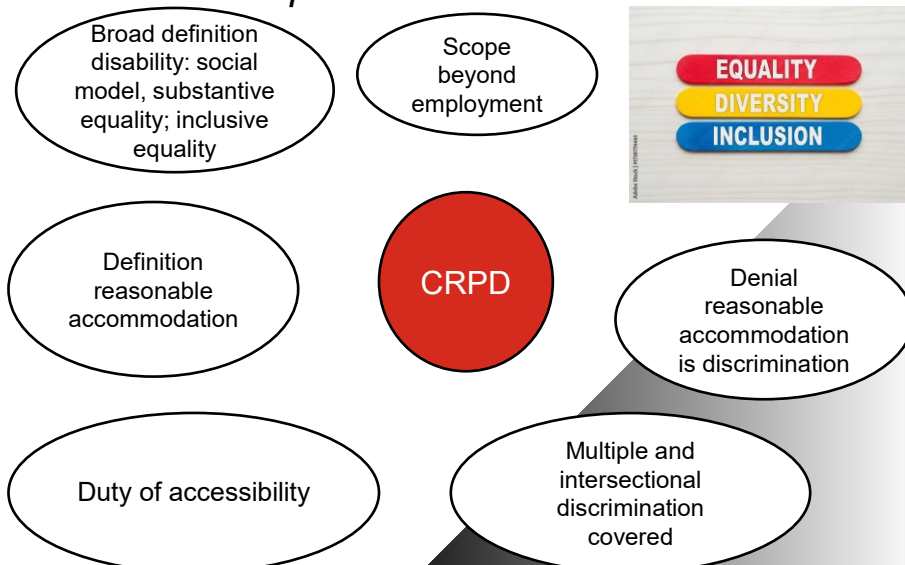
- CRPD signed and ratified by EU and by all Member States.
- Imposes positive obligations on signatories: EU and Member States have to take action to ensure the protection of disabled people against discrimination.
- Art. 4 CRPD: includes adopting legislative measures.
- In its periodic reports on the EU, the Committee on the Rights of Persons with Disabilities has urged the EU to adopt the Horizontal Equal Treatment Directive and extend the protection against disability discrimination beyond the employment sphere.
- Rec, 2a Compromise Proposal and CJEU case law state that provisions of the CRPD form 'an integral part of the European Union legal order and Union legislation should therefore be interpreted in a manner that is consistent with the CRPD'.
- **WHY IS THIS IMPORTANT?**

© Middlesex University

Slide
9

9

Importance CRPD for EU



© Middlesex University

Slide
10

10

Definition Disability

Art. 1 CRPD: Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. See Rec. 19a Compromise Proposal. Also accepted by the CJEU.

Art. 2 CRPD: Discrimination on the basis of disability means 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.

Reasonable accommodation

- Art. 2 CRPD: 'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.
- Rec. 19ca and Art. 4(a)2 Compromise Directive.
- Term must be given broad interpretation, according to CJEU.
- Denial of reasonable accommodation is a form of discrimination, important because of provisions on shift in burden of proof, but also supports social model of disability, substantive equality and inclusive equality.

General Comment 2, CRPD Committee

Duty of accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an *ex ante* duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service.

Duty of reasonable accommodation is an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, ... in order to enjoy her or his rights on an equal basis in a particular context. ... Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation.

General Comment 2, CRPD Committee

- duty of accessibility: States parties must ensure that all newly designed, built or produced objects, infrastructure, goods, products and services are fully accessible for persons with disabilities.
- Duty of accessibility to the existing physical environment, transportation, information and communication and services open to the general public must be implemented gradually. States parties should: establish definite time frames and allocate adequate resources for the removal of existing barriers; clearly describe the duties of different authorities and entities; establish effective monitoring mechanisms and monitor sanctions.
- The Committee has also stated that the gradual realisation of accessibility may take time, and therefore, 'reasonable accommodation may be used as a means to provide access to an individual in the meantime, as it is an immediate duty'.

Original COM(2008)426 Art. 4

- effective access for disabled people 'shall be provided by anticipation' if not imposing a disproportionate burden.
- Other EU Regulations and Directives cover accessibility:
 - Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air [2006] OJ L 204/1.
 - Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 [2011] OJ L 55/1.
 - Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility [2014] OJ L 356/110. Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) [2021] OJ L 172/1.
 - Directive 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L 327/1.
 - Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L 151/70.

© Middlesex University

Slide
15

15

Accessibility and disability discrimination

- L. Waddington (2025), 'Exploring the Link Between (In)accessibility and Disability in Legislation and Case law', *European Equality Law Review*, 54-72.
- Committee on the Rights of Persons with Disabilities, General Comment 2 'Article 9: Accessibility', CRPD/C/GC/2, 2014.



© Middlesex University

Slide
16

16

Multiple and Intersectional Discrimination

Committee on the Rights of Persons with Disabilities, General Comment 3, 'Article 6: women and girls with disabilities', CRPD/C/GC/6, 2016, gives the following definitions (para. 4):

'Multiple discrimination' refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated.

'Intersectional discrimination' refers to a situation where several grounds interact with each other at the same time in such a way as to be inseparable. Grounds for discrimination include age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation.

© Middlesex University

Slide
17

17

Compromise Proposal

Art. 2(3): Discrimination under this Directive includes discrimination based on a combination of the grounds of discrimination set out in Article 1, as well as a combination of one or more of those grounds and any of the grounds of discrimination protected under Directive 2000/43/EC, Directive 2004/113/EC, or Directive 79/7/EEC.

Rec.12ab: It can be important to take into account the specific situations of disadvantage resulting from multiple discrimination, including intersectional discrimination, in order to reflect the complex reality of discrimination cases as well as in order to enhance the protection of its victims. Intersectional discrimination is understood as discrimination, in any of its forms, occurring on the basis of any combination of two or more of the following grounds, including where taken separately the situation would not give rise to discrimination against the person concerned: religion or belief, disability, age or sexual orientation, as well as a combination of one or more of these grounds and any of the grounds protected under Directive 2000/43/EC, Directive 2004/113/EC or Directive 79/7/EEC.

© Middlesex University

Slide
18

18

Intersectional discrimination in the EU

- Case C-443/15 *Parris v. Trinity College Dublin and Others*, EU:C:2016:897.
- Art.3(2)(e) of Directive 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms [2023] OJ L 132/21: discrimination includes intersectional discrimination, discrimination based on a combination of sex and any other ground or grounds of discrimination protected under the Race and Employment Equality Directives.
- E. Howard, 'Intersectional Discrimination and EU Law: Time to Revisit Parris, 24, 4, *International Journal of Discrimination and the Law*, 2024, 292-312 and the authors referred to there.

Equality for All



THANK YOU

Emerita Professor Erica Howard, Middlesex University

E.howard@mdx.ac.uk

Article:
E. Howard (2026), 'The Horizontal
Equal Treatment Directive: Why it
Needs to be Adopted', 33, 1,
*Maastricht Journal of European
and Comparative Law*, 78-95.

