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# Implementing the principle of equal treatment between persons

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Complementary Impact  
Assessment of the proposed  
horizontal Directive on Equal  
Treatment

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## **Complementary Impact Assessment**

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

Impact Assessment of 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, as  
well as amendments 37 and 41 of the European Parliament

**Research paper  
by Milieu Ltd**

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**Abstract**

In 2008, the European Commission presented a proposal for a Directive to address discrimination outside the workplace based on the grounds of age, disability, sexual orientation, and on religion or belief.

While the European Parliament and Member States generally supported the proposal, some Member States have expressed concerns, among others, in relation to the potential costs of the proposed Directive, its lack of legal certainty and the lack of assessment of the costs and benefits that its implementation would place on service providers.

This study has therefore been commissioned by the European Parliament to facilitate agreement on the proposal by providing insight into possible costs for Small and Medium Sized Enterprises (SMEs) and public service providers. While most of the costs related to equal treatment measures will be very low, the assessment shows also that a range of costs for these actors have a potential to be significant. These could be related to measures ensuring equal treatment when accessing goods and services and living in the community of persons with disabilities, in health care of older persons, and in access to social advantages of same sex partnerships. However, given the broad approach taken in the proposed Directive, it has been concluded that Member States would have significant scope to implement the proposal in a way which allows them to limit costs. The assessment considers by means of example possible impacts on SMEs and public service providers in the Czech Republic, Germany, Romania, Spain, and Sweden.

This assessment has been carried out without prejudice to the obligations arising from the Treaty of the European Union and other European and international fundamental rights instruments for Member States and European institutions. It is complementary to the Commission's impact assessment accompanying the proposal and does not re-examine possible implementation costs and benefits to individuals and society in general.

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## List of abbreviations

*Note that abbreviations of stakeholders consulted can be found in Annex 4.*

<b>ADA</b>	Americans with Disabilities Act
<b>ANED</b>	Academic Network of European Disability experts
<b>CBA</b>	Cost Benefit Analysis
<b>CPA</b>	Centre for Policy on Ageing
<b>DDA</b>	Disability Discrimination Act
<b>EP</b>	European Parliament
<b>EPEC</b>	European Evaluation Policy Consortium
<b>EU</b>	European Union
<b>GP</b>	General Practitioner
<b>HORECA</b>	Industry representing hotels, restaurants and catering
<b>IT</b>	Information Technology
<b>LGB</b>	Lesbian Gay Bisexual
<b>LIBE</b>	Committee on Civil Liberties, Justice and Home Affairs
<b>MS</b>	Member State(s)
<b>PSSRU</b>	Personal Social Services Research Unit
<b>SMEs</b>	Small and Medium-sized Enterprises
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TEU</b>	Treaty on European Union
<b>UNCRPD</b>	United Nations - Conventions on Rights of Persons with Disabilities
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>WCAG</b>	Web Content Accessibility Guidelines

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## Executive summary

- The costs of implementing the proposed Directive with respect to a large proportion of anti-discriminatory measures are not likely to be significant as they are aimed at addressing prejudice-based discrimination which has low cost implications for the provider.
- Addressing these forms of discrimination requires measures such as awareness raising, training, changes in protocol which are considered to have low cost implications.
- Following an initial screening, only for three grounds of discrimination (disability, age, and sexual orientation) is it expected that remedial action could entail significant costs for SMEs and public goods and services providers.

## Background

The right to equal treatment is one of the founding principles of the European Union and a fundamental right of all people. The EU has prioritised action in this area and has adopted a range of horizontal Directives on equal treatment as well as targeted legislation on specific issues, such as accessibility in the transport sector.

Yet, despite this work and the on-going commitment of the EU to the elimination of discrimination, the issue remains a significant problem.

### Box 1: Experience of discrimination in the EU

17% of Europeans report that they have personally felt discriminated against or harassed based on one or more of the following grounds: ethnic origin, gender, sexual orientation, being over 55 years of age, being under 30 years of age, religion or beliefs, disability and gender identity (in the course of 12 months prior the survey)<sup>1</sup>.

Out of the 17% of Europeans that report that they have personally felt discriminated against or harassed (in the course of 12 months prior the survey)<sup>2</sup> 13% have experienced discrimination on a single ground and 4% felt discriminated against on multiple grounds<sup>3</sup>.

Many Europeans believe that discrimination is widespread, in particular, on grounds of sexual orientation (51%) and disability (45%), age (42%) and religion (42%), and embraced several areas, notably housing, education and services<sup>4</sup>.

<sup>1</sup> European Commission, Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 12.

<sup>2</sup> European Commission, Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 12.

<sup>3</sup>*Ibid.* p. 62.

<sup>4</sup>*Ibid.*

Early EU action in the field had focussed either on specific grounds of discrimination such as that related to gender or race or on specific sectors such as employment. This led to concerns that a multi-tier system had developed at the EU level in which some groups are less well protected and certain forms of discrimination subject to less oversight and control.

Recognising these concerns, the European Commission, the European Parliament and the Council of the European Union have all highlighted the need for further action to prevent and combat discrimination across the board, both inside and outside the labour market. In response to those issues, the Commission presented in 2008, its proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. This proposal is aimed at effectively completing the non-discrimination legislative package by establishing the principle of equal treatment for grounds either not covered in previous legislation or for sectors not already covered i.e. those outside the field of employment and occupation.

The proposed Directive follows a similar approach to the Gender Equality Directive (Council Directive 2004/113/EC) and the Racial Equality Directive (Council Directive 2000/43/EC). It primarily establishes the broad principle of non-discrimination with respect to the relevant grounds and identifies the specific sectors to which it applies. It also includes specific measures to be taken with respect to disability discrimination and focuses on improving the enforcement of rights established within the proposed Directive. The table below provides a brief overview of key aspects of the proposed Directive.

**Table 1: The proposed Directive's scope and main provisions**

Issue	Detail
<b>Grounds of discrimination</b>	<ul style="list-style-type: none"> <li>• Religion or belief</li> <li>• Disability</li> <li>• Age</li> <li>• Sexual orientation</li> </ul>
<b>Notion of discrimination</b>	<ul style="list-style-type: none"> <li>• Direct discrimination</li> <li>• Indirect discrimination</li> <li>• Harassment</li> <li>• Instruction to discriminate</li> <li>• Denial of reasonable accommodation for persons with disabilities</li> </ul>
<b>Sectors specified</b>	<ul style="list-style-type: none"> <li>• All persons – both public and private sectors</li> <li>• Social protection, including social security and health care</li> <li>• Social Advantages</li> <li>• Education</li> <li>• Access to and supply of goods and services available to the public (including housing)</li> </ul>
<b>Limiting factors</b>	<ul style="list-style-type: none"> <li>• Legitimate aim may justify differences in treatment based on age</li> <li>• Differences applied by financial services can be justified on actuarial basis</li> <li>• Without prejudice to measures on public security, maintenance of public order, prevention of criminal offences, protection of health and rights and freedoms of others</li> </ul>

	<ul style="list-style-type: none"> <li>• Without prejudice to responsibilities of Member States for content of teaching, activities and organisation of educational systems (including special needs education)</li> <li>• Without prejudice to secular nature of the State or education, or concerning the status and activities of organisations based on religion or belief</li> <li>• Without prejudice to national legislation promoting equality between men and women</li> <li>• Does not cover differences of treatment based on nationality</li> <li>• Without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in Member States</li> </ul>
<b>Specific Disability Issues</b>	<ul style="list-style-type: none"> <li>• Provision of measures by anticipation</li> <li>• Measures will not impose a disproportionate burden</li> <li>• Does not require a fundamental alteration to systems</li> <li>• Does not require the provision of alternatives</li> <li>• Reasonable accommodation shall be provided where not a disproportionate burden</li> </ul>
<b>Enforcement/Monitoring mechanisms</b>	<ul style="list-style-type: none"> <li>• Procedures to be available for enforcement of the proposed Directive</li> <li>• Organisations with a legitimate interest may support a complainant</li> <li>• Burden of proof placed on person discriminating, where sufficient facts of the discrimination shown.</li> <li>• Body to be designated for promotion of equal treatment in the relevant areas.</li> </ul>

### Current status of the proposed Directive

Despite widespread calls for action, and although five years have elapsed since the Commission proposed the Directive in 2008, no legislation has been adopted, yet. This does not mean, however, that no progress has been made.

In April 2009, the European Parliament (EP) adopted its opinion under the Consultation Procedure<sup>5</sup> of the Nice Treaty. In total, 80 Amendments were adopted including Amendment 37 extending the Directive's scope to multiple discrimination and Amendment 41 on discrimination based on assumptions. On 1 December 2009, the Lisbon Treaty entered into force which changed the procedure for the adoption of the proposed Directive. Article 19 of the Treaty of the European Union (TFEU) now specifies that a special legislative procedure was necessary requesting unanimous adoption in the Council after consent of the European Parliament. Since then, the EP undertook several informal steps to enhance the decision-making in the Council, among which this impact assessment.

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<sup>5</sup> Procedure file 2008/0140(APP) available at:  
<http://www.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=566164&l=en>.

The Council deliberated the last years in its respective Working Group and addressed one by one the various concerns with respect to the proposed Directive. Discussions have led to a range of proposed amendments. The Council has expressed particular concern about what it considers as a lack of evaluation of the effects of existing European anti-discrimination legislation (where the approach taken is similar to that of the proposed Directive), the division of competences between actors, legal uncertainty regarding some provisions of the proposal as well as the types and extent of costs for the public sector and small and medium sized enterprises (SMEs).

The Council has developed key positions in the following areas:

- **The concept of discrimination:** both the notions of multiple discrimination (with a specific focus on gender based discrimination) and discrimination by association have been introduced to the proposed Directive. In addition, harassment as a form of discrimination is limited to direct discrimination.
- **Division of competences:** the Council has specified that the proposed Directive is without prejudice to the organisation of social protection systems, including conditions of eligibility related to age and disability.
- **Scope:** the Council has provided more detailed explanations on the meaning of social protection, it has deleted the notion of “social advantages”, and it now states that with respect to access to and supply of goods and services, the proposed Directive only applies in relation to activities outside of private and family life. This compares with the Commission’s proposed Directive which has a broader coverage of professional and commercial activities.
- **Persons with disabilities:** in general the Council has sought either to provide greater detail on the obligations established in this area or to limit the obligations. In particular, it has established that general anticipatory measures shall comprise the identification and elimination of obstacles and barriers to accessibility. With respect to housing, the amended proposed Directive only applies to common parts of buildings with more than one housing unit and adjustments will not have to entail structural alterations. In addition, the obligation to ensure accessible housing is established on a progressive basis. Significantly, the Council also proposes to extend accessibility requirement to the design and manufacture of goods, unless this would impose a disproportionate burden.
- **Implementation Period:** the Council has extended the Commission’s standard two year implementation period to four years. In addition, changes have been made with respect to accessibility of buildings. Thus Member States may opt to take an extra year to ensure accessibility of new buildings, facilities, vehicles and infrastructure. For existing buildings, facilities, vehicles and infrastructure, Member States will have up to 20 years to comply with accessibility. Those Member States wishing to avail themselves of this additional time, must communicate to the Commission their action plans for achieving the requirements within the set period.



## Methodology

Given the concerns expressed by the Council and the difficulties in achieving a final agreement on the proposed Directive, this study has been commissioned **to specifically examine potential costs and benefits of the proposed Directive with respect to small and medium sized enterprises (SMEs) and public service providers**. The assessment particularly considers possible impacts in the **Czech Republic, Germany, Romania, Spain, and Sweden**<sup>6</sup>.

The study has been specifically focused in this way as the Commission has already carried out its own impact assessment (Commission Staff Working Documents), which was accompanied by a detailed study conducted by the European Policy Evaluation Consortium (EPEC), both of which considered the costs and benefits to individuals and to society of the proposed Directive. In addition, in contrast to a full impact assessment, where a number of options are typically examined, this study only examines the option as chosen by the Commission i.e. the proposed Directive of 2008.

Therefore, this study is complementary to the Commission's assessment, and both sets of results should be read together to have a full picture of the potential costs and benefits of the proposed Directive.

### Box 2: Possible costs to individuals and society of discrimination (or lack of action to combat discrimination) – Source: EPEC study.

The following examples of costs of discrimination are taken from the EPEC study and could equate to benefits from implementing the proposed Directive. To fully understand the context and methodology for determining such costs/benefits, please consult the EPEC study.

Domain	Costs to individuals and Society	
<b>Education</b>	<b>Sexual Orientation</b>	14.30% (equivalent to €452 million per year)
	Reduction in earning capacity due to health problems from bullying at school	
	Reduction of net earnings from early school leaving due to bullying	€173 million per year
	Loss in GDP due to lower participation/ qualifications	€872 million per year
	Loss of direct tax due to lower earnings	€161 million per year
	Loss of tax revenue due to dropping out of school	€76 million per year
	<b>Disabilities</b>	€28 billion per year
	Wage loss due to lower levels of education	
	Loss in GDP due to lower participation/ qualifications	€40.3 billion per year
<b>Housing</b>	In addition, governments would pay around €12.3 billion less in benefits payments due to increases in employment	
	<b>Sexual Orientation</b>	
	10% surplus in housing expenditure to avoid harassment	€4.1 billion
	<b>Disabilities</b>	€347 million
<b>Health</b>	Welfare gains from accessing housing with upper floors.	
	<b>Sexual Orientation</b>	€466 million
	Loss in net earnings due to ill health which have discrimination origins	

<sup>6</sup> These Member States were chosen to ensure geographical balance and a diversity of anti-discrimination approaches.

	Economic value of life of those who die due to health service discrimination	€4 million
	Loss of GDP due to reduced years in the labour market	€632 million
	<b>Disabilities</b>	
	Net wage losses due to ill-health from health service discrimination	€599 million per year
	Loss of GDP due to ill health from discrimination	€812 million per year
	Direct tax revenue foregone	€213 million per year
<b>Social Security</b>	<b>Sexual orientation</b>	
	Social benefits to same sex partners	€2.5 billion
<b>Social Services</b>	<b>Sexual orientation</b>	
	Loss of income where same sex mothers can't enter labour market due to inaccessible social services	€90.8 million

For this study, as is standard in impact assessments, an in-depth analysis has been carried out for those areas where the **most significant costs and associated benefits** are anticipated<sup>7</sup>. However, while impact assessments are usually conducted over the space of one year or more, this study has been completed within a shorter time frame. Primarily because of this timeline, and given the paucity of data available, it has been necessary to use a range of **proxies** and to establish a number of **assumptions** in order to arrive at cost and benefit calculations.

These assumptions and proxies have been based on the experience of **other jurisdictions**, where equality legislation and relevant, measurable standards have been in place for many years (and which therefore have estimates regarding actual costs of implementation). In addition, **existing EU and international legislation** has been drawn on to help understand the possible implications of obligations established in the proposed Directive and possible approaches to implementation. For example, with respect to persons with disabilities, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) provides further details on methods of implementation. It should also be noted that given the very broad nature of the proposed Directive and therefore the wide range of implementation possibilities, in a number of cases estimates should be considered as providing an order of magnitude of potential impacts rather than a precise real-life estimate.

The estimates provided and the suggested approaches to implementation are of course without prejudice to the obligations on the Member States and the EU to apply a **fundamental rights approach** to their policies as established in the EU Treaties and under relevant international legislation. In particular, it is noted that financial considerations cannot be invoked to circumvent the application of human rights standards.

It should also be acknowledged that the implementation will vary immensely from one Member State to the next. As this study will reveal, differences in consumption patterns, way of life, as well as in the legal and institutional set-up of a Member State will lead to

<sup>7</sup> This follows the approach put forward in the Commission's Impact Assessment Guidelines where it is noted that the level of analysis should be proportionate to the likely impacts of a proposal. Moreover, the more significant impacts should receive a deeper analysis. In particular, the guidelines propose a three-step process:

- 'Identification of economic, social and environmental impacts;
- Qualitative assessment of the more significant impacts;
- In-depth qualitative and quantitative analysis of the most significant impacts'

differences in impacts stemming from implementation of the proposed Directive. For example, the costs of implementation of the proposed Directive in the HORECA sector e.g. hospitality and restaurants, will be much higher in Spain than in Romania, due to the fact that there are many more bars and restaurants on a per capita basis in Spain. While in Spain people on average dine outside home several times a week, in Romania this number is much lower. Also differences in spending capacity will play a role. While the smaller and less developed Member States will face smaller implementation costs in absolute terms (due to smaller size and lower price levels), these might be higher in relative terms when expressed as a percentage of their GDP.

### **Approach to carrying out cost and benefit assessments in the five Member States**

Consequently, the process of assessing costs in these areas relied on a combination of:

- i. National level research on the five Member States subject to this study, which identified a wide range of specific data relevant to each area: and
- ii. The use of proxy data (based on existing studies) where national data was not available or not comparable.

Thus, for **example**, with respect to disability discrimination in the **education sector**, the following is a sample of the factors taken into account:

- Number of relevant establishments disaggregated according to type - nurseries, primary, secondary and vocational schools, as well as universities;
- Number of pupils in the different establishments;
- Percentage of pupils with disabilities;
- Percentage of establishments that are considered already accessible;
- Annual operational costs related to accessibility;
- Capital costs, for example, of achieving accessible buildings taking into account the cost of putting in place a: disabled toilet, lift, evacuation chair, small ramp, large ramp, external lift or stair lift, wider doorway, and braille signs.

While the basic approach has been to use a combination of methodologies established in existing studies, the final methodology went through numerous iterations, as some assumptions were tested and dismissed; certain data were not available and new cost items and/or proxies needed to be identified, or Member State-specific situations required adjustments to the approach to achieve comparability across the five Member States. The requirement for adjustments combined with the large number of variables and the lack of certainty in the proposed Directive's provisions have ultimately required a **complex methodological approach**.

### **Identification of the types of costs involved**

Furthermore, in determining what actions and costs should be assessed, a **multi-stage approach** was taken involving the determination of:

- Types of costs;
- Areas (combination of grounds of discrimination and sectors of the economy, e.g. education or health) to be subjected to further analysis; and
- Specific targeted sub-areas (e.g. disability discrimination in secondary schools).

As a first step, the types of costs and benefits that would accrue (regulatory, generic compliance costs; sector specific compliance costs) for enforcement authorities as well as compliance entities were identified. Three broad types of cost were identified:

1. Administrative and regulatory costs resulting from implementing the proposed Directive

These costs relate broadly to State legislative action to put into effect EU law (e.g. transposition costs and compliance review), the establishment or change to bodies which oversee and monitor the implementation of law (e.g. extension of equality bodies) and information requirements (e.g. reporting to the EU Commission and compilation of statistics).

Administrative and regulatory costs (including upfront and recurring costs) borne by the Member States' Administration have been largely identified through an assessment of the proposed Directive itself.

2. Generic compliance costs

Generic compliance costs are applicable across all sectors. These costs include: familiarisation with rules, legal advice, cost of drafting and disseminating internal guidelines or codes of conduct, dealing with complaints, staff training, system audits, and certification costs. Each of these items includes upfront as well as recurring costs.

3. Specific compliance costs

Beyond the generic compliance costs that will be assessed across all grounds of discrimination, a range of compliance costs will vary significantly depending on the grounds of discrimination and the sector involved (education, social care, health care, social advantages, housing, media, other goods and services).

### **Determination of areas with significant specific compliance costs**

In a second step, specific compliance costs which would be assessed in detail were determined. This required the identification of areas likely to result in the most significant costs. This list was subsequently reduced to a shortlist by removing actions which fell within sector specific **exemptions** from the Directive (e.g. special education) and those which, for the most part, do not concern SMEs and public service entities (e.g. the insurance sector where large companies predominate). Finally, a further targeting of the areas to be assessed was carried out based on where discrimination was likely to be prevalent and what groups of persons (e.g. persons with mobility or sensory disabilities, persons aged over 65) or sectors were most likely to be affected (e.g. primary schools, broadcasting, secondary health care).

As a result of that process, the following combinations of sectors, grounds for discrimination and sub-domains/specific groups have been identified as potentially bearing significant costs for SMEs and public service providers to address and their costs/benefits will therefore be subject to a full analysis:

**Table 2: Potential 'Most Significant Cost' areas examined**

Sector	Discrimination Grounds	Sub-domain	Specific Area(s)
<b>Education</b>	Disability	Primary and secondary schools/vocational and tertiary sectors	<b>Mobility/Sensory</b>
<b>Social Care</b>	Disability	'Living in the Community'/De-institutionalisation	<b>Severe disabilities (including physical, intellectual and mental health)</b>
<b>Health Care</b>	Age	Predominantly secondary and mental care	<b>Over 65s age group</b>
<b>Social Advantages (security)</b>	Sexual Orientation	Taxes/Benefits	<b>Lesbian, gay, bisexual</b>
<b>Housing</b>	Disability	Residential (rental and sales)	<b>Mobility/Sensory</b>
<b>Media</b>	Disability	Broadcasting	<b>Sensory</b>
<b>Other Goods and Services:</b>	Disability	Public Administration/Judiciary	<b>Mobility/Sensory</b>
	Disability	Walkways/ Public Thoroughfares	<b>Mobility/ Sensory</b>
	Disability	Hotels, Restaurants, Catering (HORECA)	<b>Mobility/Sensory</b>
	Disability	Exercise Facilities (e.g. Gyms and Swimming Pools)	<b>Mobility/Sensory</b>
	Disability	Entertainment/culture (e.g. cinemas, theatres, public clubs etc.)	<b>Mobility/Sensory</b>
	Disability	Retail	<b>Mobility/Sensory</b>

As can be seen from the table, the most significant costs are expected to occur in relation to measures for equal treatment of persons with disability and older persons while equal treatment on the ground of sexual orientation will be examined in the area of social advantages. It is worth noting here, that establishing equal treatment for persons with disabilities concerns also a large number of older persons given that almost half of persons with disabilities are over the age of 65.

An extensive literature review and stakeholder consultation<sup>8</sup> indicated that while discrimination of individuals on the grounds of sexual orientation, disability and age in other areas/sectors as well as religion based discrimination in general, is occurring, one of the main drivers for this is personal prejudice. Actions to be taken by SMEs and public service providers to eliminate such prejudice-based discrimination (e.g. through training)

<sup>8</sup> The initial table of 36 combinations was sent to the relevant experts who were invited to provide cost and benefit information and to identify other high cost areas which were not included. The vast majority of respondents stated that they broadly agreed with the assessment or did not have an opinion on the matter. No response was received from associations representing the over 65s.

would be of minimal or low cost to such entities. For this reason, they are not assessed in the study. Instead the focus has been on the most significant cost impacts on providers of goods and services.

As regards **disability**, two types of costs are considered. Firstly, costs may arise in the area of providing **access** to goods and services to persons with ambulatory (including wheelchair) and sensory disabilities. Measures to ensure equal treatment relate to physical access to buildings, changes to policies and procedures as well as providing access to information (namely through internet access/media). Secondly, possible additional costs may result from providing persons with disabilities the opportunity to avail themselves of good quality community based services ('**living in the community**').

With respect to **age discrimination**, the assessment discusses possible discrimination in healthcare and particularly examines examples of different treatment in secondary health care (renal care specifically) and mental care (depression).

Finally, with respect to discrimination on the grounds of **sexual orientation**, the cost of affording lesbian, gay and bisexual (LGB) couples who are married or in a legal-partnership equal access to **social advantages** already afforded to heterosexual couples is assessed.

## **Results: potential costs and benefits of implementing the proposed Directive**

The potential costs and benefits to SMEs and public service providers of implementing the proposed Directive are described below.

### **A ) Regulatory, administrative and generic compliance costs**

Regulatory and generic compliance costs over a five year implementation period have been estimated to range from €78 million (**Czech Republic**) to €79 million (**Sweden**), €132 million (**Romania**), €451 million (**Spain**), and €492 million (**Germany**) for the entities covered. Over 20 years, these costs would inevitably be higher but the average annual cost would nevertheless be lower. Importantly, these costs would be spread over a very large number of organisations (around 6.5 million across the five Member States) which means that the **average cost** per entity would be very low (potentially less than €50 per year on average). However, it has to be noted that for some entities costs would be much higher than for others, and many costs would have to be borne in the first years and would not be spread evenly over a prolonged period.

It should also be borne in mind that the above costs do not take into account **certification and enforcement costs**. There is no specific requirement in the proposed Directive on the former but depending on the approach, costs could be low (self-regulation) or very high (enforced).

With respect to disability, age and sexual orientation discrimination the following findings have been made.

## B) Sector specific costs

### Disability discrimination

The analysis shows that most of the costs for SMEs and public service providers to ensure equal treatment on the basis of the proposed Directive are likely to arise with respect to access to goods and services. While greater accessibility depends not only on making changes to **premises/websites** but also on the way customers are served on an on-going basis, the former is nevertheless the area where cost-intensive adjustments will be required.

Here, while the costs would be high, the possible benefits could also be extensive. The benefits would result, in particular, from **time savings** through improved access for persons with disabilities and other mobility restricted individuals and **quality improvement gains**. It should also be borne in mind that the benefits of greater access would have a large impact on those over 65 years old given the large proportion of this group having a disability. However, under the scenarios examined, the costs for SMEs and public service providers will outnumber the benefits in most cases, not only over a five year implementation period but also over a longer lead time such as over 20 years. That said, the difference between cost and benefits narrows considerably over the 20-year time period.

As such, and as can be seen from the scenario presented in the table below, for those goods and services provided at 'public access' facilities (e.g. retail premises), the net costs could run into the billions. However, if a 20 year period is taken, overall costs could be much lower, with annual costs consequently being significantly lower. For example, whilst the annual cost to SMEs and public service providers in the **Czech Republic** would be €218 million in the 5 year scenario, this would reduce to €32 million in the 20 year scenario.

Whilst the 20 year option represents a lengthy time for persons with disabilities to obtain full accessibility, the significant difference in costs is difficult to ignore.

**Table 3: Scenario of net costs (costs minus benefits) for 'public access' sectors covered**

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
<b>Czech Republic</b>	1,092	<b>659</b>
<b>Germany</b>	4,341	<b>1,679</b>
<b>Romania</b>	1,143	<b>576</b>
<b>Spain*</b>	5,674	<b>3,224</b>
<b>Sweden</b>	735	<b>440</b>

*\* Given the lack of statistics on premises usage in the EU, certain assumptions had to be made in particular regarding the number of retail outlets. Based on the assumptions made, the costs are high in certain countries such as **Spain**, which have a very large per capita number of restaurant/bars and retail outlets.*

The above figures highlight the considerable **variation in costs** between countries. This is driven by income levels (e.g. the richer the country, the more public access entities there

are), by cultural factors (certain countries, such as **Spain**, have more public access facilities) and by average premises/business size (e.g. **Spain** has a very large number of SME among public access traders).

The net costs are much lower for 'public access' premises than for **private housing** where requiring accessibility of all residences could be impossible to be justified from a cost perspective. While the proposed Directive is silent as to what is expected in the area of housing, for the purposes of this study and in line with the proportionality principle included in Article 4.2 of the proposed Directive, only certain and very limited adjustments (e.g. accessible sales material/entry ramps) were assumed to be required. Costs were then assessed based on all properties being changed by anticipation or measures taken only on an *ad hoc* basis as the need arose. Also, for housing, it should be noted that it was not possible to disaggregate costs for individuals from costs for SMEs and public service providers as, first of all, the proposed Directive treats most housing transactions as commercial, and secondly, there is no detailed and separate information available on sales and letting of private housing. The costs below cover all groups and, thus, overall costs for SMEs and public services providers will be much lower.

Costs are expected to range from €25 million in **Romania** for a 5 year implementation period on an *ad hoc* basis to €1,200 million in **Germany**. Importantly, costs related to measures by anticipation could be three to eight times higher than those related to ad hoc costs (€219 million in **Romania** and €3,600 million in **Germany**). Also, whilst costs of implementation over a 20 year period are higher than for a 5 year period, annual costs are generally lower in the 20 year scenario; e.g. in the **Czech Republic**, costs for ad hoc adjustments would amount to €5 million per year over 20 years compared with €7 million per year over 5 years for all entities (individuals, SMEs and public service providers) selling or letting private housing.

Moreover, as the need for more accessible housing will increase with an aging population, a more **targeted approach**, i.e. ensuring that a certain level of housing is fully accessible, rather than aiming at limited access improvements for all housing, would appear more feasible. Finally, such an approach would not only provide greater access, it may also lead to fewer accidents and lower associated health costs.

With regards to access to media, **broadcasting** was the key focus of analysis. The existing accessibility 'model' used at national level in the EU is based on making the main 'public' broadcasting channels more accessible rather than requiring all channels – public and private – to do so. Under this assumption, it was found that requiring each and every channel to provide 100% subtitling would be very costly, while placing such a requirement on only the four largest broadcasters might be more cost effective. In the latter case, the costs would range from a total of €1.9 million (Romania), to €3.3 million (Czech Republic), €4.6 million (Spain), €4.8 million (Germany) and €5.9 million (Sweden) in a five year implementation scenario.

Finally, while access to public transport is already covered by sector specific EU legislation, there is a gap regarding access to the built environment as a precondition to access goods and services. For example, arguably under the proposed Directive,



streetscapes and crossings may need to be made more accessible for persons with mobility/sensory disabilities. Given the amount of time a typical person spends in the built environment, the possible benefits in this area could be considerable, both in terms of time savings but also in terms of reduced health impacts from a lower number of falls/accidents. The proposed Directive is not at all explicit about what changes would be necessary. Likewise, what is meant by 'built environment' is open to interpretation. However, by way of example, analysis was carried out to assess the costs of making street crossings accessible. Over a 5 year period, and based on an extrapolation of Swedish data, these costs could range from €102 million (**Czech Republic**), to €410 million (**Romania**), €434 million (**Sweden**), €785 million (**Spain**), €1,449 million (**Germany**).

Beyond issues of accessibility, discrimination with respect to **living in the community** is also an important area to assess as it is susceptible to entail cost-intensive measures to ensure equal treatment. The UNCRPD establishes clear requirements to assist persons with disabilities to live independently in the community. It has been assessed that this would entail potentially high costs given the need to combine the reduction of institutional care with a low level of institutional support available to individuals on request with considerably increased care in the community.

While the benefits of such a move are not questioned, this change could result in substantial additional per patient costs (for the same level of care), though these estimates should be considered with caution. Given the wide number of variables involved, a cost range (in millions of euros) for each Member State was established: €170 – €580 (**Czech Republic**), €946 – €2700 (**Germany**), €69 – €245 (**Romania**), €205 – €602 (**Spain**). Notably, **Sweden** would bear no costs since all persons with disabilities are already cared for in the community and no institutions exist in this respect. As with other areas, the overall and annual costs of implementation measures reduce significantly if carried out over a 20 year period. For example, the total cost in **Germany** would reduce to between €344 and €982 million which is around a third of the 5 year implementation cost.

As stated above, these estimates should be taken with some caution. Every effort has been taken to establish a realistic scenario by including initial set up costs, on-going costs, transitional periods, the most likely fact that some institutions will have to remain open, etc. However, a wide number of variables exist and data in this area is limited. In particular, the study has relied on a Finnish assessment which calculated that overall costs of community living would be 7% higher than institutional care<sup>9</sup>. Other reports, on the contrary, argue that community living should in fact be cheaper or the same<sup>10</sup>. Moreover, both differences between Member States and the severity of disabilities that will be accommodated will affect costs for SMEs and public service providers when

<sup>9</sup>Case study in European Expert Group on the Transition from Institutional to Community-based Care 'Common European Guidelines on the Transition from Institutional to Community-based care', November 2012

<sup>10</sup>Mansell et. al., 'De-institutionalisation and community living - outcomes and costs; report of a European Study' Volume 2: Main Report. 2013; Academic Network of European Disability Experts (ANED), 'The Implementation of Policies Supporting Independent Living for Disabled People: Synthesis Report'.

providing living in the community measures. For example, assistance to persons with less severe disabilities would be cheaper if they could live in the community instead of in an institution.

### **Age discrimination**

Discrimination on the ground of age can be experienced by all age groups but is perhaps the least well defined aspect of the proposed Directive as it admits that discrimination in this area could be objectively justified without providing corresponding criteria. Following the methodology of this study, only costs and benefits for SMEs and public service providers in relation to measures for equal treatment of those aged 65 or over has been assessed.

Based on the literature and certain stakeholder positions, one of the main areas where age discrimination appears to occur is the **healthcare** sector. However, from a high level examination of two areas (kidney treatment in the area of secondary care and treatment for depression in the area of mental health), it has been difficult to determine if differential treatment is discriminatory or is based on justifiable reasons such the appropriateness of a treatment or the availability of the treatment.

With respect to **kidney failure treatment**, there is evidence that over 65 year olds have less access to kidney transplants (deemed to be the preferred treatment) compared with under 65s. An assessment was made of the cost of ensuring that over 65s had equal access to such treatment. However, it should be emphasised that this did not take into account medical limitations and availability of kidneys. On that basis, it was estimated that in the **Czech Republic** there could be a **net benefit** of €5.4 million per year of reducing possible discrimination. This compared to increased costs of €22.9 million and €0.6 million in **Germany** and **Romania** respectively, with no costs or benefits in **Spain**. No data was available with respect to **Sweden**.

Differential treatment in the area of **mental health (depression)** was more clear-cut in that expert advice identified that the over-65s receive less treatment (corrected for need). Significantly, it has been calculated that across the five Member States there would be a **net benefit** in removing the treatment gap between the over and under 65s. These benefits would range from €159 million (**Sweden**), to €188 million (**Czech Republic**), €350 million (**Romania**), €790 million (**Spain**), and €1,371 million (**Germany**).

One result of these case studies is that it appears that the reasons for differential treatment – which may or may not be justifiable – differ not only from sector to sector but also within sectors. Therefore, any assessment of the measures needed to implement the proposed Directive in this area would first need to take account of the **particularities** of the service offered. This in turn may require a comprehensive **audit** of areas within sectors where age discrimination takes place before any further conclusions on costs and benefits for SMEs and public service providers of measures aiming at equal treatment in health care can be drawn.

Overall, given the size of the health care sector, adjustments needed to remove age discrimination could, if they are needed, have a large financial impact. However, any assessment of the costs and benefits of doing so would have to be built-upon a clear specification of what constitutes age discrimination in the sector on the one hand and what differential treatment can be justified on the other.

### **Sexual orientation discrimination**

Finally, with regards to sexual orientation, it is expected that the vast majority of providers will face **minimal costs** of adjustment in this area. One possible exception relates to the area of 'social advantages' where the provision of certain tax breaks, pensions etc. on an equal basis to heterosexual married or civil partnership couples may increase costs for the state.

However, in terms of the countries covered, the proposed Directive is expected to have no cost impacts in **Spain, Sweden** (in **Spain** and **Sweden**, same-sex couples enjoy the same social advantages as heterosexual couples), **Romania** (neither same-sex civil partnerships nor marriages are currently recognised), and **Germany** (following the Federal Constitutional Court's judgment on June 2013 same-sex civil partners appear to have broadly the same rights as married heterosexual couples, including in tax matters).

In contrast, it is expected that the proposal would result in additional costs for the **Czech Republic**, where same-sex civil partners do not enjoy the same rights as married heterosexual couples in a number of areas (e.g. survivor pensions, preferential income tax treatment). These could amount to around €280,000 over five years and €1.4 million over twenty years or €3 million over five years and €17 million over twenty years (drawing on expected costs from changing income tax regulations in **Germany**).

### **Conclusions**

The assessment of potential costs and benefits of implementing the proposed Directive has been a complex process. As the proposed Directive is not explicit in the exact obligations it imposes on Member States, a wide range of approaches are possible. The process is further complicated by the interaction of international obligations and the fact that ostensibly discriminatory action can be justified or actions and adjustments need not be carried out where they would be disproportionate.

The cost and benefit assessment in this study is therefore just one possible approach that could be adopted. Any number of variables could legitimately be adjusted and the results would change. However, this study has sought to take a **realistic approach** based on **existing good practices** in Europe and around the globe.

It is evident that many forms of discrimination addressed by the proposed Directive can be combatted through relatively **low cost measures**. Much of this work will be related to changes in attitudes and culture of SMEs and public service providers. It will require prolonged and consistent training and awareness raising and will need to be supported

by appropriate enforcement mechanisms (whether by organisations themselves or by State action).

Only with respect to a limited number of areas will costs of measures ensuring equal treatment be relatively high, those these will also be accompanied by a range of benefits. On the one hand, the vast majority of costs which can be expected result from ensuring equal treatment for persons with disabilities, particularly with respect to accessing goods and services. On the other hand, given that most persons with disabilities are over 65 and that the population of the EU continues to age, action in this area will become ever more important with increasing benefits over time.

Moreover, since both the EU and almost all of Member States have ratified the UN Convention on the Rights of Persons with Disabilities, it could quite legitimately be argued that the costs stemming from combatting disability discrimination derive today in the first place from obligations established under the UNCRPD. This is relevant when considering that Member States have already committed to making changes in this field.

Overall, two important factors will strongly influence the extent to which SMEs and public service providers will face costs from implementing the proposed Directive.

Firstly, the manner in which **proportionality** requirements are applied can reduce costs. Based on approaches taken from around the world, in particular the USA and Australia, the use of national standards provides a legally certain and predictable framework for organisations. Standards can not only be effective in achieving change and realising benefits but also in reducing costs for SMEs and public service providers.

Secondly, the **implementation period** adopted for the proposed Directive will greatly influence both overall and annual costs in many areas. The study examined implementation costs over both a five and twenty year period, with costs reducing – in some cases significantly – in the twenty year scenario. However, achieving change over a twenty year period will have a significant impact on the beneficiaries of those changes. A careful balance will need to be achieved between the objectives of proportionality and cost effectiveness, and the fundamental right of all persons to equality.

The results of this study therefore provide some indication of the potential magnitude of costs and benefits for SMEs and public service providers. Significantly, assumptions and approaches adopted in this study which are based on practices and experiences around the globe, are in some ways reflected in the developing position of the Council of the European Union. Whether the proposed approach achieves the right balance of equality and proportionality cannot be answered through this study. What is evident, is that whatever form the Directive ultimately takes, it will only represent a starting point. To truly achieve change in the covered field will require sustained effort and the development of detailed guidelines and standards. This will not only facilitate legal certainty for all parties but will assist in the enforcement of equal treatment.

## Introduction

In July 2008, the European Commission presented a proposal for a Council Directive on the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation as part of its Renewed Social Agenda<sup>11</sup>.

The proposal which was subject to unanimity voting at the Council, following consultation with the European Parliament (EP), was blocked at the first Council Reading and despite some progress has still not been adopted. Key problems highlighted by Member States include: a lack of evaluation of the effects of existing European anti-discrimination legislation, legal uncertainty regarding some provisions of the proposed Directive, as well as costs for the public sector and small and medium sized enterprises (SMEs)<sup>12</sup>.

The European Parliament has repeatedly called for progress. In March 2012, the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament held a debate dedicated to the topic of 'Unblocking the Anti-discrimination Directive' with the aim of identifying and addressing the obstacles for the adoption of the proposed Directive. Following the debate, the European Parliament called on the Council to give political priority to the issue as well as to reach an agreement.

In an effort to assist progress, this study has been carried out to assess potential regulatory and compliance costs to SMEs and public service providers of obligations (and related benefits) arising from Member States' implementation of the proposed Directive.

Five sample EU Member States, namely **Czech Republic, Germany, Romania, Spain and Sweden**, were chosen for analysis to ensure geographical balance and a diversity of anti-discrimination approaches.

To facilitate the development of the methodology for assessing costs, the legal obligations imposed by other existing relevant national, EU and international legislation in the field of equality has also been assessed. This was combined with a legal analysis of the terminology employed in the proposed Directive. In addition, the current status of EU Council negotiations has also been examined to provide an indication of how the Council's developing position compares with the proposed Directive and to what extent the approach reflects existing practice in the EU and around the world.

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<sup>11</sup> 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe'.

<sup>12</sup> Specifications for an Impact Assessment of 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 (COM(2008)0426) as well as of amendments 37 (Multiple Discrimination) and 41 (Discrimination based on assumptions)) of the European Parliament to this proposal as adopted in plenary on 2 April 2008.

## Part I: Background and framework of this impact assessment requested by the EP

### Chapter 1 - The proposed Directive

#### Key findings

- The European Commission presented a proposal for a Directive on the principle of equal treatment in July 2008. At the same time, it released an accompanying impact assessment (IA) for the proposal, setting clear boundaries as to the scope of the problem being addressed and the objectives for EU action.
- Six specific policy options were retained for further assessment: no new action at EU level, self-regulation, recommendations, and one or more Directives prohibiting discrimination outside the employment sphere.
- Whilst the Commission's Impact Assessment assessed many areas, it did not focus on the potential costs for public service providers and SMEs

The objective of this study is to assess the potential costs and benefits to SMEs and public service providers of implementing the proposed Directive. The proposed Directive has already been subject to a Commission impact assessment which provides an important starting point for determining what implementing actions should be assessed. Importantly, given that this study is focused specifically on a broad cost/benefit analysis, objectives, problem definition and other matters such as EU right to act have not been studied. Rather, the sections below provide an overview of the Commission's findings and provide more information on the approach it took.

### I - Context of the Commission's proposal

In 2004, five years after the Amsterdam Treaty came into force, the Commission issued a **Green Paper** to take stock of achievements in the area of anti-discrimination policy and to gather input from a broad range of stakeholders on the way ahead<sup>13</sup>. This was soon followed by its **2005 framework strategy** on anti-discrimination and equal opportunities for all which established a set of priorities to strengthen action against discrimination. In particular, the Commission acknowledged there was a strong call for action to address differences in the level and scope of protection from discrimination based on different grounds.

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<sup>13</sup> The Green Paper indicates that significant progress has been made in developing a legal and policy framework. However, it highlights a number of issues lying ahead, including: implementing the existing legal framework; improving data collection, monitoring and analysis; and integrating the principle of anti-discrimination in other policy areas. See: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004\\_0379en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0379en01.pdf).

While it concluded that the time was not yet right for proposing new legislation, the Commission undertook to carry out a study on the relevance and feasibility of new measures to supplement the current legal framework. Completed in late 2006, the study<sup>14</sup> looked at the existing national legislative measures in tackling discrimination outside employment and the impact of these measures. It showed that there were considerable **differences between Member States** as to the degree and nature of the protection provided. Finally, it noted that very few countries have actually carried out ex ante impact assessments on anti-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'<sup>15</sup>.

In July 2008, the Commission presented its proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation as part of the 'Renewed Social Agenda: Opportunities, access and solidarity in 21<sup>st</sup> century Europe'<sup>16</sup>. This was accompanied by an impact assessment for the proposal<sup>17</sup>.

The Commission impact assessment sheds additional light on the comprehensive methodology followed by the Commission to develop the proposal, the scope and the nature of the problem being addressed as well as the objectives the proposed Directive is seeking to achieve.

## II –Methodology

In line with the preparation of any legislative initiative, and the Commission's Impact Assessment Guidelines<sup>18</sup> the Commission carried out a wide ranging evidence-gathering process which included a number of consultations and surveys in addition to studies and reports. In particular, it held a public on-line consultation and a written consultation with

<sup>14</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>15</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 21 February 2007 on Annual Policy Strategy for 2008, COM(2007) 65 final.

<sup>16</sup> This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.

<sup>17</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. Available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2180:FIN:EN:PDF>.

<sup>18</sup> European Commission, Impact Assessment Guidelines, SEC(2009) 92. Available at: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf).

the social partners and European level NGOs active in the anti-discrimination field<sup>19</sup>. On account of the lack of reliable data on discrimination, the decision was taken to examine, in the impact assessment, not only reported instances of discrimination, but also perceptions of discrimination.

An impact assessment study was also commissioned<sup>20</sup>, which looked 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. The Commission also contacted the Member States to request further information, in particular on measures taken or planned to go beyond the 2000 Equality Directives.

The impact assessment focused on **evidence of discrimination outside the labour market**. This highlighted the fact that in practice the level of legal protection to ensure equality significantly varied between Member States and between discrimination grounds.

The Commission identified six options to meet its anti-discrimination objectives, namely:

- No new action at EU level;
- Self-regulation<sup>21</sup>;
- A recommendation dealing specifically with the competences of the equality bodies and multiple discrimination;
- A general recommendation<sup>22</sup>;
- A Directive prohibiting discrimination based on disability; and
- A Directive prohibiting discrimination based on age, disability, sexual orientation and religion or belief.

The Commission came to the conclusion that a multi-ground Directive would be the most appropriate response.

### III - Problem definition

The right to equal treatment is one of the founding principles of the European Union. However, discrimination remains widespread across the EU based on a wide range of factors including cultural, social, educational and religious prejudice to name a few.

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<sup>19</sup> The responses to the consultation emphasised a number of concerns, relating to, amongst others:  
- the extent of the Community competences in the area of equality and anti-discrimination;  
- the specific nature of disability-related discrimination; and  
- the potential costs for business.

<sup>20</sup> 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) 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" (herein after "the EPEC study").

<sup>21</sup> Self-regulation dealing specifically with the competences of the equality bodies. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2180:EN:NOT>

<sup>22</sup> A general recommendation encouraging the Member States to increase the level of protection against discrimination outside employment. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2180:EN:NOT>



The figures remain stark. 17% of Europeans (that's 85 million people) report that they have personally felt discriminated against or harassed based on one or more of the following grounds: ethnic origin, sexual orientation, being over 55 years of age, being under 30 years of age, religion or beliefs, disability and gender identity (in the course of 12 months prior the survey)<sup>23</sup>.

Discrimination itself occurs in many forms from the direct discrimination of a member of staff refusing to serve someone because of their religious background or their sexual orientation, through to indirect forms of discrimination that may arise without intent. For example, where a library does not provide for wheelchair access or a shop requires removal of all headwear for security reasons which impacts on certain religious groups.

Discrimination can affect people in range of ways from minor annoyance through to devastating impacts which affect the well-being and life chances of the individuals concerned. These wider effects can be observed, for instance, 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<sup>24</sup>. As a consequence, besides being contrary to the basic principles of the European Union, the persistence of discrimination undermines the Union's social cohesion and harms its economic interests<sup>25</sup>.

Against this background, it is of concern that across the Member States, the extent of legislation to combat discrimination is highly variable. At the EU level, legislation has been established either with respect to certain grounds of discrimination or with respect to certain areas such as employment. The EU does not, to date, have a comprehensive set of legislation prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation in all areas for which it has competence.

### Box 3: Experience of discrimination in the EU

- 17% of Europeans report that they have personally felt discriminated against or harassed (in the course of 12 months prior the survey)<sup>26</sup> of which 13% have experienced discrimination on a single ground and 4% felt discriminated against on multiple grounds<sup>27</sup>.
- Many Europeans believe that discrimination is widespread, in particular, on grounds of sexual orientation (51%) and disability (45%), age (42%) and religion (42%), and embraced several areas, notably housing, education and services<sup>28</sup>

<sup>23</sup> European Commission, Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 12.

<sup>24</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. Available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2180:FIN:EN:PDF>.

<sup>25</sup> *Ibid.*

<sup>26</sup> European Commission, Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 12.

<sup>27</sup> *Ibid.* p. 62.

<sup>28</sup> *Ibid.*

The Commission has recognised that there is a clear **lack of minimum standards** across the EU with respect to equal treatment and that in view of the fact that EU Primary Law does not, in itself, 'provide a basis for citizens to assert their right not to be subject to discrimination', adopting appropriate legislation to prevent or reduce discrimination is seen as necessary for ensuring equal treatment.

## IV - Objectives

The Commission impact assessment detailed the overall and specific objectives that the proposed Directive is expected to meet. In particular, each selected policy option<sup>29</sup> as mentioned above was examined in the report to assess the extent to which it can meet these objectives. The report also stressed that the stated objectives are consistent, in particular, with the EU Social Protection and Social Inclusion Process.

The box below provides the overall and specific objectives defined in the Commission Staff Working Document<sup>30</sup>.

### **Box 4: Objectives of the proposed Directive**

#### **Overall objectives**

- To increase protection from discrimination on grounds of age, disability, sexual orientation and religion or belief;
- 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; and
- To enhance social inclusion and promote the full participation of all groups in society and the economy.

#### **Specific objectives**

- Ensure effective remedies are available to victims of discrimination on grounds of age, disability, sexual orientation and religion or belief;
- Ensure effective protection is provided from multiple discrimination;

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<sup>29</sup>A list of six options (no new action at the 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) have been identified to be examined more fully.

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, SEC(2008) 2180, see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2180:EN:NOT>, p. 27.

<sup>30</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. Available here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2180:FIN:EN:PDE>, p. 26.

- 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; and
- Ensure that public, service providers and other economic operators are informed of their rights and obligations regarding equality and anti-discrimination.

## V - Assessment of options and choice of instrument

Taking into account the above mentioned objectives as well as subsidiarity<sup>31</sup>, proportionality<sup>32</sup>, efficiency, effectiveness and consistency with fundamental principles and other Commission policies, six options were assessed for their potential economic, social and environmental impacts.

Based on a comparison of these options<sup>33</sup> underlining the added value of EU action, the Commission Staff Working Document comes to the conclusion that a legally-binding Multi-ground Directive prohibiting discrimination on grounds of age, disability, sexual orientation and religion or belief would be the most appropriate measure to achieve the specific objectives.

## VI - Main areas of strength and weakness of the Commission impact assessment

The Commission impact assessment sheds additional light on the comprehensive methodology followed by the Commission to prepare the proposal and, above all, sets forth the relevant framework of the proposed Directive. Besides the choice of instrument, this includes the determination of the problem at stake, affected fundamental rights<sup>34</sup> and the broad objectives for EU actions. A number of relevant legal aspects, including the EU right to act<sup>35</sup>, are thoroughly examined in the Commission impact assessment which also

<sup>31</sup> The principle of subsidiarity ensures that the EU may only intervene if it is able to act more effectively than Member States. See Official website of the European Union, The principle of subsidiarity. See:

[http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0017\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0017_en.htm).

<sup>32</sup> The proportionality principle aims at regulating the exercise of powers by the European Union, in the sense that action taken by the EU institutions must not go further of what is necessary to achieve the objectives of the Treaties. See:

[http://europa.eu/legislation\\_summaries/glossary/proportionality\\_en.htm](http://europa.eu/legislation_summaries/glossary/proportionality_en.htm).

<sup>33</sup> The comparison of options is explained in section 8 of the Impact Assessment, COM(2008) 426 final, p. 51.

<sup>34</sup> In its Proposal, the Commission expressly states that the proposed Directive will help strengthen the fundamental rights of citizens in accordance with the EU Charter of Fundamental Rights. The Commission also emphasizes that its proposal is in line with the strategy developed since the Amsterdam Treaty to combat discrimination, taking into account the objectives of the EU 2020 Strategy and the EU Social Protection and Social Inclusion Process. See Impact Assessment, COM(2008) 426 final, p. 21.

<sup>35</sup> As to the legal basis, the Commission's Proposal is based on Article 19 (1) of the TFEU. This article grants the EU the power to take appropriate action combat discrimination based on sex,

carries out a much wider evaluation of the costs and benefits of several options with respect to society as a whole. Thus the impact assessment study carried out for the Commission identified the costs to individuals and society. These would be costs that would arguably not be incurred if the proposed Directive were implemented. As such they can also be considered the benefits of the proposed Directive:

Possible costs to individuals and society of discrimination (or benefits of implementing the proposed Directive) – Source EPEC study.		
The following examples of costs of discrimination are taken from the EPEC study and could be associated with potential benefits of the proposed Directive. To fully understand the context and methodology for determining such costs/benefits, please consult the EPEC study.		
Domain	Costs to individuals and Society	
Education	<b>Sexual Orientation</b> Reduction in earning capacity due to health problems from bullying at school;	14.30% (equivalent to €452 million per year);
	Reduction of net earning prospects from early school leaving due to bullying;	€173 million per year;
	Loss in GDP due to lower participation/qualifications	€872 million per year
	Loss of direct tax due to lower earnings;	€161 million per year;
	Loss of tax revenue due to dropping out of school	€76 million per year;
	<b>Disabilities</b> Wage loss due to lower levels of education;	€28 billion per year
	Loss in GDP due to lower participation/qualifications;	€40.3 billion per year.
	In addition, governments would pay around €12.3 billion less in benefits payments due to increases in employment.	
Housing	<b>Sexual Orientation</b> 10% surplus in housing expenditure to avoid harassment;	€4.1 billion;
	<b>Disabilities</b> Welfare gains from accessing housing with upper floors.	€347 million
Health	<b>Sexual Orientation</b> Loss in net earnings due to ill health which have discrimination origins	€466 million
	Economic value of life of those who die due to health service discrimination	€4 million
	Loss of GDP due to reduced years in the labour market	€632 million
	<b>Disabilities</b> Net wage losses due to ill-health from health service discrimination	€599 million per year

racial or ethnic origin, religion or belief, disability, age or sexual orientation. See Impact Assessment, COM(2008) 426 final, p. 20.

	Loss of GDP due to ill health from discrimination	€812 million per year
	Direct tax revenue foregone	€213 million per year
Social Security	<b>Sexual orientation</b> Social benefits to same sex partners	€2.5 billion
Social Services	<b>Sexual orientation</b> Loss of income where same sex mothers can't enter labour market due to inaccessible social services	€90.8 million

Conversely, the Commission Staff Working Document impact assessment does not provide comprehensive information on a number of key aspects of the proposed legislation. This includes a lack of detailed assessment of the **effects** of existing national, European and international anti-discrimination legislation as well as legal uncertainty concerning some provisions of the proposed Directive, such as, for instance, reasonable accommodation and disproportionate burden. Moreover, as stated in the Commission impact assessment, 'it is difficult to provide reliable and comprehensive information on the costs of discrimination or of the measures to combat it'<sup>36</sup>. Lack of reliable data seriously undermined efforts to identify costs of prohibiting discrimination incurred by public administration and small and medium sized enterprises.

## Chapter 2 – Progress reached by the Council on the proposed Directive

### Key findings

- In July 2008, the Commission adopted the proposed Directive.
- In April 2009, the European Parliament adopted its opinion under the consultation procedure of the Nice Treaty (Legal basis: Art. 13). A number of amendments were proposed including on multiple discrimination and discrimination by assumption.
- With the entry into force of the Lisbon Treaty, a special legislative procedure requests consent of the European Parliament and unanimity in Council (Article 19 TFEU).
- At the end of 2013, the proposed Directive has not been adopted yet. The European Parliament is actively working on unblocking the proposed Directive.
- As a result of negotiations, numerous amendments were developed in the Council to the original text of the Directive as proposed in 2008.
- These amendments tend to reduce the scope of the proposed Directive or add greater clarity.
- The timeline for the implementation of the proposed Directive has been partially extended as a result of the negotiations in the Council.

<sup>36</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. Available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2180:FIN:EN:PDF>, p. 33.

## I – Status of negotiations

The Council, starting its examination on 18 July 2008, welcomed the proposal in principle with most of the Member States affirming the importance of promoting equal treatment as a shared social value within the EU. Furthermore, the Member States underlined the significance of the proposal in the context of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

Despite this generally positive reaction, Member States have been discussing the draft proposal for more than five years now. Among the **issues of greatest concern** are the lack of legal certainty, the division of competences, and the practical, financial and legal impact of the proposal.

Under the French Presidency in late 2008, negotiations mainly focussed on demarcating the division of competences between the Member States and the European Union. Discussions also covered the distinction between access to fields such as education, healthcare and social protection, and the organisation of such fields, the latter being an area of national competence<sup>37</sup>.

In 2009, the Czech and Swedish Presidencies mainly concentrated on the provisions aimed at protecting persons with disabilities from discrimination. Member States discussed aligning the proposed Directive's provisions with the UNCRPD and clarifying the key concepts. They also discussed the proposed Directive's implementation calendar in order to allow for adaptation of existing buildings or infrastructures, and the matter of not overburdening SMEs<sup>38</sup>.

### The Resolution of the European Parliament

On 2 April 2009, the European Parliament adopted its opinion under the Consultation Procedure<sup>39</sup> of the Nice Treaty. The legal basis at that time was Article 13. In total, 80 Amendments were adopted. Among them, Amendment 37 on multiple discrimination will enable an individual to be protected in cases where he/she has been discriminated on more than one ground while Amendment 41 seeks to prohibit discrimination based on assumptions.

#### **Box 5: Example of multiple discrimination and discrimination based on assumption**

A heterosexual man is accompanying his male gay friend, who is in a wheelchair, to a night club. The doorman denies access to the disabled gay person saying that the club does not allow wheelchairs. The doorman adds that anyway, the club is not a gay club and that he cannot allow a gay couple to enter.

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<sup>37</sup> Council work document 16769/1/08 REV 1 available at:  
<http://register.consilium.europa.eu/pdf/en/08/st16/st16769-re01.en08.pdf>.

<sup>38</sup> Council work document 10073/09 available at:  
<http://register.consilium.europa.eu/pdf/en/09/st10/st10073.en09.pdf>.

<sup>39</sup> Procedure file 2008/0140(APP) available at:  
<http://www.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=566164&l=en>.

### Multiple discrimination

First, the doorman discriminated against the gay man in a wheelchair twice, namely because he is gay and because he is disabled. Thanks to the concept of multiple discrimination, the disabled gay man will be able to bring a single case against the night club on both grounds of discrimination.

### Discrimination based on assumption

Secondly, the doorman discriminated against the heterosexual friend based on assumption. In assuming that he was in a relationship with his friend, the doorman denied him the access because he thought he was homosexual. Thanks to the concept of discrimination based on assumption, the heterosexual man will also be able to bring a case to court.

Under the Spanish and Belgian Presidencies<sup>40</sup> in 2010, work continued on the division of competences and the disability provisions as well as initiating discussions on the scope of the proposed Directive. The Council also undertook an in-depth analysis of the provisions on equal treatment in the areas of financial services and housing.

In 2011, during the Presidencies of **Hungary** and<sup>41</sup>, **Poland** the Council undertook an in-depth analysis of the provisions concerning, on the one hand, reasonable accommodation for persons with disabilities, and age on the other hand. Discussions on these matters continued under the Danish presidency in 2012. In the second half of 2012, under the Presidency of **Cyprus**, the Council's work focused once again on the scope of the proposed Directive, with particular reference to access to social protection and access to education<sup>42</sup>.

Further discussions have taken place in 2013 under the Irish and Lithuanian Presidencies. Most recently, the outcome of discussions of the Working Party on Social Questions of 2 September<sup>43</sup>, 2013 has shown that whilst a large majority of delegations continue to welcome the proposal in principle some delegations also have general reservations. Those delegations have expressed concerns in relation to:

- Respect of the principle of subsidiarity and proportionality;
- The need for a thorough impact assessment and cost benefit analysis;
- The burden that the proposed measures would impose on businesses (especially SMEs);
- The lack of legal certainty;

<sup>40</sup> Council work document 9535/10 available at:

<http://register.consilium.europa.eu/pdf/en/10/st09/st09535.en10.pdf> and 16335/10 available at: <http://register.consilium.europa.eu/pdf/en/10/st16/st16335.en10.pdf>.

<sup>41</sup> Council work document 10615/11 available at:

<http://register.consilium.europa.eu/pdf/en/11/st10/st10615.en11.pdf> and 16525/11 available at: <http://register.consilium.europa.eu/pdf/en/11/st16/st16525.en11.pdf>.

<sup>42</sup> Council work document 16063/12 available at:

<http://register.consilium.europa.eu/pdf/en/12/st16/st16063.en12.pdf>.

<sup>43</sup> Doc 10186/13 available at:

<http://register.consilium.europa.eu/pdf/en/13/st10/st10186.en13.pdf>.

- On-going infringement proceedings stemming from existing anti-discrimination legislation; and
- The timeliness and need for the proposal.

The Commission has maintained its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

Following these five years of negotiations, the Parliament urged the Member States to unblock the proposed Directive. For instance, in its Resolution of 26 October 2011, the Parliament emphasised the importance of the proposed Directive as an **economic instrument** to achieve the goals of the 2020 strategy<sup>44</sup>.

## II - Changes in legal terminology

As a result of negotiations in the Council and the opinion submitted by the European Parliament, the Commission's draft Directive as proposed in 2008 has undergone numerous changes. The most important changes concern the proposed Directive's scope (Article 3) and the equal treatment of persons with disabilities (Article 4). Other important amendments relate to the purpose of the proposed Directive (Article 1), the concept of discrimination (Article 2) and the implementation of the proposed Directive (Article 15).

For a more detailed analysis of all amendments to the original 2008 version, please refer to Annex 1 which provides a comparative table with the last draft as discussed in the Council.

### 1. Article 1: Purpose

One of the major amendments made by the European Parliament (amendment 37) introduces the notion of multiple discrimination that occurs when discrimination is based on any combination of the grounds protected under EU law<sup>45</sup>. The corresponding provision in the latest Council instrument has **reduced the possibility to invoke multiple discrimination** to the sole hypothesis of multiple discrimination against women (based on gender identity). This circumscribes the scope of the EP amendment thereby restricting the level of protection of victims of multiple discrimination. However, such limitation should not impinge on costs in that if it is not recognised that a person has been discriminated against on multiple grounds, such a person may still at least benefit from protection on one of the concerned grounds. For instance, if a person is being discriminated on grounds of disability and sexual orientation in a restaurant, s/he will always have the possibility to choose one of the two grounds on the basis of which s/he will go to court. The below box summarises the current legislation in the five Member States on multiple discrimination.

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<sup>44</sup> Resolution 2011/2067(INI) of 26 October 2011 of the European Parliament on the Agenda for New Skills and Jobs, §83.

<sup>45</sup> EU anti-discrimination directives protect discrimination on grounds of religion or belief, disability, age, or sexual orientation, sex, racial or ethnic origin and nationality.



### Box 6: Legislation on multiple discrimination in the five selected Member States

- In the **Czech Republic**, no legal acts have been developed to address multiple discrimination; and no laws are currently being drafted or are planned in the near future. However, according to the FRA Annual Report 2012, unofficial sources have indicated that the **Czech Republic** national equality body has processed claims on more than one ground.
- In **Germany**, the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz* – AGG) adopted in 2002, concerns discrimination in and outside the workplace, and applies to discrimination on grounds covered by the proposed Directive, as well as discrimination based on race and ethnic origin. The AGG considers aspects of multiple discrimination. Specifically, Section 4 of the AGG states that where discrimination is based on several grounds, such discrimination can only be justified pursuant to Sections 8, 9, 10 and 20 of the AGG and if the justification relates to all grounds.
- In **Romania** the Government Ordinance No. 137/2000 is the overarching legislation in the field of equal treatment. The law is applicable to all areas of public life and concerns an open-ended list of grounds of discrimination. The Ordinance considers multiple discrimination. Article 2(6) sanctions multiple discrimination based on two or more grounds, which manifest in different treatment, exclusion, restrictions or preference. According to Article 2(1) multiple discrimination is an aggravating circumstance for administrative sanctions issued by the national equality body.
- In **Spain**, Law 3/2007 on the effective equality between men and women contains a reference on multiple discrimination.
- In **Sweden** national legislation does not provide for the concept of multiple discrimination. However, in practice it does seem that such cases have been brought. In 2006 a case was presented to the Labour Court (No. 96)<sup>46</sup> claiming discrimination based on grounds of gender and ethnicity. No case law was identified, where the claimant successfully invoked multiple grounds of discrimination. This contrasts with complaints to the Equality Ombudsman where a settlement was reached with respect to discrimination on grounds of ethnicity and sex<sup>47</sup>.

In addition to amendment 37, the European Parliament also proposed an amendment to ensure that the notion of discrimination by assumption was included within the scope of the proposed Directive. To this end, the definition of discrimination in the Council version of the proposed Directive (at Recitals 12 and 12a), includes the notion of discrimination based on assumptions about a person's religion or belief, disability, age of sexual orientation. It also includes the notion of discrimination due to association with a

<sup>46</sup> AD 2006 nr 96, available at: <https://lagen.nu/dom/ad/2006:96>

<sup>47</sup> Sweden, Equality Ombudsman (2012), Case NB ANM 2010/1289, 12 July 2012

discriminatory ground, making reference to the Court of Justice Case law. The main impact on SMEs and public service providers of including these provisions is likely to be in relation to additional training and prevention measures, and an increase in the range of persons that would have claims for discriminatory treatment. As the box below indicates, some of the Member States assessed in this study already incorporate the notion of discrimination by assumption in their legislation or practice.

**Box 6b: Legislation on discrimination by assumption in the five selected Member States**

- In the **Czech Republic**, Art. 2(5) of the Anti-discrimination Law provides for prohibition of discrimination on the ground of assumed characteristics. It is stated that ‘an act where a person is treated less favourably on alleged grounds under paragraph 3 above shall also constitute discrimination’.
- In **Germany**, Section 7(1) of the AGG provides in relation to employees that they must not be discriminated against including where there is only an assumption of discrimination.
- In **Romania** and **Spain**, national legislation does not provide for the concept of ‘discrimination by assumption’.
- In **Sweden**, the Discrimination Act does not mention ‘discrimination by assumption’. Nevertheless it is considered as covered by the legislation. According to Government Bill 2007/08:95[1], which is the preparatory work for the Discrimination Act, any discrimination relating to the protected ground is covered by the Act. Thus, discrimination does not have to directly fall under the protected ground; it is enough if it is associated with the protected ground. The preparatory work gives an example of a person incorrectly perceived as homosexual and denied entry into a night club, without being homosexual. There is thus causality between the discrimination and the protected ground, despite the assumption being incorrect.

## 2. Article 2: Concept of discrimination

In relation to the concept of discrimination, the Council has added a sentence granting the Member States the right to define **harassment** in national laws and practice. This can potentially limit the scope of Directive’s application resulting in inconsistency of standards across the EU<sup>48</sup>.

Furthermore, the Council’s version of the proposed Directive leaves the right for Member States to establish eligibility requirements related to age and disability as a condition for

<sup>48</sup> Article 2(c) of the proposed Directive states: ‘In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States’.

access to social protection benefits. This provision should not impact on the costs analysis as it just clarifies a matter which falls under the competence of the Member States.

### 3. Article 3: Scope

Important modifications have been made in the proposed Directive with regard to the definition of its scope. First of all, the Council has further identified what constitutes **social protection** by including the notions of social assistance and social housing, thereby strengthening its legal certainty.

Secondly, the Council has deleted the term **social advantages** from the draft text. This may have major consequences on the costs as will be discussed in Chapter 2.VII of Part II, depending on how social advantages and social protection are interpreted. It should be noted that Recital 17b provides a relatively wide list of measures which would be considered as social protection under the Directive. These measures may also be regarded as falling under the notion of social advantages. However, as per the technical specifications, in the context of this study the whole costs attached to sexual orientation and social advantages have been taken into account.

The Council's version also replaces the provision restricting the requirement to provide non-discriminatory access to and supply of goods and services to individuals only if performing a professional or commercial activity. The Council refers to restricting non-discriminatory access to situations **outside of private and family life**. This could be seen to limit the extent of this Article.

### 4. Article 4: Equal treatment of persons with disabilities

The Council has changed the Article's title from equal treatment of persons with disabilities to **accessibility** for persons with disabilities and refers in its content to the principle of accessibility and thus to the UNCRPD.

The Commission's initial proposal detailed the areas for which effective non-discriminatory access should be provided by anticipate. These effectively corresponded to the areas detailed in Article 3 of the Commission's Proposal (social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport). The Council has now removed this list and refers simply to the areas as set out in Article 3. Whilst this appears a logical amendment, it should be noted that the Council's amended Article 3 no longer explicitly mentions social advantages or housing. Moreover, neither the Commission's Proposal nor the Council version, refer to transport in Article 3. Nevertheless, it is questionable whether these changes will have any practical impact since both transport and the provision of housing are covered under the notion of goods and services (to the extent that they are available to the public). With respect to transportation this is also explicitly referred to in Recital 19c of the Council's amended proposed Directive.

An important clarification is provided by the Council on how the accessibility requirement would apply to housing as no guidance on this issue can be found in the original proposed Directive. The Council specified that the accessibility requirement in

housing only applies to the common parts of buildings with more than one housing unit. It exempts providers of housing from having to make structural alterations or to pay for them. However, if such alterations are otherwise funded (presumably through public funds) the provider is obliged to make such alterations.

The Council has included a general obligation to ensure that persons with disabilities have access *on an equal basis with others* within the areas covered in the proposed Directive's scope instead of *effective and non-discriminatory access*, as proposed by the Commission. This descriptor might have the effect of strengthening the requirement of ensuring accessibility.

Furthermore, the Council's version requires *general anticipatory measures* to ensure effective implementation. As the proposal currently adds *with a medium or long-term commitment*, it would effectively allow the Member States **more flexibility** as regards how much time could be allowed for such anticipatory measures.

Notably, the Council has inserted a **new Article 4b** concerning accessibility and **reasonable accommodation**, where it specifies what kind of accommodation is considered to be reasonable. The Council clarifies that provisions on accessibility and reasonable accommodation do not apply where EU law provides for detailed standards or specifications on this matter regarding particular goods or services.

## 5. Article 15: Implementation

The Council's version grants Member States one additional year (5 years instead of 4 years as in the original Commission Proposal) as to the timeline for ensuring the accessibility for persons with disabilities of new buildings, facilities, vehicles and infrastructure as well as existing buildings. It allows Member States to opt for as much as 20 years for all other existing buildings, facilities, vehicles and infrastructure. This provision therefore attributes Member States greater time for implementation of the proposed Directive and consequently spreads the costs over a longer period of time.

Whilst the Council's version is not examined in the current study, considerable attention has been given to the issues highlighted by Member States as the main reasons for refusing to adopt the proposal since 2008<sup>49</sup>. In this respect, the following section seeks to shed additional light on the **existing legislation** in the field of equality, both at the EU and international level, based on the assumption that no precise assessment as to the legal constraints of the proposed Directive for MS can be made without identifying existing and possibly overlapping obligations stemming from different legal sources.

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<sup>49</sup> As in the specifications: 'a lack of evaluation of the effects of existing European anti-discrimination legislation, legal uncertainty regarding some provisions of the proposal, as well as uncertain costs for public administration and small and medium sized enterprises'.

## Chapter 3 – Current EU and international obligations relevant to equality

### Key findings

- At EU level, a number of Regulations and passenger rights Directives have been adopted and which contain some anti-discrimination provisions relevant for the implementation of the proposed Directive.
- This legislation covers also in detail the equal treatment requirement on the grounds of disability and age in transport. Consequently, there is no need for this impact assessment to analyse costs and benefits related to equal treatment measures for SMEs and public service providers in transport as they cannot be related to the proposed Directive.
- The implementation of the above mentioned Directives provides guidance on how provisions of the proposed Directive should be interpreted.
- Both the EU and the Member States must comply with obligations stemming from the UN Convention on the Rights of Persons with Disabilities.
- Some obligations in the proposed Directive are enshrined in the UNCRPD.
- Member States have already taken some measures to implement UNCRPD obligations and thus comply with the proposed Directive to varying levels which influences the costs and benefits for SMEs and public service providers directly related to the implementation of the proposed Directive.

### I - Obligations at EU level: The Charter of Fundamental Rights and EU anti-discrimination Directives

Respect for equality is one of the values the EU is founded on, along with human dignity, freedom, democracy, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Article 2 of the TEU states that '(t)hese values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'<sup>50</sup>

Moreover, the Charter of Fundamental Rights establishes the right to non-discrimination in Article 21, which covers fourteen grounds of discrimination: 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<sup>51</sup>. The Charter applies to EU institutions and bodies with regard to the principle of subsidiarity, and to Member States' national authorities when they are implementing EU

<sup>50</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF>.

<sup>51</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

law<sup>52</sup>. Anti-discrimination legislation was first taken on the grounds of nationality and has been intensively developed in relation to gender and the principle of equal pay. In 2000, two very important equality Directives were also adopted:

### 1. The Racial Equality Directive

The Racial Equality Directive<sup>53</sup>, establishes equal treatment on grounds of race and ethnicity outside employment, namely in the fields of education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

The **areas covered** by this Directive are the same as the ones covered by the proposed Directive. The Racial Equality Directive constitutes therefore a very important indicator of how **concepts** such as education, healthcare or social advantages are understood in EU law. Indeed, over the past 13 years, the ECJ has helped clarify the scope of these concepts through its judgments for example with respect to the definition of age discrimination or discrimination based on sexual orientation. The scope of the Racial Equality Directive has been used as a reference to determine the scope of the proposed Directive.

### 2. The Employment Framework Directive

The second Directive adopted in 2000 is known as the Employment Framework Directive<sup>54</sup>. It establishes a general framework to ensure equal treatment in the workplace on grounds of religion or belief, disability, age or sexual orientation. This Directive covers the same grounds as the ones covered in the proposed Directive. The Employment Framework Directive indicates how the **grounds** used in the proposed Directive could be interpreted and defined in EU law.

### 3. Equal treatment in the access to and supply of goods and services

In 2004, the Equal Access to Goods and Services Directive was adopted to ensure equal treatment between **men and women** in accessing goods and services<sup>55</sup>. The scope of 'goods and services' as defined by this Directive will be used to determine the **scope** of the notion of goods and services under the proposed Directive.

These Directives and judgments of the ECJ have all been used in the development of the methodology in this study.

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<sup>52</sup> <http://ec.europa.eu/justice/fundamental-rights/charter/>.

<sup>53</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180, 19.07.2000, p.22 – 26.

<sup>54</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 02.12.2000, p.16 -22.

<sup>55</sup> Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37 – 43.

#### 4. Overview of existing legislation

**Table 4: Current EU legislation fighting gender discrimination inside and outside employment.**

Current EU legislation fighting discrimination on grounds of gender		
	In employment	Outside employment
<b>Equal Treatment of Men and women</b>	<p><b>Council Directive 2006/54/EC</b> of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)</p> <p>(This brings together provisions of several pre-existing Directives and their amendments -- Council Directive 75/117/EEC, 76/207/EEC, 86/378/EEC)</p>	<p>Council Directive 2004/113/EC of 13 December 2004 <b>implementing the principle of equal treatment between men and women in the access to and supply of goods and services</b><sup>56</sup> (Equal Access to Goods and Services Directive)</p>

**Table 5: Current EU legislation fighting discrimination on grounds of race, religion or belief, disability, age and sexual orientation inside and outside employment.**

Current EU legislation fighting discrimination on grounds of race, religion or belief, disability, age and sexual orientation.		
	In employment	Outside employment
<b>Religion or belief</b>	<p><b>Council Directive 2000/78/EC</b> of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>57</sup> (<i>Employment Framework Directive</i>)</p>	None.
<b>Disability</b>	<b>Employment Framework Directive.</b>	None <sup>58</sup> .
<b>Age</b>	<b>Employment Framework Directive.</b>	None.
<b>Sexual orientation</b>	<b>Employment Framework Directive.</b>	None.
<b>Race</b> <b>Ethnic origin</b>	<p><b>Council Directive 2000/43/EC</b> of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>59</sup> (<i>Racial Equality Directive</i>)</p>	<i>Racial Equality Directive.</i>

<sup>56</sup> OJ L 373, 21.12.2004, p. 37 – 43.

<sup>57</sup> OJ L 303, 02.12.2000, p. 16 – 22.

<sup>58</sup> As mentioned in Section on other EU legislation, some regulations ensure non-discrimination of persons with disabilities in the transport areas. However their primary aim does not consist in fighting discrimination but in improving passengers' rights. This is why they have not been included in this table.

<sup>59</sup> OJ L 180, 19.07.2000, p. 22 – 26.

## II - Implementation in the Member States

The Employment Framework Directive and the Racial Equality Directive are two of the main 'tools' used to fight discrimination at the EU level. Thirteen years after their adoption, all Member States have included the principle of equal treatment in their national law.

The deadline for transposition into national law was 19 July 2003 for the Racial Equality Directive and 2 December 2003 for the Framework Equality directive. The ten Member States which joined the EU in 2004 had until 1 May 2004 to transpose the two Directives whereas the deadline for **Bulgaria** and **Romania** was 1 January 2007. The transposition of these Directives constituted one of the main requirements for accession to the Union.

There has been no unified approach in implementing the equality Directives, due mainly to differing national interpretations. For instance, in relation to the concept of disability, the ECJ's approach with regard to the lasting nature of the impairment is also used in various definitions of disability in national law. In both **Austria** and **Germany**, impairments must be likely to last for more than six months in order to count as a disability, while in the **United Kingdom** the impairment should last for at least 12 months. In contrast, other States require the impairment to be indefinite in duration as in **Cyprus** and **Sweden**<sup>60</sup>. Different approaches have been taken regarding the exceptions provided in the Directives. For instance, **France** and **Sweden** chose not to include the Article 4(2) exception for faith-based institutions in their national law.

### 1. Different methods of implementation

This difference in the level of protection relating to equality can be explained by the different methods Member States have chosen to transpose the Directives. Indeed, the European Network of Non-discrimination experts has identified several transposition methods among the Member States<sup>61</sup>:

- Adoption of anti-discrimination acts which more or less reproduce the Directives;
- Adoption of anti-discrimination acts covering more grounds than the Directives;
- Adoption of combinations of multi-ground anti-discrimination acts and single-ground acts;
- Adoption of several pieces of single-ground anti-discrimination legislation;
- Adoption of combinations of specific legislation and an employment act;
- Adoption of combinations of specific amendments to legislation, labour and criminal codes and some administrative law;
- Adoption of a general act covering a wider scope and more grounds than the Directives.

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<sup>60</sup> European Commission, Developing Anti-Discrimination Law in Europe, November 2011, p. 44.

<sup>61</sup>*Ibid.*



## 2. Equality bodies

According to the Employment, Race and Gender Directives, Member States had to establish equality bodies to fight discrimination and provide concrete assistance for victims in the areas in question. Some of the five Member States in this study, for instance **Sweden** and the **Czech Republic**<sup>62</sup>, went beyond such requirements and established one single body competent to deal with all grounds in all areas<sup>63</sup>.

**Table 6: Description of national non-discrimination bodies in the five Member States**

Member State	Non-discrimination body
<b>Czech Republic</b>	The Public Defender of Rights (Veřejný ochránce práv) covers all grounds and areas <sup>64</sup> covered under the proposed Directive, and also include additional grounds such as Nationality and parental status as well as additional areas such as health service, membership in political parties and associations, insurance (with restrictions), and state governance.
<b>Germany</b>	The Federal Anti-Discrimination Agency <sup>65</sup> (Antidiskriminierungsstelle des Bundes) provides support to persons who have experienced discrimination on grounds of racism or their ethnic origin, gender, religion or belief, on grounds of disability, age, or their sexual orientation.
<b>Romania</b>	The National Council for Combating Discrimination (Consiliul National pentru Combaterea Discriminarii (CNCD)) is the Romanian equality body empowered to investigate, examine and decide on cases of discrimination on all grounds and may issue administrative sanctions.
<b>Spain</b>	The Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin (Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico) only deals with grounds of race and ethnic origin and in the areas required by the Racial Equality Directive and the Employment Framework Directive.
<b>Sweden</b>	The Equality Ombudsman (Diskrimineringsombudsmannen) covers all grounds in all areas. The only exception is age discrimination which is only prohibited in employment and education.

## III - Other existing EU legislation

Beyond the anti-discrimination Directives mentioned above, a range of other EU Directives and Regulations have been adopted in the field. Identifying these has been crucial in the determination of what sectors to assess in this study. Where specific anti-

<sup>62</sup> Equinet, Detailed profile of the Office of the Czech Public Defender of Rights. Available at: [http://www.equineteurope.org/IMG/pdf/PROFILE\\_PDR\\_CZ-CONTACT.pdf](http://www.equineteurope.org/IMG/pdf/PROFILE_PDR_CZ-CONTACT.pdf).

<sup>63</sup> Equinet, Detailed profile of the Swedish Equality Ombudsman. Available at: [http://www.equineteurope.org/IMG/pdf/PROFILE\\_EO\\_SW.pdf](http://www.equineteurope.org/IMG/pdf/PROFILE_EO_SW.pdf).

<sup>64</sup> Equinet, Detailed profile of the Office of the Czech Public Defender of Rights. Available at: [http://www.equineteurope.org/IMG/pdf/PROFILE\\_PDR\\_CZ-CONTACT.pdf](http://www.equineteurope.org/IMG/pdf/PROFILE_PDR_CZ-CONTACT.pdf).

<sup>65</sup> Website of the Federal Anti-Discrimination Agency: [http://www.antidiskriminierungsstelle.de/EN/Home/home\\_node.html](http://www.antidiskriminierungsstelle.de/EN/Home/home_node.html).

discrimination legislation exists in a field which is covered by the proposed Directive, the *lex specialis principle* applies. This means that national anti-discrimination legislation stems directly from specific Directives and Regulations already in place. This means that such measures have not been costed in this study.

Existing EU anti-discrimination provisions cover primarily persons with disabilities and persons with reduced mobility, in particular with respect to transport accessibility.

## 1. Transport

There are **four main Regulations** which include non-discrimination provisions for persons with disabilities and persons with reduced mobility. They establish specific obligations in terms of accessibility of railway, airways, road transport and transport by sea. For the purpose of this study, this means that costs related to transport will not be assessed.

Three of the four Regulations specifically relate to the **rights of all passengers**:

- Travelling by **rail** adopted in 2007 ([Regulation 1371/2007<sup>66</sup>](#));
- Travelling by **bus** and travelling by **coach** transport adopted in 2011([Regulation 181/2011<sup>67</sup>](#));
- Travelling by **sea** and **inland waterway** adopted in 2010 ([Regulation 1177/2010<sup>68</sup>](#)).

These three Regulations contain a specific section on non-discriminatory rules and rights of disabled persons and persons with reduced mobility. In particular, the three Regulations above cover physical accessibility; accessibility of information; right to assistance, training of the staff; and compensation in respect of wheelchairs and other mobility equipment.

In addition, a fourth Regulation ([Regulation 1107/2006<sup>69</sup>](#)) **exclusively** regulates the rights of disabled persons and persons with reduced mobility when travelling by **air**. It broadly establishes the same rights as those contained in the three other Directives but in more detail, regarding the way accessibility must be provided to passengers with disabilities.

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<sup>66</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 03.12.2007, p.14-41. Entered into force: 3 December 2009

<sup>67</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, OJ L 55, 28.2.2011, p. 1-12. To apply from 1 March 2013.

<sup>68</sup> Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, OJ L 334, 17.12.2010, p. 1-16. To apply from 18 December 2012.

<sup>69</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1-9. To apply from 26 July 2008 with the exception of Articles 3 and 4 for which there is a 1 year extension.

It addresses specific situations, such as when an air carrier refuses to let a person with a disability or persons with reduced mobility on-board<sup>70</sup>. The Regulation provides for quality standards for assistance of persons with disabilities and persons with reduced mobility.

## 2. Media /telecommunications

Non-discrimination provisions, notably accessibility provisions, have been adopted in relation to media and telecommunications. **Directive 2010/13** (Audio-visual Media Services Directive) includes some provisions promoting accessibility of audio-visual media services to persons with disabilities and persons with reduced mobility. This Directive came into force on 20<sup>th</sup> March 2013.

In contrast to transport-related legislation, such accessibility requirements are **considerably less detailed**. Further, accessibility provisions enshrined in the proposed Directives on media are not binding. In this respect, the wording of the proposed Directive indicates that Member States do not have a legal obligation to provide accessible media (TV, radio etc.). Rather it states that *'Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.'*

## 3. Other goods and services

Recently, Regulation **305/2011** laying down harmonised conditions for the marketing of construction products<sup>71</sup> has included provisions on safety and accessibility. The provision, contained in Annex I of the Regulation, reads as follows *'construction works must be designed and built taking into consideration accessibility and use for disabled persons'*. The meaning of 'take into consideration' is not entirely precise. The Regulation establishes an obligation on the way construction works must be designed rather than on the final outcome<sup>72</sup>.

# IV - Obligations at international level relevant for costs and benefits related to the implementation of the proposed Directive

## 1. The UNCRPD and its impact on EU law and policies

The UNCRPD was ratified by the EU on 23 December 2010 and is the first international Human Rights treaty ratified by the EU as a whole. In ratifying the UNCRPD, the EU as a whole has committed itself to comply and implement the Convention to the extent of its competences. All the 28 Member States have also signed the UNCRPD individually, with 25 having already ratified it.

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<sup>70</sup>*Ibid.* Article 3.

<sup>71</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC Text with EEA relevance. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0005:01:EN:HTML>

<sup>72</sup> Annex I of the Regulation has entered into force on 1 July 2013.

Article 4 of the UNCRPD obliges the EU to 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention'.

Article 4 of the UNCRPD made the EU responsible for taking '**all appropriate measures**', including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.' As stated in Article 4 of the UNCRPD, the EU is bound by the Convention and will have to modify or abolish any legislation which is not in accordance with the principles laid down in the UNCRPD.

The signing of the UNCRPD created an important momentum for the EU to recognise the rights of people with disabilities as a priority policy in the upcoming years. The EU has recently launched **specific policy initiatives** to ensure greater participation of people with disabilities in the society. For example, the European Disability Strategy 2010-2020, which is inspired by the provisions of the UNCRPD<sup>73</sup>, is focused on implementing **key principles** set out in the Convention, such as developing policies for inclusive and high-quality education. In doing so, the EU is taking an important step in implementing Article 24(1) on inclusive education for persons with disabilities.

Similarly, one of the priority objectives set by the UNCRPD is accessibility of persons with disabilities. This principle was consequently emphasised in the European Disability Strategy 2010-2020. To ensure better accessibility of people with disabilities and thus comply with Article 9 of the UNCRPD, the Commission adopted a proposal for a Directive on the **accessibility of the public sector bodies' websites**<sup>74</sup> on 3 December 2012. Furthermore, the UNCRPD also contains a reference to multiple discrimination. As said before, by ratifying the Convention, the 25 EU Member States have committed to implement the provisions which are not yet in EU law (to the extent that the EU has competence to act in such areas). The adoption of the proposed Directive could be a measure to implement Art 6(1) of the UNCRPD on multiple discrimination<sup>75</sup>.

The interpretation of key concepts of EU law have been influenced by the ratification of the UNCRPD. This also implies that, in interpreting the law of the Union, the ECJ will seek consistency with the UNCRPD<sup>76</sup>. This is reflected, for example, in Recital 4 of the Employment Equality Directive<sup>77</sup> where a reference is made to international instruments.

This could have important implications in terms of the scope of the existing provisions. For instance, the UNCRPD recognises the refusal of reasonable accommodation as a form of discrimination whereas EU anti-discrimination law does not do so explicitly.

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<sup>73</sup>*Ibid.*

<sup>74</sup> Available at: <http://ec.europa.eu/digital-agenda/news-redirect/9125>.

<sup>75</sup> Jarlath Clifford, The UN Disability Convention and its Impact on European Equality Law, The Equality Rights Review, Vol. 6 (2011), p. 19.

<sup>76</sup>*Ibid.*

<sup>77</sup> Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

Countries that have ratified the Convention will need to periodically inform the Committee on the Rights of Persons with Disabilities about the measures taken to implement the Convention. The Committee, composed of independent experts, will highlight any shortcomings in the Convention's implementation and make recommendations<sup>78</sup>.

## 2. Implementation of UNCRPD in the five selected Member States

In implementing the UNCRPD and existing EU rules, Member States are already to some extent compliant with the proposed Directive. The five Member States took significantly different approaches to address obligations enshrined in the UNCRPD. As a result, the level of compliance with the UNCRPD and the EU Regulations differs from one country to another.

The **Czech Republic** signed the UNCRPD on 30 March 2007. The UNCRPD was ratified on 28 September 2009 and promulgated on 2 February 2010. The **Czech Republic** signed the Optional Protocol on 30 March 2007 but it has not yet been ratified and no clear intention to do so has been shown by the Czech government. Further, no general disability strategy has been adopted. Nonetheless, since 2011 the country has been implementing Social reform (*Sociální reforma*)<sup>79</sup>. This reform aims at promoting legislative changes for people with disabilities but is restricted to the areas of employment, social benefits and social services<sup>80</sup>.

The two Regulations on the rights of passengers by rail and road are reflected in Czech legislation. An amendment to the national Act No. 111/1994 on road transport has included a reference to the direct application of EU Regulation 181/201. It will enter into force once signed by the President of the **Czech Republic**. Another act on railways<sup>81</sup> includes a reference to the direct application of the Regulation on rail passengers' rights and obligations which entered into force on 1 January 2012.

**Germany** signed the Convention and its Protocol on 30 March 2007. Both the Convention and its Protocol were ratified on 24 February 2009<sup>82</sup> and the Convention entered into force in **Germany** on 26 March 2009<sup>83</sup>.

**Germany** already had a set of national level **legal instruments in place** aiming at ensuring accessibility for people with disabilities in different areas such as justice or public ways, squares and roads<sup>84</sup>. As a result, **Germany** chose to undertake policy

<sup>78</sup> Available at: [http://www.eu-un.europa.eu/articles/fr/article\\_9756\\_fr.htm](http://www.eu-un.europa.eu/articles/fr/article_9756_fr.htm).

<sup>79</sup> Available at: <http://socialnireforma.mpsv.cz/cs/>.

<sup>80</sup> ANED, **Czech Republic** Country profile, available here: <http://www.disability-europe.net/countries/czech-republic>.

<sup>81</sup> Act No. 266/1994 on railways

<sup>82</sup> DOTCOM: the Disability Online Tool of the Commission. Available here: <http://www.disability-europe.net/dotcom>.

<sup>83</sup> *Ibid.*

<sup>84</sup> Information collected through national legal research.

measures rather than legislation<sup>85</sup> to implement the UNCRPD. Its main objective was to fill the existing gap between legal provisions and actual practice. A **National Action Plan** to implement the UNCRPD in German national law was adopted by the Federal Government in June 2011. It consists of a range of different measures<sup>86</sup>, some of which are specifically tailored to ensure better implementation of existing legislation in practice. The National Action Plan is also complemented by other policies at the federal or municipal level<sup>87</sup>.

**Romania** ratified the UNCRPD in November 2010. The Optional Protocol was signed on 25 September 2008 but has not been ratified yet<sup>88</sup>. This prevents individual and collective complaints from being submitted to the UN Committee. **No specific legislative steps**, either in the form of new acts or via amendments of existing legislation, have been taken in order to implement the UNCRPD to date. Likewise, **no policy measures** or broader strategies have been put in place following the ratification of the UNCRPD. The **Romanian** Government is still working on draft amendments since the ratification in 2010 and no proposal has been tabled yet<sup>89</sup>.

**Spain** signed the UNCRPD and its protocol on 30 March 2007. Both the Convention and the protocol were ratified on 3 December 2007 and entered into force on 3 May 2007<sup>90</sup>. Unlike the other four Member States, **Spain** undertook major **legislative action** to comply with the provisions of the Convention, both at policy and legislative levels. Law 26/2011 adapting the Spanish legislation to the UN Convention on the Rights of Persons with Disabilities is the main legal act implementing the Convention<sup>91</sup>. It has modified several pieces of national legislation in response to the requirements of the Convention. This includes a broad range of **areas** such as healthcare, housing, media, goods and services etc.<sup>92</sup>. Thus, most of **Spain's** relevant national measures come from, or have been significantly amended as a result of, the implementation of the UNCRPD. Similarly to other Member States, **Spain** also launched a national strategy called **Spanish Disability Strategy 2012-2020**<sup>93</sup>. This strategy combined the recommendations of the Committee<sup>94</sup>,

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<sup>85</sup> Legislation refers to laws which serve to legally prohibit certain actions and ensure others are carried out. Policies are like a plan of action providing guidance towards compliance with legislation.

<sup>86</sup> United Nations, Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, p. 45.

<sup>87</sup> *Ibid.* p. 168.

<sup>88</sup> Information collected through national legal research.

<sup>89</sup> Information collected through national legal research.

<sup>90</sup> DOTCOM: the Disability Online Tool of the Commission. Available here: <http://www.disability-europe.net/dotcom>.

<sup>91</sup> Available at: [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2011-13241](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-13241).

<sup>92</sup> Information collected through national legal research.

<sup>93</sup> United Nations, Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, p. 93.

<sup>94</sup> Committee on the Rights of Persons with Disabilities, The views of the Committee on the Report submitted by the Spanish Government are available here: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx>

its areas or concerns, general targets of the Europe 2020 Strategy and specific targets of the EU Disability Strategy 2010-2020<sup>95</sup>.

**Sweden** signed the UNCRPD on 30 March 2007 and ratified both the Protocol and the Convention on 15 December 2008. On 14 January 2009, the Convention took full effect<sup>96</sup>. Discrimination on grounds of **inaccessibility** already existed in **Sweden** in the area of employment and higher education. With the entry into force of the UNCRPD, the government intensified its efforts in the field of accessibility and developed environment and public transport<sup>97</sup> access points. In 2011 it launched a disability Strategy<sup>98</sup> based on the same areas identified in the UNCRPD. For instance, the Strategy aims at strengthening the rights of passengers in public transport in general and passengers with disabilities in particular. Further, it emphasises the importance of everyone's access to culture, through for example education and opportunities for artistic development<sup>99</sup>. **Sweden** is currently considering extending the scope of discrimination on grounds of inaccessibility to areas other than employment and higher education<sup>100</sup>. **Sweden** already had legislation in place ensuring accessibility of transport for persons with disabilities before the EU directives were adopted.

### 3. Investments made to date implementing the UNCRPD

Determining the costs to implement the UNCRPD has not been possible in this study. Whilst all Member States except Romania have adopted policy and/or legal measures to implement the UNCRPD (see the analysis in Annex 3) they have concurrently been implementing national laws in this area. It is therefore difficult to determine whether the costs and investments made can be attributed to either UNCRPD measures or national ones, given that they cover similar grounds.

Having further clarified the (legal) context of the proposed Directive, the range of existing information on costs and benefits of Equality legislation has also been studied. In particular, a review of relevant literature on the cost/benefits assessment on discrimination outside the workplace available both on EU and non EU countries has been carried out.

<sup>95</sup> United Nations, Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, p. 93.

<sup>96</sup> DOTCOM: the Disability Online Tool of the Commission. Available at: <http://www.disability-europe.net/dotcom>.

<sup>97</sup> United Nations, Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, p. 237.

<sup>98</sup> Information collected through national legal research.

<sup>99</sup> *Ibid.*

<sup>100</sup> United Nations, Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, p. 238.

## Chapter 4 – Effects of the scope of the assessment, economic theory, and the lack of existing standards in the EU on the analysis

### Key findings

The methodological approach developed in this study complements, or builds on, the analysis presented in the Commission impact assessment of 2008.

However, **key differences** include:

- The assessment focuses on sectors where the presence of SMEs and public service providers is considerable. Costs and benefits occurring to individuals, large companies and voluntary organisations, or the society in general are not examined.
- Drivers for the proposed Directive are not examined as the problem definition, objectives and other key elements have already been outlined in the Commission impact assessment.
- Only the proposed Directive is assessed rather than a range of options to attain equal treatment.
- An in-depth analysis has been carried out only for the areas where the most significant costs and associated benefits are anticipated.
- Existing EU and international legislation (e.g. UNCRPD) in the field of anti-discrimination has been drawn on to help understand the possible obligations established by the proposed Directive; and to develop possible approaches to the implementation of the proposed Directive.
- A range of assumptions have been made, and a range of proxies have been used to make quantitative estimates possible.

### I - The scope – building on the Commission impact assessment of 2008

The methodological approach developed in this study differs from that of the Commission impact assessment carried out in 2008. The 2008 work was instrumental in estimating the costs of discrimination to individuals and the society, aspects that this study is not covering. The below box gives examples on the findings of the EPEC study regarding the costs of inaction to address discrimination in the EU:

#### Box 7: Costs of inaction at the EU level from EPEC study

The Commission impact assessment looked 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. Some of the costs (for EU 27) of inaction are presented below:**

- 17% of Europeans (85 million people) have felt discriminated against or harassed based on one or more of the following grounds: ethnic origin, gender, sexual



orientation, age<sup>101</sup>, religion or belief, and disability<sup>102</sup>. This has a range of individual and societal costs including alteration in life choices, lower self-esteem, extra time lost, extra income lost, productivity lost.

- The EPEC study generally accounted for **foregone earnings from inferior health and education outcomes** (and the associated lost tax revenues) due to various forms of discrimination including bullying, harassment and degrading treatment. For example<sup>103</sup>:
  - The study found that 10% of the openly gay or lesbian youth harassed (16,100 individuals) will not attain tertiary education due to discrimination and resulting health problems. Because of the statistically expected gap in future earnings between individuals with and without tertiary education, this adds up **€172 million for the 16,100 young people affected and €76 million in tax revenue**. The equivalent figure for income loss due to discrimination at school and consequent reduced earning capacity for **people with disabilities is estimated at €4.3 billion a year**.
- The EPEC study also considered the **exclusion from medical services for LGB persons**, including such effects as temporary and permanent health problems, and even death in a very small number of cases. An attempt to monetize the losses put the figure at a conservative **€4 million annually per person**. It was not attempted to gross the value up for the whole affected population, because of lack of sufficient information.
- Because of discrimination in housing, LGB people pay around 10% more than the rest of the population. This puts an **extra burden of €4.1 billion a year on the LGB community**.
- In the area of social benefits the current cost in terms of **foregone survival benefits for LGB persons** is estimated at **€2.5 billion annually**.

**This study is aimed at complementing or building on, and not replacing or replicating, the Commission impact assessment.** The key differences in terms of scope of the study and general approach are detailed below:

## 1. Focus on SMEs and public service providers only

In line with the terms of reference, this study has only examined the costs and benefits to SMEs and public service providers. It does not examine costs and benefits occurring to individuals or society in general, nor does it consider impacts for large companies and voluntary organisations.

<sup>101</sup> In this particular context, discrimination on the grounds of age refers to being over the age 55 or being under the age of 30.

<sup>102</sup> European Commission, Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 12.

<sup>103</sup> For more details and a full disaggregated account of the incurred costs to individuals and society, see Annex 12 to the EPEC study.

However, the delineation between SME, public service provider and other enterprises is not an easy one to make. The boundary between a **private and public service provider** varies considerably from country to country. It is possible that the same services are provided by civil/public servants in certain countries and by private entities in others. For example, postal services are public in **France** and private in the **UK**. Delimiting public vs private service providers becomes important in the context of trying to ensure that estimates are comparable across the five countries of this impact assessment.

Another factor that had to be considered was the **level of duties** that different sectors place on service providers regardless of whether they are large or small; or public or private. For example, the level of duties will be higher in public interest sectors, such as health and social care.

In view of these practical differences, the term public service provider was interpreted for the purpose of this study in a broad sense to cover any organisation which is bound by public service duties when providing a particular service, even if privately owned.

## **2. Drivers for the proposed Directive are not examined**

The problem definition, objectives and other key elements of an impact assessment have already been outlined in the Commission Staff Working Document. These were not revisited in this study. Primarily, this study assessed the social and economic **efficiency** of the proposal.

## **3. No alternative options are considered**

In contrast to a full impact assessment, only one option – implementation of the proposed Directive – was assessed, rather than a range of options.

### **Box 8: The level of analysis and the use of proxies**

The scope of the Commission impact assessment was very large. Not only was a range of options considered; the analysis also looked at a large range of sectors for a variety of cost and benefit variables across the EU 27 Member States (at that time).

In contrast, this study focuses on a number of specific areas where the most significant costs and associated benefits were anticipated. However, it has been necessary to make use of a range of proxies and to establish a large number of assumptions. This was due to legal uncertainty, scarcity of data, and the impossibility to generate data in the time-frame and scope of this study.

The methodology put forward in this study has been based on existing EU and international legislation to help understand the possible **implications of obligations** established in the proposed Directive and possible approaches to implementation. For

example, with respect to persons with disabilities, the UNCRPD provides further details on methods of implementation. In addition, the analysis has been informed by the experiences and information available from other jurisdictions where anti-discrimination legislation outside the workplace has been in place for many years. The experience from these jurisdictions has also helped in finding proxy data for estimates.

Given the broad nature of the proposed Directive and the flexibility regarding implementation of its provisions, for many of the areas examined, the **cost and benefit estimates** should be interpreted with caution. Rather than showing precise estimates rooted in credible implementation scenarios, the estimates provide an order of magnitude of the potential impacts of the proposed Directive. In short, the approach taken examines one realistic way in which the proposed Directive could be interpreted and implemented.

This complementary approach required that the analytical framework used (type of cost; sectors examined) was as consistent as possible with the Commission Staff Working Document impact assessment. In this context, the Commission's Proposal was the **reference text for this study**<sup>104</sup> **together with** amendments 37 (on multiple discrimination) and 41 (on discrimination by assumption) proposed by the European Parliament.

#### 4. Council discussions on the proposed Directive

Generally, the study did not cover the Council amendments. However, the Council's deliberations up to the end of 2012 were taken into account. More specifically, the Council's proposed option of allowing an extension of the implementation **timeline** from 5 to 20 years (Council amendment Article 15.2); and the possible clarification of the specific requirements relating to **residential housing** (Council amendment Article 4.6) were considered.

## II - Approach to identification and analysis of most significant impacts

As noted above, the study assumed that discrimination outside the workplace exists and can be addressed with the proposed Directive. The objective here was to consider how the proposed Directive would specifically impact SMEs and public service providers in the five Member States. The steps taken to identifying the most significant impacts were:

### **Step 1: Examine drivers and identify types of costs and benefits**

Based on economic theory, national impact assessments and field studies:

- Examine the drivers of inequality/discrimination and whether the proposed Directive, if implemented correctly, is likely to result in costs and benefits for SMEs and/or public service providers.
- Identify what types of costs and benefits would accrue for enforcement authorities as well as compliance entities (regulatory, generic compliance costs; sector specific compliance costs).

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<sup>104</sup>As required in the tender specifications.

**Step 2: Define compliance costs**

Based on the above, split the compliance cost types according to whether they are likely to:

- Apply to all SMEs and public service providers across several discrimination grounds (e.g. generic compliance costs); or
- Be specifically tailored depending on the ground (e.g. disability etc.) and/or sector e.g. (retail etc.).

**Step 3: Identify the most significant sector specific costs and benefits and the major possible impacts on SMEs and Public Service providers**

Apply a stepwise approach by:

- Using the nine policy areas identified by EPEC consortium in its original study (used as the basis for the Commission impact assessment); and
- By excluding the sector-specific exemptions included in the proposed Directive (e.g. special education) and identifying high sector specific costs areas which mostly do not concern SMEs and public service entities (e.g. the insurance sector which is dominated by large firms).

**Step 4: Verify choice of sectors and areas to be assessed in this study**

Verify a number of channels:

- Through external experts involved in the project;
- Via a consultation of expert stakeholders chosen on the basis of an extensive literature review search and
- Through responses to previous consultations in this area (i.e. those organised by the Commission in the same area).

**Step 5: Identify actions required to implement the proposed Directive for SMEs and Public Service providers**

- Outline what the objectives of the proposed Directive are in these 'high cost areas' and assess what actions might be required as part of the implementation of the proposed Directive.

**Step 6: Estimate (where possible) the status quo of each of the five surveyed countries.**

- This assessment informs the gap between the current situation and a situation in which the proposed Directive can be considered as implemented.

**Step 7: Determine costs and benefits of the proposal in the areas examined in the 5 MS**

- Transform the estimation of the gap identified in Step 6 into actions that might be required to complete the implementation of the proposed Directive. This allows for an estimation of the costs and benefits brought about by the proposal on SMEs and Public Authorities in the 5 MS. For further details to this approach, please see Chapters 1 and 2 of Part II of the study.

### III - Background to economic theories of discrimination

#### 1. Availability of literature and analysis

The fields of discrimination and equal treatment have traditionally been dominated by **legal specialists** at least within the EU. Thus, it has been difficult to find source material – conceptual, analytical, descriptive or other<sup>105</sup> – which looks at the issue of discrimination from an economic point-of-view. Indeed, prior to the proposed Directive, there was very limited literature on the costs of discrimination to individuals in the EU, and even less literature on what drives it. The EPEC study of 2008 was a first EU wide attempt to put figures on a range of the costs of discrimination outside of the workplace to society and individuals. However, for a number of reasons, it was acknowledged by the European Commission in its Commission impact assessment that it has not been possible to identify and accurately estimate all costs and drivers:

‘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.... Correspondingly, increasing access to goods and services for groups currently discriminated against could have positive financial effects<sup>106</sup>.’

One possible reason for this focus on legal rather than economic analysis may relate to the assertion that reliance on a simple cost-benefit approach to measure inequality (as opposed to applying a broader analysis, broader cost effectiveness or multi-criteria tests), takes a very narrow view of the economic, social and environmental value of implementing such change. This may lead to results which are socially or politically unacceptable, where monetary costs are over-emphasised as opposed to benefits, which are much more difficult to quantify.

#### 2. Challenges in applying cost benefit analysis to the area of discrimination

Using cost-benefit analysis to assess the impact of discrimination law is controversial for several reasons.

Firstly, as cost-benefit analysis is based on financial or monetised costs and benefits, it may be seen as unfair where factors which cannot be monetised are not fully assessed or analysed. For example, changes to a person’s self-esteem may be important but very difficult to monetise.

<sup>105</sup>Annick Masselot, Comparative Analysis of Existing Impact Assessments of Anti-discrimination Legislation, 2006. Found at:

[http://cms.horus.be/files/99907/MediaArchive/Policies/Equality\\_and\\_nondiscrimination/Comparative%20analysis%20on%20national%20measures%20to%20combat%20discrimination%20outside%20employment%20December%202006%20-%20strand%202.pdf](http://cms.horus.be/files/99907/MediaArchive/Policies/Equality_and_nondiscrimination/Comparative%20analysis%20on%20national%20measures%20to%20combat%20discrimination%20outside%20employment%20December%202006%20-%20strand%202.pdf).

<sup>106</sup>Page 34 of Commission’s Impact Assessment on the proposal. Found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2180:FIN:EN:PDF>.

Secondly, as a cost-benefit analysis monetises impacts, there could be situations in which the assessment results in favouring the needs of wealthier individuals' or groups' over the needs of others. A hypothetical illustrative example here is the possible use of a cost-benefit analysis to decide on the location of a municipal dump in an urban area. Locating the dump in a wealthy neighbourhood, could lead to a €20 million loss of property values, while placing the same dump in a poor neighbourhood might only cause a loss of €5 million. A simple reading of the analysis would suggest placing the dump in the poorer area. The city authority could even mitigate the impact by 'paying' the poorer neighbourhood up to €15 million to 'take' the dump. Such an approach may appear unjust from a social perspective and, therefore politically unacceptable.

Thirdly, a society might choose to spend based on the theory of marginal utility to income. A simple cost-benefit analysis assumes that individuals enjoy the same utility from each and every euro spent (regardless of whether this is spent by the individual or by an authority). The diminishing marginal utility is relevant to determining the most effective use of limited resources (of e.g. public authorities) this is because when the amount of spending increases, it will result in diminishing returns for the chosen objective (e.g. number of beneficiaries; time saved ) i.e. each extra euro spent will have less value. For example, €20 million spent on improving accessibility to transport, might produce a benefit of 50,000 units; however, a doubling of the amount spent, might only produce an additional benefit of 30,000 units (80,000 overall); as more money is spent, additional benefits per € spent decreases. Thus, the society might choose to spend an amount of money to address discrimination, that provides a satisfactory return to investment, but does not cover the needs of the discriminated against persons. Such cost considerations are not consistent with a fundamental rights perspective.

However, including the above considerations in an impact assessment would require a broader analysis beyond monetised costs and benefits. Such a broader analysis would also require **political judgement** as regards the abovementioned distribution effects between poorer and wealthier individuals. This is beyond the scope of this study. Therefore, despite the above criticisms, the approach taken in this analysis has been to focus on costs and benefits.

#### **IV - EU external economic and statistical material**

Whilst literature on the costs and benefits of anti-discrimination in the EU is almost non-existent, there is a greater, albeit limited, body of literature available in the USA and other non-EU developed countries such as Australia and Switzerland. There, considerable economic and statistical material exists on the costs of discrimination outside of the workplace, especially in the area of access to goods and services for persons with mobility and sensory disabilities. This literature is examined in the following sections.

Finally, while there is a significant amount of material on the costs and benefits of the types of discrimination not covered in the proposed Directive – namely gender and race discrimination – or areas not covered by the proposed Directive such as disability and age discrimination in the workplace, this literature is still of considerable value for better

understanding the drivers and effect of measures taken within the scope of the proposed Directive.

## V - Types of discrimination and impact on costs

There are a wide number of reasons or drivers of discrimination against a particular group or individual either inside or outside the workplace. These can broadly be split between those, on the one hand, where discrimination is driven by the conscious decision or position of an organisation, and on the other, where the discrimination could be described as being passive, or not having the same conscious or deliberate driver. From an economic perspective, the literature (primarily focused on the employment sector) focuses on the following drivers:

**Table 7: Drivers of discrimination (non-exhaustive list)**

Active	Passive
Personal prejudice of the employer (or service).	<b>Lack of awareness of the needs of a particular group and the impact of certain practices on that group.</b>
Prejudice of the employer's (or good/service providers) existing employees (customer base).	<b>The cost of remedying the discrimination.</b>
Risk aversion due to e.g. lack of knowledge of a group e.g. in the insurance sector.	
The extent of the business obtained from the discriminated group i.e. the more business opportunities offered by the discriminated against group the less a business may be willing to discriminate.	
The ability of the provider or employer to refuse access/service i.e. discrimination possibilities are reduced where a public service provider is required to provide a service to all persons.	

### **Box 9: Costs related to the elimination of discrimination based on personal prejudice**

The fact that a particular discriminatory action is based on personal prejudice has an important impact on the assessment in this study. In particular, it is considered that actions to eliminate this form of discrimination primarily entail training, changes in policy and enforcement through, for instance, the courts to change the attitudes or behaviour of the person perpetrating discriminatory practices. In general, such actions, do not in general entail significant costs for the service providers.

## VI - Economic theories on discrimination in the commercial sector

### 1. Reasons for discrimination observed in the area of employment

Gary Becker, one of the first economists to focus on discrimination in the workplace, is of the opinion that discrimination is **not rational** from an 'economic theory' point of view, as it raises the costs of recruitment for prejudiced employers. He also notes that the higher the size of the discriminated against group relative to the overall population, the higher the cost to the employer of taking a prejudiced position. By this logic, it would be more damaging for an employer to exclude women from the recruitment process (50 percent of job market) than it would be to exclude persons, say, on the basis of sexual orientation (less than 50 percent of job market)<sup>107</sup>.

He did note, however, that in certain cases, **prejudice can pay-off** for the employer in certain circumstances. For instance, the presence of prejudice amongst the customer base<sup>108</sup> or amongst staff may render discrimination rational for the employer from a monetary cost perspective alone. For example, if an SME's existing client base/employees is prejudicial towards certain minorities, it may be commercially-beneficial for the SME to discriminate.

However Becker's main argument was that discrimination could harm the economic interests of an employer and may be easily eliminated by changing attitudes through simple training and awareness-raising. Such analysis can be equally applied to discrimination outside the workplace. However, this observation depends on the nature of the discrimination discussed which was often gender or race related. Indeed the apparent root cause of the discrimination was so-called '**preference based discrimination**' where unequal treatment is based on a dislike of or aversion to a particular group of people. Discrimination based on disability or age may have other drivers which are linked to perceived or actual costs of service or risk of ensuring an appropriate physical environment.

#### **Box 10: Risk or cost aversion**

Discrimination may also be driven by risk- or cost-aversion. This type of discrimination may arise in a situation where a risk-averse employer or service provider (e.g. insurers) may have less information on a particular group of individuals. This may favour a 'what he/she knows already' approach, where he/she hires from or serves a group of individuals he or she is familiar with and may tacitly discriminate against other potential customers/employees. This situation may also arise where there is a fear of hidden or additional costs, such as serving persons with disabilities.

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<sup>107</sup> Gary Becker, *The Economics of discrimination*, 1971, 2<sup>nd</sup> edition.

<sup>108</sup> While Becker and many of the other authors who have written on the subject do not often refer to discrimination outside of the workplace, the above categories could equally be applied to discrimination on other grounds and even outside of the workplace. Indeed, many of the same arguments against discrimination have been made with respect to service provision to the African American community in the USA, in areas such as housing, car sales and even fast food restaurants. In one study by John Yinger<sup>108</sup>, the discrimination sometimes manifests itself in terms of differences in price paid, rather in access to, or quality of service.



To conclude, while discrimination may not be beneficial for society or the individual, in certain cases there may be a range of 'reasons' why discrimination persists.

## **2. Consequences for the commercial sector and standardisation**

For the purpose of analysing the costs of the proposed Directive for SMEs and public service providers, the reduction or prevention of discrimination on the basis of prejudice can reasonably be seen as relatively cost-free. Therefore the focus is on sectors and areas where change towards equal treatment may result in additional costs for goods and service providers.

While additional costs for serving certain types of customers – e.g. those with disabilities – may be real, the risks for providers can be reduced when the providers are clear on what they have to do to be in line with the proposed Directive. One way of doing so, and which has been used in many jurisdictions with disability equality laws, is to introduce standards governing access to goods and services.

## **VII - Economic theory behind a standards-based approach to removing discrimination versus ad hoc action**

### **1. Readiness to provide reasonable accommodation in employment – lessons learnt**

Where discrimination is based on cost, there are a number of key factors that need consideration such as:

- The distribution of costs and benefits between different groups in the society;
- Individual incentives for making necessary changes and incurring associated costs.

For instance, there are situations where discrimination may continue even when the total net social and economic benefits (e.g. increased business, enjoyment) for the society outweigh the private costs of making adjustments (e.g. additional financial costs for a business of removing barriers to premises for persons in wheelchairs). A provider may choose not to make adjustments to his/her premises and procedures if the net impact on him/her is negative, even if there is a larger overall benefit for his or her potential customers.

By way of example, in a study of the impact of disability employment law in the US, one commentator<sup>109</sup>, Stein, used **welfare economics theory** to outline the different incentives faced by employers when considering employing individuals with disabilities. To illustrate this, he outlined three different scenarios or situations (list below) and noted that only in one area (bullet-point 3 below) there would be a strong need for public intervention (e.g. a need for equality legislation). In the other two cases, the individual incentives for the employer would be sufficient to entice the employment of individuals

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<sup>109</sup> Michael Ashley Stein, *The Law and Economics of Disability Accommodations*, 2003. Found at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=393340](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=393340).

with disabilities. While these scenarios address discrimination in the area of employment, they can apply by analogy to access to goods and services.

- First of all, Stein looked at a situation where, to the knowledge of the employer, a person with a disability is equally able to do a job as any other qualified person. By analogy, this could equally apply to a situation outside employment in which a disabled person who has no problem accessing public transport. In both cases, the outcome is a 'wholly efficient' (Pareto optimal) accommodations the employer/provider as well as the employee/customer benefits (i.e. everybody gains; no discrimination). In this case, there is no need for intervention as employment/service provision is undertaken voluntarily, without the need for government compulsion or intervention. Even after allowing for adjustment costs, the employee/customer with a disability is the most or equally profitable person to employ/provide a good or service to. In this scenario, the employer, the employee and society reap maximum benefits from the adjustment.
- Secondly, in the other extreme case, an accommodation would be wholly inefficient where an employer or provider is required to employ/serve a person with a disability far lacking in the ability to be employed/served. In this scenario, employing and/or accommodating a person with a disability would create a net cost not just for the employer but also for society (for instance because of the net costs of the employer/service provider and the opportunity cost of employing/serving other individuals). Such a situation could arise when a person with a disability may not be able to use a service, even when he or she is reasonably accommodated by the provider. In such a situation, it may be more efficient not to make the adjustments and exclude that person from the said job or service, in exchange for a different type of intervention, for instance welfare benefits or the provision of the service in another manner.
- The third situation concerns the more complex, 'in-between' scenario where government intervention would bring about overall public gain but that employers and/or providers would have to be compelled or incentivised and/or compensated to provide accommodation. These are known as 'socially-efficient' outcomes and can manifest in a number of ways but relate primarily to a situation where accommodation may result in lower, zero profits or even a net loss for the employer, yet yields a net social benefit overall.

For accommodation to be efficient in the third situation scenario, the value of the overall benefit generated should at least equal the cost to the employer of employing the person with a disability (including adjustments). Stein states that *'this is an area where the state has the potential to compensate losing employers and should do so out of self-interest'*. For goods and services provision one way of doing this would be through grants or tax exemptions<sup>110</sup> for investments in accommodations. It is assumed that the enforcement cost does not outweigh the net benefit.

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<sup>110</sup> Such policies are often referred to as Kaldor-Hicks welfare enhancements. However, according to Stein a Kaldor-Hicks efficient policy *"is efficient so long as the winners can in theory, even if not in reality, compensate the losers"*, through, for instance, involuntary transfers such as taxes and subsidies.

## 2. Consequences for the calculation of economic benefits of anti-discrimination policy: anticipation vs. accommodation

There are several reasons why this conceptual framework is relevant to the analysis of the proposed Directive. First of all, it helps to highlight the fact that from a pure economic perspective, policy intervention to reduce discrimination (or promote equal treatment) will bring **monetary benefits** in certain circumstances, namely where the policy intervention results in a net social benefit, while in others the policy intervention makes **no difference** and/or **is ineffective**.

Secondly, ensuring that such a social benefit takes place requires making sure that employers/providers make accommodations, even if it is not in their own personal commercial interest. This requires some form of **compulsion** or **incentive** system.

It is important how such obligations are effectuated. For example, policy makers could set **minimum standards** across a sector or cover certain types of disability (e.g. in the form of mandatory building accessibility rules). On the other hand, a **case-by-case approach** could be implemented which is conceivably more efficient, but may also lead to legal uncertainty for businesses and incomplete adherence to the proposed Directive. Consequently, while it could be argued that a case-by-case approach could be more efficient, a minimum standards approach may be more effective and lead to more consistent application of the rules. Thus, different incentive structures and approaches to implementing equality legislation have different kinds and levels of cost implications on service providers and authorities.

On this point, while the text of the proposed Directive requires that providers make certain changes by **anticipation**, it does not explicitly list what kinds of actions or alterations should be undertaken in anticipation (*ex ante*) versus **accommodation** (*ad hoc*). This may give rise to uncertainty for providers and makes it difficult to assess in advance what detailed actions will be required to comply with the proposed Directive.

One way of eliminating such uncertainty would be to provide detailed minimum standards across an entire sector or economy on how a good or service should be provided. This is the approach put forward for accessibility of public access facilities in **Article 9 of the UNCRPD**. However the Convention is silent on other areas. In reality, the proposed Directive can be read as taking a combined approach with respect to persons with disabilities since Article 4 (1)(a) requires measures by anticipation (which could be equated with the establishment of standards) whilst Article 4(1)(b) on reasonable accommodation requires action on an *ad hoc* basis.

## VIII - An evolution towards a standards based approach in the area of accessibility

To some extent concerns over effectiveness and legal certainty appear to have led other countries (arguably 'model' countries from the perspective of disability legislation) to take a standards-based approach and focus those standards on net **social rather than individual** benefits<sup>111</sup>. Countries with extensive experience of disability discrimination law (US and Australia) have encountered and tackled these issues, particularly with regard to access to public premises, transport, the built environment (e.g. pavements/streets), as well as to commercial websites. They have treated these issues in the following way:

**United States:** Regarding premises, the US implemented building accessibility guidelines (ADAAG) the year after it adopted the overarching Americans with Disabilities Act of 1990. With regards to accessibility to pavements/crossings and websites, standards have been lacking, which has resulted in a number of cases brought to courts. The US Access Board is currently considering developing standards that would cover access beyond 'facilities' (e.g. 'public access' premises) and would include mandatory standards for websites.

**Australia:** The 1993 Disability Discrimination Act (DDA) originally took a complaints-based approach (as opposed to compliance or standards-based) and as such did not include requirements on specific actions to be taken (in a similar way to the proposed Directive).

However, a later review by the Australian government noted that this approach created concerns over the *'lack of certainty regarding practical compliance obligations under the DDA'*<sup>112</sup>. This subsequently led to amendments to the DDA to allow the Government to introduce **Disability Standards** in relation to access to premises. Moreover, it determined that compliance with a relevant Disability Standard is sufficient to satisfy the DDA duty not to discriminate in relation to the subject area covered by the Standards.

**International (UN):** On this point, in its 2010 Report on Disability<sup>113</sup>, the UN's World Health Organisation noted that *"Experience shows that mandatory minimum standards, enforced through legislation, are required to remove barriers in buildings. A systematic evidence-based approach to standards is needed, relevant to different settings and including participation from people with disabilities."*

The approach regarding access to facilities in the US, Australia, and recommended by the UN, is very much in line with the mandatory standards-based approach discussed above.

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<sup>111</sup>This means that standards are designed in a way to accommodate the most prevalent disabilities, up to a chosen threshold of prevalence. It is assumed that accommodating individual needs for people with disabilities after this threshold will result in a net loss for the society as a whole.

<sup>112</sup>Statement found at <http://www.abcb.gov.au/major-initiatives/access-for-people-with-a-disability>.

<sup>113</sup> Statement found on page 14 of the 2010 Report on Disability:  
[http://www.who.int/disabilities/world\\_report/2011/accessible\\_en.pdf](http://www.who.int/disabilities/world_report/2011/accessible_en.pdf).

In all discussed cases, the standards are practically obligatory unless a provider can demonstrate that the change required to adhere to the standards would pose a **disproportionate burden**, e.g. that such an obligation would constitute a 'justifiable hardship', as it is called in the US and Australia. In both countries, such hardship is defined and therefore **limited**. For example, changes to physical accessibility that add 20% or more on top of the original foreseen new building/renovation costs are seen as extensive. This effectively means that any add-on cost to ensure physical accessibility that are under this threshold should be borne and are reasonable. In practice, for the vast majority of premises accommodation costs come in under 20% of the overall renovation/building costs. Thus, the standard will effectively be mandatory for all but a minority of premises<sup>114</sup>. For as further discussion on the US and Australian approaches to access to goods and services see [Chapter 6](#) in Part I.

The above discussion also assumes that where there are a number of providers for whom the implementation of the proposed Directive would result in a net loss. As such these providers may need to be somehow compensated through redistribution of the gains. While this can be done for public authorities (through transfers from one governmental area to another provided transaction costs are low and re-distribution mechanisms are simple), it can be harder to do for the private sector (including SMEs). For example in the US, measures taken by providers to increase access may be offset against tax in certain circumstances.

## **IX - Effect of the number of beneficiaries**

Anti-discrimination actions are also far more likely to result in a positive benefit cost ratio (or a lower net cost) when the number of beneficiaries is high (i.e. for persons with physical disabilities at over 10% of the EU population on average, compared with persons with rarer conditions) and where their needs are relatively uniform. On the other hand, providing 'accommodations' for persons with rarer or more severe disabilities or for those who have greater or more specific needs may be more costly.

## **X - Further aspects influencing costs and benefits**

The analysis also considers the following aspects:

Given the taste or prejudice-based nature of most discrimination, providing equal treatment should be relatively costless (behavioural change), regarding the grounds of sexual orientation and religion and belief. However, for disability and age discrimination, the following has to be taken into account.

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<sup>114</sup> There are a number of provisions which assist the provider. In the US -where a premises also has to 'remove barriers', legal certainty is further provided for private facilities which have previously made changes to past standards as they are somewhat protected from having to make subsequent changes by 'safe harbour' rules in other words a business making changes in compliance with the 1991 code would not have to make changes in line with the 2010 code. Likewise in Australia changes don't have to be made until a major building renovation or a new build is made.

### **1. Needs for accommodation of disability in specific contexts**

Beyond anticipatory measures, there are many accommodations which are very specific to an industry or business and cannot be anticipated in advance, at least not at policy maker level. An example of this could be a case where a person with a physical disability needs assistance in retrieving a product from a top shelf in the shop. Therefore, in summary, and in order to balance efficiency and effectiveness, it would appear that the proposed Directive's dual anticipatory/ad hoc approach to accommodations would require a mixture of industry/sectoral standards/rules and specific case-by-case measures.

### **2. Objectively justified age-discrimination**

While the above discussion refers to disability, and for the most part to access to goods and services, the same logic could be applied to age discrimination. For example, the discussion raises a number of questions, such as: when is discrimination objectively justified? does the same criteria for objective justification apply to all sectors and providers?; or should objective justification be examined on a case-by-case basis, among other questions? These and further questions are discussed in Section 2.VI in Part II on the ground/sector-specific costs and benefits relevant for discrimination based on age. In a nutshell, as discussed in the paragraph above regarding disability discrimination, discrimination based on age differs from sector to sector and provider to provider. While in sectors such as insurance and healthcare certain age limits are used claiming objective justification across the population, there is often a need for further investigation; often the concept of 'objective justification' is applied, but is not based on actual research.

### **3. Adaptation of anti-discrimination laws to new services**

- The above analysis refers to a situation which is static. However, the way people are served changes over time. For example:
- When the US Americans with Disabilities Act (ADA) was passed, the internet was not publically available, let alone used for goods and service delivery; this has changed significantly ever since but the reflection of this change requires amendments to legislation;
- A good or service may become cheaper over time (for example due to technological advancements or cheaper imports and, as a result, the provider may be more willing to provide greater access;
- Alternatively, the way the good or service is provided could change and this may lead to lower discrimination. As will be further explained in Part II, for some sectors an automatic improvement (decrease in discriminatory practices) per annum is assumed.

## **XI - Influence of the internet on the provision of goods and services**

Since the ADA was passed the provision of goods and services has changed through greater use of the internet to access goods and services, which were previously only available at premises. In theory, internet accessibility could be a **substitute** for access to

goods and services in the built environment, especially if a particular provider used both modes of service provision.

However, one of the basic requirements of the UNCRPD is that persons with disabilities are able to *“live independently and participate fully in all aspects of life”*<sup>115</sup>. Therefore for the purposes of this study it has been assumed that an equal right to access to goods and services means accessing a good in a similar way to an ‘average’ person. Given the likely continued importance of face-to-face contacts, and the right in the case of persons with disabilities to live in the community and participate in everyday life, this means that remote sales are **not considered as an adequate alternative** to traditional goods and sales provision and that access to goods and services on premises may have to be ensured even if the provider has already made its website accessible.

## **XII - Measuring efficiency: types of impacts considered for inclusion in the assessment**

In any cost-benefit analysis, a range of valuation methods can be used. As there is no onus to restrict the analysis to financial costs (e.g. income and expenditure), **non-financial variables** such as the impact on quality of life, the environment and other externalities can also be included. However, as highlighted above, one of the major challenges of conducting such an analysis in the area of discrimination is that there is very little material available on the **monetary value** of such variables, especially with regard to measuring benefits of greater equality and access to goods and services.

As such, much of the literature in place in the EU has focused on the legal and financial impact of anti-discrimination rules inside and outside the workplace, rather than on the **economic impact**. For example, much of the commentary focuses on how much the proposed Directive would cost employers and/or how much extra business they would receive from improving access. Very little attention, for example, has been paid to **benefits** resulting from the time savings or safety gains resulting from improved access. While such costs are not ‘financial’ as they do not result in money spent they can nonetheless be monetised as saved time and safety is valuable to customers. .

As explained above, it is challenging to **put a ‘price’ on equality** and there are a number of differing opinions on how this ‘price’ should be perceived and constructed:

- One view here is that while eliminating discrimination may be costly in certain areas, it is justified on the basis of ethics/ fundamental rights.
- From a business point of view, some assert that implementation of the legislation will have certain distribution effects. On average, it is expected that the required change could result in a zero net benefit, assuming that all businesses have to pay for implementation actions. However, while some providers will enjoy financial returns from increased business, there will be others who will incur a net loss, because of no increased business, if people with disabilities are not part of the provider’s customer base.

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<sup>115</sup> Article 9 of the UNCRPD.

## 1. Non-financial benefits in economic assessments in general

In contrast to the literature focus in the area of anti-discrimination, economic assessments carried out in other sectors – such as in the transport and health sectors – often take a broader view of the possible costs and benefits. For instance, non-financial benefits relating to time savings, quality of life and safety in these sectors are often monetised.

## 2. Time savings

Time savings play a role for impact assessments in infrastructure projects. When policy makers are considering whether or not to build a new road to alleviate road congestion, they typically examine not only the financial or out-of-pocket costs (such as construction costs, fuel used by drivers and tolls collected) but also the **opportunity cost** of the time spent travelling which is usually calculated as the product of travel time and the **value of travellers' time**. This combines to what is called the 'generalised' cost of road congestion.

In this example, when the new road is built, the capacity of the road network is increased, which initially reduces congestion and the time spent travelling. Consequently the 'cost' of every journey falls. However, a 'knock-on' effect of this fall in cost is to increase the amount of journeys each traveller chooses to make i.e. this results in a change in the quantity consumed which relates very much to the price responsiveness of the customer. For instance, if the driver has a lot of discretion on whether or not he wants to use the road, then the cost reduction may lead to a relatively large **increase in usage**. Of course the change will also depend on a range of other factors such as substitutes (e.g. existence of a train network; travelling to work earlier). In essence, there are two processes that take place. First, traffic may be transferred from other roads to the new road. Second, the new road may induce new demand because of the reasons explained above. Thus, new, rather than diverted, car trips may be made. Put another way, the time saving means that there is a net economic/social benefit from the change, one which is not reflected in purely financial cost and benefit estimates.

This approach was used in a study on anti-discrimination legislation in the US in 2010. The approach was used partly to justify the introduction of **new accessibility standards** for premises and facilities for persons with disabilities by the US government. The US took on board arguments that the benefits of such standards in terms of time savings and increased use would outweigh investment and other costs. They also noted that businesses would see an aggregate increase in sales. While this example covers disability, it is conceivable that equal treatment in other grounds included in the proposed Directive would also result in time savings and better service for those discriminated against.

### Box 11: use of time savings calculations in this study

In order to fully reflect the potential benefits of action in the field of disability discrimination, time savings will be used as proxies for economic benefits in this study.



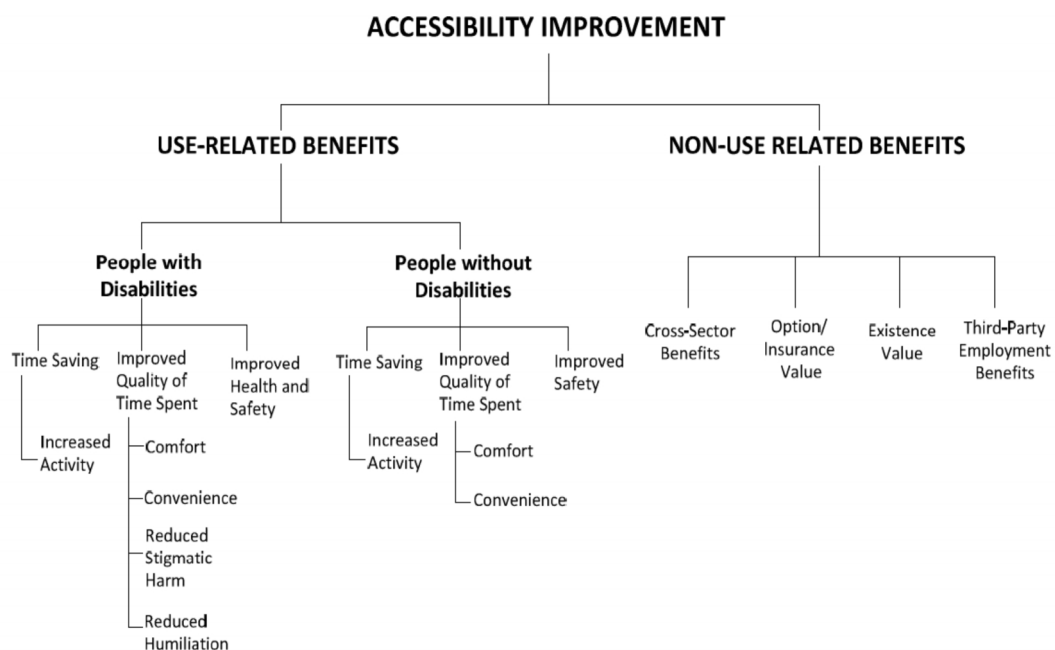
### 3. Safety benefits and other benefits for individuals

In addition to time savings, better service and increased business the elimination of discrimination in relation to physical accessibility of goods and services also has safety benefits. These safety benefits accrue to persons with disabilities (including temporary impairment) as well as older persons and include additional safety, lower accident rate and lower healthcare costs as direct benefits.

As a result, several commentators have put forward the **economic ‘insurance’ value** of equal treatment, again with regard to disability, as a method of assessing costs and benefits. The argument goes that as there is always a possibility that an (any) individual may acquire a disability – and that this possibility increases with age. An individual would be willing to pay and ‘insure’ him/herself so that his/her environment etc. is accessible. In 2009, the Australian government used the ‘insurance’ value of accessibility to introduce similar building accessibility rules. Both governments (Australia in 2009 and the US in 2010) considered safety benefits in their analyses. Figure 1 outlines possible beneficiaries and benefits of better access; however, many of them are not counted in cost and benefit analyses that look at financial costs and benefits. Also this assessment excludes them because it is focus on costs and benefits for SMEs and public service providers.

The diagram below, taken from the 2010 US Regulatory impact assessment on accessibility, outlines a range of the possible benefits resulting from greater access to goods and services at ‘facilities’.

**Figure 1: US “Framework for accounting for all benefits resulting from accessibility improvements”**



Some of the benefits included in the figure above go beyond direct effects (use-related benefits) to outline that increased access to goods and services, including healthcare, can result in **better employment prospects** for persons with disabilities, and that this could lead to welfare/healthcare savings. Transferring this approach back to assessments carried out in the EU, **Sweden** took some of these factors into consideration when expressing her opinion with regard to European Commission proposals on public sector e-accessibility (e.g. websites)<sup>116</sup>.

In the area of age discrimination, specifically in the health and social care sector, measurements of increased quality of life savings from lower age discrimination have been put forward in various reports. For further discussion please see Chapter 2.VI in Part II.

### **XIII - Comprehensive impact assessments and field studies on costs and benefits of equality legislation outside the workplace**

While there is extensive literature on each of the grounds covered by the proposed Directive, only a small amount of publicly available EU literature deals with the costs and benefits of anti-discrimination legislation. So far, this literature:

- Has been covered at length in the supporting EPEC study; and/or
- Covers the consequences of discrimination law for individual and society at large, and not for SMEs and public services providers which is the focus of this study; and/or
- Refers to employment which is not covered in this proposal and education which is, for the most part, exempt.

Thematically, available material focuses for the most part on:

- Access to goods and services for persons with disabilities;
- On the right of persons with disabilities to live in the Community; and
- With regards to age discrimination, on insurance and health and social care for persons over the age of 65.

#### **1. EU impact assessment in the area of discrimination outside the workplace – the 2008 Commission impact assessment**

As noted above, prior to the Commission Staff Working Document impact assessment accompanying the proposed Directive (and associated public consultation), there was **very little information** available in the EU on the costs and benefits of equal treatment outside of the workplace. Indeed, a review of existing impact assessments conducted for<sup>117</sup> the European Commission in 2006 revealed that most EU countries had not

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<sup>116</sup> Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites. Available at: <http://ec.europa.eu/digital-agenda/en/news/proposal-directive-european-parliament-and-council-accessibility-public-sector-bodies-websites>.

<sup>117</sup> Annick Masselot, Comparative Analysis of Existing Impact Assessments of Anti-discrimination Legislation, 2006.

considered the impacts of discrimination and if they had, the analysis conducted was qualitative in nature.

The 2008 EPEC study which underpinned the proposal cast considerable light on the **significant possible benefits** for certain individuals of eliminating discrimination. A prime example is the very large possible effect the proposed Directive could have, for example, on the equal treatment of lesbian and gay individuals in the education sector. However, the main limitation of this study – and understandable considering the above mentioned lack of previous studies – is that there is **not a full picture** of the costs and benefits with regards to implementation of the proposed Directive by commercial and public sector service providers. For example the study does not cover the conceivable costs for schools of eliminating discrimination against lesbian and gay individuals.

Moreover, given the very large scope of the proposed Directive, the EPEC study did not cover all the costs and benefits for individuals or for society. Finally, as the EPEC study was completed as an input to the proposed Directive, it considered many areas (e.g. special needs education) which were finally left out of the proposed Directive's scope.

More recently, in 2012 the European Commission put forward a proposal<sup>118</sup> for 2 million public sector websites to be made accessible. The supporting cost benefit analysis noted that internet accessibility would have a net benefit in terms of increased e-commerce and employment.

## 2. Impact assessments and studies completed at Member State level

The documentation accompanying the proposed Directive helped raise awareness of the costs and benefits of equal treatment. The text of the subsequently adopted UNCPRD has also provided additional clarity in the area of disability. However, with the exception of the **UK**, there are **very few studies** of this nature available within the EU. Indeed, very few analyses have detailed the economic implications of anti-discrimination law and even less have undertaken economic assessments of such anti-discrimination rules outside of the workplace. This is despite the fact that all EU countries have some form of anti-discrimination rules in place both for employment and the provision of goods and services.

The main exception to this is the **UK** where all of the grounds – as well as implementation costs – are covered by the **Equality Act of 2010** and other pieces of ground-specific or sector specific anti-discrimination legislation and their associated cost and benefit studies. The first step took place in 1995 with the Disability Discrimination Act. This Act was reviewed a number of times and was complemented by disability discrimination provisions inserted into relevant sector legislation such as legislation covering the education sector. Regarding sexual orientation, impact assessments have been carried out to accompany the 2004 legislation on civil partnerships and legislation on equal access to goods and services in 2006. The various duties included in this

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<sup>118</sup>Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites COM(2012) 721 final available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0266:FIN:EN:PDF>.

legislation were streamlined into the Equality Act of 2010. An Age Discrimination Act was passed in 2012. Despite this broad coverage, again, the main focus of the legislation has been on disability and somewhat more recently on age discrimination. There is a limited coverage of the costs and benefits of eliminating discrimination on the grounds of sexual orientation and religion and belief.

Beyond the **UK**, in early 2009, **the Netherlands'** government commissioned a study on the potential major effects of the proposed Directive. While the study's authors identified age and disability as the main high cost areas, the study focused on accessibility. In mid-2010, **Sweden** issued a comprehensive study on the potential costs and benefits of accessibility for persons with disabilities. Both the **Dutch** and **Swedish** studies covered premises and transport. **The Netherlands** study also covered internet access while the Swedish study covered the public built environment.

It should be noted that above analyses focused on **access to goods and services**, and that within this area, the analysis covered the provision of a selected number of goods and services, and not their conception and manufacture.

Finally, to our knowledge, no EU country has conducted an *ex post* analysis. That said, while no EU country or the EU has conducted an *ex post* assessment of anti-discrimination legislation, the regular revisions of such rules in the **UK** has allowed for a certain process of 'learning-by-doing', thereby allowing policy makers to take a more informed approach to assessing possible costs and benefits.

## Chapter 5 – Relevant EU Member State impact assessments

### Key findings

- Within the EU, Impacts Assessments providing detailed costs relevant to **accessibility to goods and services** have been carried out in the **UK**, the **Netherlands** and **Sweden**. The work on these three Member States provides an insight into different approaches of carrying out cost estimations for accessibility.
- In the area of estimating costs for the **transition from living in an institution vs. living in the community**, most work has concentrated on highlighting the costs and benefits occurring to individuals and society. The assessment can, however, build on two cross-country studies – a **2007 DECLOC report** and a **2009 ANED report** – which have provided some cost estimates for providers in this area.
- Regarding **age discrimination**, assessments have been carried out in the **UK**. The **UK** authorities examined age discrimination as part of the development of the **Equality Act of 2010** and the **Age Discrimination Act of 2012**, mainly in the areas of health care and insurance provision.
- Regarding discrimination on the grounds of **sexual orientation**, the only cost and benefit study was found in the **UK**. The study acknowledged that most discrimination in this area is based on prejudice and individual attitudes, and, as such, should not be costly to eliminate.

## I - Disability – access to goods and services

This section discusses the types of costs and benefits that relevant impact assessments carried out by the EU Member States have identified for SMEs and public service providers. The impact assessments from the UK, Netherlands, and Sweden have identified a range of costs for accessibility items such as accessible entrances (ramps), accessible toilets, installation of elevators and other mobility and auxiliary aids, as well as 'soft' or procedural costs. These impact assessments have been very valuable in further determining what costs that might arise from implementing the proposed Directive for SMEs and public service providers; but did not specifically look at the benefits for these stakeholders as separate from benefits to individuals and society.

### 1. United Kingdom

Before its incorporation in the Equality Act of 2010, the main **UK** piece of legislation tackling discrimination faced by persons with disabilities was the 1995 Disability Discrimination Act. The main costs and benefits resulting from this Act arose with the introduction of amendments in 2003 requiring most goods and services providers to ensure access for persons with disabilities. Housing and transport were treated in separate pieces of legislation.

The **Regulatory impact assessment** accompanying the **2003 changes in legislation**, estimated that on the basis of self-compliance, the costs (1999) to service providers (public and private) of mandating physical access to premises at between £893 (€1,040<sup>119</sup>) million and £1,472 (€1,714) million in non-recurring costs and between £62 (€72) and £283 (€330) million in recurring costs over a five year period. This covered both the hard or capital costs of premises access, as well as policies and procedures. Internet access was not considered explicitly.

With regards to **housing** in the **UK**, the onus on private landlords selling or leasing accommodation is different to that applying to those operating premises which provide goods and services to the public. In other words while a shop, café etc. may be required to make physical adjustments to premises, a landlord leasing a home/apartment is only required to allow a tenant make such changes. Finally, the **UK** approach to ensuring this is relatively light-touch given that providers **self-certify** that they meet the rules.

### 2. Netherlands/Sweden

In both the **Netherlands'** and **Sweden's** *ex ante* studies mentioned above, the authors estimated that the **highest cost** adjustment area by far concerned **housing** accessibility. Less attention was given to on-going 'soft' procedural costs. In addition neither the **Swedish** nor the **Dutch** studies attempted to estimate the percentage of cases where businesses and other providers would not have to make changes due to disproportionate burden. Therefore, put simply, the authors assumed that all providers may have to

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<sup>119</sup>Here and further, exchange rates are approximated and based on the current rates from [www.xe.com](http://www.xe.com).

comply. In the absence of legal case law and existing legislation, the challenge in both cases has been making a number of strong **assumptions** with regard to how the equal treatment legislation would be applied.

The above does not mean that it is only the **UK, Sweden** and the **Netherlands** who have considered the costs and benefits of providing equal access to goods and services. Indeed, **most if not all EU countries have rules in place** and many Member States such as **Ireland** and **France** have published extensive material on disability. However, to our knowledge the **UK, Sweden** and the **Netherlands** are the only EU countries that have published detailed cost-benefit information on discrimination in these areas.

## **II - Disability and living in the community**

Beyond costs related to ensuring accessibility for persons with disabilities, a certain amount of costs for SMEs and public service providers can be expected as a result from implementation of **Article 19 of the UNCRPD** on '*Independent Living and Living in the Community*'. The article requires that persons with disabilities are able to effectively choose whether to live in a community as opposed to an institution. This area is broader than 'accessibility' as it often relates to providing a range of **social care services** for persons with more severe disabilities.

The goals of the proposed Directive are consistent with the UNCRPD, although the choice of living in a community is not explicitly required by the proposed Directive. Nevertheless, the proposed Directive should, most probably, be interpreted in line with the Convention as the EU is a signatory. The view taken here is that **by signing the UNCRPD, the EU Member States have already committed themselves to the associated implementation costs**. These costs are considered in this assessment because the proposed Directive could potentially accelerate the implementation of Article 19 of the UNCRPD, requiring the associated costs to be incurred earlier. Thus, the costs and associated benefits are stemming from the UNCRPD, and, because the Articles of the UNCRPD are consistent with the objectives of the proposed Directive; the proposed Directive, cannot be considered implemented unless Article 19 is. Nevertheless, it has to be underlined that these costs would incur, albeit differently, on the basis of the commitment of the Member States to the UNCRPD.

### **1. Studies covering all Member States (apart from Croatia)**

Most work and literature in the area of transitioning from living in an institution to independent living or living in a community has focused on bringing forward evidence regarding **benefits to individuals and society (out of the scope of this impact assessment)** thus emphasising the fundamental rights aspect of Article 19 of the UNCRPD, where financial considerations cannot be a justification for non-implementation. In the EU, extensive work in highlighting the individual and societal benefits in the area has been done by the **FRA, the EDF, the European Network on Independent Living (ENIL), European Social Network (ESN)**, and other organisations and individuals. For example, the 2012 report '*Choice and Control: the Right to Independent*

*Living*<sup>120</sup> by FRA describes the experience of persons with disabilities in 9 EU Member States (including **Germany, Romania and Sweden**) in and outside of institutions. Relevant for the purposes of this study, the report provides a comprehensive overview of what **types of support services** could be required to successfully support daily living and participation in the community for persons with intellectual disabilities and mental health problems outside of institutions. The report discusses community living elements such as living space (e.g. living alone, in a group, in a group home), education facilities, day centres, health facilities, leisure facilities and personal assistance. The 2013 ESN report '*Independent living: making choice and control a reality*'<sup>121</sup> provides an insight of changes that could be required from **social service providers** to really deliver on the needs of persons with disabilities. It also shows how **differences in legislation** in 6 EU Member States (including **Romania, Sweden and Spain**) can account for differences in implementing independent living.

While the literature produced in this area has been useful in realising the scope and types of services that would be required for successful deinstitutionalisation, the body of work has been **limited in providing insights into the costs that such a transition would present for SMEs and public service providers** and how this compares to the costs that are currently being spent. In addition, the literature does not provide an indication of which of the services would be sufficient to comply with Article 19, and which services would be considered to go beyond the minimum compliance obligations. The interpretation adopted here takes a more narrow view of Article 19 than the two documents described above; the objective here has been to try to distil the **minimum requirements** for SMEs and public authorities to achieve Article 19.

In recent years, the **UNCRPD Committee has issued 'Concluding observations'**<sup>122</sup> that summarise relevant issues in selected countries signatory to the UNCRPD. Concluding observations have thus far been adopted for three EU Member States – **Spain** (September 2011), **Hungary** (September 2012) and **Austria** (September 2013). The concluding observations for **Spain** are discussed further in the results section for disability 'Living in the community' (**Chapter 3.IV** in Part II). The CRPD Committee has not yet scheduled the adoption of 'Concluding observations' for other EU Member States.

To our knowledge, two EU cross-studies have considered the cost of transition to and operation of a system of community living. These two studies have been instrumental in informing about the kinds of costs that might be incurred by SMEs and public service providers in the transition to independent or community living. A 2007 **study across all 27 EU Member States** carried out by the University of Kent and LSE (the DECLOC

<sup>120</sup>European Union Agency for Fundamental Rights, 'Choice and Control: the Right to Independent Living', available at: [http://fra.europa.eu/sites/default/files/choice\\_and\\_control\\_en\\_13.pdf](http://fra.europa.eu/sites/default/files/choice_and_control_en_13.pdf), accessed 1 November 2013.

<sup>121</sup>European Social Network, 'Independent living: making choice and control a reality, An ESN report on how social services in Europe are promoting choice and control alongside people with disabilities', available at <http://www.esn-eu.org/news/270/index.html>, accessed 1 November 2013

<sup>122</sup>Reports are available from the International Disability Alliance at: <http://www.internationaldisabilityalliance.org/en/crpd-reports-0>

study)<sup>123</sup> found that there is **no evidence** that community-based models of care are inherently **more costly** than institutions, assuming comparable needs of residents and comparable quality of care. The report acknowledges that there might, however, be significant costs if **parallel systems** have to be maintained in the transition period until closure of institutions. The maintenance of two systems can extend into the long-term because of lack of suitable alternatives for some groups of people with disabilities.

The same general message, namely that community care costs are comparable to those of institutional care is also stated in a report by the EC Directorate for Employment, Social Affairs and Equal Opportunities in September 2009<sup>124</sup>. Again, these costs are predicated on the basis of comparable needs of residents and comparable quality of care. The way in which countries implement the living in the community obligation is therefore crucial, as is a comparison of how institutions have previously been run, for instance there may be cost differences where poor **quality** institutions are replaced by high quality living in the community services.

In 2009, the **Academic Network of European Disability Experts** (ANED) carried out another cross-study, building upon the DECLOC findings<sup>125</sup>. The study consists of a synthesis report and national reports on 29 countries<sup>126</sup> in Europe<sup>127</sup>. The synopsis report suggests that in general, it appears that the **cost of independent living is less** than that of institutional care. It is acknowledged that there is a lack of consistency between data collection in the countries and 'like for like' comparisons cannot be made. For example, responsibilities for social care can be shared between different levels of governance (municipal, regional, national etc.). This will differ from Member State to Member State and consequently data collection practices will reflect these differences making it difficult to standardise assessment methods. A further discussion on the findings of the report is available in Chapter 3.IV in Part II on assessing impact of changes to eliminate disability discrimination in social care. Since 2009, some quantitative estimates have also been included in the work of the European Network on Independent Living (ENIL)<sup>128</sup>, and qualitative discussions are part of the UNCRPD first implementation reports.

In recent years, certain NGOs have highlighted cost and benefits issues relating to the use of EU structural funds for the renovation of institutions hosting persons with disabilities. However, no detailed cost-benefit assessment dealing with this issue could be sourced.

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<sup>123</sup> Mansell et. al., 'De-institutionalisation and community living - outcomes and costs; report of a European Study' Volume 2: Main Report. Available at: [http://inclusion-europe.org/images/stories/documents/Project\\_DECLOC/DECLOC\\_Volume\\_2\\_Report\\_for\\_Web.pdf](http://inclusion-europe.org/images/stories/documents/Project_DECLOC/DECLOC_Volume_2_Report_for_Web.pdf), Accessed 18 July 2013.

<sup>124</sup> EC Directorate for Employment, Social Affairs and Equal Opportunities, 'Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care, p. 6.

<sup>125</sup> Academic Network of European Disability Experts (ANED), 'The Implementation of Policies Supporting Independent Living for Disabled People: Synthesis Report', available at <http://www.disability-europe.net/theme/independent-living>, accessed 18 July 2013.

<sup>126</sup> All EU Member States excluding **Croatia**.

<sup>127</sup> Available at <http://www.disability-europe.net/theme/independent-living>, accessed 20 June 2013.

<sup>128</sup> European Expert Group on the Transition from Institutional to Community-based Care 'Common European Guidelines on the Transition from Institutional to Community-based care', November 2012 <http://www.enil.eu/wp-content/uploads/2012/12/Guidelines-11-16-2012-For-dissemination-WEB.pdf>, accessed 11 July, 2013.



The aforementioned ANED 2009 work on **deinstitutionalisation** highlights some trends in expenditure in residential institutions. Two EU countries (**Sweden** and **Denmark**) do not invest in institutions for disabled people. These are the same countries where large scale institutions (with more than 30 places) do not exist anymore. In three countries investments are static; in another nine countries (including **Germany**, **Spain** and **Romania**), the level of expenditure on institutional care is actually increasing. This situation, which may be inconsistent with Article 19, includes the building or development of new institutions (also large-scale institutions in **Romania** and residential institutions for older disabled people in **Spain**)<sup>129</sup>.

### III - Age discrimination research in the UK

The focus of the predominantly **UK** literature on age discrimination has looked less at whether the goods and service provider should accommodate a group of individuals and more on whether the supposed discriminatory action or policy could be objectively justified to be fulfilling another reason.

In contrast to disability, there are **very few economic studies** dealing with age discrimination. Those that do exist are predominately published in the **UK** and for the most part cover equality in the provision of insurance services, health care and other goods and services such as car/housing rental.

The **UK** authorities examined age discrimination as part of the development of the **Equality Act of 2010** and the **Age Discrimination Act of 2012**.

Given the open ended nature of what is meant by age discrimination and objective justification, the **UK** approach was to **consider each sector** on its merits. In this way, it considered a number of ad hoc areas where age discrimination could be justified (e.g. package holidays, car rentals), and that such rules could apply equally to the age group 18-25 as to the age group over the age of 65. That said the main focus of the impact assessment accompanying these acts was on persons above the age of 65 and was related to alleged discrimination in the areas of insurance and health/social care.

#### 1. Insurance

Regarding possible discrimination in the area of **insurance**, the discussion has been concerned with a range of products including motor insurance, private health care, travel insurance and so on. The government looked broadly at whether or not insurance products were being offered on the basis of **risk** and more specifically at proposals to introduce more **tailored insurance** for older persons and mandating certain insurers to provide a service. In short the government found that there were costs and benefits of removing discrimination in the sector. One practical solution was to ensure that the services of at least one insurance provider per area would be available to older persons. Belgium – the other EU Member State which has age discrimination legislation in place for outside the work place – also restricts age discrimination in the area of insurance.

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<sup>129</sup> ANED 'The implementation of Policies Supporting Independent living for disabled people in Europe: Synthesis Report', 2009, pp. 22-23.

## 2. Health

Another area of concern which was examined in depth was the publicly funded, 'free-on delivery' National Health Service (NHS). With regards to possible age discrimination in this area, from the 2007 to 2010, the **UK** authorities, most notably the Department of Health, commissioned a range of studies on the costs and benefits of eliminating age discrimination. Another important body of research was carried out by the Centre for Policy on Ageing (CPA), and focused on four broad areas in health care, according to the classification of the CPA: primary and community health care; secondary care; social care; and mental care.

One of main conclusions of these studies is that there is a considerable level of **disagreement** on the extent to which age discrimination exists in the sector and how much it would cost to eliminate. In fact, there is no real agreement on whether discrimination based on age exists at all in health care; or whether what might appear to be discriminatory treatment is in fact treatment allocated on the basis of risk and clinical factors and thus can be objectively justified. One of the main discussion points was that it is inherently difficult to prove discrimination on grounds of age in healthcare because there are **multiple and complex factors involved in the decision-making process** of a patient and medical practitioner. For instance possible side effects, clinical factors, personal reactions to treatment, medical coverage and others are taken into account when determining the appropriate method of treatment, and such risks can be expected to increase with the age of the patient. Another factor is that in a statutory health system the service is provided for the most part on the basis of need alone and less on commercial grounds.

Despite the above disagreements, several studies from the **UK** offer some **evidence** of discrimination in the **four major areas of healthcare**: primary and community health care, secondary care, social care, and mental care. For instance, in a 2007 study, researchers found evidence of an age effect on the delivery of care for persons who have suffered a stroke in England, Wales, and Northern Ireland, with older patients being less likely to receive care in line with current clinical guidelines<sup>130</sup>.

## 3. Upper age limits

Moreover, in a study in the **UK** that included a survey of General Practitioners (GPs)<sup>131</sup>, 34 percent of GPs were aware of cases where upper age limits restricted access to heart bypass operations; 12 percent acknowledged similar restrictions for knee replacements, and 35 percent for kidney dialysis. Further, 20 percent of cardiac care units had upper age limits and 40% had an explicit age-related policy for thrombolysis.

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<sup>130</sup> In AGE Platform Europe 'Building the case for more action at European level to combat age discrimination in access to goods, facilities and services' October 2007.

<sup>131</sup> Age Concern press release, *New survey of GPs confirms ageism in the NHS*, ACE, 17 May 2000.

Upper age limits have also been fairly common in cardiac rehabilitation programmes and in high or intensive care units following surgery<sup>132</sup>. A more recent study in the **UK** has shown that the incidence of breast cancer peaks in the group of patients over the age of 85, while the surgery rate peaks for patients in their mid-60s and then declines sharply at the age of 70. The rate of elective knee replacement and hip replacement surgery for patients aged in their late 70s and over has dropped consistently. However in addition to clinical factors and approaches, this could be explained by patient awareness and preference<sup>133</sup>, with the latter two factors including possible discriminatory behaviours if arising from discriminatory practices of physicians (e.g. a patient is not aware of an alternative procedure because the physician has not informed the patient and has single-handedly ruled out the procedure because of the patient's age).

#### 4. Indirect discrimination by ignorance

Another issue identified in literature is indirect discrimination by ignorance, where physicians are not familiar with objective differences in needs for older patients. For instance, a study in the **UK** concluded that only 40 percent of GPs<sup>134</sup> have received any postgraduate training in the care of frail, older people with multiple pathologies.

#### 5. Mental and social health care

Regarding costs for eliminating discrimination, in 2007 the Department of Health in the **UK** commissioned research on demonstrable age discrimination in mental health and social care services. After standardising for need<sup>135</sup>, the studies concluded that eliminating age discrimination by expanding services to older patients would result in additional spending of £1.75 to £2.25 billion<sup>136</sup> (about €2 to €2.6 billion in current prices) for mental health services and some £2 to £3 billion (about €2.35 to €3.5 billion) for social services covered by the National Health Service.

#### 6. Measures to close the discrimination gap

The research points out that other means (e.g. change in attitudes and behaviour) for closing the 'discrimination gap' might be viable and result in different estimates<sup>137</sup>. The

<sup>132</sup> In AGE Platform Europe 'Building the case for more action at European level to combat age discrimination in access to goods, facilities and services' October 2007.

<sup>133</sup> The amount of awareness of the patient depending on information provided by the physician; and or personal preferences.

<sup>134</sup> Centre for policy on ageing, December 2009, p. 21.

<sup>135</sup> The analysis assumes that patients with similar needs are offered the same or 'like' treatment. There are no resource constraints for dedicating additional funding – there are no distribution effects where additional services to older people results in reduced services for other consumer groups.

<sup>136</sup> For context purposes, the NHS budget for 2006/2007 was £75 billion. (<http://www.telegraph.co.uk/news/uknews/1543222/NHS-deficit-rises-to-over-1.3-billion.html>), accessed 20 June 2013.

<sup>137</sup> Government Equalities Office 'Equality Act 2010: Banning age discrimination in services, public functions and associations. Equality Impact Assessment' Annex C, page 59.

UK impact assessment '*Ending age discrimination in the provision of services*' carried out in 2012 by the Government Equalities Office in response to the Equality Act 2010 said that any age-based practices in the NHS (National Health Service) and social care should be objectively justified.

In the health care sector, the UK impact assessment looked at familiarisation with legislation, training, on-going costs for improving health and social care services for older people, compliance costs associated with objective justification (transitional and on-going), and court cases brought against NHS bodies and the private sector. The best estimate for the annual cost was £11.5m (£12.3m in present value)<sup>138</sup> with an implementation period of 10 years (3.5% discount rate).

#### IV - Research on sexual orientation discrimination in the UK

Again the UK is the only Member State which is understood to have issued a detailed regulatory impact assessment in this area. In 2004, ahead of the **Civil Partnership Act**, it issued an assessment noting that the main possible costs of the act would relate to pensions provision, and other marriage-related benefits which are often referred to as 'social advantages'. Though benefits were said to be considerable, none were quantified. With regards to goods and services, however, in 2006 during the consultation on the impact assessment on drafting The Equality Act (Sexual Orientation) Regulations, the British Hospitality Association confirmed that they did not consider that the proposals for the regulations would have a significant effect on the hospitality sector. In addition, the study also claimed that "the extra costs in the first year for each small business arising from the sexual orientation regulations will be **a little over £1.00**". On the basis of this the UK government estimated that the costs of equality legislation on these grounds with regards to most goods and services would be low. As stated above, this is also the approach taken in this impact assessment where most of the discrimination associated with the grounds of sexual orientation and religion and belief is based on personal prejudices and can be eliminated by change in values and behaviour. These actions are assumed to have a low cost.

#### V - Religion and belief

There are no known cost assessments done in this area in the EU.

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<sup>138</sup> €13.2m (€14.1 in net present value) in current prices.

## Chapter 6 – Non-EU impact assessments and studies on equality

### Key findings

- Non-EU impact assessments have been found in the areas of **accessibility to goods and services for persons with disabilities**.
- The US has a long history of issuing **legislation and specific standards** regarding accessibility in and outside of the workplace. This has allowed to perform detailed cost and benefit assessments. Concepts analogous to **reasonable accommodation** and **disproportionate burden** have been operationalised.
- **Australia** is another ‘early mover’ in the field of accessibility. Because of low implementation rates of the relevant legislation, also Australia implemented specific accessibility standards, **guiding and clarifying the implementation of the accessibility legislation**.
- In Europe, **Switzerland** issued comprehensive legislation on accessibility to buildings in 2004, and has published relevant data in 2007.
- Work on these three countries has been a **valuable source for developing proxies** and for clarifying what implementation of the proposed Directive might require from SMEs and public service providers.

While there are a number of jurisdictions outside of the EU which have introduced some form of equality legislation, the main countries where there is substantial analysis available are the USA and Australia. In both cases, the analysis focuses on tackling discrimination against persons with disabilities. Switzerland has also completed significant work on accessibility. Thus with respect to living in the community, age, sexual orientation and religion/believe anti-discrimination legislation, no impact assessments or cost benefit analyses were identified outside the EU.

### I - United States

The main US legislation on discrimination against persons with disabilities, the **Americans with Disabilities Act (ADA)**, was introduced over 20 years ago in 1990. Covering both the areas of employment and discrimination outside the workplace, the provisions of the ADA are extensive. In addition, this legislation is supported by secondary standards (e.g. building access) and extensive case law which has been introduced in the intervening period and has promoted implementation. Although the ADA covers all types of disability – including mental health and intellectual disability – its main focus is on the **most prevalent physical and sensory disabilities**.

In terms of cost assessments performed to support the ADA, the US departments responsible for the various sectors covered by the Act have systematically conducted impact assessments to accompany major changes to the Act and to underlying

standards<sup>139</sup>. In recent years the various US departments have produced extremely **detailed** cost-benefit assessments on **access to facilities and public transport** and the Department of Justice is in the process of developing rules on **internet accessibility**. Nonetheless, there are no figures available detailing the total costs of the ADA.

All-in-all, the ADA is split into **three ‘titles’** covering (I) employment, (II) goods and services provided by state and local governments (i.e., healthcare, prisons, voting, etc.) and (III) goods and services privately owned places of public accommodations (i.e., restaurants, movie theatres, sporting venues, etc.).

As with the proposed Directive, concepts analogous to **reasonable accommodations** and **disproportionate burden** are considered. Both Title II and Title III obligations are subject to “fundamental alterations” or “undue burden” defences<sup>140</sup>. In other words, if an accommodation costs too much, a business does not have to do it.

Nevertheless, although progress in areas like public transport has been considerable, the US National Council on Disability maintains that *‘while the laws discussed above have relatively broad coverage and there has been promulgation of standards (e.g., the ADAAG Guidelines for physical places and Access Board for methods of electronic information), there are few current monitoring sources to assess how much progress has been made. Title III of the ADA, in particular, has been criticised for being chronically under-enforced’*.<sup>141</sup>

Despite the above shortcomings, implementation of disability legislation in the US is still considered to be **more advanced than in the EU**: the Department of Justice estimates that close to the entire public transport system is accessible and between 60% and 90% of public access buildings and facilities are accessible. This is contrast to the EU where building accessibility is believed to be substantially lower. On the other hand it is recognised that, as in Europe, the vast majority of **US websites are not fully accessible** (though plans are afoot to require change in this area as well, at least for larger companies<sup>142</sup>).

In addition, and in contrast to the proposed Directive, the ADA does not specifically cover access to housing. In essence, the ADA covers ‘public access’ with housing not included in this notion. However, a separate piece of legislation – the **Fair Housing Amendments Act** of 1988 – relates to private or shared housing and covers access to common areas of buildings over a certain size. Regarding homes, the Fair Housing Amendments Act requires making *‘reasonable accommodations in rules, policies, practices, or*

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<sup>139</sup> while it is understood that the original Act as well as initial standards relating to accessibility were not supported by impact analyses

<sup>140</sup> National Council on Disability, Finding the Gaps: A Comparative Analysis of Disability Laws in the United States to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2008. Found at: <http://www.ncd.gov/publications/2008/May122008>, accessed 17 July 2013.

<sup>141</sup> Idem, page 12.

<sup>142</sup> For more information on this see: <http://www.eweek.com/enterprise-apps/doj-may-apply-ada-accessibility-guidelines-to-websites/>

*services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling.*<sup>143</sup>

Beyond accessibility, US Supreme Court **case law** (e.g. Olmstead case, 1998) has driven the provision of **social services** to allow persons with disabilities to live in the community and not in institutions. In this area, it was considered that unjustified institutionalisation is a form of discrimination<sup>144</sup>.

## II - Australia

Another 'early-mover' in the area of disability anti-discrimination law is Australia which introduced its **DDA** in 1992. As in the USA, while covering all disabilities, the focus of the DDA has been on the **most prevalent types of disability** (e.g. physical/ sensory). Moreover, as in the USA, the original DDA was not accompanied by a detailed cost assessment; however, subsequent *ex post* analyses have been completed most notably in 2004 by the Productivity Commission.

Finally, and unlike the USA which introduced detailed implementation standards a year after the ADA in 1991, Australia did not immediately develop such guidelines. However, towards the end of the 1990s **low implementation rates** of the DDA led the government to reconsider the potentially positive impact of such standards with respect to disability access. However these standards took some time to introduce and the first version of the premises code was rejected due to cost. It took until **mid-2009 before a revised version** was accepted.

The costs and benefits of this code as well as costs and benefits put forward in equivalent Australian and US studies are further discussed below.

In both Australia and the US, **the civil society was directly involved** in the impact assessments on implementing legislation that addresses discrimination based on the grounds of disability. For both countries, civil society organisations helped to develop methodology that would showcase the benefits of the relevant legislation to persons with disabilities.

## III - Switzerland

Within Europe, Switzerland was one of the first countries to pass comprehensive legislation on accessibility to buildings in 2004. Data with regards to the costs of doing so were published in 2007.

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<sup>143</sup> The text of this Act can be found at: <http://www.justice.gov/crt/about/hce/title8.php>

<sup>144</sup> For more information on this see

[http://www.europe.ohchr.org/Documents/Publications/Getting\\_a\\_Life.pdf](http://www.europe.ohchr.org/Documents/Publications/Getting_a_Life.pdf) and

<http://community-living.info/documents/ECCL-StructuralFundsReport-final-WEB.pdf>, accessed 17 July 2013.

### **Box 12: Use of previous impact assessment studies**

In view of the paucity of data and information on a range of equal treatment implementation issues, the range of assessments which have been carried out around the world have been an **important source of proxies**. The Australian, Dutch, Swiss, UK and US studies have all been relied on at various points in the establishment of the assessment methodology.

The literature review outlined above allowed the study to define the theoretical and practical framework applicable to the Commission's proposal as well as assisted in developing the methodology for determining potential costs (and benefits) to SMEs and public service providers. A detailed methodology has been developed to further identify and analyse such costs (and benefits) and to assess the likely impact of any changes. Given the lack of data in this area, much of the analysis needed to be based on **extrapolation and estimates**. Furthermore, the loose nature of certain legal provisions of the proposed Directive required that certain broad interpretations were made. The approach adopted was to compare what the proposed Directive might be regarded as requiring (benchmark/good practice) given the current situation on the ground (baseline) in the five selected Member States.



## Part II: How to monetise impacts for SMEs and public service providers

### Chapter 1 – Determination of what costs may arise

#### Key findings

- Only those impacts associated with the greatest costs and benefits to SMEs and public service providers have been assessed.
- Estimating these costs and benefits in five fundamentally different Member States has required strong assumptions with important consequences for the magnitude of estimates.
- Three main categories of costs for SMEs and public service providers have been identified: administrative and regulatory costs for Member States' administrations; generic compliance costs across all areas; sector-specific costs and related benefits.
- Through a detailed process of weighing and determining possible impacts, the specific costs and related benefits have been calculated for the following discrimination grounds:
  - For disability discrimination: costs of providing accessibility to goods and services to persons with ambulatory and sensory disabilities; and costs related to transitioning from institutional care to community care arrangements;
  - For discrimination based on age: impacts from ensuring equal treatment in healthcare by means of two treatment examples, one in secondary healthcare and one in mental care;
  - For sexual orientation discrimination: impacts of affording LGB couples in legal-partnership the same access to social advantages as for heterosexual couples;
- The nature of change in implementing the proposed Directive will require additional resources, such as additional staff, guidance documents and physical adjustments to the environment.

In most impact assessments, crucial decisions must be made about what costs and benefits to assess. Usually, the process for doing this is relatively straightforward as the actions and the sectors where costs and benefits will accrue are evident. With respect to this impact assessment study, the process is less obvious for two reasons.

Firstly, not all costs and benefits can be assessed so only those actions likely to entail **the greatest costs and benefits** will be evaluated. This takes into account the fact that within

any given sector and any form of discrimination, a multitude of variables exist which need to be factored in to any analysis.

**Box 13: Scope of the health sector**

The health sector is a trillion euro industry encompassing public and private provision of health services, covering thousands of different treatments and services, with a whole range of different forms of direct and indirect discrimination potentially occurring whether with respect to access to treatment or discrimination when receiving treatment.

In addition, services where the costs of provision are sporadic and low, relative to other areas, are also eliminated from the study.

Secondly, a wide variety of approaches can be adopted by Member States, public service providers and SME's when implementing the provisions of the proposed Directive. No single standard or set of rules exists which determines how the various entities must act. In order to carry out the assessment, **decisions and assumptions** must be made about what Member States are likely to do and what they should do based on existing implementation standards, case law, international standards and best practice around the globe. **These assumptions can have a fundamental impact on the magnitude of any costs and benefits.** The methodology for making calculations is therefore described in some detail below.

Costs and benefits can be split into three broad categories which are explained below with detailed potential costs identified on the basis of a literature review of costs in the area of equality. The obligations established in the proposed Directive were also a key factor in determining detailed costs areas.

Initial assumptions on cost areas were first put to an **expert consultation** to verify that the types of costs identified were correct and in order to receive more data and views. The experts consulted are listed in Annex 4.

While the level of response was good in terms of quantity and quality, there appears to be a lack of cost and benefit data available. Indeed, only one respondent reverted with cost data (beyond that provided in the original Impact Assessment and EPEC study<sup>145</sup>). Nevertheless considerable useful input was received with regard to the likely extent of the costs and benefits. **The consultation did not result in substantial changes to initial assumptions on the areas where costs would arise.** A summary of consultation responses is provided in Annex 6.

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<sup>145</sup> Available at: <http://disability-studies.leeds.ac.uk/files/library/EPEC-external-study-10.pdf>.

## I - Determination of categories of costs arising from implementation of the proposed Directive

### Box 14: Administrative, regulatory and generic compliance costs related to the implementation of the proposed Directive

Based on the literature reviewed in Chapters 4, 5 and 6 in Part I, in particular with respect to the experience gained by States in assessing implementation costs inside and outside the EU, the costs of the proposed Directive can broadly be split between three main categories, that is:

- Administrative and regulatory costs resulting from implementing the proposed Directive
  - These costs relate broadly to: MS legislative action to put into effect EU law (e.g. implementation costs and compliance review); the establishment of or change of bodies which oversee and monitor the implementation of law (e.g. extension of equality bodies); and information requirements (e.g. reporting to the EU Commission and compilation of statistics).
  - Administrative and regulatory costs (including upfront and recurring costs) borne by MS Administration can largely be identified through an assessment of the proposed Directive itself. These costs have been further verified through an expert consultation. Comments focused on enforcement by equality bodies, compilation and use of statistics.
  - In addition, a number of factors having either an upward or downward pressure on the basic regulatory costs have been identified. Such factors include, for instance, the relatively short time frame for implementation of such a broad Directive (which is likely to increase costs) and its open-ended nature.
- Generic costs of complying with the proposed Directive in all areas
  - Generic compliance costs are costs which are borne by entities regardless of sector and may relate to preventing/reducing several grounds of discrimination at the same time. Examples of such costs include: familiarisation with rules; legal advice; cost of drafting and disseminating internal guidelines or codes of conduct; dealing with complaints; staff training; system audits; certification costs. Each of these items includes upfront as well as recurring costs.
  - Generic compliance costs have been identified based on an extensive literature review and validated through an expert consultation with considerable disagreement arising over the level of such costs.
- Costs that are sector and ground specific.

Based on the literature presented in Chapters 4, 5 and 6 in Part I of the study in particular with respect to the experience gained by States in assessing implementation costs inside and outside the EU, the costs of the proposed Directive can broadly be attributed to the following actors:

**Table 8: Actors having to bear the different costs arising from implementation**

	Actors	Type of Cost
1	Government authorities	Administrative and regulatory costs resulting from implementing the proposed Directive
2	SMEs and public service providers	Generic compliance costs of complying with the proposed Directive in all areas
3	SMEs and public service providers	Ground-specific costs and benefits for promoting equal treatment

The following sections provide a detailed explanation of each category of cost.

### 1. Administrative and regulatory costs on Member States' administrations

Administrative and regulatory costs relate broadly to MS legislative action to put into effect EU law, the establishment or change to bodies which oversee and monitor the implementation of law and information requirements. Detailed costs in this category can largely be identified through an assessment of the proposed Directive itself as well as the implementation of other legislation in the field. Details of potential costs are provided in the table below.

### 2. Types of costs and benefits

**Table 9: Types of administrative and regulatory costs likely to arise when implementing the proposed Directive**

	Item	Rationale	Upfront(examples)	Recurring
1	Awareness campaign/ Guidelines	Article 10	Initial awareness raising/ Guidelines drafting	Updating guidelines
2	Extension of equality body	Article 12	New staff/ duties	Wages/events
3	Transposition costs and compliance review of legislation and processes	Article 13	Transposition; For compliance review, extensive screening may be required/new staff	On-going equality checks of new legislation
4	Additional legal infrastructure (besides equality body) and enforcement of sanctioning mechanism	Article 14	Establishment/ New staff	Depends on number of complaints, complexity of law and standards

	Item	Rationale	Upfront(examples)	Recurring
5	Reporting to European Commission	Article 16	None	Every five years
6	Compilation of statistics*	Not in proposed Directive but Article 31 UNCPRD	Develop reporting format and data collector/collator	No specific requirement, but it can be used as regular data collection will be needed, ideally once a year
7	Costs of monitoring/ inspecting/ running certification schemes*		Depends on implementation (e.g. self-auditing versus third party certification)	Especially important in certain areas (building accessibility and sales of buildings)

*\* It should be noted that with respect to the compilation of statistics and of monitoring costs, these are not specifically established under the proposed Directive, and thus Member States may choose not to carry them out. However, they have been costed in this study as these actions are generally considered as important to achieving effective implementation of legislation.*

### 3. Factors affecting Member State administrative and regulatory costs and benefits

While the types of costs detailed above arise in a range of sectors, several factors are detailed below which have either an upward or downward pressure on the basic regulatory costs. However, in line with the Commission's impact assessment guidelines, which highlights that orders of magnitude for costs can be appropriate, the wide range of factors listed below have not been used within the detailed assessment. Rather, these are provided for illustrative purposes for consideration in further assessments.

Factors influencing potential costs and benefits include:

- Contrary to more targeted legislation in place in many other areas, the proposed Directive is principle-based and lacks specific targets. Therefore, each Member State will have to further define and communicate what obligations it will impose on organisations to comply with the proposed Directive;
- The relatively short time frame for implementation of such a broad Directive i.e. five years, is likely to increase costs;
- Whilst EU legislation can result in internal market savings through reduced administrative burdens on business, this is unlikely to be the case here due to the open-ended nature of the proposed Directive. This risk may be mitigated to some extent through EU legislation on accessibility<sup>146</sup> which it is understood will aim to provide such simplification benefits. Whilst a proposal has now been made

<sup>146</sup> The Consultation Document on European Accessibility Act available at: [http://ec.europa.eu/justice/discrimination/files/2011-12-13\\_consultation\\_background\\_document.pdf](http://ec.europa.eu/justice/discrimination/files/2011-12-13_consultation_background_document.pdf).

with respect to websites provided by the public sector, it is, unclear when any wider EU legislation will be proposed;

- There is a strong relationship between regulatory costs for governments and certain compliance costs of SMEs and public service providers. For example, where organisations are required to certify that their building/website etc. is accessible, this exercise can help reduce the monitoring and data gathering burden borne by administrations (because the task is already performed by the private certifier);
- Most Member States already have discrimination legislation in place and the proposed Directive provides considerable flexibility in its implementation. For example, in a number of important areas, such as disability, the proposed Directive allows Member States to determine when an accommodation is disproportionate or not;
- There is considerable experience available inside and outside the EU as to how to implement equality legislation. For example, in developing the 2010 Equality Act 2010, the **UK** did not start from 'scratch'. Rather it drew together nine major pieces of discrimination legislation and around 100 pieces of ancillary legislation;
- It can be assumed that all public administrations already have experience with the existing equality, Employment Equality and Racial Equality Directives. Therefore, it is assumed that the changes resulting from the proposed Directive would be iterative and already performed in most countries to some extent.

## **II - Generic compliance costs and benefits**

In addition to administrative and regulatory costs which State actors will face, both SMEs and public service providers will face generic compliance costs applicable across all sectors (such as customer service training) and ground-specific costs which arise when implementing anti-discrimination with respect to a particular ground (e.g. putting in ramps for wheelchair users).

### **1. Main compliance costs and benefits**

With respect to the first, most if not all businesses serving the public will have to take account of measures imposed by national legislation to implement the proposed Directive. They will therefore face additional costs on that basis. However, whilst they may face similar types of costs, the level of those generic compliance costs can vary by sector. For example, whilst discrimination based on sexual orientation has been identified as problematic in the hotels-restaurant-café-bar sector<sup>147</sup>, that discrimination may be resolved through basic generic staff training. Conversely, in the health sector, the range of sexual orientation issues that needs to be taken into account is considerable and is likely to require a more enhanced level of training at a higher cost. In addition, whilst most generic compliance costs will be applicable across all sectors to some extent, there may be some sectors for which a particular cost will not arise.

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<sup>147</sup>Written Response by ILGA-Europe: European Commission Consultation on New Anti-Discrimination Measures, October 2007, available at [http://ilga-europe.org/home/how\\_we\\_work/european\\_institutions/anti\\_discrimination\\_law/why\\_ilga\\_europe\\_support](http://ilga-europe.org/home/how_we_work/european_institutions/anti_discrimination_law/why_ilga_europe_support).

The main compliance costs expected to arise regardless of the sector in which a public entity and SME is involved are categorised as follows:

**Table 10: Generic compliance costs<sup>148</sup>**

	Item	Variable	Reasons for actions: Upfront (examples)	Reasons for actions: Recurring/ frequency
1	Familiarisation with rules	Number of employees involved/ level of seniority/ amount of time required	Legislation	<b>On-going guidelines</b>
2	Legal advice (e.g. checking whether service provision may be seen as discriminatory)	Per hour/time required	Prior to changing procedures/ building	<b>Following a complaint</b>
3	Costs of drafting and disseminating internal guidelines, checklists and codes of conduct	Number of employees involved/ level of seniority/ amount of time required	Following Legislation	<b>On-going guidelines</b>
4	Dealing with complaints/queries	Number of employees involved/ level of seniority/ amount of time required	N/A	<b>Number per year</b>
5	Staff training (awareness/customer service and compliance with law)	Number of employees involved/ level of seniority/ amount of time required	Following Legislation	<b>As required</b>
6	Systems audits (non-legal) e.g., accessibility audits for disability and adherence to future standards	Per hour/time required	Prior to changing procedures/ building	<b>N/A</b>
7	Certification costs (if required to comply with standards etc.)	Cost of inspector/third party certifier	Following changing procedures/ building	<b>N/A</b>

*\*Upfront costs relate to those costs which an entity will face from the outset. These are one off costs. Recurring costs are those which the entity will face on a regular basis.*

<sup>148</sup> Expert advice and literature sources, such as the impact assessments carried out in the US, the Netherlands and Australia, have been used to arrive at this list of types of generic compliance costs.

### III - Identification of sector specific compliance costs and related benefits

Compliance costs and benefits vary depending on to which ground of discrimination and sector an action is related. It is these costs which require the greatest analysis since all sectors and grounds of discrimination must be examined first in order to produce finally a short list of areas for detailed assessment. The methodology for costing the actions necessary in each of those sectors also varies.

#### Box 15: Identification of sector specific compliance costs and related benefits

Ground specific costs have been categorised through three distinct phases:

1. A list of 36 broad areas of discrimination have been identified by combining the four discrimination grounds of the proposed Directive (Disability, Age, Sexual Orientation, and Religion and Belief) and the nine different 'sectors' or 'policy domains' covered in the EPEC study of 2008 (Education, Social Care, Healthcare, Social Advantages, Transport, Housing, Finance/Insurance, Media, and Other Goods and Services).
2. From these potential 36 broad areas of discrimination, areas were excluded which were either:
  - a. exempted from the scope of the proposed Directive in the proposal;
  - b. had no significant effects on costs and benefits on SMEs and service providers; or
  - c. only a small market share for SMEs and service providers.
3. The remaining policy domains (listed below) have been subject to a detailed cost benefit analysis:

Policy Domain	Grounds
Health Care	Age
Social Care	Disabilities (Age*)
Other Goods and Services (public services)	Disabilities (Age*)
Other Goods and Services (SMEs)	Disabilities (Age*)
Other Goods and Services (all)	Disabilities (Age*)
Housing	Disabilities (Age*)
Education	Disabilities
Social advantages	Sexual Orientation
Media	Disabilities (Age*)

*\*Whilst age discrimination in this domain was not assessed per se, it is recognised that the majority of persons with disabilities are aged over 65 and therefore discrimination on this ground has a more significant impact on older persons.*

Consequently, the areas to be examined by the impact assessment were further defined by applying a threefold analysis:



- Identify a list of areas based on **discrimination grounds** and **sectors** set out in the EPEC study
- Eliminate from the list the combination of discrimination and sector which prima facie will not involve **significant costs** or for which there are obvious **exemptions** or exclusions. Validate results through stakeholder consultation.
- For the remaining sectors, carry out a detailed analysis to identify other **legal limitations**, **factual limitations** and other relevant factors requiring further targeting of areas for which costs should be estimated.

## 1. Phase 1 – Identification of potential areas for impact assessment

As explained in Box 15, in the first phase, a list of 36 broad areas of discrimination and action to be examined have been identified by taking the four discrimination grounds of the proposed Directive (disability, age, sexual orientation and religion and belief) and the nine different ‘sectors’ or ‘policy domains’ covered in the EPEC study of 2008 (Education, Social Care, Healthcare, Social Advantages, Transport, Housing, Finance/Insurance, Media, Other Goods and Services). These areas also reflected the findings of the Commission’s public consultation which received 5,400 responses.

The sector of Other Goods and Services was further disaggregated (see Table 9 below). It includes types of goods and services that represent a large share of how persons choose to spend their earnings, or facilities that are needed to enable it (to be consistent with the broad notion of Article 4(2) of the proposed Directive that alterations should cover areas, where the benefit to society and individuals are sizeable.

The table below sets out the areas considered to fall under the notion of ‘Other Goods and Services’. To keep the approach as simple as possible within this sector, public administration/judiciary and walkways/public thoroughfares are also included though they do not strictly correspond to goods and services.

**Table 11: Potential areas to be assessed for the sector of ‘other goods and services’**

Sector	Disability	Age	Sexual Orientation	Religion and Belief
Other Goods and Services	✓	✓	✓	✓
Public Administration/Judiciary	✓	✓	✓	✓
Walkways/Public Thoroughfares	✓	✓	✓	✓
Hotels/Restaurants/Cafes	✓	✓	✓	✓
Entertainment/Culture	✓	✓	✓	✓
Retail	✓	✓	✓	✓
Professional Services	✓	✓	✓	✓

Each combination of sector and ground was next examined to see which combinations would have to be fully or partially assessed to reach the objectives of this impact assessment.

Through this process the list was shortened to allow for a final analysis. Once the short list of areas was established, each sector and the relevant ground for discrimination was further analysed to determine if further targeting or elimination of certain sub-sectors was required. For example, whilst disability discrimination in the education sector was part of the process, the assessment will not include special needs education because the content and provision of education is outside the scope of the proposed Directive according to Article 3(3).

## **2. Phases 2 and 3– Refinement of potential areas**

Phases 2 and 3 ensure that the impact assessment focuses on the most relevant areas regarding costs and benefits for SMEs and public authorities. Firstly, the following areas were excluded from the list of potential areas:

- Areas exempted from the proposed Directive (e.g. special needs education);
- Areas where from the nature of actions required it is clear that the proposed Directive is unlikely to result in significant ground-specific costs of adaptation for SMEs and public service providers (e.g. much action to resolve discrimination on the grounds of religion and belief is centred around changing attitudes and cultures which primarily requires awareness raising and training and as such are covered under generic compliance costs);
- Areas where the share of the market held by SMEs and public goods/service providers is small (e.g. insurance/banking) and therefore the overall costs would be low.

Secondly, it was made sure that the remaining areas:

- are covered by the proposed Directive,
- represent a high possible adaptation cost for SMEs and public service providers in the covered sectors; and
- are areas for which the accommodation must be of significant benefit to the affected group. This reflects the factors under Article 4(2) of the proposed Directive, which must be taken into account when determining if there is a disproportionate burden. Thus the benefit to persons with disabilities must be taken into account and the smaller the benefit the greater the likelihood that there will be a disproportionate burden.

While this eliminates from the impact assessment a large number of areas, those included represent the largest proportion of costs and benefits that are likely to arise from the implementation of the proposed Directive.

As a result of the analysis, costs and benefits of action will be assessed with respect to the following sectors and discrimination grounds:

- **Disability** discrimination in the **education, social care, health care, housing, media, and other goods and services** sectors;
- **Age** discrimination in the **social care** and **health care** sectors
- **Sexual orientation** discrimination in the **social advantages** sector

## IV - Details on the choice of the grounds and policy domains to be assessed

### 1. Assessment of mobility or sensory disability in education

In the education sector, only equality measures with respect to disability discrimination will be assessed. In this respect, actions to accommodate **mobility or sensory disabilities**, the most common forms of disability and known responses to disability discrimination, will be assessed in detail as potentially significant costs for public and private providers of education.

Discrimination with respect to the education curriculum and to intellectual disabilities and other impairments will not be examined as these are assumed to be exempt from the proposed Directive, based on Article 3(3) (see table in Annex 6). However, the assessment covers all the main phases of education, i.e. primary, secondary schools, vocational and tertiary sectors.

### 2. Exclusion of discrimination in education based on sexual orientation, religion and belief, and age from the assessment

Discrimination based on sexual orientation, age, and religion and belief occur within the education sector but are not assessed in this study for the following reasons:

In relation to sexual orientation and discrimination based on religion and belief, the basis for such discrimination is, according to the extensive literature review and stakeholder consultation<sup>149</sup>, predominantly **personal prejudice** e.g. harassment, bullying. As such, the primary means of addressing those problems is through **training** and adjustment of policies which are unlikely to entail significant costs. Nevertheless, such actions will, to some extent, be covered under the generic compliance section.

In addition, potential forms of discrimination arising as a result of the content of teaching e.g. lack of education materials including non-heterosexual perspectives, are **outside the scope** of the proposed Directive since it explicitly states in Articles 3(3) and 3(4) that it is without prejudice to Member State responsibilities for content of teaching, activities and organisation of their education systems, including in the provision of special needs education.

Moreover, the proposed Directive also allows **Member States** to provide for differences in treatment in **access** to educational institutions based on religion or belief (see table in Annex 6). Thus religion based schools will not be required to change their policies as a result of the proposed Directive.

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<sup>149</sup>According to G. Becker (1957), 'taste for discrimination' is personal prejudice, or taste, against associating with a particular group. In addition, the initial table of 36 combinations was sent to the relevant experts who were invited to provide cost and benefit information and to identify other high cost areas which were not included. The vast majority of respondents stated that they broadly agreed with the assessment or did not have an opinion on the matter. No response was received from associations representing the over 65s.

With respect to age discrimination in the education sector, this will not be assessed as according to Article 3 of the proposed Directive, Member States may set **age limits** in relation to access to education, which represents the major form of age discrimination in this sector. Thus, there are no significant sector-specific costs expected (see table in Annex 6).

### **3. Exclusion of most of the discrimination occurring in social and health care from the assessment**

Within the social and health care areas, literature review and senior expert advice suggests that a wide range of discrimination occurs across all grounds. However, much of this discrimination appears to be rooted either in **personal prejudice** of staff or lack of understanding rather than as a result of discriminatory policies e.g. undignified treatment of people based on sexual orientation or religion, lack of appropriate meals in hospital settings (e.g. Halal or Kosher), or Muslims being refused access to prepare the body of the deceased<sup>150</sup>. Similarly, with respect to discrimination against persons with disabilities, this ranges from not allowing individuals to make appointments, to preventing a person to bring in their assistance dog. The greatest barrier, however, has been the negative or biased attitudes of some healthcare professionals<sup>151</sup>.

Actions to resolve such discrimination revolve around training, enforcement action and adjustment of policies, none of which are considered to entail significant costs. A range of other forms of discrimination also occur e.g. refusal to recognise the partner of an LGB patient. However, most of these entail **low cost** changes to policy or relate to actions which are likely to be considered within **national competence** and **outside the scope** of the proposed Directive e.g. denial of reproductive assistance for LGB persons.

### **4. Exclusion of discrimination in health care in relation to reproductive rights from the assessment**

Discrimination related to reproductive rights are excluded from the scope of the proposed Directive by Article 3(2) (see table in Annex 6) and are not covered by this study.

### **5. Background to the case study approach to address discrimination in health care based on age**

Findings based on literature review and expert advice suggest that discrimination in the health care sector that has **significant costs** affects two age groups, the 18-24 year-olds and persons over the age of 65.

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<sup>150</sup>Weller, P., Feldman, A. & Purdam, K. (2001) Religious Discrimination in England and Wales. Home Office Research Study 220, p72. Available at: <http://www.neiladdison.pwp.blueyonder.co.uk/religionlaw.co.uk/reportad.pdf>; Also Inequalities and multiple discrimination in access to and quality of healthcare (2013) European Union Agency for Fundamental Rights

<sup>151</sup> EPEC Study, p. 30

Discrimination based on age for persons over the age of 65 is closely linked to disability discrimination and can, in general, affect a large proportion of the population. Therefore, anti-discrimination action, especially where this requires providing access to new services, is likely to be costly.

However, there are a number of measures which can be taken to ensure that healthcare (primary and community; secondary; mental; and social<sup>152</sup>) is provided, regardless of age, on the basis of **clinical need** alone and that social care services do not use age in their eligibility criteria and policies to restrict access to services. The assessment of the costs and benefits of eliminating age discrimination in healthcare would then, ideally, cover the **over and under-65s** of the three broad types of discrimination identified, within the four broad areas of provision of healthcare.

- A comprehensive assessment would include costs and benefits of eliminating explicit age limits, especially in primary and community and secondary healthcare.

This may include:

- Audits to identify age discriminatory programmes procedures;
- Objectively justifying explicit age limits in terms of services and drugs and making their provision responsive to need;
- Eliminating age limits when not objectively justified; estimating the costs of associated increase in service provision of patients above 65;
- Abolishing age segregated services (social and mental health);
- Examining whether service is provided on a like-for-like basis;
- Eliminating tacit Clinical Discrimination (clinical; all areas); and
- Monitoring referrals and expenditure to ensure clinical service is based on needs.

Explicit age limits are fairly easy to detect. The challenge was the **heterogeneity of health care policy** across the five Member States subject to this study – no explicit age limits were found that would cover the same procedure in primary and community and secondary care across the five countries. Evidence of discrimination in the provision of age segregated services was not found in the literature. Inherent challenges to establish like-for-like comparisons for segregated services are rooted in the fact that services have been segregated with an objective in mind that certain **differences** have to be acknowledged, for example in diagnosing eye-sight problems for people above a certain age. However, because the objective of providing the service should be the same (e.g.

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<sup>152</sup> These four broad categories are consistent with the use by the UK Centre for Policy on Ageing.

**Primary and community care** is understood as services provided by family doctors, dentists, pharmacists, optometrists and ophthalmic medical practitioners, together with district nurses and health visitors; **secondary care** refers to hospital care resulting from a referral by a health professional in primary care. **Mental health care** is addressing a psychiatric disorder that results in a disruption in a person's thinking, feeling, moods and ability to relate to others, either through primary health care services or specialized services. **Social care** refers to support to an individual's social as opposed to health care needs, whether by statutory or non-statutory organisations. Social care is considered as a broad area in health care, because the quality of social care is closely linked to health outcomes. Glossary available at <http://www.cpa.org.uk/glossary/glossary.html#S>

based on need), there should be no discrimination disadvantaging a particular group making use of the service.

Regarding tacit clinical discrimination, mixed evidence has been found in particular areas of secondary and mental health treatment.

With respect to health care, the specific focus of this assessment is on age discrimination in relation to access to treatments. Following literature review and discussion with experts, two specific examples were identified to demonstrate possible cost and benefit assessment in the health sector: Renal failure and depression relate both to discrimination in the age group of over 65s. Whilst it is recognised that it would be of interest to assess also discrimination in the health care sector for the age group of 18-24 year olds, an example fulfilling the other three selection criteria (availability of data, preferred treatment option, representativeness of the population and/or the health care sector) was not identified. The process of deriving these criteria and selecting the two examples is further explained in [Chapter 2.VI](#) in Part II.

According to these findings, the following methodological approach has been developed to illustrate isolated impacts of the elimination of possible age discrimination.

## **6. An illustrative approach to measuring age discrimination in health care: the case study approach**

Given the considerations in the previous sub-chapter, as well as the large size and complexity of the sector, the lack of data available on age discrimination as well as the lack of agreement over what constitutes discrimination in healthcare, and questions over the actual scope of the proposed Directive in this area, the analysis follows a case study approach where **two examples in secondary and mental health care** are presented in qualitative and quantitative terms. These do not serve to provide a cost-benefit analysis for SMEs and public service providers but are **illustrative** only.

The examples have been selected following a review of relevant literature and expert advice. The **four criteria** used for selecting the cases include:

- Evidence of age discrimination in the provision of treatment in that particular area, where differences in treatment cannot be explained by clinical factors alone;
- Satisfactory (if not perfect) availability of data or appropriate proxies;
- The extent to which the example is representative – representing either a large number of patients affected or requiring a substantial proportion of total health care spending – of a particular area of healthcare provision (primary, secondary, mental, social);
- A consensus (if partial) on the preferred method of treatment, either derived from literature, expert judgment or both.
- The selected examples are renal failure to illustrate possible age discrimination in secondary care and treatment of depression as an example of possible age discrimination in mental health care. Both examples drew primarily on data available in the UK. And should be considered as guiding examples of our approach of how age discrimination may occur and how it could be monetised,

based on the strong and simplifying assumptions that treatment is based on need (and on no other criteria) and that there are no budgetary or other constraints to the provision of health care based on need.

## **7. Assessment of discrimination in social care based on disability: life in the community and institutionalisation**

With respect to **disability discrimination**, the focus of the assessment has been on limitations on persons with disabilities to live in the community and independently. This area has been chosen because of three main reasons. Firstly, **costs and benefits of enabling** persons with disability to live in the community and independently are potentially **high**<sup>153</sup>. Secondly, there is a large number of people that may need to be accommodated (there are **1.2 million** people with disabilities in institutions in the European Union<sup>154</sup>). A third factor was the fact that Article 19 of the UNCRPD, which 25 Member States of the EU have ratified, establishes this obligation, thus, it is certain that deinstitutionalisation will have to be put in practice.

Disability related discrimination in this area mainly concerns people with more acute physical or intellectual/mental health disabilities. Furthermore, between the two grounds of **disability and aging** there are major **overlaps**. For instance, almost half of persons with disabilities are also over the age of 65. In addition, the projected growth in the over 65 population will increase the persons with disabilities population over the coming years.

## **8. Exclusion of discrimination based on disability regarding access to social advantages from the assessment**

There is no clear evidence that there is an overall level of discrimination against persons with disabilities in the area of access to social advantages. This takes into account the fact that although some discrimination may occur, there are also significant levels of social protection or advantages afforded to disabled and aged persons. Furthermore, Article 2 (6) of the proposed Directive allows Member States to set a specific age for access to social benefits.

## **9. Assessment of discrimination based on sexual orientation regarding access to social advantages**

Discrimination on the grounds of sexual orientation in the area of social advantages is, however, assessed in this study based on findings from the stakeholder consultation and literature review which showed that discrimination in this field was occurring (though not necessarily widespread).

The assessment will focus on a particular form of discrimination which is the most likely to entail significant costs. This arises where a Member State recognizes a same sex

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<sup>153</sup> The DECLOC main report, for example, specifically points out the high costs if parallel systems have to be run concurrently, p. 10

<sup>154</sup> DECLOC main report, p. 25

partnership but they cannot access the same benefits as those in a heterosexual partnership.

For example, the **Czech Republic** recognises same-sex civil partnerships but they are denied joint property rights, tenancy rights, and are excluded from joint taxation and survivor pension rights despite such benefits being available to married couples<sup>155</sup>.

It should be noted that discrimination in this area will only be assessed where a Member State recognises same sex partnerships since in line with the proposed Directive and ECJ Case law '*Member States remain free to decide whether or not to institute and recognise legally registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies.*'<sup>156</sup>

Finally, only lesbian, gay and bisexual discrimination will be assessed as the principle of equal treatment for men and women applies to discrimination arising from the gender reassignment of a person. This is explicitly recognised in the EU Gender Directive which also follows ECJ case law<sup>157</sup>. Thus discrimination on this basis is considered to be gender discrimination.

## **V - Details on the choice of the sectors to be assessed**

### **1. Exclusion of the transport sector from the assessment**

The transport sector is not covered in this impact assessment as there are already extensive EU technical Regulations and customer passenger rights for train, bus, and aviation transport. While the public transport network is far from fully accessible, and although the purpose of the proposed Directive is to provide 'effective access', it is hard to see how it will result in more stringent conditions than those in place in these more specific Regulations (see the analysis in Annex 3).

### **2. Assessment of disability discrimination regarding accessible housing**

A range of discrimination issues occur within the housing sector including denial of access to rental accommodation due to prejudices against e.g. LGBTI persons or persons from a particular religion. For these forms of discrimination, training and broader non-discrimination enforcement action through courts will be the primary means of achieving change. Such costs are considered to have a low likelihood of entailing significant costs.

With respect to persons with disabilities, discrimination occurs not only through denial of access to housing due to personal prejudices, but also due to the failure to adjust housing to make it accessible either before a sale or rent or once the property is rented.

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<sup>155</sup> Global Rights and IGLHRC, 'The Status of Lesbian, Gay, Bisexual, Transgender and Intersex Rights in the **Czech Republic**', Shadow Report, July 2007, p. 7.

<sup>156</sup> Judgment of the ECJ of 14.2008 in case C-267/06 Tadao Maruko

<sup>157</sup> Recital 3 of Directive 2006/54/EC of 5 July 2006 and Case C-13/94, P v S and Cornwall County Council [1996] ECR I-2143.



Such discrimination is mainly mobility or sensory related and it is this latter form of discrimination which is likely to entail **high costs** to remedy.

### 3. Exclusion of the finance and insurance sector from this assessment

The sector of finance and insurance is not assessed in this study. Recital 15 and Article 2 (7) of the proposed Directive allows for insurance to be based on actuarial risk thus permitting **justified discrimination** (see the table in Annex 6). It is understood that such forms of discrimination are the most significant with other discrimination not entailing significant costs to address. In addition, as the vast majority of actors involved in the insurance industry are understood to be **large enterprises**, the proposed Directive is unlikely to have a significant effect on SMEs.

### 4. Assessment of disability discrimination regarding access to content of different media (broadcasting and websites)

Discrimination in the provision of media services can arise under all grounds primarily with respect to content of media. In this respect, it is considered that corrective action such as training, guidelines, or enforcement will not entail significant costs.

The only ground of discrimination which is considered to have potentially high costs for SMEs and public service providers to redress is with respect to disability. Such discrimination occurs primarily with respect to accessibility of media, in terms of e.g. not being able to hear broadcasts or read online media. In this respect, the primary groups affected are those with sensory impairments (given the nature of the services, mobility issues are not a primary source of discrimination).

Alterations to the provision of **print media** are considered to fall under the proposed Directive's **exemption** on fundamental alterations.

Media such as newspapers or radio will not be costed, as adjustments would entail fundamental alterations to the service being provided. Indeed, Article 4(1)(a) states that measures aiming at enabling persons with disabilities to access to goods and services (and thus media) should not require fundamental alteration of the service at stake nor require the provision of alternatives thereto. In addition, adjustments requiring the development of ICT assistance technologies are not considered as they are beyond the scope of this study

### 5. Assessment of disability and age discrimination in access to public administration/judiciary and walkways/public thoroughfares as other goods and services

This category – included in the EPEC study – covers sectors not covered by the previous areas. To keep the approach as simple as possible within the sector of other goods and services, public administration/judiciary and walkways/public thoroughfares are also included, though they do not strictly correspond to goods and services.

Overall, for other goods and services, discrimination occurs across all grounds. However, in line with other sectors, such discrimination is predominantly based on **personal prejudices** e.g. where staff or owners of establishments refuse to serve a person based on a protected ground, treat such persons in an undignified manner or even harass them. Examples of such discrimination include denial of a double room to a same sex couple or derogatory comments about a Muslim lady's clothing, or patronising treatment of an older person when shopping. The primary method of resolving such discrimination is through education and **training** and appropriate enforcement action and is not envisaged to entail significant costs.

With respect to discrimination based on disability, the most significant (from a cost perspective) form of discrimination requiring redress is the limitation of access which again affects those with mobility and sensory limitations. It is assumed that accessibility issues in this sector relate to **public access areas**. Therefore, most office buildings are excluded – open access offices are covered either through professional services or public administration.

**Box 16: Assumption for SMEs and public service providers regarding physical access to premises**

Based on the approach taken in the proposed Directive (Article 4(1)(a)), it was assumed that SMEs and public service providers do not have to fundamentally change how and when they serve the public and that so called positive or proactive measures are not obligatory. Article 2(6) also states that the proposed Directive does not preclude Member States from fixing a specific age to access certain goods and services, provided such limitation is justified by a legitimate aim and is appropriate and necessary.

Based on the above analysis as outlined in Box 15 on 'Identification of sector-specific costs and related benefits', the following ground/sector combinations were looked at in further detail:

**Table 12: Sectors and grounds of discrimination subject to further assessment**

Sector	Grounds	Sub-domain	Specific Area(s)
<b>Education</b>	Disabilities	Primary and secondary schools/ vocational and tertiary sectors	Mobility/Sensory
<b>Social Care</b>	Disabilities	General	Physical/ Intellectual disability/Mental Health
<b>Health Care</b>	Age	Health care in general, especially secondary and mental health care	Over 65 year-olds
<b>Social Advantages</b>	Sexual Orientation	Taxes/Benefits	Lesbian, gay, bisexual

Sector	Grounds	Sub-domain	Specific Area(s)
<b>Housing</b>	Disabilities	Residential (rental and sales)	Mobility/Sensory
<b>Media</b>	Disabilities	Broadcasting	Sensory
<b>Other Goods and Services:</b>	Disabilities	Public Administration/Judiciary	Mobility/Sensory
	Disabilities	Walkways/ Public Thoroughfares	Mobility/ Sensory
	Disabilities	Hotels, Restaurants, cafes/ Bars (HORECA)	Mobility/Sensory
	Disabilities	Gyms and Swimming Pools	Mobility/ Sensory
	Disabilities	Entertainment/culture (e.g. cinemas, theatres, public clubs etc.)	Mobility/Sensory

As can be seen, with respect to sector specific costs and benefits, discrimination based on disability, age and sexual orientation only will be assessed. Whilst a wide range of discrimination based on religion and belief occurs, actions to combat such discrimination are not expected to entail significant costs.

As regards **disability discrimination**, two types of costs will be considered. Firstly, costs which may arise in the area of providing **accessibility** to goods and services to persons with ambulatory (including wheelchair) and sensory disabilities. These changes relate to physical access to buildings, changes to policies and procedures as well as providing access to information (namely through internet access/media). Secondly, possible additional costs may result from providing persons with more severe disabilities the opportunity to avail of good quality community based services ('**living in the community**').

With respect to **age discrimination**, the assessment will look into discrimination in healthcare; and particularly examine discrimination in secondary health care and mental care. These two areas have been selected according to a variety of reasons, explained in detail in [Chapter 2.VI](#) of Part II, although it is acknowledged that age discrimination is likely to occur in other areas of health care provision.

Finally, with respect to discrimination on the grounds of **sexual orientation**, the cost of affording LGB couples who are married or in a legal-partnership equal access to **social advantages** already afforded to heterosexual couples, will be assessed.

## 6. Assessment of multiple-discrimination

Multiple discrimination is discrimination of a person based on two or more grounds. This could for example arise where a person with disability who is also gay faces a greater level of discrimination when seeking hospital treatment than would occur if they had been either only disabled or only gay.

The notion of multiple discrimination is relatively new and is still not widely recognised or acted upon whether through policy actions, legislation, procedures or training.

Importantly, it is argued that discrimination on more than one ground is or can be more than the sum of its parts. In other words, the type of discrimination experienced or the extent of the discrimination is different or of a different level than would be expected by simply adding the discrimination together. Thus 'multiple discrimination does not simply consist in the addition of two sources of discrimination; the result is qualitatively different, or synergistic'<sup>158</sup>.

However, for the purposes of this study, the key issue is whether SMEs or public service providers will have to respond in a substantially different way to multiple-discrimination, compared with how they would have to act to remedy the two (or more) forms of discrimination if occurring separately.

Having examined the literature on the matter, it is apparent firstly that the **primary forms** of multiple discrimination tend to include gender as one of the grounds, with race also being an important factor. Thus the real life examples of multiple discrimination identified do not exactly fit to the grounds protected under the proposed Directive. Nevertheless, even considering all forms of multiple discrimination, it was only possible to find **one area** in which the recognition of multiple discrimination may or would result in a different level of action compared with if only one form of discrimination occurred.

This relates to the fact that in some Member States discrimination cases can only be submitted to the judiciary with respect to one ground of discrimination. Where discrimination occurs based on two or more grounds, either separate cases must be brought for each ground or one claim is brought but each ground is considered as a separate claim.

This approach (as opposed to examining all grounds as a single claim) can either result in **additional costs due to more litigation, or can result in a finding of non-discrimination where discrimination may have been found if both grounds had been considered together**. For example in an American case, a discrimination case was brought by black women with respect to the application of their employer's seniority system. Black women were made redundant first as they had most recently joined the company. As such they were worse off than both white women and black men and the source of their discrimination could only be shown through the combination of being both female and black<sup>159</sup>.

Despite these examples, however, it has not been possible to identify the relevant data necessary to calculate any potential costs and benefits **to SMEs and public service authorities** in being able to handle multiple discrimination cases. With respect to SMEs and public service providers, the impact is likely to occur with respect to a reduction in costs as a result of handling a single case (as a party to the proceedings) instead of two separate cases.

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<sup>158</sup> K. Crenshaw 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics' (1989) University of Chicago Legal Forum, 139

<sup>159</sup> *DeGraffenreid v General Motors Assembly Division* 413 F Supp 142 (US Federal Court of Appeals) as described in the European Anti-Discrimination Law Review Issue No. 2, October 2005, p 13. Available at [http://ec.europa.eu/justice/discrimination/files/lawrev2\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/lawrev2_en.pdf)

To calculate such benefits, clear data would be needed on the number of cases brought against SMEs (and the venue for such cases e.g. civil case for damages, claim through a tribunal or through arbitration, or through an equality body), the likely increase in cases resulting from improvements in access to justice, the possible decrease in cases where some would now be joined, the average cost of cases and the proportion of cases which resulted in a finding against the SME and the extent to which this would be affected by a recognition of multiple discrimination.

In addition, based on a literature review, it appears that the number of cases which would constitute multiple discrimination include at least one of the grounds of the proposed Directive, and relate to one of the sectors covered by the proposed Directive would not be significant. Overall cost savings would therefore not be expected to be significant.

Public service providers could also be affected in their function as courts or equality bodies. However, much of the data required for calculating the costs for the parties to proceedings would also be needed to calculate the costs of authorities. Since this information was not obtainable a cost/benefit assessment could not be carried out. Moreover, since such cases can relate to civil litigation or will result in costs being paid by the parties, the impact on judicial authorities can be expected to be lower.

## **Chapter 2 – Determination of ground/sector-specific compliance costs and benefits in relation to ending discrimination based on disability, age, and sexual orientation**

### **Key findings**

- The notion of disability is not explicitly defined in the proposed Directive but a minimum common definition is contained in the UNCRPD.
- The proposed Directive provides a number of factors to be taken into account when assessing reasonable accommodation and disproportionate burden.
- It has been assumed that ‘anticipation’ would require the existence of detailed standards on facilities (e.g. building accessibility) and/or procedures (e.g. being flexible with the rules to accommodate a person with a guide dog).
- Approaches taken in several countries such as the USA and Australia were used to determine possible unit costs of change.
- Two main scenarios have been considered with regard to residential housing: the ‘ad-hoc/reasonable accommodation’ scenario and the ‘anticipatory’ scenario.
- Non-physical infrastructure adjustments, e.g. to websites, have also been assessed.

- In determining costs for living in the community, it has been assumed that this would be the preference of all persons with disabilities.
- The main cost categories associated with transition from institutional to community living have been identified as follows:
  - set-up costs of community services;
  - costs of running institutions while community service systems are being developed; and
  - costs of living in a community versus an institution which depend on the severity of the disability.
- A range of benefits to organisations have been taken into account, e.g. knock-on effects on employment numbers, reduction in health costs and welfare budgets.

The following sections describe in detail the methodological approach to determining sector specific compliance costs. In broad terms, this has entailed examining or determining the following matters:

- Legal issues which may limit or affect implementation obligations;
- Method of service provision and resulting nature of changes;
- Number of organisations having to make changes; and
- Possible unit costs of changes.

Firstly, it's necessary to understand how services are provided as this will be the primary determinant of how discrimination occurs and how it needs to be resolved. In this sense, the way the good or service is delivered (face-to-face, remotely, internet) and/or the location where this occurs (remotely; at business premises/home deliveries) is of primary interest.

Secondly, it is necessary to understand the nature of the changes that are likely to be needed. These can broadly be split between those changes to an organisations infrastructure which entail hard costs e.g. capital expenditure on buildings/equipment, and those entailing a change to the way an organisation operates or provides a service. These entail soft costs such as changes to policies and procedures.

Thirdly, it is necessary to understand, how many organisations are likely to need to make the different types of changes. This will be determined not only by the number of organisation delivering in a certain way but also the extent to which there services are already accessible.

Finally, it is necessary to determine detailed per unit costs, to the extent possible, or where sufficient data isn't available, to develop proxies.

With this information, a detailed assessment methodology can be established and used to determine potential costs (or at least orders of magnitude) in the five Member States covered by this study.

## I - Legal considerations regarding anticipatory measures

Several important concepts are established in the proposed Directive with respect to equal treatment of persons with disabilities. In particular, access to services should be achieved through the implementation of possibly limited anticipatory measures. In addition, service providers may, on a case by case basis, need to provide reasonable accommodation where this would not impose a disproportionate burden.

Both these conditions can have an important impact on the types of actions that SMEs and public service providers must take as well as the extent and frequency of those actions. They must therefore be taken into account in any costing model. However, these concepts are **not defined** in the proposed Directive and their exact impact on implementation is difficult to predict.

With respect to effective access through anticipatory measures, SMEs and public authorities need to make appropriate adjustments in anticipation of what persons with disabilities will require in order to access the offered services. This means that service providers should make adaptations regardless of existing staff or customer base, providing of course that such changes do not pose a disproportionate burden, require a fundamental alteration to the service or require the provision of alternatives thereto (Article 4 of the proposed Directive).

This requires a knowledge of the different types of disabilities and what this means in terms of providing equal treatment. In terms of accessibility, it is assumed that this will require some form of audit of procedures or premises etc. in order to ensure effective implementation.

For something to be anticipated, our **assumption** is that it must be both reasonably easy to predict and likely to happen. We are also assuming that these notions will be based on evidence, such as previous experience, expert advice or literature. Moreover, the anticipatory action should be tailored to the objective it sets out to address. The needs of those with the most prevalent mobility (ambulatory/wheelchair) and sensory (sight and hearing impaired) disabilities appear to be relatively **easy to predict**. In addition, action taken for one customer will also benefit another – the provider will not have to devise a different service delivery for each and every situation.

Even where the probability of a person with a mobility/sensory disability requesting a good or service is relatively high, it is still not clear how far a goods or service provider should go to adjust their services, particularly given the mitigations mentioned above. As has been described in the literature review (see Chapters 4, 5 and 6 in Part I), a number of countries such as the U.S. and Australia, which have a strong track record with respect to disability equality legislation, have deemed it necessary to establish **national standards** to ensure necessary anticipatory adjustments are carried out. Moreover, the UNCRPD (Article 9) clearly requires contracting States to establish standards and guidelines with respect to accessibility of public services and facilities.

**Box 17: Anticipation and the need for standardisation**

The proposed Directive (Article 4(2)) appears to recognise the linkage between disproportionate burden and national standards when it states:

‘The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.’

In view of best practice and the need to interpret the proposed Directive in light of the UNCRPD and for the purposes of this study, it has been assumed that ‘anticipation’ would require that national standards on facilities (e.g. building accessibility) and/or procedures (e.g. being flexible with the rules to accommodate a person with a guide dog) would need to be in place. These standards, whether voluntary or mandatory, would help outline what is expected of providers and help achieve legal certainty. However, as goods and service providers would be able to rely on disproportionate burden to limit their liability, it is assumed that such standards would be formulated only for those circumstances in which the overall economy/society wide benefits of accommodation would exceed the costs.

The effect of this approach is to assume that certain actions will have to be carried out by all goods and service providers that are covered by the standards, irrespective of whether they have contact with persons with disabilities or not.

However, more heterogeneous forms of disability such as mental health problems and intellectual disability are less easy to anticipate and these are not expected to be subject to wide national standards for equal treatment measures. Rather, these are likely to be accommodated on a case-by-case basis.

**II - Legal considerations regarding reasonable accommodation**

In addition to anticipatory measures, organisations must accommodate persons with disabilities but need do so only to the extent that it is deemed reasonable. Reasonable accommodation is a central concept to understand how service providers will have to adapt their services to take account of the needs of persons with disabilities. However, the proposed Directive does not provide a definition of reasonable accommodation; rather it provides factors to be taken into account:

- The size and resources of the organisation;
- Its nature;
- The estimated cost;
- The life cycle of the goods and services;
- The possible benefits of increased access for persons with disabilities;
- The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.



It is thus difficult to predict exactly what service providers will have to change and the costs those changes might incur. The criteria in the proposed Directive are **not defined** in detail and are applied to individual cases not in general terms.

For the purposes of this study, these criteria have been used, along with national case law relating to the Employment Equality Directive<sup>160</sup>, to help determine whether and to what extent different sectors may have to act.

For example, the size, resources and nature of the organisation has been taken into account when determining whether additional services should be provided. Here, SMEs providing goods and services are generally assumed to only have to adapt their **premises**. However, certain service providers are assumed to have to also adapt their **websites** as much of their business is obtained through that medium. Equally, public authorities/judiciary are assumed to have to make changes to both infrastructure and websites due to their resources and the fundamental nature of their services.

A brief outline is provided below of the criteria that must be taken into account when assessing whether any measures to prevent discrimination would impose a disproportionate burden.

## **1. Public funding to allow for reasonable accommodation in relation to size and resources of SMEs and public service providers**

It is assumed that a lower burden is more likely to be placed on SMEs compared with large companies and the public sector and that their **revenue (or resources)** should play a part in the decision. As mentioned above, an SME may be expected to make his premises accessible but once he does so he may not be expected to also make his website accessible. A larger organisation could be expected to take both measures.

It is worth noting that within this decision, an organisations access to public funding could influence a Court's decision on whether that organisation should carry out certain adjustments. The possibility of obtaining **public funding** or any other assistance is referred to in the Employment Directive (Recital 21) and this approach has been applied both by the ECJ and the Member States. Of the five Member States selected for this assessment, **Germany, Spain and Sweden** followed this approach through their legislation or case law. The ECJ in **Ring and Skouboe Werge joined cases** ruled on reasonable accommodation for workers with disabilities and pointed out that:

‘Danish law makes it possible to grant public assistance to undertakings for accommodation measures whose purpose is to facilitate the access to the labour market of persons with disabilities, including initiatives aimed at encouraging employers to recruit and maintain in employment persons with disabilities’<sup>161</sup>.

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<sup>160</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>161</sup> Judgment in joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, (ECR [2013] I-0000).

Whilst the proposed Directive does not set out this approach, it is likely that some Member States will require adjustments to be made by SMEs where public funding is available whilst in other Member States this will not be the case. However, for the purposes of this study, such detailed variances were **not taken into account** due to the lack of sufficient data.

## **2. The relationship between the nature of the goods and services provider and reasonable accommodation obligations**

The way that the good or service is provided, in particular how and where the providers conduct their business, influences the degree of the obligation they face under the reasonable accommodation principle. For instance, a provider who simply provides services (e.g. utility, professional) may have to focus on communication materials/methods since they can provide services off site, whilst a goods provider where physical access to premises needs to be provided will need to focus on the infrastructure adjustments.

Corresponding to the previous chapter, indications on how this could be put into practice can be found in the area of **employment**. Here, the reasonableness of the measures can vary depending on the situation of the employer. For instance in **Sweden**, legislative materials accompanying the Discrimination Act include provisions on adaptation measures required of an employer which can be improvements related to physical accessibility, the acquisition of technical support, and changes in work tasks, time schedules or work methods. A similar approach could be foreseen outside the employment arena.

The nature of the good/service is also important with regard to **walkways/thoroughfares** as these are often pre-requisites for the consumption of other goods and services. Regarding the provision of public administration/judiciary, consumption is often not optional. **Germany** has already several legal provisions stipulating that reasonable accommodation should be made to allow disabled persons to communicate with public authorities and in court<sup>162</sup>.

To conclude, while it is very difficult to generalise on how all SMEs and public service providers will have to act based on the above criteria, it is clear that a number of different business types will have to be considered on a **sectoral basis**. Further details are provided in Chapter 1 of Part II.

## **3. Costs and life cycle of measures in relation to the legal obligation to provide reasonable accommodation**

The price of a service, and its frequency can have a large effect on whether a given accommodation is proportionate or not. While it is assumed that SMEs will be able to

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<sup>162</sup>Dr. Matthias Mahlmann, Report on measures to combat discrimination Directives 2000/43/EC and 2000/78/EC, Country Report 2011 **Germany**, p.49. Available at: [http://non-discrimination.net/content/media/2011-DE-Country%20Report%20LN\\_final.pdf](http://non-discrimination.net/content/media/2011-DE-Country%20Report%20LN_final.pdf).

provide access more easily in cases of high cost - low frequency transactions, this still depends on the environment in which the service is provided. For example, in the hypothetical example of a notary providing services to a person with a mobility disability, if the notary's premises are not accessible, he/she could choose to meet that person at other, accessible premises. In this example, compared to the high cost and low frequency of the transaction (e.g. buying a house once say every 20 years), the relative cost of accommodating the person may not be high. On the other hand, accommodating a person with a vision-related disability may require significant effort for a notary in terms of providing accessible material. In any case, the costs and life cycle of a good/service are likely to affect the obligation to provide reasonable accommodation.

The German Court followed this approach in the area of **employment**. Indeed, when the contracts of workers with disabilities' are due to end soon or when it is not sure that the worker will be able to reintegrate into the enterprise, reasonable accommodation need not be provided. The court has stated that *'The burden is deemed to be disproportionate if the measure demands significant financial investment even though the work relationship will end soon because of a fixed-term contract or age limits'*<sup>163</sup>. Moreover, **Sweden** uses *'the expected length of the employment'* as one of the criteria to assess the 'reasonable' character of the accommodation.

Thus, in relation to the proposed Directive, a Court is likely to take into account whether the accommodation is expensive and will only benefit very few people when determining the reasonableness of any action.

#### 4. Possible benefits of increased access for persons with disabilities

Here, it is likely that if the overall possible benefits to individuals/society outweigh the cost to providers, this will work in favour of judging an accommodation as 'reasonable'. For the purposes of this impact assessment, it was therefore assumed that the possible benefits to individuals and/or society would be balanced with the costs of providers when determining or establishing standards on reasonable accommodation.

Both the **Czech Republic** and **Spain** already take into account the extent to which the measure would benefit the person with disabilities in assessing whether a burden is disproportionate. In the **Czech Republic**, *'the extent to which the measure would accommodate the needs of the disabled person'* and *'the adequacy of alternative provision or arrangements to accommodate the needs of the disabled person'* is taken into account. In **Spain**, the judge considers the 'discriminatory effects for disabled persons if the accommodation is not adopted'.

Beyond proportionality, it is necessary to outline what would be expected as a minimum in terms of the provision of services. In this sense, the proposed Directive is considered to be based on the '**social model of disability**' and should be in line with the UNCPRD. A major consequence here is that disabled persons should be **able to participate** in the community according to their preference.

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<sup>163</sup>*Ibid.*

This means, for example, that providing web accessibility for the purposes of e-government or e-commerce is not a **substitute** for providing location/premises-based accessibility. On the contrary, if a business provides physical access to premises, then it is debatable whether or not they would have to provide an accessible website. Doing so could be seen as a disproportionate burden, albeit not for all businesses. However, given the rise in e-commerce, a large on-line retail provider may gain an **unfair advantage** over a shop which has to invest in physical adaptations. Overall, therefore, accessibility must be linked to the means of delivery (See [Chapter 1](#) in Part II.). If a company offers a choice to all customers, then it should also be extended to persons with disabilities where reasonable.

As a result of the EU's accession to the UNCRPD, access and reasonable accommodation must also be interpreted in light of the requirement to facilitate living in the community (Article 19). As such, services that were previously provided in an institution located away from the community, such as in the areas of social or health care, should arguably be provided as close as possible to the community to provide a viable choice to persons with disabilities between an institution and the community. For further discussion on Article 19 of the UNCRPD please see [Chapter 3.IV](#) in Part I.

Overall, these factors will be taken into account when examining each sector to determine whether a particular measure could be anticipated as being necessary or whether the measure should be provided on an ad hoc basis according to individual need.

Having considered the various legal implications, it is necessary to next develop a detailed methodology to assess changes and investments needed to achieve equal treatment for persons with disabilities.

### **III - Specific means of service provision and the impact on costs and benefits of anti-discrimination measures**

There is a wide range of ways in which a good or service can be provided: at premises, to someone's door, via the internet or other media. Making each one of these delivery modes accessible requires different types of investments and on-going costs. These modes are also often linked with the **location** of the service, for example, in a shop or through the internet. For the purposes of this study, the most useful delineation is between services provided in buildings and those provided remotely.

Looking at the range of sectors to be examined with respect to disability discrimination (education, social care, health care, housing, media and other goods and services), the vast majority of these continue to be provided **in buildings** or other similar facilities. For example, most goods and services, with the exception of transport, are provided in a building. This is supported by UK data where it is estimated that sales to the public in a building account for 75% of all sales. The remaining 25 % of sales is covered by the **remote** commercial provision of goods and services such as the internet or through off

premises, by phone and especially through the internet contact and/or internet/phone sales<sup>164</sup>.

### **Box 18: Limitations of the disproportionate burden principle for buildings**

It should also be noted that the focus of literature and national action has not been on making every building or every part of a building accessible. This is widely seen as unrealistic, at least in the short to medium term, and matches the limitation established through the disproportionate burden principle. The focus has rather been on making public-access parts of buildings occupied by goods and service providers accessible. Some studies have considered changes required to an entire building space but these are in the minority.

In the light of the above, the more prevalent approach of examining a proportion of buildings and the space therein is therefore adopted for this IA.

These conditions will have an impact on the provision of reasonable accommodation and therefore also on the costs and benefits for SMEs and public authorities.

The following services are presented more in detail:

#### **1. Public administration, judiciary: service provision on site**

For public administration/judiciary it is assumed that services are consumed on site, despite the availability of e-government and e-learning. This is in line with the right of persons with disabilities to enjoy goods and services in the same way as persons without disabilities.

#### **2. Education – distance learning**

With respect to education, there is little data on the extent of distance learning compared to traditional methods. The **UK**, which is recognised as one of the leaders in distance learning, has a wide provision of courses. Thus for example, of 308 UK Higher Education authorities examined, 113 (37%) were found to offer one or more distance/ online courses. In addition, the Open University (not counted in the above statistics) which is the **UK's** leading provider of distance learning also provides hundreds of courses<sup>165</sup>. Whilst it is unclear how these figures correspond to the proportion of courses provided in the assessed establishments, even a brief look at their courses gives a good indication that distance learning courses represent a small proportion of all courses. This compares also with, for example, **Portugal** where it is estimated that only 3% of all higher education is

<sup>164</sup> In the UK the split for internet: stores sales for persons with disabilities is roughly 25:75. See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31715/10-1126-2012-legacy-for-disabled-people-case-for-the-disabled-customer.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31715/10-1126-2012-legacy-for-disabled-people-case-for-the-disabled-customer.pdf).

<sup>165</sup> D. White, N. Warren, S Faughnan & M. Manton; 'Study of UK Online Learning Final report', March 2010, University of Oxford; p. 12, available at: <http://www.jisc.ac.uk/media/documents/projects/UKOnlineLearningStudy-FinalReport-Mar10-FINAL-FORPUB.pdf>.

provided through distance learning (of which 90% is provided by one university)<sup>166</sup>. Moreover, many distance learning courses involve blended learning, which requires some attendance at an establishment. Overall, it is assumed that across the EU, distance learning represents a small percentage of all courses which in turn means that an important aspect of access to education for persons with disabilities will relate to the infrastructure of establishments.

### 3. Location in health care, social care, and media

With respect to health care and social care sectors, given the nature of those services; it can be reasonably assumed that most service provision takes place **in a building/facility**. This contrasts with the media sector, where television, radio and newspapers are clearly **not primarily provided in buildings** (sales of papers etc. are covered under other goods and services).

### 4. Types of measures in relation to the location: hard costs and soft costs

There is broadly speaking a direct correlation between the types of measures that are required and where a service is provided.

#### *Hard costs*

Thus, where the service is provided in a building/ facility, **hard costs** such as upfront capital and recurring maintenance costs relating to accessible buildings and associated equipment such as auxiliary aids, tend to be the primary or first changes required or carried out.

A **UK** survey of organisations found that 'of those respondents with **customer contact** on their premises, the most common type of adjustment or arrangement was to provide wheelchair or disability access to their premises (such as wide aisles, checkouts, automatic doors, ramps etc.). Three quarters of all establishments in this group making any changes had done this<sup>167</sup>.'

This contrasts with those providing services remotely who will probably rather have to adapt their websites.

#### *Soft costs*

Irrespective of the sector examined i.e. education, health, housing etc., a range of adjustments can be envisaged as necessary which can be classed as resulting in **soft costs**. In simple terms, these types of costs are largely related to **changing the way** services are provided e.g. through personal assistance, training, and changing of policies. Also these

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<sup>166</sup> A Hasan and W Laaser, 'Higher Education Distance Learning in **Portugal** – State of the Art and Current Policy Issues'; European Journal of Open, Distance and E-Learning; available at: <http://www.eurodl.org/?article=414>.

<sup>167</sup> N. Meager et al; Costs and Benefits to Service Providers of Making Reasonable Adjustments under Part III of the Disability Discrimination Act; Department for Work and Pensions, p50; available at: <http://campaigns.dwp.gov.uk/asd/asd5/rrep169.pdf>.

costs can be split into upfront costs relating to changing policies and procedures as well as on-going costs of accommodating ad-hoc requests for assistance. The latter can include certain auxiliary aids which help in providing information in a different format (e.g. Braille menus, large print documents) but excludes many other auxiliary aids, such as certain induction loops and better lighting, which are often considered an intrinsic element of building fixtures<sup>168</sup>.

The table below provides a brief overview of some of the key hard and soft costs of providing greater access to goods and services.

**Table 13: Examples of hard and soft costs relating to access to goods and services**

'Hard' Costs	'Soft' Costs
<ul style="list-style-type: none"> <li>• Internet set-up and maintenance;</li> <li>• Building access capital costs and maintenance)</li> <li>• Fixed auxiliary aids (e.g. induction loops in premises)</li> <li>• Temporary equipment (e.g. mobile ramps)</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to policies and procedures (e.g. admission of guide dogs):</li> <li>• Ad hoc service changes (e.g. bringing good to customer)</li> <li>• Training</li> <li>• Certain auxiliary aids (e.g. braille menu)</li> </ul>

Based on the above analysis, disability discrimination is split between assessing changes and costs and benefits relevant to physical infrastructure and then changes and costs relating to non-physical infrastructure.

#### **IV - Methodology for assessing the impact of changes to physical infrastructure**

As mentioned above, to assess the costs and benefits of any changes, it is necessary to determine the number of organisations (SMEs and public service providers) within a sector that may need to make changes. From that figure, only those organisations which actually need to make adjustments should be factored into any calculations.

##### **1. Determine number of SMEs and public authorities having to make changes**

*Estimating how many premises there are in each sector*

In terms of the number of premises which may be affected, there is **insufficient** generic or EU wide data available to determine exactly how many premises may be covered by the proposed Directive and, of those, how many would need to make adjustments. It was therefore necessary to work with estimations.

<sup>168</sup> Building related aids such as lighting and induction loops are considered covered in the building costs.

**Non-residential building stock** was thought to be a starting point for making such an estimate. Based on data collected by the Buildings Performance Institute Europe<sup>169</sup>, non-residential building stock accounts for **25% of the total building stock**, though not all of this would need to be made accessible.

However, estimating or establishing assumptions based on the above information is likely to result in significant errors. As such, for this study, national researchers in the five Member States have identified **country specific information** on non-residential building stock with respect to the various sectors that are being examined. The buildings and sectors covered are provided in the table below:

**Table 14: Types of buildings examined by sector**

Sector*				
<b>Education</b>	Nurseries	Primary Schools	Secondary Schools	Universities
<b>Social care</b>	Care-homes			
<b>Health Care</b>	Hospitals	Clinics	Pharmacies	Other
<b>Other Goods and Services</b>				
<b>Public admin/judiciary</b>	Public administrative buildings	Courts		
<b>HORECA</b>	Hotels (small and large)	Restaurants	Cafes	Bars and Nightclubs
<b>Exercise</b>	Gyms	Swimming Pools		
<b>Entertainment and culture</b>	Cinemas	Theatres	Commercial spectator sports venues	Museums/libraries
<b>Retail</b>	Shops etc.			

*\*As can be seen, physical infrastructure costs are not examined with respect to Media, Social advantages. Calculations for pavements/ thoroughfares are based on a different approach.*

It should also be noted that detailed cost assessments are not made with respect to **professional services** due both to the extremely wide variety of those services and the way those services can be provided. As a result it is questionable whether they have to be provided in the organisation's premises or whether they can instead be provided in a third location. Finally, as many of these services only provide **services to other businesses**, rather than to the general public, it is not possible to identify the number of SMEs which serve the public. Consequently, it is not possible to estimate the number of such service providers for which an assessment should be made nor, therefore, the impact of the proposed Directive on such walk-in and other service providers.

<sup>169</sup> Europe's Buildings Under the Microscope; p8 available at [http://www.bpie.eu/uploads/lib/document/attachment/20/HR\\_EU\\_B\\_under\\_microscope\\_study.pdf](http://www.bpie.eu/uploads/lib/document/attachment/20/HR_EU_B_under_microscope_study.pdf)



*Estimating how many premises are already accessible*

With the above approach, estimates of the number of non-residential and residential premises which could fall under the scope of the proposed Directive in the 5 selected Member States could be established. It is next necessary to estimate how many of those buildings will actually have to be adjusted. The most significant question here is whether the building is already considered to be accessible.

Unfortunately, there are **no statistics** available in the EU on building accessibility despite the fact that most if not all EU countries have detailed accessibility rules in place. Therefore the current level of accessibility has to be estimated with a literature review providing some insight. For example the **Swiss** study by the Eidgenössische Technische Hochschule Zürich assumes general building accessibility of 30%<sup>170</sup>. In contrast, the **Dutch** impact assessment<sup>171</sup> examines both premises and web accessibility from a sectoral point of view, with the typical level of accessibility estimated at between 10 and 60 %. Larger public service buildings are considered to be more accessible than others due to previous legislation requiring access for public elements of administrative buildings over 400m<sup>2</sup>.

In the **UK** study on access to goods and services, 50% of respondents declared that no adjustments were necessary to their business, either because their premises were already accessible or they conducted business off premises<sup>172</sup>. However, this survey may be biased in reflecting only those who have already taken action thus exaggerated the results.

The Australian and US literature explicitly notes that there are no records on how many businesses are accessible and to what extent. However, in the US it is assumed that after 20 years of the Americans with Disability Act, 90 % of public access buildings are accessible (from here referred to as the 'US Study/US RIA')<sup>173</sup>. In **Sweden**, general literature indicates a range of between 10-35 %.

*Baseline estimate*

Thus estimates from these different countries range from 10% to 90%, with a number hovering around the 30-50 % mark. Overall, based on these variable results, we have used a baseline conservative figure of **40 %**. From this starting point, national researchers

<sup>170</sup>Eidgenössische Technische Hochschule Zürich: [http://www.hindernisfrei-bauen.ch/kosten\\_d.php](http://www.hindernisfrei-bauen.ch/kosten_d.php).

<sup>171</sup> Available at:

[http://www.eerstekamer.nl/eu/behandeling/20091104/bijlage\\_impact\\_assessment/f=/viaagyk86uqo.pdf](http://www.eerstekamer.nl/eu/behandeling/20091104/bijlage_impact_assessment/f=/viaagyk86uqo.pdf).

<sup>172</sup> N. Meager et al; Costs and Benefits to Service Providers of Making Reasonable Adjustments under Part III of the Disability Discrimination Act; Department for Work and Pensions, p50; available at: <http://campaigns.dwp.gov.uk/asd/asd5/rrep169.pdf>.

<sup>173</sup> US Department of Justice, Final Regulatory Impact Analysis of the Final Revised Regulations Implementing Titles II and III of the ADA, including Revised Standards for Accessible Design, 2010. Available at: [http://www.ada.gov/regs2010/RIA\\_2010regs/DOJ%20ADA%20Final%20RIA.pdf](http://www.ada.gov/regs2010/RIA_2010regs/DOJ%20ADA%20Final%20RIA.pdf).

have sought to identify country specific data on accessibility. It should be noted that the **Swiss, US, UK** and **Australian** figures assume that accessibility of 'public access' buildings may require many types of **auxiliary equipment aids**. For example an accessible theatre or shop etc. should have the means to communicate with persons with sensory difficulties. These costs are built into the building access standards of these countries.

Finally, based on evidence from **Sweden** that non-residential stock is renewed on average every 100 years, it is assumed that there will be natural increase in accessibility of buildings (outside implementation of the proposed Directive) of 1 % per year (100 % taking 100 years).

No **EU** wide figures have been identified for accessibility of **paving** and **street crossings**. However, given that there is little literature focusing on the lack of accessible pavements, it is assumed that the situation is not worse than accessible houses. For the purposes of this study, the literature on buildings has therefore been relied on to provide a conservative baseline estimate of 40% accessibility. National researchers subsequently sought country specific data through both literature reviews and interviews. Finally, as with buildings a 1% per year increase in accessibility is assumed outside of any measure taken on accessibility.

The table below indicates the percentage of accessible buildings in each of the five Member States:

**Table 15: Accessibility estimates based on national research**

Member State	Rate	Explanation
<b>Czech Republic</b>	50%	Info from National Council of Persons with Disabilities (Národní rada osob se zdravotním postižením), within 10-15 years will be 90%
<b>Germany</b>	40%	No additional information found – baseline estimate used
<b>Romania</b>	40%	No additional information found – baseline estimate used
<b>Spain</b>	51%	Estimate established on basis of data in the 'Survey on Disabilities, Personal Autonomy and Dependence Situations, 2008.'. The study estimates that persons with disabilities older than 6 years who have no difficulty in getting about on the street amount to 1,928,500 persons (i.e. 50.9% of persons with disabilities older than 6 years of age). Whilst it is recognised that there isn't necessarily an exact correlation, this figure is taken as a proxy for the percentage of pavements already accessible.
<b>Sweden</b>	40%	No additional information found – baseline estimate used

## 2. Determine possible unit costs of changes: define adjustments needed

For business premises, the main possible adjustment costs relate to accommodating mobility-related disabilities such as carrying out adjustments to external electronic doors, ramps, toilets, and lifts. This assumption is supported by research carried out by the Australian, **Netherlands**, Swiss and **UK** governments.

## UK example

For example, the **UK** examined what reasonable adjustments had been carried out by goods and services providers to meet their obligations under the **UK Disability Discrimination Act**. In particular, it found that with respect to providers having contact with customers in their premises, the following adjustments were made:

**Table 16: Types of adjustments made by providers having contact with customers in the UK**

Adjustment (on premises contact)	Yes %	No %	Don't know %	Unweighted; N=
Wheelchair or disability access	75	25	0	463
Specific kinds of assistance	56	44	0	463
Accessible toilets for disabled people	53	46	1	463
Dedicated parking facilities	38	62	0	463
Dedicated staff	35	65	0	462
Home delivery service	30	70	0	462
Bells, buzzers or flashing lights	23	77	0	463
Improved lighting or colour contrast lighting	21	76	3	463
Hoists, lifts or evacuation chairs	13	64	23*	463
Tactile signs	9	91	0	463
Induction loops	6	94	0	463

\* Includes those respondents (22%) for whom this adjustment was not applicable (e.g. because their premises consisted only of a single story building); percentages are row percentages

## The Dutch example

The Dutch government looked at a similar range of adjustments which they anticipated would be required to comply with the proposed Directive. Those adjustments are based on a variety of costs – some hard and soft, premises based and internet based.

**Table 17: Adjustments to be made under the proposed Directive – Dutch impact assessment estimate**

Type of facility	Adjustment Amount in €
Hoist, lift or evacuation chair	22,892
Handicapped Toilet	25,000
Wheelchair accessibility	2,571
Contrast colour or better lighting	1,712
Bells, buzzers and flashing lights	1,592
Braille / contrast signs	1,179
Telecoil (Loop)	743
Handicapped parking	388
Accessible website	1,155
Documents in Braille or large print	74

## Adjustments

Based on the approach taken in these assessments and the range of changes that were either required to be made or believed would be needed, costs have been estimated for making the following adjustments in the five Member States (see [Chapter 3](#) of Part II on Results):

- New disabled toilet;
- Disabled toilet (in existing WC);
- Lift;
- Evacuation chair;
- Small ramp;
- Large ramp;
- External/chair lift;
- Door widen;
- Contrast colour/better lighting;
- Bells, buzzers, flashing lights;
- Braille, contrast signs;
- Website access (assessed with respect to non-physical infrastructure changes);
- Tele-coil/ loop;
- Disabled parking;
- Braille/large print docs (assessed with respect to non-physical infrastructure changes);
- Guidelines (assessed with respect to non-physical infrastructure changes).

### 3. Determination of unit costs: the nature of the business

Not only the number and nature of the adjustment will affect costs but also their relation to the nature of the business. For example, bars and restaurants require accessible toilets while retail stores usually do not. It is likely that most walk-in stores and bars etc. would not need lifts. Other walk-in service premises (e.g. hairdressers) may also need to provide a toilet. Some businesses could **easily change** how they serve customers and therefore would not have to make any changes at all (e.g. in the case of certain professional services where customer visits are low frequency, high payment). Overall, the Dutch, US and Australian studies have provided the most useful data on how adjustments will vary by sector. These studies have therefore been used as a proxy for adjustments in this study.

Finally, the **EU's 2011 Regulation on Construction Products** indicates that buildings should be designed with regard to the needs of persons with disabilities. Therefore it can be assumed that there will be no new training requirements as a result of the proposed Directive on architects and building industry of adopting or devising accessibility standards. Nor will there be any additional costs for building equipment manufacturers.

#### 4. Methodology for assessing the impact of changes to physical infrastructure – residential premises

##### Determine number of organisations having to make changes

*Estimating how many premises there are in each sector*

Similar to non-residential premises, there is no reliable EU wide data on the private housing stock<sup>174</sup>. As such, national researchers have identified **country specific data** on the residential housing stock in their respective Member States.

*Estimate how many premises are accessible*

There is no clear data on residential housing accessibility across the Member States. Research carried out by national researchers provided some statistics which could be used to estimate an accessibility rate. For example, according to the Spanish report and based on data from the 'Survey of Disabilities, Personal Autonomy and Dependence Situations, 2008', around 51% of persons with disabilities over the age of 6 years had no difficulty in coping in their dwelling. Based on that data, assuming 1 person with disability in each dwelling and taking into account a number of variables, it was estimated for **Spain** that around 8% of the residential housing stock is accessible.

This figure is broadly comparable with estimates for **Sweden** which put accessible residential housing at 10%. In **Germany**, however, the Bundesverband Freier Immobilien (Association for Independent Real Estate) has estimated that only about 1% of the 39 million homes are geared to the special needs of older people<sup>175</sup>. Finally, the **UK** has carried out various surveys and also keeps local registers of accessible housing (primarily public sector housing). For the **UK** it has been estimated, based on a **UK Household Survey**<sup>176</sup>, that around 5% of homes possess all four key features of an accessible home with 26% having none of those features<sup>177</sup>.

Given this wide variance in estimates, variables within those estimates and apparent satisfaction rates, for the purposes of this study, a single **10% accessibility rate** is assumed for all five Member States examined.

##### Determine possible unit costs of changes

<sup>174</sup> It was not possible to disaggregate data based on whether houses are owned/ rented/ sold by individuals, SMEs or larger organisations.

<sup>175</sup> Accessible through: <http://archive-de.com/page/120745/2012-07-15/http://barrierefrei.de/information/bwf-studie-sieht-grossen-nachholbedarf-nur-ein-prozent-altersgerechte-wohnungen-deutschl>.

<sup>176</sup> English Housing Survey, Households 2010-11; available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6739/2173283.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6739/2173283.pdf).

<sup>177</sup> Disability in the United Kingdom 2012: Facts and Figures, Papworth Trust accessible at: [http://www.papworth.org.uk/downloads/disabilityintheunitedkingdom2012\\_120910112857.pdf](http://www.papworth.org.uk/downloads/disabilityintheunitedkingdom2012_120910112857.pdf).

Housing is explicitly included in the proposal, to the extent that it is made available to the public i.e. private housing which is for sale or rent. However, for a number of reasons, a different approach is taken to assessing necessary and proportionate adjustments in this sector compared with non-residential premises.

It particular, based on information collected by national researchers, it is notable that:

- A typical person on average only changes home approximately every 20 years (i.e. 5 % of households; however this can vary considerably by country);
- There is a very large number of residential premises (around 200 million in the EU); and
- Most house renters/sellers, with the exception of property developers and agents, are not strictly businesses (though private sales and rentals are treated as commercial transactions in the proposed Directive).

These factors are directly relevant to the assessment of proportionality that each proposed Directive must undergo as well as to the assessment of proportionality established within the proposed Directive. Thus, there is likely to be a lower proportionality threshold with respect to private individuals (acting in a commercial capacity) compared with businesses. However, given the lack of data differentiating private, SME and sales by large enterprises, this element has not been included in the analysis.

Given these concerns, a wider examination has been carried out of approaches taken in other countries. This research has shown that jurisdictions which have introduced anti-discrimination legislation have treated housing in a separate law or have not treated it all (e.g. USA, Australia), have lower requirements for public access premises (e.g. England and Wales) or exempt many housing units below a certain size (e.g. Switzerland).

Where studies have not treated housing differently, large potential costs are shown to arise, as indicated in **Sweden** in 2010 where making every residence (with the exception of single family homes) fully accessible could amount to 300 billion SEK (approximately 35 billion euros) over 20 years. In view of such potential costs and given the proportion of persons with disabilities, the proportion of those who are in need of accessibility adjustments, and the frequency that persons change homes (this frequency being likely to be lower for persons with disabilities), it is assumed that requirements on landlords and sellers of property will be lower than for other goods and services providers.

Based on the combination of the information above and the proportionality limitations in the proposed Directive, it is assumed that, as in the **UK**, adjustments would not be mandatory with respect to physical infrastructure. However, other forms of adjustments such as mobile accessibility aids (evacuation chair, small ramp) and rental/sales information would have to be provided in braille/large print, would be covered.

In addition, landlords and sellers of homes would have to familiarise themselves with new legal requirements and commission a system audit. This improved physical accessibility should result in access time savings for people with ambulatory disabilities.

#### **Ad hoc adaptation versus anticipation in housing**

It should also be noted that since most homeowners do not sell/lease their home on a regular basis and most persons with disability will not be frequently moving house, it is debatable whether these accommodations should be made on an ad hoc or in an anticipatory manner. On the one hand, whilst an ad hoc system is relatively efficient, it may either lead to further discrimination, for example because landlords or home sellers may try to avoid renting or selling to persons with disabilities or it may be less effective generally. On the other hand, an anticipatory system should be more effective but could be regarded as very inefficient as a lot of housing will need to be adjusted but may never be used by persons with disabilities.

As the proposed Directive does not specify what approach to take, the two main scenarios considered with regard to residential housing are:

- **The 'ad-hoc/ reasonable accommodation' scenario:** only flats/houses offered for rent or sale to persons with disabilities would be subject to the requirements arising from the proposed Directive; and
- **The 'anticipatory' scenario:** i.e. requirements would apply to all houses/flats offered for rent or sale.

It has been assumed that all public and private hospitals, GPs/doctors and clinics, as well as care homes are accessible to people with the most **common disabilities**. This is based on impact assessments and other literature sources discussed in Chapters 4, 5 and 6 in Part I. It has also been assumed that many 'walk-in' facilities, such as pharmacies and opticians, are often located on the 'high street' with other commercial establishments, and have therefore been covered in the analysis for the retail sector.

Therefore, this study has examined the accessibility of **other healthcare facilities**, such as dental practices, that are used by a substantial proportion of the population. The following information items were considered in the calculations:

- Number of dental practices;
- Number of patient visits per annum;
- Estimated proportion of patients that have a disability; and
- Proportion of establishments that are already accessible (default value 40%<sup>178</sup>).

## 5. Methodology for assessing impact of non-physical infrastructure changes

In addition to assessing the costs of adjusting the infrastructure of premises, a range of non-physical infrastructure adjustments will have to be made and have therefore been assessed in this impact assessment.

Firstly, a large proportion of non-infrastructure changes are in fact generic to all sectors and grounds of disabilities. The primary measures that are required in this regard are:

- Familiarisation with the new requirements;
- Legal and system audits;

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<sup>178</sup> Arrived at when comparing the different approaches taken by the Swiss, Australian, Swedish and US approaches discussed in Section 1.4.

- Complaints handling;
- Staff training.

Since, these changes are of a generic nature, the detailed explanation on assessment methodology is provided in Chapter 1 in Part II.

## 6. Costs related to certification procedures

Furthermore, in order to **monitor compliance** some form of certification of procedures is normally put in place. It is assumed this will be necessary for the education, public administration and judiciary, public thoroughfares, HORECA, Commercial sports, entertainment and retail sectors.

## 7. Costs related to measures which ensure accessibility of websites in relevant sectors

In some sectors, the websites of **SMEs** tend to be an integral aspect of the services provided. As such, it has been assumed that these websites would also have to be made accessible. The areas covered are:

- Hotels;
- Gyms;
- Swimming pools;
- Cinemas;
- Theatres;
- Stadiums;
- Museums/Libraries.

In terms of assessing the costs Of ensuring a website is accessible, the Commission's proposed Accessibility Directive from 2012 provides a useful starting point as it requires all 'public' websites to be accessible. The Commission established an average set up cost of €18,000 and on-going costs of roughly €3,000 per year<sup>179</sup> and assumed that most businesses and public sector bodies would have a website (the cost varies by country according to labour costs). However, the Commission did not give separate costs for SMEs, which should be **much lower**. A **UK** study from 2002<sup>180</sup> put annual on-going website maintenance at just over £1,000 (approximately €1,600 in 2002). The Dutch impact

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<sup>179</sup> Accessibility Impacts, 'Study on Economic Assessment for Improving eAccessibility Services and Products', 2009. This study also presents a number of scenarios on what would be the benefits and costs of greater eAccessibility if usage increased. In this study these scenarios are not examined as it is assumed that the general population – including PwD – will continue to procure goods and services as they do now e.g. mostly at premises and through face-to-face contact.

<sup>180</sup>UK Department of Work & Pensions, "Costs and benefits to service providers of making reasonable adjustments under Part III of the Disability Discrimination Act", 2002.<http://research.dwp.gov.uk/asd/asd5/rrep169.pdf>.



assessment of 2009 put it at circa €1,100 per website (without referring to capital and operational costs)<sup>181</sup>.

Given these diverse positions, and the fact that costs for developing websites tend to reduce over time, this study has used the Dutch impact assessment to provide the **baseline cost**. This has then been updated for each Member State to reflect current prices.

## **8. Costs related to the provision of educational materials to persons with disabilities**

With respect to education, the Dutch impact assessment has been relied on to identify additional measures that could be required. In that study, beyond the measures already referred to, the provision of educational materials in different formats to persons with **sensory impairments** and **special accommodations during exams** have both been taken into account. These have also been assessed in this study based on the Dutch costing and adjusted to the relevant Member State's prices using OECD conversion tables.

## **9. Non-physical infrastructure changes to allow for living in the community**

Beyond physical accessibility, the study also assessed the impacts of ensuring people with disabilities are able to live in the community in line with Article 19 of the UNCRPD. The content, assumptions and methodology for estimating these impacts are further explained in [Chapter 2.IV](#) in Part II.

## **10. Non-physical infrastructure changes in the media sector: concentration on subtitling in television broadcasting**

Whilst the provision of goods and services, not their design or manufacture, has been assessed, a differentiation between physical and non-physical infrastructure changes was not possible in the media sector as the two cannot be separated.

Furthermore, where accessibility for customers is dependent on ICT assistive technologies, this type of media was considered beyond the scope of this study. This included measures to assist hearing impaired persons enjoying radio broadcasts (Induction loops can be used by some people and there have been attempts to develop a captioning system for radio).

In addition, where measures to accommodate persons with disabilities would entail a fundamental alteration to a service, that media type has not been assessed. This covers in particular print media.

Through this approach, the key media sector analysed has been television broadcasting. Here, subtitling has been assessed as it is by far the most common form of providing accessibility in this area. In order to determine the potential costs of providing subtitling,

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<sup>181</sup> Furthermore, in Australia the company offering ticketing services for the Sydney Olympics of 2000 made its website accessible for AUS\$29,000 (circa €25,000). It is hard to imagine a small business having a website the size of the Olympics booking website. The Commission's website also mentions the accessible Tesco website which was developed at a cost of £35,000.

the number of broadcasters in each Member State and the number of broadcasts which are already subtitled was first identified.

#### *Non-specific obligation*

At this point, the extent of the obligation to subtitle had to be established. It would have been possible to assess the costs of requiring all broadcasts to be captioned. However, when considering that the unit cost estimate of providing captioning is around €300 per hour<sup>182</sup>, it could be seen that to subtitle all broadcasts would be extremely expensive. In view of the non-specific obligations established in the proposed Directive and its proportionality exemptions, it was considered that 100% captioning would not be required.

Two approaches are currently used in this field. Firstly, not all broadcasters have to provide subtitles and secondly of those that do, only a proportion of their broadcasts must be subtitled. For example in Australia, for terrestrial programming, 55 % of all programmes (both analogue and digital) between 6am and midnight had to be captioned pre-2006, with this increasing to 70 % by December 2007. For subscription television, there was an initial agreement in 2004 for at least 20 channels to provide closed captioning and then a further 20 channels commenced captioning within 2 years of the start of captioning (this happened in October 2004). The channels were required to caption 5 % of output with a 5 % increment each year<sup>183</sup>.

#### *Scenarios*

In view of the significant cost implications and existing approaches, two scenarios have been assessed. In the first one, costs have been calculated where all identified channels in the relevant Member State must provide all broadcasts with subtitles (taking into account an assumed captioning rate of 5 % already).

In the second scenario, it is assumed that only **4 broadcasters** are required to provide subtitles. Data on the extent to which the main broadcasters already provide captioning was then collected by national researchers. Where no data was available, a 50 % rate was applied. These assumptions are based on the evidence that official figures<sup>184</sup> suggest that a significant proportion of programming is subtitled, while it appears that this only applies to the major public and private broadcasters. The table below indicates the subtitling rates in the five Member States:

**Table 18: Subtitling rates**

Czech Republic	Germany	Romania	Spain	Sweden
46%	50%	50%	40%	25%

<sup>182</sup> Ofcom, Media Literacy Audit: Report on media literacy of disabled people. Available here: <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/disabled.pdf>

<sup>183</sup> See page 237 of MeAC - Measuring Progress of eAccessibility in Europe Policy Inventory, 2007.

<sup>184</sup> See: <http://www.eaccessibility-monitoring.eu/researchResult.aspx>

Ultimately costs were calculated based on broadcasts being carried out 24 hours a day, 7 days a week (except in **Sweden** where national research indicated that on average 18 hours are broadcast). To this was added average annual indirect costs (staff, capital and costs of capacity) based on the **UK** Regulatory impact assessment updated to 2013 prices.

Finally with respect to professional services, detailed cost assessments are not made due both to the extremely wide variety of those services and the way those services can be provided.

## **V - Methodology for assessing impact of changeover from living in an institution to living in a community**

### **1. Legal considerations**

Beyond physical accessibility, this study has assessed the costs to SMEs and public service providers associated with enabling persons with disabilities to live independently and be included in the community (Article 19 UNCRPD). The assessment of costs and benefits to individuals and society has not been part of this study.

According to the European Network on Independent Living (ANED) and the DECLOC study there are **1.2 million people**<sup>185</sup> with disabilities in institutions in the European Union. About 25% of the residents have intellectual disabilities; the next most represented group is people with mental health problems. According to the European Commission, in many EU countries, expenditure on institutional care, in 2009, was still higher than expenditure on community care for people who need support because of a disability<sup>186</sup>.

This section first explains the rationale behind exploring the costs of independent living in the context of the proposed Directive. In doing so, the analysis explores links between the proposed Directive and the obligations stemming from the ratification of the UNCRPD. Next, a legal analysis of the article is provided, with the objective of shedding some light on the possible implications and associated costs and benefits of implementation.

#### *Link between the proposed Directive and Article 19 of the UNCRPD*

This article requires that all parties to the UNCRPD ensure that persons with disabilities have the right to choose to live in a community. Their choice should not be restricted to a 'non-choice' of living in an institution (defined as a medical facility with more than 30 places, where 80 % or more of the residents have a disability).

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<sup>185</sup> DECLOC main report, p, 25

<sup>186</sup> EC Directorate for Employment, Social Affairs and Equal Opportunities (2009) 'Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care', p. 10

### Box 19: UNCRPD Article 19 – “Living independently and being included in the community

‘States Parties’ to this Convention recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs".

In the EU, there is a broad agreement at the political level and in the society that the inability of persons with disabilities to choose where and how to live constitutes discrimination. Much work has been done in this area describing the conditions of living in an institution versus living independently or in a community. This work has highlighted the benefits of independent living mostly for individuals and the society, such as choice and control over one’s living place and care arrangements. Some of this work has been highlighted in [Chapter 5.II](#) in Part I of this study, discussing work done in the EU by ENIL, ESN, FRA among others.

Living in an institution is characterised by the restriction of personal choices through one or more features of the so-called ‘institutional culture’ (e.g. ‘depersonalisation’, rigidity of routine, en masse/block treatment, social distance, paternalism)<sup>187</sup>. Living in a community is a superior option from a rights perspective. If **properly managed**<sup>188</sup>, it can

<sup>187</sup> As defined in EC Directorate for Employment, Social Affairs and Equal Opportunities (2009) ‘Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care’, p. 6.

<sup>188</sup> Proper management and monitoring of the community-based system is a very important concept for the success of living in a community, where addressing multiple needs would need to be coordinated with multiple service providers (e.g. public, voluntary and private service providers). The risk of improper management and monitoring is that, in addition to lower health outcomes, the objective of anti-discrimination is not achieved and the person with the disability remains effectively excluded from the community. Most often, this can result from situations where adequate alternatives are not set up before the closure of institutions; or in cases when the new community arrangement is effectively replicating institutional arrangements but only with a smaller scale; e.g. accommodation in ‘family-style’ apartments, but with the same staff, location and treatment.

bring substantial improvements in quality of life, including superior health outcomes (e.g. shorter and less frequent periods in hospital stay, decreased medication<sup>189</sup>).

As a result of ratification of the UNCRPD (see [Chapter 3.IV](#) in Part I), the EU action, including the proposed Directive must comply with the Convention and be interpreted in light of it<sup>190</sup>. As such, it has been assumed in the study that requiring or incentivising persons with disabilities (in particular those with severe disabilities) to live in institutions (e.g. long stay hospitals) runs contrary to the proposed Directive. Thus, although the proposed Directive does not explicitly require action analogous to Art. 19 of the UNCRPD, it has been assumed that such action is necessary when implementing the proposed Directive.

#### *Legal interpretation regarding compliance with Article 19 of the UNCRPD*

Article 19 is divided into three key parts and the meaning of each of these three concepts is key to understanding **what SMEs and public service providers will need to do to implement the proposed Directive** in this field. The interpretation of Article 19 in the context of this study takes the approach of mapping **minimum conditions** that would be sufficient to be considered compliant with Article 19 and the proposed Directive. As the literature in this area has highlighted (see [Chapter 5.II](#) in Part I) there is a broad range of services that, depending on the type and severity of the disability are necessary and/or complementary to living in the community (e.g. different types of living arrangements; personal care and assistance; accessibility to the built environment<sup>191</sup>; access to education and health; access to community activities). This impact assessment has analysed the possible **cost implications for SMEs and public authorities from the implementation of some of these arrangements**; and does not consider added necessities of persons with rare and/or severe types of disabilities. In this context, the three key parts of Article 19 are interpreted in the following way:

##### a) Meaning of 'choice' in theory

Paragraph a) of Article 19 states that persons with disabilities must have the opportunity to choose their place of residence or the persons they live with. Choice implies that a person can weigh several alternatives e.g. has a meaningful choice. The right to choose to live in a community would imply that Member States should **forbid forced institutionalisation**. This measure has already been taken in the US where the Supreme Court held that 'unjustified' institutionalisation was itself a clear form of discrimination<sup>192</sup>.

<sup>189</sup> European Expert Group on the Transition from Institutional to Community-based Care '*Common European Guidelines on the Transition from Institutional to Community-based care*', November 2012 <http://www.enil.eu/wp-content/uploads/2012/12/Guidelines-11-16-2012-For-dissemination-WEB.pdf>, p. 51.

<sup>190</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, p.2; 5; 7; 13 and 16.

<sup>191</sup> This component of the assessment is considered under the section for access to goods and services for persons with disabilities (Sections 5.1, 6.1, 9.2).

<sup>192</sup> [http://www.europe.ohchr.org/documents/Publications/getting\\_a\\_life.pdf](http://www.europe.ohchr.org/documents/Publications/getting_a_life.pdf) p.75.

**b) Theoretical notions of the meaning of individualised support**

Article 19 states that persons with disabilities must have access to various services<sup>193</sup>. The Council of Europe highlighted in its report, that to have access to a range of services presupposes that such services exist, and are within the reach of each person with disabilities<sup>194</sup>. Paragraph b) of Article 19 gives indications on what types of services are envisaged. To comply with Article 19, services need to include 'in-home, residential and other community support services, including personal assistance'. Another important point of the definition is that these services are provided in the context of the aim to **support inclusion** in the community and **prevent isolation**. These two conditions have significant implication for setting a standard of support which needs to be respected to qualify as 'individualised support services'<sup>195</sup>. For instance, if a person receives support which cannot enable the person to interact with others in the society, even if there is some support, it is not likely to be considered as individualised support according to Article 19 of the UNCRPD<sup>196</sup>.

**c) Meaning of accessible and adapted community services**

Paragraph c) of Article 19 requires community services to be accessible and adapted to persons with disabilities. To access these services, persons with disabilities must be on an '**equal footing**' with non-disabled persons. This means that in terms of access, persons with disabilities should not be disadvantaged as compared to other users. This provision is closely linked to making services available to the public accessible. In addition, services need to be responsive to the needs of people with disabilities which means that it is not only about accessing the service but once the person with disabilities has accessed it, this service must respond to his/her needs as it would with a non-disabled person.

Apart from these three conditions, the UNCRPD does not provide any other information on when implementation of the Convention (and Article 19 in our case) is deemed fulfilled. No threshold or clear action plan has been provided. Furthermore, literature review<sup>197</sup> only provides piecemeal examples on national measures or ideal standards but these are unlikely to be feasible for most countries. At the same time, in practice, it seems that that it is recognised that the **national context** needs to be taken into account when assessing whether a State has complied with this provision. Similarly, countries have the volition to decide the timing and amount of resources they spend on the implementation.

*Interpretation of possible actions required for the implementation of Article 19 of the UNCRPD*

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<sup>193</sup> Commissioner for Human Rights, The right of people with disabilities to live independently and be included in the community, CommDH/Issue Paper(2012)3, p.19.

<sup>194</sup> Commissioner for Human Rights, The right of people with disabilities to live independently and be included in the community, CommDH/Issue Paper(2012)3, p.20.

<sup>195</sup> Commissioner for Human Rights, The right of people with disabilities to live independently and be included in the community, CommDH/Issue Paper(2012)3, p.20.

<sup>196</sup> Commissioner for Human Rights, The right of people with disabilities to live independently and be included in the community, CommDH/Issue Paper(2012)3, p.20.

<sup>197</sup> Council of Europe's documents, guides from civil society and ANED reports.

Based on the above, it has been assumed that, in order to comply with Article 19 of the UNCPRD, there should at least be appropriate **legal instruments** in place that check compliance and act upon violations, and to check if community living provision includes adequate support and services to respond to the needs of the persons with disabilities.

In contrast to living in an institution, literature suggests that living in a community does not entail the provision of a particular type of programme or building, but includes the provision of a flexible **range of tools and services** to enable persons with disabilities to have the protection and support necessary, while maintaining a self-chosen level of independence.

Features of community living include:

- The separation of support and assistance from a particular type of building; the disabled person is able to choose their building of residence freely;
- Persons with a disability have the right to have access to the same range of options as everyone else according to the principle of ‘universal access’, where facilities are designed in a way that disabled people are not disadvantaged as compared to others;
- The disabled person is, as much as possible, in control over the way support services are organised and delivered; and, where people are not able to exercise control over all aspects of their life, arrangements are flexible enough to provide guardianship only for those aspects<sup>198</sup>.

### **Challenges of moving to community living**

#### *Sufficient financial and staff resources*

The main challenge in the transition to community living is ensuring that sufficient financial and staff resources are available to adequately meet the needs of people with disabilities. Models of social care vary considerably across countries with different structures for financing social care arrangements, different approaches to staff training, certification and recruitment of staff, among many other factors. Together, these factors complicate the ability to carry out a cost comparison between countries, one which would account for level of care based on needs or reasonable accommodation. As such, it is challenging to anticipate the costs of providing comparable levels of care.

#### *Adequate costing and sufficient staffing*

The second challenge in the transition to community living is to ensure that the community service is of a sufficient quality and that it is not overly subverted by private out-of-pocket expenses by the disabled person or family, or by private voluntary insurance<sup>199</sup>. To be in line with the UNCPRD, support services need to be adequate as the costs are likely to be too high to be met by individuals or families alone.

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<sup>198</sup> Ibid.

<sup>199</sup> There are four main ways of paying for this; two private and two public: Out of pocket expenses by the disabled person or family; voluntary or private insurance; tax based support, based on need; social insurance, based on need.

**Germany** and **Sweden** are using a system of personal budget or a direct cash payment to the person with disability to an organisation managing the support. Personal budgets and direct cash payments are up-front allocations that persons with disabilities can use to design and purchase services to meet their personal needs. In **Romania**, people with disabilities receive assistance as a service (hours of service) instead of a cash payment or budget. The Details on the approach taken in **Spain** and the **Czech Republic** were not available.

## 2. Key assumptions for the determination of costs and benefits

Whilst the requirement to ensure living in the Community is evident, the level or the extent to which social care services must be provided is not clearly established. In particular, the proportionality and reasonableness requirements of the proposed Directive act to limit obligations. The UNCRPD on its part only requires State action within their resources and only requires action to **facilitate** living in the community. Thus the right has been assumed to be limited on a 'reasonable' basis. However it is assumed that as a minimum, the quality of care provided in the community must **be on a par** with that provided in an institution.

In addition to this, a number of key assumptions have had to be made to carry out the assessment:

- The **size of the institution** is used as **proxy for the notion of 'institutional culture'**. Thus, the larger the institution, the larger the prevalence of the features or components associated with 'institutional culture'. This is a very strong assumption, as it is possible that in some Member States 'institutional culture' can be very dominant, regardless of the size of the institution (e.g. especially in cases where a large institution has been reorganised in a set of smaller units). In other words, 'institutional culture' can dominate even if there are no institutions *per se*, and the physical reorganisation of institutions has only an indirect impact on the quality of care if provides.
- An institution is defined as a facility with more than 30 places, where 80% or more of the residents have a disability. **Smaller institutions and care homes** are considered as a community living arrangement. This has implications in cases where, for example, the typical facility has a number of places slightly below the threshold of 30. Theoretically, in this case the persons with disabilities are living in a community arrangement, while in practice it could be argued that conditions are closer to that of living in an institution.
- It is assumed that the level of care provided in the community will be the same as in the institution. In the context of this study, this means that community services will be **based primarily on need** and will be fulfilled at least to the same extent as in an institution. Literature review and consultations with experts have not clarified how 'same level of care' should be interpreted.
- As such, it has been assumed that persons with disabilities will tend to choose living in a community over living in an institution. In addition all persons with disabilities would eventually choose living in a community as a **superior option**



to living in an institution. It has been assumed that the transition will take 20 years<sup>200</sup>.

The process for determining the costs of choice between living in a community and institution follows the same logic as the process outlined in the previous sections of this Chapter, but is slightly adjusted to reflect the specific considerations. For instance, the costs of choice will depend on the number of individuals affected (e.g. **persons with more severe disabilities**) who will change over from institutional to community care. These costs will occur to the public authorities either at the national, regional or local level, depending on the social care system and competencies specific to the Member State. In the process of the change, two systems will need to function concurrently – institutions can be closed only when all persons with disabilities willing to change over to community living have been provided with appropriate alternatives.

In the **transition period**, while the staffing costs of institutions might decrease, the fixed operational costs will not decrease significantly. Simultaneously, the Member States will have to allocate funding for services required when living in a community. The DECLOC report suggests also that community systems will initially have to receive additional funding until they gradually mature to full capacity<sup>201</sup>. Depending on the administrative structure of the Member State, and on the interpretation of what is considered sufficient to ensure a level of care comparative to the institution, the support might include alteration of living space/restructuring of previous institutions etc. While it is assumed that the majority of persons with disabilities would choose to live in a community, some might choose to remain in an institution. Thus, to some extent, there could be the need for **concurrent systems in the long run**. This has certain cost implications, and is further explained below.

#### *Parallel systems, changeover costs*

Running parallel systems has significant cost implications. Broadly, as mentioned above, these can take the following forms: investments in current institutions need to be continued to ensure a minimum level of standard<sup>202</sup>; operational costs of running institutions remain as long as viable community support systems are set up (and might continue if some people with disabilities remain in institutions); set-up costs for community systems; operational costs for provision of community services.

Regarding investments in current institutions, according to the DECLOC report, in 21<sup>203</sup> EU Member States, State funding (local or regional) supports institutions with more than 30 places; in 16 Member States, state funds support institutions with more than 100

<sup>200</sup> There is wide scope for variation in this regard. It depends on the particular welfare system of a country; on the pace and resources for transformation. It is also recognised, as described in this section above, that Member States have considerable flexibility as to when and how to implement the UNCRPD.

<sup>201</sup> DECLOC main report, p. 10.

<sup>202</sup> This is a cost while running parallel systems, however, this cost would also occur in the absence of transition to community living, therefore it does not constitute a cost stemming from obligations resulting from the implementation of the UNCRPD.

<sup>203</sup> Information was available for 25 Member States.

places. This is done either, because institutions may be dilapidated and need to be refurbished, or because policies run counter to the objectives of the UNCRPD. In the transition period, while the staffing costs of institutions might decrease, the fixed operational costs will not decrease significantly.

For some Member States, the closure of institutions and the establishment of community services would involve changes to legislative and administrative rules (e.g. on financing, security or hygiene) which currently make it more difficult to provide services outside of large institutions. In addition to concurrently bearing the costs of running institutions, the DECLOC report suggests that, whilst community systems mature to their full capacity, additional funding will be needed for institutions (i.e. beyond routine operational costs of community services)<sup>204</sup>.

Given this context, it is assumed that the closure of all institutions will not be feasible in the Member States where this has not already taken place. It is assumed that a certain percentage of institutions will have to remain open to be able to provide very specialized services. In terms of definitions, these facilities might be reorganised or downsized as to not meet the definition of an 'institution' (at least 30 places where 80% of persons have disabilities), but for all effective purposes there will be costs incurred from keeping these facilities operational.

#### *Accessibility and living in the community*

In addition, for people with disabilities, the **ability to live in a community will be closely correlated to accessibility of the surrounding environment**. The costs and benefits of increased accessibility to built environment have been discussed in [Section III](#) of this Chapter. The analysis in this part of the study does not consider accessibility to the built environment because it is already considered elsewhere in the report. It has to be pointed out, however, that in order for Article 19 to be effectively implemented, the built environment in the community has to be accessible to persons with disabilities to enable them to be included and effectively participate in community living.

In the context of this study, because of the way cost areas have been set up and delimited, it is assumed that costs for making the common environment accessible are not included in the initial investment in the new community facilities as part of de-institutionalisation. Alterations to personal space (e.g. house of apartment) is included for the analysis of costs of transition to living in the community, as these will be financed (to some extent) by relevant authorities.

#### **Box 20: Adjusted process for determining costs of implementation of art. 19 of the UNCRPD for any given States Party**

- Determine method of service provision;
- Determine the extent of change necessary to comply with the UNCRPD;

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<sup>204</sup> DECLOC main report, p. 10.

- Determine status quo;
- Determine whether status quo is compliant and whether change is needed;
- Determine number of individuals potentially affected by the change;
- Identify possible unit costs of changes.

*Determine method of service provision*

In this context, the first step was to determine parameters that could be considered as a viable option for living in a community – it has to be affordable (supported) and provide a level of care that is not below that providing when ‘living in an institution’.

*Determine the extent of change necessary to comply with the UNCRPD*

The second step was to determine the resulting nature of change. In the context of the area of independent living, this required an assessment of the current situation in each Member State – the extent of de-institutionalisation achieved to date and the extent to which viable alternatives had been created. The nature of change required to comply with the UNCRPD could vary between countries, and this was acknowledged in our understanding of the nature of obligations that the UNCRPD implies. At the same time, for the purposes of this study, and for purposes of comparability across the five Member States subject of this study, it was assumed that the country was compliant with the UNCRPD if all persons with disabilities had the option to live in the community, while receiving support based on need.

*Determine status quo and whether it is compliant with UNCRPD of whether change is required*

The next step was to compare the status quo of a country with its compliance with the UNCRPD to determine whether there was a gap. This was mainly a qualitative assessment depending on the interpretation of what was regarded as a sufficient level of community care (on par with institutional care), where, as stated above, support was provided according to need.

*Determine number of individuals potentially affected by the change*

The fourth step was to estimate the number of persons with disabilities that were still living in an institution and could potentially choose to live in a community. Depending on data availability, the number of persons with disabilities was aggregated at the national level, or disaggregated depending on the geographical unit (i.e. region, municipality) and the type and level of disability.

*Identify possible unit cost changes*

The final step was to determine the unit cost of service provision in a community versus an institution; and to estimate the difference between living in the community versus living in an institution. These consisted of ‘**soft costs**’ like the provision of care services, and ‘**hard costs**’ like alterations to living space, equipment and fixed auxiliary aids. These costs would vary between groups of persons with disabilities. Two approaches were possible here – either standardising for need similar to the DECLOC approach; or disaggregating costs specific to different groups and levels of disability to the extent

possible<sup>205</sup>. Because of the lack of reliable and comparable data for specific groups of people with disabilities, the DECLOC approach was selected for this study. The resulting estimates should be treated with caution, as a scenario that sheds some light on the range and magnitude of potential costs to SMEs and public authorities.

In addition, this step also took into account the changeover costs consisting mainly of:

- The **fixed costs** of concurrently running institutions (per unit cost times number of institutions). It has been assumed that staff working in existing institutions will be taken on in community care; but additional costs are possible for training and upgrading of skills. It is assumed that costs of implementation will be heavily dependent on the status quo of the particular country. In countries where the process is just starting, the transition is based on a 20 year implementation scenario; while in others, where processes of deinstitutionalization are in a more advanced stage, transition will take less time.
- The **set-up costs** of community support beyond the routine costs of provision of community services<sup>206</sup>. These would mostly be 'soft costs' such as change in regulations and procedures for allocating support; reviewing and monitoring service provision; coordination mechanisms. The calculation depended on how many administrative units would require changes in procedures, and how extensive those changes would be.

Where data were scarce or incomparable (e.g. different metrics, levels of aggregation, classifications of kind and level of disability), data from other Member States were used as a proxy. The DECLOC and ANED studies have been a source for the derivation of a number of proxies. Other, national level studies have been used to refine and verify proxies. For example, a study carried out in **Finland** in 2010 found that for people with intellectual disabilities, community-based care was approximately 7% more expensive than institutional care. It was found that housing and basic care was cheaper in the community, but this advantage was outweighed by the cost of services that had to be obtained outside the housing unit<sup>207</sup>. Depending on the context, a 10% cost differential was eventually used as a proxy in calculations. In the **process of deriving the proxy**, it was assumed that, depending on the disability, community living costs can be higher (considering parallel systems), equal (DECLOC) or lower (ANED) than living in the institution. Even if eventually costs would equalize or be lower<sup>208</sup>, there would be a

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<sup>205</sup> The literature review suggests that living in a community is associated with better personal and health outcomes, which might have a reducing effect on services needed over time. On the other hand, more services might be required as persons with disabilities age. These dynamic changes are not considered here.

<sup>206</sup> DECLOC main report, p. 10

<sup>207</sup> A Case study in European Expert Group on the Transition from Institutional to Community-based Care 'Common European Guidelines on the Transition from Institutional to Community-based care', November 2012 <http://www.enil.eu/wp-content/uploads/2012/12/Guidelines-11-16-2012-For-dissemination-WEB.pdf>, p. 51

<sup>208</sup> Again, it is assumed here that community living can be equally expensive or cheaper if it is possible to close all institutions, meaning that two parallel systems are not required. After review of literature and consulting with experts, it seems clear that the closure of all institutions might not be

period of adjustment, where living in a community would be somewhat more costly than living in an institution, especially where services have to be obtained outside immediate living space (implying certain coordination and adjustment costs). The Finnish study pinpointed the actual level of cost increase this might entail, and a 10% cost differential proxy was selected. However, there were significant limitations to using proxy data for this work. Without a range of reliable cost data from a range of sources, the use of proxy is able only to offer a scenario for the magnitude of costs that might be incurred, rather than a reliable estimate. Some of these constraints and limitations are further discussed in the next section.

### **3. Constraints and limitations to determining costs for community living**

#### *Availability of data and 'comparability'*

As pointed out in the research done by ANED in 2009 and DECLOC in 2007, it is very difficult to provide and interpret meaningful evidence illustrating trends in deinstitutionalisation. A review of European and international sources of data as part of the DECLOC work showed that there are no existing sources that would provide comprehensive data on the following key metrics for this work: number and characteristics of people with disabilities in institutions in the EU; and the number of institutions in the EU<sup>209</sup>. Data sources reviewed included Eurostat<sup>210</sup>, United Nations statistics<sup>211</sup>, the WHO<sup>212</sup>. Reasons for this include: the aggregation of data of all users of residential care and all types of disabilities, missing past data, different interpretations of what counts as an institution (e.g. is sheltered housing and 'family-type' included) among others.

Data on other social care institutions is fragmented and much harder to come by as social care services are provided in a range of facilities and is often the responsibility of regional or local authorities. This has been often cited as a challenge to monitor change and progress regarding deinstitutionalisation. Accurate data are a challenge at the Member State level, and, for the purposes of this work, are a major factor constraining comparability between the five Member States analysed.

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feasible. For example, in the context of the FRA 2012 study, respondents with mental health problems who are currently living in a community, acknowledged that they anticipate the need to have to receive specialized treatment in a psychiatric institution over the course of his life. The essential point here is that even if the services they will require will not be provided in an institution per se; they will most probably need specialised services whose costs are not considered on average for living in the community.

<sup>209</sup>DECLOC main report, p 11.

<sup>210</sup>Provides some information on numbers of psychiatric hospital beds, but no indication whether acute or long-term.

<sup>211</sup>Provides number of people with disabilities, but not on institutions; the DISTAT database (the United Nations Disability Statistics Database) contains country-specific census and survey data (no standardisation). As of 2001, the UN provides Guidelines and Principles for the Development of Disability Statistics, available here: [http://unstats.un.org/unsd/publication/SeriesY/SeriesY\\_10e.pdf](http://unstats.un.org/unsd/publication/SeriesY/SeriesY_10e.pdf), accessed 16 July 2013.

<sup>212</sup>Provides an atlas on mental health and is developing an atlas for intellectual disability.

As highlighted above, because of the lack of reliable and comparable data for specific groups of people with disabilities, the aggregated Member State level data was used, including all types of the most common disabilities for people living in institutions. To the extent possible available data from DECLOC, ANED and national sources was compared to understand the differences and discrepancies between the sources. Finally, the data that was actually used was selected based on the majority of the sources available. For instance, for Germany, the number of persons with disabilities living in an institution was arrived at through exploring the numbers reported by ANED, DECLOC and the Federal Ministry of Health. The Federal Ministry of Health was selected as the source because it was the original source of ANED data (69,000), and the number seemed consistent with data reported in DECLOC (67,6682).

#### *Differences in Member States' social care systems*

The models of social care vary considerably across countries. There are differences in administrative structures and division of responsibilities across multiple levels of governance. These have implications for financing channels and instruments. Other differences include staff recruitment, certification and training, and the monitoring of staff performance. For instance, **Sweden** (along with **Denmark** and Norway) is one of the three European countries which does not have any form of large-scale institutions (with more than 30 places and with 80 % of residents having disabilities). In **Sweden** persons with disabilities can decide of their own volition where and how they want to live, not only by law, but according to NGOs, in practice as well<sup>213</sup>. Also, in **Sweden** persons with disabilities are legally entitled to receive full financial support for necessary personal assistance<sup>214</sup>.

However, the main challenge here is that **Sweden** spends about twice as much on care for the elderly (whilst recognising that this spending is obviously higher than spending focused only on persons with disabilities, a large proportion of elderly people have a disability of some kind) than the next highest country (spending is expressed as a percentage of GDP). Therefore, while it could be termed a 'best' or good practice country from a choice and service point of view, this system could be expensive to emulate. Therefore the elements of the system of Sweden, such as full financial assistance for care support and full control over the selection of support services did not seem realistic to implement in other Member States. In fact, recently concerns about the costs of spending on independent living have been raised in **Sweden**<sup>215</sup>. Likewise, as discussed above, **Sweden** has a unique health and social care structure with no public social care institutions so the model may not be directly comparable to other EU Member States with different set-ups.

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<sup>213</sup> In ESSL foundation 'ESSL Social Index Pilot Study 2010, Situation of Persons with Disabilities' 2010, ESSL p. 17

<sup>214</sup> ESSL p.58.

<sup>215</sup> ANED The Implementation of Policies Supporting Independent Living for Disabled People in Europe: synthesis report, 2009, p. 15.

The differences between social care systems become particularly relevant if there is a need and attempt to use proxy data from other countries.

With respect to the five Member States subject to this study, **Sweden** is the only EU Member State supporting self-directed personal assistance with the use of mainstream services (the person with disability chooses the type of support, including the management of own time, budget, and selection of staff). Essentially, this means that persons with disabilities have close to equal access to the same services as other, fully-abled citizens. **Germany** and **Spain** are currently providing 'twin-track' support, where *'options for self-directed personal assistance for independent living co-exist alongside more traditional service-led and directed options'*, implying partial choice and control over support. Thus, it means that both **Spain** and **Germany** are currently maintaining parallel systems.

This can have certain cost implications. For example, if it is not possible to easily re-allocate resources from one track to the other, this can lead to **duplication of costs**, where both tracks have to have a certain reserve allocated for people with disabilities who choose to switch over. Also, when persons with disabilities are gradually moving away from living in an institution, the fixed costs of operation will not decrease. Staffing costs might decrease, but it is likely that the additional costs for services in the community will be higher than this decrease. Reports from **Spain** and **Germany**, as part of the ANED research in May 2009, state that current budgetary allocations and incentive structures are not able to provide support based on need. This might, however, be due to costs of running parallel systems while dismantling social care systems based on large institutions. In the case of **Germany**, while persons with disabilities are entitled, since 2008, to personal budgets, the report suggests that social care support structures incentivise persons with more complex disabilities to revert to accommodation within large institutions (allotted budgets do not cover their needs)<sup>216</sup>.

In **Romania**, there is also co-existing support, but personal assistance elements (i.e. control over planning and implementation including recruiting staff and managing staff and budget) are not self-directed. In the **Czech Republic**, it is understood that only service-led support is available to live in the community or independently. In practice, it is understood that community arrangements are only available in the capital region. In other areas people with disabilities are restricted in their choice. In effect the only option available in such a situation is 'living in an institution'<sup>217</sup>.

#### 4. Literature findings regarding trends regarding independent living

##### *Severity of disability*

<sup>216</sup> ANED 'Report on the social inclusion and social protection of disabled people in European Countries; **Germany** country study', p. 15

<sup>217</sup> ANED The Implementation of Policies Supporting Independent Living for Disabled People in Europe: synthesis report, 2009, pp. 26-34

According to experts in the area, the cost differences of living in an institution versus living in a community will depend on the severity of the disability. The less severe the disability, the cheaper community living would be in comparison to living in an institution, assuming that support is allocated on the basis of need. It is expected that when very specific services need to be developed in a community for individuals with severe and/or complex disabilities, community living is likely to be more expensive than existing services in specialised institutions. The aforementioned study in **Finland** found a 7 % gap between expenditure in the community and institution for mental care patients. This figure, among other estimates, was used to arrive at a proxy 10% cost differential between institutional and community care. The process of deriving the proxy is explained above in section *Process for determining costs*.

At the same time, according to the DECLOC study that looked at all EU Member States, on average *'there is no evidence that community-based models of care are inherently more costly than institutions, once the comparison is made on the basis of comparable needs of residents and comparable quality of care. Community-based systems of independent and supported living, when properly managed, should deliver better outcomes than institutions'*<sup>218</sup>. The DECLOC approach compared the community versus institutional care by considering three key aspects:

- Differentiating costs after adjusting for differences in the level of disability of residents and therefore their needs for and receipt of services;
- Taking account of the wide range of services and their different levels of quality to understand the influence of particular services on the cost;
- Accounting for the different possible sources of funding, considering costs met by public agencies and by others, such as families and carers for people with disabilities to make sure that the difference of costs of community versus institutional living is not simply shifted away from public authorities<sup>219</sup>.

The DECLOC conclusion has been shared by ANED, ENIL and DG Employment, Social Affairs and Equal Opportunities. The study by ANED in 2009 *The Implementation of Policies Supporting Independent Living for Disabled People in Europe* suggested that it is also possible for community care to be less expensive than institutional care<sup>220</sup>, for example in the case of **Sweden** and **Italy**. According to two studies carried out in **Sweden**<sup>221</sup> (cited in the ANED synopsis report) the introduction of support for independent living through personal assistance has saved the Swedish taxpayers at least 29 billion SEK between 1994 and 2007 (around €3.33 billion). The ANED report on **Italy** estimates that the cost of

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<sup>218</sup> Idem.

<sup>219</sup> DECLOC Main Report, p. 9.

<sup>220</sup> A study by Ward et al 'Costs and consequences of placing children in care' (2008) quoted in the DG Employment, Social Affairs and Equal Opportunities report claimed that the average unit cost for maintaining a child for a week in a residential placement was 4.5 times that of an independent living arrangement, 8 times that of the cost of foster care, 9.5 times that of a placement with family and friends, and more than 12.5 times that of placement with own parents.

<sup>221</sup> Ratzka, A. (2007). *Independent Living for people with disabilities: from patient to citizen and customer*. <http://www.independentliving.org/docs7/ratzka20071022.html>; and Socialstyrelsen (2008) *Personlig assistans enligt LASS ur ett samhällsekonomiskt perspektiv Rapport från Socialstyrelsen (Assistance under LASS from a socio-economic perspective)*.



independent living is about one third of the cost of living in an institution. It was, however, not specified whether allocations cover the needs of people with disabilities, or rather reflect current spending patterns and budget allocation on independent living for people with disabilities, based on historical allocations and political priorities.

Thus, depending on the severity of the disability and the type of disability community care can be less, equally, and more expensive than institutional care; and these factors have to be considered in estimations.

#### *Trends in de-institutionalisation*

According to the work of the Mental Health Economics European Network (MHEEN), in recent years most progress regarding deinstitutionalisation has been achieved in mental health care. This means that proportionally there has been the largest switchover from institutional to community living, as compared to other groups of people with disabilities (e.g. intellectual or physical). However, this trend has been largely limited to Western Europe, where de-institutionalisation is quite advanced. In Central and Eastern Europe, the process is still in its early stages.

The work of MHEEN also points out that in some western European Member States (e.g. **Austria**, England, **Germany** and **Spain**) there are signs of re-institutionalisation – an increase in the number of people with mental health problems in prisons, people admitted involuntarily, and the increase in the numbers of forensic beds<sup>222</sup>. Regarding other types of disabilities, evidence has been difficult to obtain.

Authors of the country reports for the ANED 2009 research suggest that in **Spain** and the **Czech Republic**, the situation has remained static in the 2000-2006 period. For **Spain**, where community living options have been developed, uptake levels are low because of low awareness among the affected persons with disabilities. In the **Czech Republic**, the number of persons with disabilities in residential facilities has remained unchanged between 2000 and 2006. In **Romania**, people with disabilities ‘choose’ to live in residential institutions because viable alternatives for living in the community are not sufficiently developed. In **Germany**, despite support for community living, the number of people registered as living in institutions and applying to live in institutions increased in the 2005-2009 period. The author of the report on **Germany** did not find evidence that could explain this apparently retrograde trend. However, the author of the report on **the Netherlands**, where a similar trend is observed, suggests that it may be a backlash from unanticipated challenges encountered in living in a community and from the fear of being bullied<sup>223</sup>.

Within the context presented in this section, the below table summarises the considerations and assumptions in estimating costs of deinstitutionalisation in each of the five Member States:

<sup>222</sup> Mental Health Economics European Network (MHEEN) ‘MHEEN II Policy Briefing, Economics, mental care and policy: An overview’, January 2008.

<sup>223</sup> ANED, The Implementation of Policies Supporting Independent Living for Disabled People in Europe: synthesis report, 2009, pp. 18-21.

### Box 21: Assumptions in determining costs of implementation of art. 19 of the UNCRPD in the five Member States

#### Changeover costs:

- By the end of the implementation period, **80% of persons with disabilities living in an institution will live in a community; 20% of institutions will remain operational;**
- In a **5 year implementation schedule**, each year 16% of patients transition to community living and 16% of institutions close down;
- In a **20 year implementation schedule**, each year 4% of patients transition to community living and 4% of institutions close down;
- Calculations consider the operational costs that are saved as a result of closing institutions.

#### Per-Patient changeover costs:

- **Per-patient costs for living in the institution** is derived from available literature sources and rely on data for costs in the **UK** and costs in **Spain**;
- Data points from the **UK** and **Spain** are **adjusted for each of the five countries** by taking into account an index for their standard of living from EUROSTAT data (e.g. **Spain** = 100; **Germany** = 124.6; **Czech Republic** = 81.4). This creates a **range of possible per-patient costs of living in an institution** for each of the five Member States;
- The difference in per-patient costs of **living in an institution vs living in a community** is determined through examination of the available literature (DECLOC, ANED and national level reports); living in the community is assumed to be, on average, 10% more costly than living in an institution; and
- The total change-over cost for each of the five Member States is constructed as a range, taking into consideration the **number of persons with disabilities currently living in an institution**, according to data from ANED, DECLOC and other sources.

## VI - Benefits of measures to remove discrimination against persons with disabilities

In addition to assessing the costs to SMEs and public service providers of implementing the proposed Directive, the benefits to these authorities have been taken into account to assess the overall impact of the proposed Directive.

Several different types of benefits with respect to disability equality are often put forward as resulting from greater accessibility. Some are direct in nature and some are indirect. Likewise some can be monetised and some are qualitative. Direct effects can be seen as those which accrue to the disabled person or to the provider providing the access. These, direct effects may include not just the benefit of extra business for the provider but also the value to the person previously discriminated against. Indirect benefits, on the other

hand, may include knock on effects on employment numbers, reduction in health costs and welfare budgets resulting from SMEs and service providers providing greater access. As the purpose of this study is to focus on costs and benefits for SMEs and public service providers (or costs and benefits directly resulting from their actions), direct effects are the main focus.

## **1. Determining the beneficiaries of accessibility**

### **Individual level (outside the scope of this assessment)**

Two important factors have been taken into account when considering the population that would benefit from **adjustments** to improve disability access. Firstly, the target population (persons with disabilities) would benefit from adjustments to varying extents - some disabilities will have limited impact on mobility in any case and adjustments might not be sufficient to benefit those with the most severe disabilities. Supporting this argument, some sources in the **UK** have put forward that only 25 % to 30 % of persons with disabilities (out of circa 20 % of the **UK** disabled persons population) have problems accessing certain services such as transport<sup>224</sup>. Based on that assumption, this would mean that only around 3-5 % of the EU population (assuming 15 % of the EU population is disabled) with a disability would benefit from access adjustments.

However, it must secondly be taken into account that a wider group of persons than those officially deemed to be disabled can also benefit from adjustments. Of those people, the greatest beneficiary population will be those with temporary impairments or reduced mobility not deemed to be disabilities. The use of the term 'persons with reduced mobility' in EU rules on train interoperability is instructive in outlining that the scope of beneficiaries should be interpreted broadly. Moreover, the main EU level disability association (EDF), estimates that 40 % of the European population's mobility is impaired at any given time which would suggest much greater benefits deriving from adjustments. Higher benefit rates are also supported by the Swiss study referenced above which cites that 80 % of the population would benefit from accessibility standards.

Beyond these groups, other persons who are impeded in their mobility e.g. when carrying goods, parents buggies etc., will also derive benefits from adjustments.

Finally, as the number of persons with disabilities may be expected to rise with Europe's ageing population, benefits from greater accessibility will increase over time.

## **2. Determining the nature of the benefits gained**

### *Direct benefits: time gained and extra business from accessibility*

The most detailed approach to determining benefits can be seen in the United States. As described in Chapter 6.I in Part I, in 2010 the US Department of Justice approved substantial changes to its building access standards based on a regulatory analysis which

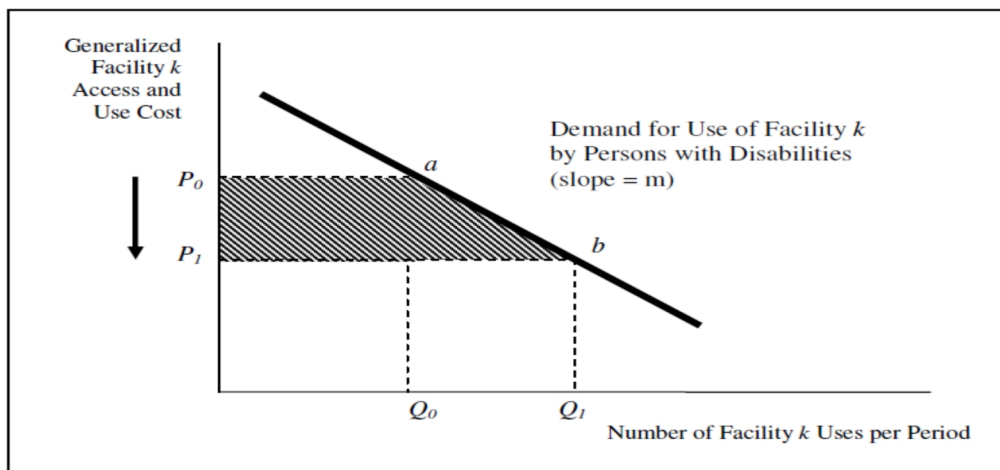
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<sup>224</sup> ANED facts and figures for the United Kingdom. Found at: <http://www.disability-europe.net/content/facts-and-figures>.

found that increased accessibility would save access time and improve the enjoyment of goods and services for persons with mobility and sensory disabilities. This analysis examined the gain in both consumer surplus resulting from the reduction in time taken to access and to get around previously less accessible premises as well as the enjoyment or 'utility' gained e.g. by installing a hearing loop system. Put simply, greater access decreases the amount of time/effort required by persons with disabilities in procuring goods and services, which in turn increases consumption.

The diagram below taken from the study presents the logic behind this approach. As can be seen, greater access results in a lowering of cost from  $P_0$  to  $P_1$ , which in turn leads to greater consumption ( $Q_0$  to  $Q_1$ ) depending of course on whether the average customer responds to a lower price (i.e. how flexible his/her demand is to the increased accessibility, represented by the letter  $m$ ).

**Figure 2: US: "Economic Framework for Estimating Benefits from Changes in Access Time"**



While the study focused on the consumer surplus or benefit to customers and did not outline how providers' profits may increase as a result of greater sales, it also noted that this increased consumption would result in **increased sales** of 0.5 % for vendors (based on 75 million extra 'visits'), without resulting in lost business for others. Also, while the study, which took place over several years across all public access sectors (except transport and private housing), cannot be performed in Europe without extensive fieldwork, the results can be used within the European context.

The nature of the benefits gained will vary according to the type of disability a person has. Thus, in the case of wheelchair/ambulant disability, actual access time is of greatest relevance, while for sensory and communicative disabilities usage gains could prevail.

In making calculations, it is assumed that while persons with disabilities have on average lower incomes than the average person, they have broadly the **same consumption patterns** as an average person and will enjoy better access regardless of age, severity of disability etc.

As the US study, takes into account the particularities of the US system such as existing **standards** and includes a range of exemptions and provisos, the actual cost and benefits provided cannot be directly compared to other countries. However, it is relevant to consider the scale of the changes required by such standards. This is highlighted by the fact that the net present value (i.e. benefits minus costs in today's money) of the changes over 40 years (at a 3% discount rate) would amount to \$40.4 billion, made up of \$66.2 billion in expected benefits and \$25.8 billion in costs. 93% of the benefits of the changes were ascribed to **time savings** for persons with disabilities while 7% were attributed to **simplification savings**.

This approach has been used in this study to calculate direct benefits along with some consideration of possible **health and safety benefits**. Alternative methods such as the insurance value of disability (see [Chapter 6.II](#) in Part I) were considered but not used due to the difficulties of obtaining data, of applying the methodology to the EU situation and of problems with double counting.

In terms of the 'accessibility' **beneficiary population**, it should be noted here that the estimate on benefits takes into account benefits to both persons with disabilities and wider groups. Thus the 10% figure used for the population of beneficiaries in each Member State is considered to be a conservative estimate. The approach also takes account of the precedent set in EU transport legislation where those with reduced mobility includes not only those with disabilities but also the broader population including children, persons with children, persons with injuries and so on.

### **3. Benefits gained from disability equality measures in the area of public administration and judiciary: a model of monetary calculation of time savings**

The following shows, by way of a hypothetical example, how the range of factors explained above can be taken into account to calculate what the time savings could be and how this is converted to a monetary value. It is based on the assumption that equality measures will result in the beneficiary saving a proportion of his/her time in Court.

- The beneficiary population, as explained above, is calculated at 10% of the total of each of the 5 Member State's population.
- The beneficiaries will benefit from easier access to public administration buildings and courts, e.g. through a ramp introduced for wheelchair users. Also moving around within the Courts will be easier and beneficiaries with hearing impairments will profit from an induction loop. Together, these measures can be equated to time savings improvements in quality of use.
- The number of visits to public administrations and courts per year is estimated for two different types of buildings. In addition, the length of time spent in the establishment is estimated. Based on the US study, 5% of time saving per visit (this percentage applies to most sectors but there are variances – See Annex 7 on

estimated benefits) are assumed (For a visit of 60 minutes, time and use savings are 3 minutes).

- To monetise this value, existing data on value of time has been used for each sector (as used for example with respect to transport impact assessments). This varies by country according to average income. For this example, 1 minute is assumed to equate 10 cents, consequently, each visit of one hour constitutes a benefit of 30 cents.
- To calculate total benefits this rate is multiplied by the number of visits.

This model can be used for each sector with slightly different calculations. Key assumptions are provided in Annex 9.

*Possible indirect benefits: employment, social protection and health effects*

With regard to indirect benefits, **employment effects** can be assumed of having all goods and services, including transport and access to buildings, open to persons with disabilities. Such benefits would conceivably impact on **public authorities spending** and result in lower disability income support payments, lower costs of labour market programmes and higher tax revenues<sup>225</sup>. However, given the existence of a range of transport and employment EU legislation with regard to disability, the benefits of the proposed Directive in this area are likely to be more of a complementary nature.

In terms of existing analysis, the Swedish study on accessibility (referred to in Chapter 4), calculated that equality action would result in a 1% increase in the employment of working age persons with disabilities. This equated to a **saving** of social benefits and other support measures to public authorities of 1.3 billion SEK. In addition, a number of **knock-on effects** were considered in this study, including a lower need for home carers and personal assistance (professional or other; -10% after 10 years) and savings related to better health (-10% for working age population). Similarly, according to an ANED report, employment of disabled persons in the **UK** went from 38% in 1998 to 44.3% in 2009<sup>226</sup>. However, it must be recognised that there are a wide range of variables which need to be taken into account to fully understand the relationship between equality legislation and employment levels and that different results can be from country to country<sup>227</sup>. Moreover, even where employment figures on persons with disabilities may not change, others may benefit. For example, in Australia, it appears that carers may have benefited<sup>228</sup>. The effects on health gains are unknown.

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<sup>225</sup> Idea Consulting, "Why invest in employment? A study on the cost of unemployment", December 2012.

<sup>226</sup> ANED; <http://www.disability-europe.net/>.

<sup>227</sup> According to COAG Reform Council Data, in Australia and the USA, there has not been a substantial change in the employment rate of persons with disabilities between the ages of 16 and 64 in the US and Australia over the last 20 years, despite significant equality legislation.

<sup>228</sup> There are over 6 million carers in the **UK** and 10 million persons with disabilities. In Australia the ratio of carers in the population (2.6%) to the severely disabled (4%) is also of the same proportions. The employment of these persons – traditionally below national averages – has increased since the introduction of disability in both countries in the 1990s. The number of carers is anticipated to increase substantially with the ageing of the population.

Other benefits also exist, in addition to those discussed above. However, these are even more difficult to quantify or are qualitative, such as self-esteem costs (e.g. humiliation/stigmatic harm).

The above indirect benefits are strongly related to **employment** and factors which affect employment such as access to **public transport** and **workplace** facilities. The various cost assessments used to support greater access under the Australian and US legislation use additional employment as a given driver for the legislation. However, the situation is different with respect to the proposed Directive as it does not relate to employment which is covered by comprehensive EU anti-discrimination legislation at the workplace. Furthermore, not all its costs and benefits can easily be predicted, for example regarding **public transport** which is also covered by other EU legislation. Thus, while such indirect benefits and objectives are important, they have been excluded for these reasons from being assessed in this study.

## VII - Discrimination on the basis of age

### 1. Legal considerations

From a legal point of view, and by definition, discrimination on grounds of age concerns the entire population and cannot be restricted to one specific category. For instance, the *Mangold case*<sup>229</sup> recognised discrimination against elderly people while the *Hutter case*<sup>230</sup> recognised discrimination against young people. As a result, EU legislation does not define age but does not restrict age discrimination under or above a certain age either. This approach differs from that taken, for example, in the US, where action to prevent age discrimination concerns persons who are more than forty years old<sup>231</sup>.

However, certain age groups face greater discrimination than others. For the purposes of the study, discrimination on grounds of age is assessed only with respect to people above the age of 65. This choice is supported by the literature where the vast majority of discrimination outside the workplace in the provision of goods and services is documented as impacting the 18 to 24 age group and the over 65s. This is coupled with the fact that in the area of healthcare the impact primarily falls on the over 65s<sup>232</sup>.

It is important to note that discrimination in this age group is strongly related to discrimination on the grounds of disability. According to various estimates, about half of people above the age of 65 have a disability. For example, according to an impact assessment performed by the Government Equalities Office in the **UK** to assess the 2010 Equality Act, about 75 % of people above the age of 85 have a disability. While there is a large overlap between the ground of disability and age, most of the discrimination relates to the fact that persons over this age are more likely to have mobility, sensory or mental health impairments, all of which are covered under disability.

<sup>229</sup> C-144/04 Werner Mangold v Rüdiger Helm [2005] ECR-I-9981.

<sup>230</sup> C-88/08 David Hütter v Technische Universität Graz [2009] ECR- I-5325.

<sup>231</sup> European Commission, Age Discrimination and European Law, April 2005, p.13.

<sup>232</sup> Age discrimination against persons on the grounds of reproductive rights is excluded from the proposal.

According to a set of criteria, two detailed examples were selected to illustrate the **possible magnitude of impacts** in the health care sector. The examples were based on four criteria (evidence of discrimination, availability of data, representativeness of the population or proportion of health care budget, identified preferred method of treatment). The first one deals with discrimination in secondary health care (treatment of kidney failure); the second deals with discrimination in mental health services (treatment of depression). For both examples, the discrimination occurred against persons over the age of 65. While it was recognised that in some procedures discrimination against persons in the age group 18-24 can occur (for instance in reproductive health services), an example was not found that would also fulfil the other three selection criteria.

## 2. Age and healthcare

According to literature review and expert advice, one of the main areas where public administrations/service providers would incur costs regarding equal treatment for persons above the age of 65 is the area of healthcare. Here the main manifestation is attributable to cases where persons younger than 65 may receive a superior **level of service** or where healthcare providers make certain **subjective assumptions** based on age. Article 3 of the proposed Directive states that discrimination based on age and disability is prohibited by both the public and private sector in social protection, including social security and health care<sup>233</sup>.

Nevertheless, according to Article 2 of the proposed Directive, *‘Certain differences of treatment based on age may be lawful, if they are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test)’*<sup>234</sup>. This is analogous to provisions in Directives 2000/43/EC, 2000/78/EC and 2002/73/EC, which make it possible to justify indirect discrimination in the workplace. However, the result of this proportionality test can be extremely difficult to anticipate as no major trend could be identified in existing ECJ case law on discrimination within employment.

## 3. Scope of the proposed Directive regarding equality in health care in relation to the newly introduced provisions of Article 168 of the Lisbon Treaty and the proposed Council amendments

The notion of healthcare is wide and undefined in EU law. The Charter of Fundamental Rights of the European Union gives an indication of the meaning of healthcare<sup>235</sup>. Article 35 states that *‘everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices’*. As a result, access to **preventive health care** and benefit from **medical treatment** can easily be understood as protected by the scope of the proposed Directive. As such, parallel activities which are necessary to access and benefit from a treatment are also arguably protected against discrimination.

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<sup>233</sup> Art 3, Proposal for a Council Directive COM(2008) 426 final.

<sup>234</sup> Art 2, Proposal for a Council Directive COM(2008) 426 final.

<sup>235</sup> Except for the Member States who opt out namely UK, **Poland** and **Czech Republic**.



In the *Kohl Case*, the ECJ has recognised that reimbursement of medical treatment by a private insurance company falls under the scope of healthcare<sup>236</sup>. As a result, healthcare cannot be understood as only providing medical treatment but also can cover other aspects such as the **access to medical treatment** or the **action of being reimbursed**. This broad scope is very important as the main manifestations of discrimination in this area broadly relate to persons above the age of 65 receiving inferior care, disproportionately higher fees, or restricted access to health care and social care services, both in the areas of prevention and treatment.

However, the scope of healthcare in the proposed Directive has to be interpreted in the light of the **shared competence** between EU and Member States. As emphasised in the proposed Directive, the legal provisions of the proposed Directive must not interfere in the powers and discretion of the Member States in the area of healthcare.

Article 168 of the TFEU details what action the EU can take with respect to Health Care. Whilst, the proposed Directive does not rely on this legal base, it is worth noting that Member States explicitly added three more areas (compared to former Article 152 TEC) which are deemed within the competence of the Member States. Article 168 TFEU states that Union action shall respect the responsibilities of the Member States for the:

- Definition of their health policy; and
- Organisation and delivery of health services and medical care.

The responsibilities of the Member States shall include:

- Management of health services and medical care;
- Allocation of the resources assigned to them;
- Donation or medical use of organs and blood.

Given that these areas have been newly introduced, it is clear that these are issues of concern to the Member States and their sovereignty. It is also worth noting in Council amendments to the proposed Directive, the Council has included recitals (17f in particular) clarifying where the exclusive competence of the Member States lie<sup>237</sup>

*"The exclusive competence of Member States with regard to the organisation of their social protection systems includes decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and health services and the conditions of eligibility. In particular Member States retain the possibility to reserve certain benefits or services to certain age groups or persons with disabilities."*

Arguably this is a direct reflection of the Article 168 TFEU provisions. In view of the limitations in EU competence whilst acknowledging that the proposed Directive's legal base is wider than health care issues, the question is raised to what extent the proposed Directive can purport to impose non-discrimination requirements with respect to Member State's provision of healthcare. Nevertheless, as this study is being conducted with regard

<sup>236</sup> Case C-158/96 Kohl v Union des Caisses de Maladie [1998] ECR I-1931.

<sup>237</sup> Outcome of proceedings of 11 July 2012, The Working Party on Social Questions, 12457/12.

to the 2008 proposal and not on the basis of subsequent proposed amendments, some assessment has been carried out in this regard on a case scenario basis.

#### **4. Methodology for assessing costs and benefits of eliminating age discrimination in healthcare**

##### **Manifestations and evidence of age discrimination in health care**

As with other grounds, discrimination can be direct and indirect. It is assumed that both forms of discrimination can sometimes be objectively justified. The discussion below focuses on three broad categories of manifestation of age discrimination:

##### *Discrimination caused by explicit age limits and separated services*

Possible instances of *direct discrimination* in the healthcare sector often relate to specific and explicit age limits in public health programmes. Such limits, which can have legitimate reasons, include treatments such as breast screening, cervical screening, seasonal flu vaccinations, health checks, or bowel checks, to name a few. In some cases, however, age limits are chosen without a full analysis of the value of the programme for excluded age groups<sup>238</sup>. Sometimes, although a particular programme may be open to all, it is nonetheless actively proposed to a certain age group. Similarly, such discrimination can also manifest itself in terms of pricing or charging based on age (where there is no specific age limit). This can occur in charging for drugs for instance<sup>239</sup>.

Costs associated with removing such age limits would include **additional service costs** resulting from the previously excluded group. Objectively justifying an age limit which was previously unstudied would also entail **research costs** (even if ultimately justified). Such a rule may require that all age limits/differential charging regimes be justified through the provision of outcome based evidence, which may require extensive research.

##### *Separated services for social and medical reasons*

Linked to this are age limits which are often applied for social as well as medical reasons. Two examples concern social, mental and geriatric health care where different service structures are often put in place to cater separately for the working age population (18-64) and older adults (65 plus). While the original motivation for such 'age appropriate' services and facilities differentiation may be legitimate (e.g. the separation could be to

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<sup>238</sup> Women older than 70 years are offered mammography screening much less often than younger women – despite accounting for one-third of all breast cancer cases in the country – and those older than 74 years are not screened at all. However, one-third of all breast cancer patients in Sweden, for example, are 70 years or older at diagnosis. Despite these statistics, few breast cancer trials take these older women into account. Considering that nowadays a 70-year-old woman can expect to live for at least another 12-16 years, this is a serious gap in clinical knowledge. The research article is available here:

<http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0030025>, Accessed 14 March 2013.

<sup>239</sup> In Malta, there was a case where cardiac drugs (statins) were provided to the under 75s on favourable terms. This practice was considered to be discriminatory and was discontinued. [http://www.maltamedia.com/news/2005/ln/article\\_11807.shtml](http://www.maltamedia.com/news/2005/ln/article_11807.shtml), accessed 17 July 2013.

better cater for the specific needs of one of the groups, especially in the case of geriatric care), over time a discriminatory situation may arise where one is better funded than another though not with the objective of e.g. positive discrimination where an unfair situation is sought to be remedied. For instance, the 2009 CPA studies on age discrimination in the mental healthcare and social sectors in the **UK** indicated a significant decline in services offered once a person reaches 65<sup>240</sup>. However, the CPA did not reveal the extent of this difference.

#### *Tacit discrimination*

A third, broad area of discrimination appears to concern ‘unofficial’ or tacit age discrimination at the doctor level. This **indirect discrimination** can possibly manifest itself in a number of ways, namely through clinical decision making, which can occur in any area of health and may not appear in national legislation, policy guidelines etc. Indeed, according to the **UK’s** Centre for Policy on Ageing which consulted a number of General Practitioners, such clinical age discrimination has been seen for some years as occurring in a variety of treatment areas within the NHS<sup>241</sup>. Also the **UK** impact assessment on age discrimination carried out in 2010 and 2012 to assess the impacts of the 2010 Equality Act and the 2012 Age Discrimination Act cites a range of evidence that some age groups, especially older people, are more likely to receive **poor services**<sup>242</sup>. However, none of the sources identified indicate the extent of the problem.

In certain cases the driver of this discrimination relates to the choices (e.g. referrals) made by physicians who overstate age as a risk factor or are not fully aware of the **benefits of treatment**. In the case of tacit clinical age discrimination, the costs of eliminating such discrimination are unclear and impossible to gauge without first undertaking a thorough analysis or audit of healthcare services while personal benefits for the individual would be obvious.

#### *Detection and anti-discrimination measures*

In terms of the nature of the abovementioned examples of age discrimination, at one end of the spectrum, explicit age limits are perhaps **the easiest to identify** while at the other end, tacit clinical age discrimination is difficult to measure. In the area of possible age discrimination in age-segregated services in mental and social care, while there is considerable evidence in differences in treatment, there is no consensus on how this can

<sup>240</sup> Available at: <http://www.cpa.org.uk/information/reviews/reviews.html>, accessed 17 July 2013.

<sup>241</sup> The CPA quotes a study by Robinson (2002) where GPs acknowledged to be aware of upper age limits restricting access to key procedures such as heart by-pass operations (34% of GPs acknowledged this), knee replacements (12%); and kidney dialysis (35%). Robinson also found studies that showed that 20% of cardiac care units operate upper age limits and 40% have an explicit age-limit policy for thrombosis. Available in CPA, *A literature review of the likely costs and benefits of legislation to prohibit age discrimination in health, social care and mental care services and definitions of age discrimination that might be operationalised for measurement*, 2007. [http://www.cpa.org.uk/information/reviews/CPA-age\\_discrimination\\_costs\\_report.pdf](http://www.cpa.org.uk/information/reviews/CPA-age_discrimination_costs_report.pdf), accessed 17 July 2013

<sup>242</sup> Government Equalities Office ‘Ending Age Discrimination in the Provision of Services’. 2012, p. 6

be addressed. In addition, as both explicit age limits and segregated services can also be referred to as 'institutional age discrimination' (that is, they are determined by health and social care policy), they may be easier to eradicate compared with tacit discrimination, which is based often on attitudes.

#### *Benefits of anti-discrimination measures*

Regarding the possible benefits of more equitable healthcare for the over 65s, these are quite clear – longer life, lower depression levels and lower disability amongst others. However, again, there is no clear data on how extensive the problem of delivering equitable healthcare is and what the resulting benefits could be. Indeed, this may explain the fact that there are **no studies** quantifying the benefits of removing age discrimination in the health and social care sectors. The **UK** government<sup>243</sup> made an attempt to do so in its draft impact assessment when it examined three different **possible indicators** to measure benefits from age discrimination rules:

- **Better access to services** (here the **UK** government checked to see if older people who were unhappy with their level of service went to a private insurer; they did not);
- **Better outcomes from treatment** (the metric investigated here is the number of persons above a given age that are admitted to emergency stays in hospitals. The inference is that if the older adult was receiving adequate primary, social or mental care, then emergency secondary care would not be needed. However, the problem here is that age discrimination is only one factor in visits to emergency rooms);
- **Reduction in complaints**. The logic here is that there would be fewer complaints from older persons due to poor service. This assumes of course that older people would complain when service levels decline, making it possible to measure the change in the level of care.).

Unfortunately, however, none of these provide a satisfactory quantitative indicator for the benefits of reducing age discrimination in healthcare. While advances in healthcare seen since the introduction of universal healthcare in Europe have contributed to extending life expectancy and quality, there is no study on how much of this is resulting from healthcare or is due to other factors.

Better outcomes from treatment can also be estimated by using a tool known as the **Quality Adjusted Life Years (QALY)** concept, which is primarily used to measure and select the superior alternative between two (or more) different treatment options. Specifically, this tool can also be applied in measuring the cost-effectiveness and health outcomes between different patients. The QALY concept has two dimensions – (i) the length of life; and (ii) the quality of this life. The concept is further explained in this chapter in Sub-section 7. Depending on the example, benefit calculations might include gains in productivity, safety, and effects on co-morbidities (i.e. medical conditions existing simultaneously).

**Box 22: Quality Adjusted Life Year<sup>244</sup>**

A Quality Adjusted Life Year is the unit of measurement used to compare the cost-effectiveness of different treatments for the same condition or across treatments for different conditions. QALYs have two dimensions. The first is the length of life – months or years – that the patient can expect following treatment. The second is the quality of that life. The quality is measured on a scale ranging from 0 (death) to 1 (perfect health). The scale takes into account mobility, pain or discomfort, anxiety or depression and the ability to pursue the usual activities of daily living.

This allows new treatments to be compared with standard existing care. To take an example used by NICE in the **UK**, a notional patient with a serious, life-threatening condition may have a life expectancy of one year with a quality score of 0.4 given existing care, but if he or she receives a new drug the life expectancy will rise to 15 months with a quality score of 0.6. So while standard care yields a gain of 0.4 QALYs (one extra year at 0.4), the new drug yields a gain of 0.75 QALYs (15 months at 0.6). So the new treatment produces 0.35 additional QALYs.

The final stage in the process of using this methodology in decisions about new drugs or other interventions is to calculate the cost of achieving the QALY gain. Assuming that the cost of new drug is £10,000 as against standard treatment costs of £3,000, the difference of £7,000 is then divided by the QALYs gained (0.35) to calculate the cost per QALY: £20,000 in this imaginary example.

**Selection of examples for assessment in secondary care and mental care: treatment of kidney failure and depression**

Given the above considerations, as well as the large size and complexity of the sector<sup>245</sup>, the lack of data available on age discrimination let alone the lack of agreement over what constitute discrimination in healthcare; the analysis follows a case study approach where two examples in secondary and mental health care are presented in qualitative and quantitative terms. The examples have been selected following a review of relevant literature and expert advice. A mix of four main criteria in selecting the cases has been:

- 1) Evidence (if mixed) of age discrimination in the provision of treatment in that particular area, where differences in treatment cannot be explained by clinical factors alone;
- 2) Satisfactory (if not perfect) availability of data or appropriate proxies;
- 3) the extent to which the example is representative – representing either a large amount of patents affected or requiring a substantial proportion of total health care spending – of a particular area of healthcare provision (primary, secondary, mental, social);

<sup>244</sup> In section 17 of Centre for Policy and Ageing 'Ageism and age discrimination in primary and community health care in the United Kingdom, a review of the literature', December 2009

<sup>245</sup> The health care industry is estimated to be over €1 trillion annually

- 4) A consensus (if partial) on the preferred method of treatment, either derived from literature, expert judgment or both.

The first example will discuss age discrimination in secondary care, specifically age discrimination in the treatment of renal failure. The second example will discuss age discrimination in mental care treatment, specifically in the treatment of depression. Both examples draw primarily on data available in the UK. The analysis of the two examples should be considered as guiding illustration of our approach of how age discrimination may occur and how it could be monetized, based on two strong assumptions: treatment is based on need; there are no budgetary or other constraints to the provision on health care based on need.

#### *Calculating costs*

Considering the above context, the methodology for calculating the costs for closing the discrimination gap for the examples of renal failure and depression follows the general process outlined in the first sections of this Chapter, but is adjusted for the specificities of the health sector.

The process of determining the cost of providing equal treatment in a particular area or procedure in health care follows the subsequent steps.

#### **Box 23: Process for determining costs of implementation with respect to persons above the age of 65 in the area of health care**

- Determine most appropriate method of service provision (procedure);
- Determine the resulting nature of changes (discrimination gap);
- Determine number of individuals (people above age of 65 requiring additional services);
- Identify possible costs of change.

#### *Determine most appropriate method of service provision (procedure)*

First, it is necessary to determine the preferred method of treatment of a particular health issue. The selection is based either on literature review, expert advice or a mix of the two, and considers both cost effectiveness and health outcomes among other factors. For example, in the case of depression, the preferred treatment has been selected by referring to the guidelines of the National Institute for Health and Care Excellence (NICE) of the UK. The NICE guidelines for the treatment of depression suggest that first line of treatment should be with a 'selective serotonin reuptake inhibitor' (SSRI) and that the choice of antidepressant should be guided by the patient's previous experience of an antidepressant, and by co-morbidities and side effects.

The first step would require finding the following information and data items:

- Most common treatment options; and the preferred treatment option;
- Unit costs of the most common treatment options; and the preferred treatment option.

*Determine the discrimination gap*

Second, it is necessary to identify whether there is difference in treatment between patients above the age of 65 and below the age of 65 that cannot be objectively justified and/or explained by clinical factors (e.g. complex interactions with other medical conditions meaning higher risk, lower quality of life, inability to withstand treatment). The gap is estimated as a proportion of a particular age group receiving the preferred treatment as compared to the overall rate of treatment in the age group. If there is a gap in this proportion between above and below 65 year-olds, this is indicatively considered to be the 'discrimination gap' subject to adjustment for clinical factors mentioned above. For example, if 30 % of over 65 year-olds are receiving the preferred treatment option; and 50 % of under 65 year-olds are receiving the preferred treatment option, the 'discrimination gap' is 20 %, unadjusted for clinical factors. If there are no clinical factors that should be considered; it is assumed that, to close the 'discrimination gap', 20 % more of the patients above the age of 65, who are treated, should receive the preferred treatment option (as opposed to the current treatment).

This second step in the process would require the following data items:

- Prevalence data for people under and above the age of 65;
- Data on the proportion of patients treated under and above the age of 65;
- Data on the proportion of patients that are receiving the preferred method of treatment under and above the age of 65.

*Determine number of individuals (people above the age of 65 requiring additional services)*

The third step is to determine how many additional patients above the age of 65 would need to receive the preferred treatment option in order to close the 'discrimination gap' (by multiplying the percentage of the 'discrimination gap', by the amount of patients above the age of 65 receiving treatment).

*Identify possible costs of change*

The fourth step is to identify the potential cost of change. This is done by subtracting the unit cost of the preferred option from the other treatment option(s). This result is then multiplied by the number of additional cases of patients above 65

As discussed above, the process assumes that there are no distribution effects and that health care budgets accommodate this change. An additional, final step could involve introducing some of these relevant factors that might affect the impacts (if not costs) of additional treatment.

## **5. Simplified setting to illustrate costs related to equal treatment of elderly people in health care**

As, the proposed Directive does not define what **objective justification** means – in the health care sector or elsewhere – an analysis of costs related to equal treatment of elderly people in healthcare is effectively made in a policy vacuum.

A very simplified setting needs to be established, firstly, in which the complexities of health care provision, health outcomes and interactions with pre-existing conditions are not accounted for. Therefore, it has been decided to simulate the cost assessment through two examples of **isolated components** of health care provision which sheds some light on the costs related to equal treatment for the elderly in specific treatment procedures. The analysis **cannot** be considered as an attempt to estimate the extent of impacts for the entire health care industry.

As above, it is also crucial to point out that the extent of changes looked at in the two examples below should not be interpreted as changes that will be required by the proposed Directive as the exact nature of changes required is **uncertain**.

In any case, calculations would depend heavily on the ability to demonstrate age discrimination; which, in turn, will depend on the availability of prevalence, treatment, and preferred treatment data disaggregated according to age group. Regarding the use of proxy data for the example of renal failure, experts in the area suggest that **prevalence rates** are similar across populations with certain common characteristics, and proxy data could be used where data are not available. The data in **mental health** are expected to be less similar across the five countries. Also, the preferred methods of **treatment** and their cost might vary among the five selected Member States, or there might not be an agreement on what the preferred treatment would entail, what is the average cost per case, and who is paying this cost.

#### **Box 24: Approach to calculate costs of equal treatment of older persons in health care**

- Age discrimination is only considered with respect to people over the age of 65. Health care has been identified as an area where the elimination of direct and indirect discrimination by public service providers could have significant effects.
- Literature and expert advice distinguishes between three main forms of possible discrimination (explicit age limits, age separated services, and tacit discrimination), across four broad main areas of health care (primary and community care, secondary care, social care, and mental care). This classification has framed the analysis.
- Given the complexity and size of the health sector, the analysis undertaken has focused on two detailed examples: secondary health care and kidney transplants/dialysis; and mental health care and treatment of depression.
- The two examples (treatment of kidney failure and treatment of depression) were selected based on four criteria: 1) evidence of discrimination based on age; 2) availability of prevalence data; 3) representativeness of the example (either affecting a considerable part of health care services users, and/or proportion of health care budget); 4) there is a clearly identified preferred method of treatment.
- While it was recognised that in some procedures discrimination against persons in the age group 18-24 can occur (for instance in reproductive health



services), an example was not found that would also fulfil the other three selection criteria.

- Key analytical steps were: determining most appropriate method of service provision; identifying a 'discrimination gap'; determining how many patients above the age of 65 would need to receive additional (or different) treatment to close the 'discrimination gap; determine the cost of this change.
- The main benefits from eliminating age discrimination in healthcare are associated with better access to services, better health outcomes for patients, and reduction in complaints. Benefits are expressed in Quality Adjusted Life Years (QALY).

## 6. Methodology for assessing impact of changes to eliminate discrimination in secondary healthcare: renal failure example

### Data for the UK revealing age discrimination

Treatment data for December 2011 in the UK show that 62.7% of patients aged under 65 years who were receiving renal replacement therapy (which is the generic term for treatment for severe CKD) had a 'functioning transplant' compared with only 25.0% of patients aged 65 years and over. There are complications around the interpretation of these data but, for the purposes of this study, it is assumed that the 37.7% gap in 'functioning transplant' between under and over 65 year-olds cannot only be related to objective clinical factors. There is evidence to suggest some level of either direct or indirect age discrimination in the treatment of renal failure<sup>246</sup>. The above figures, however, can only provide a rough basis for calculations.

Kidney dialysis and kidney transplant are the methods of treatment for CKD. Ahmad et al (2012) who looked at health service costs and utility gains over a 5-year period calculated that transplant was less costly than dialysis (difference of £37,409 per patient) and generated better outcomes<sup>247</sup>. If the age difference in treatment patterns (62.7% for younger patients, 25% for older) was to be removed, then an additional 37.7% of older patients would get transplant rather than dialysis. If the prevalence rate of severe CKD in the age group 75-79 year olds is taken as an example (2200 per million population), 1633 additional patients would be receiving a transplant rather than kidney dialysis. **Savings** to the health service could potentially reach as much as £61.10 million over 5 years, or £12.22 million per year.

<sup>246</sup> For example, McNamara & Williamson (2012) reflect on evidence from North America and Europe in observing: 'Older adults who need organ transplants, such as those with end-stage renal disease, are much less likely to be placed on the waiting list for a new organ than their younger counterparts'. Some evidence suggests that this situation is changing, with patients ages 60 to 75 about twice as likely to receive liver transplants in 2006 than in 1995 (Schaeffner, Rose, & Gill, 2010), but younger adults are still much more likely to be approved for waiting lists' (p.11). For the full paper see [http://www.eurage.com/files/GSA-PolicyAgingReport-Summer2012\\_FINAL.pdf](http://www.eurage.com/files/GSA-PolicyAgingReport-Summer2012_FINAL.pdf), accessed 23 June 2013.

<sup>247</sup> Ahmad et al, 'Cost utility analysis of transplantation versus dialysis in elderly patients in the UK', (2012).

In reality, switching treatment from dialysis to transplant is far from straightforward. There is a wide range of complexities that need to be considered. For instance, while transplantation is generally seen as clinically superior and more cost-effective than dialysis, there are important constraints such as the availability of donated organs or perceptions of how the range of possible results of the procedure might have a negative effect on the quality of life. These constraints could not be taken into account when estimating the potential costs of switching treatment and rather it was assumed that every patient will choose to receive the transplant, because it is the clinically superior treatment option.

## **7. The process for calculating the costs**

The process for calculating the costs of eliminating discrimination for the treatment of Chronic Kidney Disease was the following:

- Regarding CKD, the overall objective is to identify if the superior type of treatment (transplant) is provided equally to all age groups. As such, we have assumed that all patients are successfully and accurately diagnosed.
- Three possible options have been selected for further action – transplant (superior option); dialysis (next best option); and ‘no treatment’, in the unlikely event that a patient is not suitable for treatment or chooses not to receive treatment.
- Calculations were then based on two key variables: the number of people receiving each type of treatment according to age group (the age of 65 is the boundary between two age groups); and treatment costs per annum.
- On the benefits side, the calculations made use of the concept of Quality Adjusted Life Years (QALY). The concept is explained in text box 22 above.

The calculation of benefits of renal treatments uses the estimates of the **UK** National Institute for Health and Care Excellence (NICE), where treatment costs of £20,000-30,000 per QALY are considered cost effective. By approximation, the calculations use the €35,000<sup>248</sup> threshold<sup>249</sup>. The value of QALY is not discounted over the implementation period.

The current net benefit is calculated for each age group by multiplying the number of patients receiving a particular type of treatment by the difference between the costs of treatment and the benefits of receiving the treatment. This shows the overall benefits (in terms of QALY) for treatment of patients according to current data.

A second benefit calculation (called Benefits – Current Net Benefit by Age Band if no Discrimination) is intended to demonstrate the potential benefits (in terms of QALY) if the number of patients receiving each type of treatment were equal, i.e. no ‘age discrimination’.

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<sup>248</sup> Based on exchange rate provided by [www.xe.com](http://www.xe.com) on 04.09.13 (1 GBP =1.18266 EUR).

<sup>249</sup> The QALY equivalent for each type of treatment was advised by Dr. Martin Knapp (London School of Economics and King’s College London)

Finally, the net policy gain of eliminating discrimination is calculated by finding the difference between 'current net benefit' and 'current net benefit if no discrimination'.

## 8. Measuring costs and benefits of eliminating age discrimination in mental healthcare: the illustrative example of depression treatment in the UK

Depression is the most prevalent type of mental health care problem amongst persons above the age of 65. Untreated depression is the most common reason for suicide among older people, for example, and more generally is a source of poor quality of life. Depression is costly at any age. For example, the total cost of depression in **Sweden** (all age groups) was estimated at €3.5 billion in 2005 (Sobocki et al 2007). The following factors contribute to this cost: lost productivity (83 %), drugs (3 %) and other health care (14 %) <sup>250</sup>. In the **UK**, the overall cost of depression in 2007 (all age groups) in terms of services (almost all health services) was £1.7 billion. Adding the costs of employment loss brings the figure up to £7.5 billion <sup>251</sup>.

Barua *et al* suggest that the prevalence of depression among older people is 10.3% worldwide, based upon a review of previous studies <sup>252</sup>. The WHO estimates the rate between '10 and 20% depending on cultural circumstances' <sup>253</sup>.

Although there are untreated cases of depression across all age groups, the proportion of untreated cases is higher for people over the age of 65. There may be a treatment gap, which can be a result of direct or indirect discrimination of the elderly. This discussion is further illustrated with an example from the **UK**.

### Treatment of depression in the UK

In the **UK**, approximately 30 % of older people with depression and who discuss it with their GP (primary care doctor), only half are **diagnosed** and receive treatment. This indicates that only about 15 % <sup>254</sup> of all older people with clinical depression receive treatment. An even smaller number of older people with depression (6 %) receive specialist mental health care such as cognitive behavioural therapy, rather than just medication. For younger adults, evidence linked to the 2007 adult psychiatric morbidity survey estimates that 25 % of people with depression receive treatment. One measure of age discrimination would therefore be the difference in treatment between younger and older adults. If the age difference in treatment patterns was to be removed, then an additional 10 % of older patients would receive treatment.

<sup>250</sup> In the MHEEN Group 'Economics, mental health and policy: An overview', p. 10.

<sup>251</sup> In McCrone et al., 'Paying the price' (2008), [http://www.kingsfund.org.uk/sites/files/kf/Paying-the-Price-the-cost-of-mental-health-care-England-2026-McCrone-Dhanasiri-Patel-Knapp-Lawton-Smith-Kings-Fund-May-2008\\_0.pdf](http://www.kingsfund.org.uk/sites/files/kf/Paying-the-Price-the-cost-of-mental-health-care-England-2026-McCrone-Dhanasiri-Patel-Knapp-Lawton-Smith-Kings-Fund-May-2008_0.pdf), accessed 23 June 2013.

<sup>252</sup> Barua et al., 'Prevalence of depressive disorders in the elderly' (2011), *Annals of Saudi Medicine*.

<sup>253</sup> In Barua et al., 'Prevalence of depressive disorders in the elderly' (2011), *Annals of Saudi Medicine*, p. 620.

<sup>254</sup> Half of the 30%.

In the **UK**, the National Institute for Health and Care Excellence (NICE) issues **guidelines** for interventional procedures, technology appraisals, clinical procedures and for public health. NICE guidelines for the treatment of depression suggest that the first line of treatment should be with a selective serotonin reuptake inhibitor (SSRI) and that the choice of antidepressant should be guided by the **patient's previous experience** of an antidepressant, and by co-morbidities and side effects. It is hard to find evidence on an untreated population, because once someone has been identified as having depression, it would be unethical not to offer or refer them for treatment; placebo-controlled data have not been found.

The cost of treatment would consist of the costs of SSRI, primary care supervision and consultation. Returning to the **UK** example, the treatment of 10 % of additional cases of depression for patients above the age of 65 would equate to an additional 29,132 people. Costs of treatment would be £24.3 million over a 12-month period. The cost does not consider reducing factors such as disrupted employment, crisis admissions to health care (such as emergency rooms), suicide, and poorer prognosis in co-morbid physical health problems. The benefits of the additional treatment can be expressed in quality adjusted life years (QALY) (explanation in Section 6).

The QALY gain from treating an additional 29,132 people would equate to approximately £111 million (about €130 million) over the 12-month period. This valuation uses the willingness to pay threshold used by NICE in England and Wales of £20,000 per additional QALY<sup>255</sup>. The mean QALY gain for the full sample is 0.191 over the 12-month period. The QALY gain assumes no natural remission in depression; actual gains are likely to be lower.

## **9. The process for calculating the costs of eliminating discrimination for the treatment of depression**

In this context, the process for calculating the costs of eliminating discrimination for the treatment of depression was the following:

- Data for prevalence of depression included depressive episodes and mixed anxiety/depressive disorders<sup>256</sup>. Unlike the example on renal failure, it is not assumed that all patients are diagnosed. Consequently, not all patients receive treatment.
- The analysis is based on the proportion of the population claiming to suffer from depression by age group.
- The treatment rates data are based on the percentage of people claiming to suffer from anxiety that visit a doctor; and on the percentage who receive treatment after having visited a doctor.
- The treatment costs are expressed as medication costs per annum.
- The benefit estimation follows the same logic as for the example of renal failure.

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<sup>255</sup> For a discussion on cost effectiveness of the threshold see NICE's 'Briefing paper for the Methods Working Party on the Cost Effectiveness Threshold' (2007)

<sup>256</sup> Assumes that there is no overlap.

- The differences between the treatment rates between age groups mark the area of policy intervention or the 'discrimination gap' (or the difference between current net benefits' and 'net benefits if no discrimination'. According to the discussion above and the **UK** example, the 'discrimination gap' is 10%, unless there are county-specific data available.

## VIII - Sexual orientation discrimination

### 1. Legal considerations regarding sexual orientation and social advantages

For the most part, the costs of providing equal treatment to persons on the basis of sexual orientation – namely to LGB individuals – is seen as minimal. Therefore, the costs for SMEs and public service providers are seen to be zero in most sectors. In fact it could be argued that the removal of discrimination in this area may result in an overall gain.

However, one of the main areas where costs could be borne, largely by public authorities, is in the area of civil partnerships/status/marriage and social advantages.

Discrimination on the grounds of sexual orientation appears to be almost costless to reduce for SMEs and other goods and services providers due to the nature of the discrimination and the actions required to remedy the situation (see consultation responses in Annex 6). Conversely for public administrations the potential increased costs would result from applying the same social advantages (e.g. benefits and taxes) to married LG persons as they do for heterosexual married couples. In this regard the Commission's proposal notes that *'the text makes it clear that matters related to marital and family status, which includes adoption, are outside the scope of the Directive. This includes reproductive rights. Member States remain free to decide whether or not to institute and recognise legally registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies.'*

Therefore it is assumed that where one of the five countries permits same sex marriage or considered legal partnership as an equivalent to marriage to same-sex couples<sup>257</sup>, any differential treatment relating to social advantages (e.g. benefits and taxes) would have to be eliminated<sup>258</sup>. Furthermore, the ECJ in its Case C-147/08 *Jürgen Römer v Freie und Hansestadt Hamburg* held that where only civil registered partnership is available to same-sex partners, benefits under pension plans must be equal for same-sex registered partners and married partners<sup>259</sup>.

In terms of scope, the manifestation of discrimination, and associated cost for public authorities (i.e. the government etc.) and SMEs, relates to married/homosexual couples being denied access to the same social advantages as married heterosexual couples. The law only applies if same sex marriage or partnership is recognised by the law (e.g. this is not the case in **Romania**).

<sup>257</sup>Case C-267/06, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, 2008.

<sup>258</sup>Case C-267/06, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, 2008.

<sup>259</sup> Case C-147/08, *Jürgen Römer v Freie und Hansestadt Hamburg*, 2011.

## 2. Possible costs and benefits

According to the literature (see [Chapter 5.IV](#) in Part I) and previous responses to discrimination consultations (see Annex 5), the main access problems could relate to a lack of equal rights in the areas of survivor pensions, tax and financial assistance for carers.

Regarding the number of people affected, the proportion of the population which falls in this category lies between 2.5 and five %, depending on the source used. This is seen as constant. What is not constant is the extent to which couples engage in civil partnerships, which is seen as being significantly lower than marriage for heterosexual couples. As noted in the Regulatory impact assessment accompanying the **UK's** Civil Partnership Act 2004, the main changes will relate to pensions.

## 3. Determination of what costs may arise

National interviews conducted in the five study MS have provided key information on this policy area (see Annex 3). In terms of coverage, the proposed Directive is expected to have no cost impacts in four of the five case study countries, namely **Spain, Sweden, Romania** and **Germany**. In **Spain** and **Sweden**, same-sex couples enjoy the same social advantages as heterosexual couples, while in **Romania**, neither same-sex civil partnerships nor marriages are currently recognised. Thus in **Romania**, the issue of discrimination as defined by the proposed Directive cannot arise in this sector. In **Germany**, same-sex civil partners appear to have broadly the same rights as married heterosexual couples, with the exception of adoption rights and tax treatment. However, on the 6th June 2013, the Federal Constitutional Court delivered a landmark judgment effectively putting same-sex partners on an equal footing with heterosexual marriages in tax matters. Therefore, it is expected that the proposed Directive would not result in increased costs for the German government.

It is expected that the proposal, if adopted, would result in additional costs for the **Czech Republic**, where same-sex civil partners do not enjoy the same rights as married heterosexual couples in a number of areas, possibly including survivor pensions, preferential income tax treatment, inheritance and gift tax and stamp duty etc. (see Annex 3).

The cost of providing state pensions and bereavement benefits has been estimated on the basis of the 2010 per capita cost given in the **UK** impact assessment of the Civil Partnership Act 2004. This has been applied to the situation in the **Czech Republic** based on average pension values in the two countries. The cost of equal treatment has regards income tax was based on information on the **German** experience, adjusted to the average wage level in the **Czech Republic**. The current number of civil partnerships in the **Czech Republic** were next taken into account and it was assumed that an additional 200 partnerships would be registered each year in the future. The cost of equal treatment in other areas where same-sex couples are currently discriminated against, including inheritance tax, gift tax and stamp duty, was not included due to a lack of data.

**Box 25: Overview of discrimination on the grounds of sexual orientation**

While for the most part the costs of providing equal treatment to persons on the basis of sexual orientation is seen as minimal, for public administrations potential increased costs could result from applying the same social advantages (e.g. benefits and taxes) to married LGB persons as they do for heterosexual married couples.

- With regard to social advantages, according to the literature and experts' consultation, the main access problems could possibly relate to a lack of equal rights in the areas of, amongst others: survivor pensions; equal treatment for tax purposes; inheritance tax; financial assistance for carers.
- In terms of coverage, the proposed Directive is expected to have no cost impacts in four of the five case study countries, namely **Spain**, **Sweden** (in **Spain** and **Sweden**, same-sex couples enjoy the same social advantages as heterosexual couples) **Romania** (neither same-sex civil partnerships nor marriages are currently recognised) and **Germany** (following the Federal Constitutional Court's judgment on June 2013 same-sex civil partners appear to have broadly the same rights as married heterosexual couples, including in tax matters).
- It is expected that the proposal, if adopted, would result in additional costs for the **Czech Republic**, where same-sex civil partners do not enjoy the same rights as married heterosexual couples in a number of areas (e.g. survivor pensions, preferential income tax treatment).

**Chapter 3 – Results****I - Summary of main elements of methodology**

The results of this study in terms of the costs and benefits to SMEs and Public Service Providers of implementing the proposed Directive are achieved by applying the methodology described in the previous chapters. Correspondingly, cost and benefits will be assessed for a limited number of grounds in a limited number of areas in which the highest costs will be generated. The study has covered the following areas:

- Disability:
  - Access to general goods and services for persons with physical and sensory disabilities
  - Right of persons with disabilities to social care ('life') in the Community and not in 'institutions'
- Age: Healthcare (examples of different treatment in the areas of renal failure and mental depression)
- Sexual Orientation: Social Advantages

As described in previous sections, the costs and benefits assessed are divided into two broad categories: (1) regulatory costs and benefits, which fall on public authorities in their role as enforcers of the proposed Directive, and (2) compliance costs and benefits, which fall on providers of goods and services. These compliance costs (2) were further divided into *generic compliance costs* (2a) which may arise regardless of the grounds or sector affected by the proposed Directive, and *specific compliance costs* (2b) which arise in response to a specific ground of discrimination, such as disability and/or in a specific sector (e.g. retail premises; healthcare).

**Table 19: Types of costs and benefits assessed**

	Type of Cost	Effected entity
<b>1</b>	Administrative and regulatory costs resulting from implementing the proposed Directive	Government and other enforcement authorities
<b>2(a)</b>	Generic compliance costs of complying with the proposed Directive in all areas	SMEs and public service providers
<b>2(b)</b>	Ground- and sector-specific costs and benefits for promoting equal treatment	

It should also be noted that, as per the assessment framework of the study, only the significant costs (2b) which could be borne by SMEs and public service providers of goods and services to the public are assessed.

As outlined in the literature review and methodology, it is expected that the highest costs will arise with regards to ground/sector specific costs and that the majority of these would relate to access to goods and services for persons with disabilities. This is not surprising given that as most of the SMEs and public service providers are providing goods and services and given that persons with mobility and sensory difficulties constitute the vast majority of persons with disabilities.

Finally, the results below represent one of a number of ways in which the proposed Directive could be implemented in the EU Member States. This reflects, namely in a way similar to how disability equality legislation has been introduced in other jurisdictions which have extensive experience in disability discrimination, such as the US, Australia and the UK, and based on the arguments surrounding how age discrimination legislation in the UK could be implemented.

In terms of how this section is structured, [Section 9.II](#) below presents regulatory and generic compliance costs resulting from implementing the proposed Directive in all areas. [Sections 9.III and 9.IV](#) then deal with specific costs for prohibiting discrimination on the grounds of disability. [Section 9.V](#) covers discrimination based on age, while [Section 9.VI](#) covers sexual orientation specific compliance costs with a focus on social advantages.



## **II – Administrative and regulatory costs and generic compliance costs for governments and other public authorities (service providers) which apply across all four grounds and in all areas of the proposed Directive**

As noted in the literature review section, many countries' anti-discrimination rules started out as complaints-based, rather than compliance-based, legislation. In other words, action was often taken by individual goods and services providers on an ad-hoc basis rather than in a consistent manner across all providers. This was the case in the early days of the Disability Discrimination Act in Australia (as outlined in [Chapter 6.II](#) in Part I) which led to high levels of legal uncertainty for providers and dissatisfaction amongst persons with disabilities over low compliance rates. This situation changed with the development of certain 'standards' or rules which set out in advance what exactly was expected from goods and service providers in certain areas.

Therefore, for this study, it was assumed that implementation of the proposed Directive would be **compliance-based** where the legislation would be underpinned *ex ante* by standards and guidelines which are outlined and communicated in advance by authorities.

This approach has quite an important impact on certain regulatory and compliance costs in that the cost of implementation and enforcement largely falls on the compliance entity (i.e. the goods and service provider) rather than on the taxpayer or on the individual being discriminated against. Likewise a system where responsibilities and roles are outlined in advance in certain areas should have the impact of reducing the number of complaints.

As a general observation it should be noted that the EU and its Member States already have in place a range of anti-discrimination laws, as well as policies and procedures for enforcing such legislation. This fact should have a limiting effect on possible additional regulatory and generic compliance costs resulting from the proposed Directive.

**Generic compliance costs** to be borne by a typical SME/public goods and services provider (regardless of ground or sector) may include:

- Familiarisation with rules;
- Legal questions;
- Self-audit;
- The production of internal guidelines and codes of conduct;
- Staff training; and
- Dealing with possible complaints.

### **1. Administrative and regulatory costs**

For regulatory authorities, the following main costs were identified:

- Transposition costs and reporting to the Commission;
- Guidelines (e.g. simplification/layman's explanation of legislation);
- Information and statistics costs;
- Awareness raising;
- Enforcement/ monitoring costs.

Each of the countries covered would have a one-off cost to **transpose** the proposed Directive. This one-off transposition cost was estimated at between €100,000 and €800,000<sup>260</sup>. With regards to costs of five-yearly **reporting** to the Commission, these should be minimal as they simply require collating and presenting statistics and other information collected for other purposes. We estimated this at 20 days full time equivalent employees.

Furthermore, and as mentioned above, authorities – in particular the national equality body – might have to provide SMEs and other providers with formal **guidelines** so that they do not have to read and interpret the legislation, thus to some extent reducing the SMEs' costs of familiarisation with the requirements of the new legislation. For this, the assumption made is that each country would devote an additional 10% to the budget to the national equality authority. While this may appear low in certain cases, the assumption here is that as each of the Member States surveyed has an equality body<sup>261</sup>, and given the fact that all are overseeing several existing EU and national legislative instruments on anti-discrimination, there should be no large additional establishment or operational costs. Likewise, it is assumed that all of the Member States studied have in place procedural rules on equality as well as the infrastructure to implement these rules. Moreover, and as mentioned above, business representative associations can also play a role in disseminating guidelines to its members.

Additionally, national authorities would have to gather **information and statistics to be** used for the purpose of on-going monitoring and enforcement. While these could be very high if the proposed Directive was the first piece of anti-discrimination legislation, the reality is that there are already several wide-reaching pieces of legislation already in place which would allow for certain synergies to be achieved during data collection thus reducing overall costs. In addition, in this field, it is common for a minimal level of data collection to take place.

Overall, given the lack of information on what statistics are to be required from Member States by the proposed Directive, the costs of information and statistics collection is not estimated.

With regards to **awareness-raising**, while informing the general population of the proposed Directive may incur marketing costs, raising awareness amongst SMEs and

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260 As noted in RPA (2012), one UK impact assessment states that “the costs of amending current regulations to implement a Directive are thought to be around £700,000” (around €800,000). Although no details are given on the basis for this calculation, it is expected that these costs relate to a rather substantial legislative change and would include those costs of making (e.g. preparing an impact assessment, preparing a transposition note and presenting the legislation before parliament), printing and publishing the legislation. This estimate is significantly higher than the cost estimated in UK Department for Transport (2011) which notes that “a combination of legal and technical resources as well as policy advisors are usually required to implement such a change, costing approximately £15,687 per amendment” (approximately €18,000).

<sup>261</sup>The Public Defender of Rights' Ombudsman in the **Czech Republic**; the Federal Anti-Discrimination Agency in **Germany**; the National Council for Combating Discrimination in **Romania**; the Council for Promotion of Equal Treatment of all Persons without Discrimination in **Spain**, and the the Equality Ombudsman in **Sweden**.

public providers should cost substantially less, in part due to the fact that business associations can disseminate information on rules to their members in a relatively cost-effective manner.

**Box 26: Monitoring and enforcement costs cannot be estimated in advance at EU level**

- The monitoring and enforcement costs of the proposed Directive are important to ensure that goods and services providers make necessary changes. While the introduction of ex ante standards in areas like accessibility can help monitoring and enforcement, the fact that standards can only be applied to a certain number of areas covered by the proposed Directive means that the implementation of the many provisions of the proposed Directive would still remain more complaints-based than compliance based. As the number of complaints, court cases etc. depends on how well each Member State implements the proposed Directive, the enforcement costs cannot be estimated in advance at EU level. Indeed, even for countries such as the UK, USA and Australia, which have had anti-discrimination legislation outside the workplace for many years, no publication was found quantifying enforcement costs. Therefore, it has not been possible to include enforcement costs in the generic compliance cost analysis.
- However, it should be noted that the development of certain standards and guidelines by building code bodies, certifiers, equality bodies and the court system could actually save certain legal costs by reducing regulatory uncertainty.

## 2. Generic compliance costs

For SMEs and individual public service entities (e.g. a school), it is assumed that familiarisation with the new rules will be assisted by simple guidelines produced by equality authorities and business-representative organisations. For this reason **calculations** were based on the following assumptions:

- An employee in a typical SME spends a working day (7.5 hours in total; one-off cost) in familiarising himself and colleagues with the new legal requirements.
- However, there may remain instances where legal questions have to be answered. For this reason, for certain areas (see table in Annex 11), we estimated this could entail an average €700 one-off cost per entity.
- Where answering such legal questions would not be necessary, a self-audit of business processes might entail another working day (7.5 hours; one-off cost) to check procedures and make changes if necessary.
- There may also be a need to produce *ad hoc* internal guidelines/codes of practice for employees. This, where necessary, could require another half working day (one-off cost).

- With regard to **staff training** (on-going cost), as employees serving the public already have to respect existing anti-discrimination rules, it was anticipated that there should be considerable knowledge in the workforce already. For example, all employees should be aware of anti-discrimination duties relating to gender and race, employment discrimination rules, as well as issues indirectly relating to accessibility, such as health and safety for instance. Nonetheless, we estimated that this would require half a working day per year at most<sup>262</sup>.

In contrast to the abovementioned generic compliance costs, the greatest compliance-related costs for providers have been found to be in assessing and making the changes necessary for specific grounds (e.g. for disability and access). These costs are assessed below in section 9.3. on disability and access to goods and services, section 9.4. on disability and social care (living in the community) and section 9.5. on age and health care.

### **3. Results for administrative, regulatory and generic compliance costs for SMEs and public service providers across all grounds in the 5 selected Member States**

The possible regulatory costs (item 1 in table 12 in the above section) for public administrations and the generic compliance costs (2a in table 12) for SMEs and public service providers, depend on the implementation schedule.

In line with the methodology outlined in previous chapters of this report, two scenarios have been developed based on 5 year and 20 year implementation timelines, as summarised below in Table 13. The 5 year scenario (oriented towards the implementation deadlines suggested in the proposal) is considered a very ambitious implementation timeframe for a Directive with such a high degree of complexity, wide coverage and with potentially significant cost implications in some sectors. A 20-year implementation scenario is therefore also provided as a more realistic and less costly timeframe for some areas, reflecting also the deliberations so far in the Council. It was chosen because it is the implementation timeframe selected as appropriate in a number of literature sources and is broadly in line with timeframes allowed to public transport operators in the implementation of passenger rights legislation. For further discussion refer to Chapters 1 and 2 in Part II on our approach to estimating the costs of the implementation of the proposed Directive.

The main reason why the costs for the 5 year and 20 year scenarios are similar here is because most of the regulatory and generic compliance costs occur **upfront**. However, as noted already, enforcement costs have not been calculated. Their inclusion could possibly mean that on-going regulatory costs would be higher.

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<sup>262</sup> The average SME in the EU only employs 4 persons. Therefore, training time should be minimal for most. Data found at: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-ET-11-001/EN/KS-ET-11-001-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-ET-11-001/EN/KS-ET-11-001-EN.PDF)

**Table 20: Estimated total administrative, regulatory and generic compliance costs over first 5 and 20 years of the proposed Directive (with the exception of enforcement costs and certification of accessibility)**

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
<b>Czech Republic</b>	78	97
<b>Germany</b>	492	675
<b>Romania</b>	132	147
<b>Spain</b>	451	608
<b>Sweden</b>	79	117

*All numbers have been rounded. Compliance costs are based on the number of SMEs and public service providers covered in Annex 12.*

### Findings

As noted above, given the fact that the Member States already have (or should have) extensive anti-discrimination rules and procedures in place for employment and on grounds of gender and race, the additional **non-enforcement** related regulatory costs faced by authorities and generic costs faced by providers should be limited. Indeed in many cases goods and services providers may not have to significantly alter how they serve customers. However, as indicated in previous chapters, based on the assessment put forward in the 2007 EPEC study which supported the Commission's original proposal, it is plausible that **enforcement costs** could be quite high.

Beyond potential enforcement costs, the vast majority of compliance costs for SMEs and public service providers will not be related to generic compliance costs but to providing greater access to goods and services for persons with disabilities, and in certain areas, for the over 65s as well as, in some Member States (and to a lesser extent), to social advantages in relation to sexual orientation. These ground specific costs are outlined in the sections below.

### III - Ground/sector-specific compliance costs and benefits in relation to equal access to goods and services of persons with disabilities

This area requires action resulting in considerable costs to achieve provision of greater access to goods and services for persons with disabilities.

Within this area, the primary focus is on persons with physical and sensory disabilities who account on average for 70% to 80% of all persons with disabilities. In terms of where adjustments need to be made, the focus is on the costs and benefits of facilitating access at facilities (e.g. premises) where the vast majority of goods and services are provided, or via websites etc. As the adjustment required depends on the nature of the good or service provided, the costs of adjustment will vary by sector.

## 1. Results for access to the provision of goods and services by sector

As explained in previous chapters, this study has focused on the costs and benefits to SMEs and public service providers and as such complements the assessment already carried out by the European Commission which examined a wider range of costs and benefits. Notably, this study has not assessed the potential benefits of the proposed Directive to individuals and society. They were assessed by and on behalf of the European Commission and have been summarised in Chapter 1.VI in Part I.

It has to be reminded that a breakdown by SME and public service provider is difficult given the fact that in each country surveyed the public sector/public service provider and SMEs are often both involved in the same sectors. While educational facilities, public administration buildings and public spaces are typically seen as areas where the public sector dominates and restaurants etc., entertainment/culture and retail and other service providers are seen as the preserve of SMEs and large companies, this is not always the case. The reality is that **both SMEs and public bodies are involved in all areas** with the exception of administration and public spaces. For example, there are SMEs involved in running schools while there are public authorities involved in running gyms. Likewise, on the one hand, there are large private companies which run hospitals, whose services are partially paid by the public and other commercial entities that have certain public service obligations, while on the other hand, there are many publicly funded entities that do not. Moreover this situation varies from country-to-country. Therefore, any further analysis should **look more at how the service is provided** rather than the ownership or size of entity providing it.

## 2. Sectors and services assessed

The sectors which will have to adhere to accessibility requirements to accommodate persons with disabilities of the proposed Directive do not cleanly fit under SME or public service provider/authority descriptions. In many cases, both the private and public sector are involved in providing a certain service such as education or social care. Rather, if one applies the wording of the proposed Directive, in particular in Article 4(2), it is more likely that costs will vary by **subsector** and even on a **business-by-business basis** (e.g. the nature of the business, size etc.). This makes estimations for costing very difficult.

The sectors are outlined in the table below. While they do not cover all the possible entities to be affected by the proposed Directive, they do nonetheless cover the vast majority of sectors which offer goods and services to the public.

It is also worth reiterating that whilst much of the focus is on disability discrimination, this is likely to affect a large number of older persons given that almost half of persons with disabilities are over the age of 65.

**Table 21: Sectors and entities examined under ‘access to goods and services’**

Sector	Ownership/Size/Entity affected
Education	Mostly public but substantial private SME presence; includes nurseries, primary and secondary schools (including vocational); universities
Healthcare and Social Care	Mostly public or publically funded; includes hospitals, clinics, care homes; excludes pharmacies as covered already in retail category below
Public Administration and Judiciary	Public authority by definition; public administration buildings/courts
Walkways and Public Thoroughfares	Public authority by definition/street crossings
Hotels, Restaurants, Cafés, Bars (HORECA)	For the most part private sector (mostly SME)
Exercise Facilities	Mixture of public and private sector; Gyms and Swimming Pools
Retail	For the most part private; mostly SME
Broadcasting media	Mixture of public authority and private; television services, excludes internet and paper media
Housing	Mixture of public authorities and private individuals

### 3. Outline of main assumptions made and variables used

In the absence of data on a whole range of indicators related to accessibility requirements to accommodate persons with disabilities, it has been necessary to make a range of far-reaching assumptions. These are described in the box below.

#### **Box 27: Key assumptions with relevance to sector-specific compliance costs to create greater access for persons with disabilities**

- ‘Visitability’ of a premises and access to key elements may be the objective for certain premises while 100% accessibility may be required for others, such as housing.
- The focus is on a typical type of premises by sector. However, a range of variables within sectors means that costs can vary considerably between premises.
- It is assumed that providers will receive guidance from public authorities and/or business representative bodies on their obligations.
- ‘Soft costs’ related to ad hoc service changes (e.g. spending a bit more time with a customer) are not included here as greater investment in hard costs such as physical accessibility is likely to reduce the need for such ad hoc changes.

- The assumption is that consumption patterns of persons' with disabilities are the same as an 'average' person in any given Member State.
- Costs are based on a survey of costs estimated in existing building standards in place in **Switzerland** and **Australia** and to some extent those applying in the **US**. Figures provided from an impact assessment conducted in **the Netherlands** were also taken into consideration. In addition, given the uncertainty underlying the costs, and the likely variation across entities, the costs are presented across a minimum/maximum range. The types of changes estimated are presented in Annex 10.
- It is assumed that, where premises are accessible, accessible websites and other forms of accessibility (free delivery) are generally not required. However, for services where internet booking is integral to the service, such as for hotels, internet accessibility is included.
- Resulting benefits for users with mobility/sensory disabilities are, for the most part, based on a 'value of time saved' measure using calculations which are guided by accessibility rules applied in the **US**. This takes account of the time getting to, getting into and around the facility and the added value of the visit. Estimates on time used per facility type are presented in Annex 9.
- Given a lack of data in the EU and the lack of compatibility between the **US** and the **EU**, it has had to be assumed that the accessibility measures could lead to a flat 5% increase in time savings for persons with mobility and sensory difficulties. Indirect benefits are not included. The three exceptions to this 5% estimate are (i) housing which is put at 0.2%, and (ii) exercise (10%). A full explanation is provided in Annex 9.
- Where existing levels of accessibility are not known (i.e. in most cases), a flat 40% accessibility rate is assumed. This figure, which is based on the literature review, does not infer that 40% of all facilities are fully accessible. Where an alternative higher number is available, it is used instead. It is assumed that, even without the proposed Directive, an additional 1% of business premises will become accessible every year. The exceptions to this are accessibility of media (depending on the Member State) and housing (10%).
- The population of beneficiaries is assumed at 10% of the adult population. The only exceptions to this 10% figure are education (where 3% is assumed as the percentage of the age group with physical and sensory disabilities is low) and media (4% of the population has hearing impairments).
- As age and disability are correlated, the population of **beneficiaries** takes into account ageing populations. This is especially relevant for the 20-year investment scenario. In addition, a 4% discount rate is applied. Finally, costs and benefits are assumed to accrue over the 5 and 20-year implementation time periods. As changes can be expected to result in benefits beyond these time periods, benefits will have to be considered as **underestimated**. Costs for maintaining equipment etc. are not included.
- Due to a lack of data, in many cases, the figures include all facilities in a certain sector and do not differentiate between SMEs and larger companies.



As noted previously, goods and services can be provided in a number of ways. While most goods and services are offered at private 'public access' premises (e.g. shops) or at related websites, many goods and services which can be bought and sold are provided in a different manner (e.g. rental or sale of private housing) or are provided remotely (e.g. broadcasting).

#### **4. Results for the assessment of costs for SMEs and public service providers of improving equal 'public access' to goods and services in 7 areas**

Based on the methodology and assumptions outlined above and in [Chapters 1 and 2](#) of Part II, and the input variables provided in Annexes 9,10, 11, the possible costs and benefits of providing greater access to goods and services for persons with physical and sensory disabilities for the five selected Member States are outlined below. These results relate to the following facilities/sectors:

- Educational establishments and services;
- Health establishments (excluding hospitals, clinics where accessibility is assumed) and services;
- Public administration buildings/services
- Hotels, restaurants and cafes etc.;
- Exercise facilities (pools/gyms);
- Entertainment and cultural establishments (cinemas, theatres, libraries, sports arenas etc.)
- Retail (shops and other walk-in establishments and services).

The results presented in Table 20 below (5 year implementation scenario) and in Table 21 (20 year implementation) are based on the actions that above entities might be expected to take in order to meet the spirit of the proposed Directive in this area and hence provide improved access to persons with physical and sensory difficulties. In reading the two tables, it should be noted, however, that given the almost complete lack of data on adjustment costs available in the EU, the numbers provided only represent possible **scenarios**.

As already noted, the sector-level costs are based on the actions presented in Annex 11, which in turn are **estimations** based on costs provided for impact assessments conducted in the **US, Australia and the Netherlands**.

The table takes into account benefits which have been based on the possible time savings/utility gains accruing to persons who face mobility and sensory challenges (e.g. not only those with disabilities) which result from the actions taken by goods and services providers to increase accessibility. Again, given a complete lack of information or estimates on the time savings/utility gains for users resulting from accessibility in the EU, the **scenario** covers a situation where the beneficiaries typically gain to the tune of 5%.

However, it is crucial to remember that the proposed Directive (Article 4(2)) allows Member States to **match accessibility requirements** on goods and services providers **with benefits**. For example, if accessibility standards in a hypothetical Member State are estimated to result in, say, €500 million in benefits for retail customers, then the Member State in question is free, in theory, to establish accessibility requirements which are estimated to cost in the region of €500 million. That said, the challenge here is that requiring that all providers in a given sector have to meet minimum levels of accessibility, may mean that costs exceed benefits. This is the case for the scenario tables below where, in the majority of instances, costs exceed benefits. Thus, Member States have the possibility to study the situation at national level, and, consequently, to take the decision to set **accessibility standards** in a way which **minimises costs** while complying nevertheless with the proposed Directive.

In addition, with regards to the number of entities underlying the cost data provided in the tables, a major assumption had to be made with regards to the number of 'walk-in service establishments' in each country. The number of these entities – which include hairdressers, walk-in offices etc., and which are not strictly 'retail' premises per se – are estimated using **US** data where for every retail establishment (e.g. shop, supermarket), there are four walk-in service establishments. As this may lead to overestimations, the figures for the number of total retail outlets (shops and walk-in establishments) are very much **hypothetical**.

**Table 22: Potential costs and benefits of a 5 year implementation scenario (access to goods and services in selected sectors; sector specific access costs, € millions)**

€ millions*	Czech Republic			Germany			Romania			Spain			Sweden		
	<i>Cost</i>	<i>Ben</i>	<u><i>Net Costs</i></u>	<i>Cost</i>	<i>Ben</i>	<u><i>Net Costs</i></u>	<i>Costs</i>	<i>Ben</i>	<u><i>Net Costs</i></u>	<i>Costs</i>	<i>Ben</i>	<u><i>Net Costs</i></u>	<i>Costs</i>	<i>Ben</i>	<u><i>Net Costs</i></u>
Education facilities/ services	74	10	<u>65</u>	993	242	<u>751</u>	87	20	<u>67</u>	626	95	<u>532</u>	172	42	<u>130</u>
Health facilities/ services**	7	3	<u>3</u>	64	31	<u>33</u>	9	<1	<u>8</u>	77	8	<u>68</u>	8	1	<u>7</u>
Pub. Adm/ Judiciary	62	7	<u>55</u>	630	97	<u>532</u>	90	5	<u>85</u>	387	40	<u>347</u>	72	16	<u>56</u>
Horeca	320	20	<u>300</u>	2,050	1,033	<u>1,014</u>	204	11	<u>193</u>	1,210	295	<u>914</u>	238	91	<u>147</u>
Exercise Facilities	13	4	<u>9</u>	126	38	<u>87</u>	5	<1	<u>5</u>	85	16	<u>68</u>	18	11	<u>7</u>
Entertainment/ Culture	133	3	<u>130</u>	408	176	<u>231</u>	160	1	<u>158</u>	188	22	<u>166</u>	55	9	<u>46</u>
Retail Outlets - Shops	121	15	<u>105</u>	460	121	<u>338</u>	153	28	<u>125</u>	785	70	<u>715</u>	82	14	<u>68</u>
<b>Total (excluding est. of other walk in establishments)</b>	<b>731</b>	<b>63</b>	<b><u>667</u></b>	<b>4,729</b>	<b>1,740</b>	<b><u>2,989</u></b>	<b>709</b>	<b>67</b>	<b><u>643</u></b>	<b>3,366</b>	<b>550</b>	<b><u>2,813</u></b>	<b>647</b>	<b>186</b>	<b><u>461</u></b>
<i>Other Retail Outlets*** – estimate of walk-in establishments</i>	486	62	<u>425</u>	1,838	486	<u>1,352</u>	613	112	<u>500</u>	3,141	280	<u>2,861</u>	330	56	<u>274</u>
<b>Total</b>	<b>1,217</b>	<b>125</b>	<b><u>1,092</u></b>	<b>6,567</b>	<b>2,226</b>	<b><u>4,341</u></b>	<b>1,322</b>	<b>179</b>	<b><u>1,143</u></b>	<b>6,507</b>	<b>830</b>	<b><u>5,674</u></b>	<b>977</b>	<b>242</b>	<b><u>735</u></b>

*\*With respect to all tables, due to rounding of benefits and costs figures, the numbers contained in net costs may not correspond exactly to the 'cost' and 'ben' columns.*

*\*\*The health facilities excludes hospitals, clinics, GPs etc. where it is assumed that premises and procedures are already accessible. Therefore, these figures includes activities such as dentistry*

*\*\*\*Compared to the other countries **Spain** has a very high number of cafes/bars and retail establishments. For the calculation of walk-in establishments the assumption was made (based on US data) that there are four times as many walk-in establishments and service entities serving the public as there are shops. For example the US has almost one million shops etc. and four million walk-in establishments. However, **Spain** with less than 20 percent of the population of the US has half a million shops (and an estimated 2 million walk-in establishments). Therefore this estimate may lead to significant overestimation of the costs of **Spain** for retail.*

**Table 23: Potential costs and benefits of a 20 year implementation scenario (access to goods and services in selected sectors; sector specific access costs, € million)**

€ millions*	Czech Republic			Germany			Romania			Spain			Sweden		
	Cost	Ben	<u>Net Costs</u>	Cost	Ben	<u>Net Costs</u>	Costs	Ben	<u>Net Costs</u>	Costs	Ben	<u>Net Costs</u>	Costs	Ben	<u>Net Costs</u>
Education facilities/services	-**	-	-	1,095	490	<u>604</u>	86	52	<u>33</u>	664	193	<u>470</u>	196	86	<u>110</u>
Health facilities/services***	5	9	<u>-4</u>	44	71	<u>-27</u>	6	2	<u>4</u>	52	19	<u>33</u>	6	2	<u>4</u>
Pub. Adm/ Judiciary	36	19	<u>17</u>	430	225	<u>204</u>	61	11	<u>50</u>	264	93	<u>170</u>	49	37	<u>12</u>
Horeca	298	56	<u>242</u>	3,075	2,388	<u>687</u>	164	25	<u>139</u>	1,173	691	<u>482</u>	383	210	<u>173</u>
Exercise Facilities	9	10	<u>-1</u>	87	88	<u>-1</u>	4	<1	<u>3</u>	59	39	<u>19</u>	12	27	<u>-14</u>
Entertainment/Culture facilities	92	8	<u>83</u>	283	408	<u>-124</u>	110	3	<u>107</u>	130	52	<u>77</u>	38	21	<u>16</u>
Retail outlets-shops	82	31	<u>51</u>	313	246	<u>67</u>	104	57	<u>47</u>	535	141	<u>293</u>	56	28	<u>27</u>
<b>Total (excluding est. of other walk in establishments)</b>	<b>522</b>	<b>133</b>	<b><u>388</u></b>	<b>1,254</b>	<b>985</b>	<b><u>269</u></b>	<b>418</b>	<b>228</b>	<b><u>190</u></b>	<b>2,877</b>	<b>1,228</b>	<b><u>1,544</u></b>	<b>740</b>	<b>411</b>	<b><u>328</u></b>
<i>Other Retail Outlets**** – estimate of walk-in establishments</i>	331	126	<u>205</u>	1,254	985	<u>269</u>	418	228	<u>190</u>	2,143	567	<u>1,575</u>	225	114	<u>111</u>
<b>Total</b>	<b>920</b>	<b>261</b>	<b><u>659</u></b>	<b>6,582</b>	<b>4,903</b>	<b><u>1,679</u></b>	<b>955</b>	<b>378</b>	<b><u>576</u></b>	<b>5,024</b>	<b>1,800</b>	<b><u>3,224</u></b>	<b>967</b>	<b>527</b>	<b><u>440</u></b>

\*Numbers are rounded.

\*\*Interviews with experts in the **Czech Republic** suggest that educational establishments will be accessible within five years.

\*\*\*The health facilities excludes hospitals, clinics, GPs etc. where it is assumed that premises and procedures are already accessible. Therefore, these figures includes activities such as dentistry

\*\*\*\*Compared to the other countries **Spain** has a very high number of cafes/bars and retail establishments. For the calculation of walk-in establishments the assumption was made (based on US data) that there are four times as many walk-in establishments and service entities serving the public as there are shops. For example the US has almost one million shops etc. and four million walk-in establishments. However, **Spain** with less than 20 percent of the population of the US has half a million shops (and an estimated 2 million walk-in establishments). Therefore this estimate may lead to significant overestimation of the costs of **Spain** for retail.

For the correct appreciation of the above mentioned 'scenario' figures on costs and benefits for SMEs and public service providers, the following has to be taken into account:

- The scenario used would suggest that costs will be highest for those Member States with the lowest GDP. This is because the **benefits** are measured in terms of the value of time saved resulting from greater accessibility, where value is a function of average wage rates and 'leisure time' value. In other words, **if wages are low, then benefits are low**. While the costs of accessibility are lower in countries with lower GDPs this is not enough to compensate for the difference in benefits.
- Likewise, there is a marked difference between the net costs of a 5-year transition and a 20-year transition. Overall, the net **costs diminish substantially with the longer implementation period**. Even so, in this hypothetical scenario, in every country there would still be net costs after 20 years.
- The main costs will arise in the area of making **HORECA** and **retail** accessible since most goods and services are offered by such entities, and generally at premises. As noted due to a lack of data on total retail premises (including shops and other walk-in services such as professional services, petrol stations etc.), it is very difficult to estimate costs for this sector.
- Per unit costs for making SME premises accessible in the retail sector are estimated to be relatively low as only basic accessibility investments are expected on average. On the other hand, the sheer number of premises devoted to retail means that costs overall are significant, as suggested also by extrapolation of US figures.
- **The area of HORECA (Hotels, restaurants, cafes etc.) is one** where there are considerable **benefits** from greater accessibility, especially for restaurants and cafes. However in contrast to retail, the need to invest in, for instance, **sanitary facilities** raises costs.
- With regards to exercise facilities/swimming, using US figures in the absence of alternative data, the **returns appear to be high**.
- With regards to entertainment facilities, the **benefits are quite high** as the average visitor spends a considerable amount of time here. Given the differences, sector by sector (or building type), differentiation may be appropriate in certain cases.

## 5. Results for the assessment of costs for SMEs and public service providers of certifying their compliance with accessibility requirements

In addition to the above sector-specific costs related to the creation of improved accessibility, if each SME and public service provider was required to certify that its business (premises etc.) meets the proposed Directive with regards to accessibility, the additional certification costs could be substantial. As per the methodology, we examined the scenario in which certain entities with **significant compliance costs** would have to certify the accessibility of their goods and services provision (e.g. schools, restaurants) while others (e.g. small shops) – for reasons of cost etc. – would not have to certify as the costs for them would be out of proportion. However, this classification is *ad hoc* so the

numbers provided below, based on a certification cost of €700 to €1,000 per entity and covering a range of 5 to a 20 year implementation periods, are illustrative:

**Table 24: possible disability access certification costs for providers (excluding retail\*)**

Member State	€ million
Czech Republic	60-85
Germany	250-360
Romania	50-75
Spain	270-380
Sweden	35-50

\*As the typical retail accessibility costs amount to between €1,000 and €1,500, certification would not make sense and would be clearly disproportionate. As such, retail is excluded.

Overall, possible certification costs could be extensive and high in comparison with the other compliance costs of the proposed Directive.

## 6. Results for the assessment of costs for SMEs and public service providers in other areas of accessibility

- Beyond 'public access' to private provision of goods and services, with regards to **residential housing**, the costs of making every seller or landlord of residential housing accessible for persons with disabilities far exceed the benefits in most cases. Even if every person selling or letting a house/apartment had to only take small anticipatory measures (e.g. spend €400 on minor accessibility improvements/provide leases etc. in braille, as well as spend the time to inform themselves of the legislation etc.), the cost would still be very high for the 95 million householders resident in the 5 countries surveyed. As the average person moves house once every 20 years on average, and there are 200 million residential units in the EU, the cost would, in this situation, vastly exceed the benefits. Detailed figures are provided in Annex 12.
- Only in cases where the vendor/landlord makes such very small changes on an ad-hoc rather than on an anticipatory basis (i.e. when a person with a disability wants to rent a property), can the possible benefits possibly exceed the costs. However, in such cases, it is open to debate what benefits would result from such small changes or accommodations and further would this be sufficient for the potential buyer/leaseholder with a disability. Rather than making all properties for sale or let accessible, it may be more efficient to ensure that a certain percentage of properties (e.g. 10% reflecting the proportion of the population with sensory/mobility disabilities) are made fully-accessible. Another argument for focusing on a particular number of premises is the fact that the EU's population is ageing and that a certain amount of the population will need accessible housing. One of the key benefits here will be the possible effect this would have on health and safety in terms of lower numbers of falls etc.

- With regards to the **built environment**, while transport is already covered under EU legislation, the accessibility of streetscapes and crossings is also important. While there is insufficient data available to fully analyse the situation, based on a rough estimate provided in Annex 12 the possible benefits in this area could be considerable.
- Finally, **television broadcasting** was analysed as persons with hearing disabilities would need to be appropriately accommodated under the proposed Directive. In all countries, the number of channels available has mushroomed over recent years with over 700 channels available in certain countries (e.g. **Spain, Romania**). Given that there is an estimated existing level of subtitling at 5%, the cost of moving to full subtitling across these channels would far exceed the benefits (in the absence of a universally accepted metric of the 'utility' of television, the television license fee/tax/charge was used as a proxy). In most countries, existing obligations in this area fall on public service providers who must provide a certain level of captioned programming. However, this is typically in the range of 40% and rarely covers more than 50% of programming, even for the top 2 or 3 public service channels. Ultimately, it would be more economical to require full subtitling of the top 4 or so channels than to require all channels to do so. The numbers analysed are presented in Annex 12.

## 7. Concluding remarks on disability access

As noted above, given the lack of (i) concrete data on current access levels on the 'cost' side and a lack of (ii) surveys on time use and inconsistent statistics on affected groups on the benefit side, the results outlined in this section can only be seen as indicative of how the proposed Directive could affect SMEs and public service providers on the one hand, and persons with disabilities on the other hand.

On the cost side, information based on measures taken in **Switzerland**, the **US**, and **Australia**, and impacts assessed for the **Netherlands**, was taken as examples of what a typical school/administration/company etc. may have to do to comply with the proposed Directive. Overall, the aim was to show what adjustments could be seen as **reasonable** based on experience elsewhere; ensuring **100% accessibility is not required** by the proposed Directive. Therefore, costs for providing 100% accessibility would be higher than the numbers indicated above. On the benefit side, estimates are based for the most part on one **US** study on accessibility. As a result, the first action which should be taken should be to **improve the availability of data** on the European level regarding accessibility of premises, websites, etc. in the Member States.

In the scenarios used for public access to goods and services, while the costs may outweigh the benefits over both the 5-year and 20-year implementation timeframes, the difference would be considerably less over a 20-year implementation period, meaning that **the gap between costs and benefits should narrow considerably over a longer implementation period**. There are several possible reasons for this. One is that over 20 years, with the growth in the EU's ageing population and the high correlation between age and disability, the **number of beneficiaries rises**. Also, as per the methodology, it is assumed that a greater number of buildings will become accessible (increase assumed at



1% per year) even without the implementation of the proposed Directive. A final reason is that buildings can be made accessible as they are being **renovated**. Therefore, a 20-year implementation period could be more feasible (or least much less costly for Member States with high GDP), at least with respect to existing buildings etc.

Under the scenarios looked at, there are significant differences between countries due to differences in GDP. While there are differences in costs between, for example **Germany** and **Romania**, the differences in benefits are even higher as they are based on the value of a person's time, which in turn is based on estimated work and leisure time values (higher in **Germany**; lower in **Romania**). In short: the higher the GDP, the greater the potential business case. This difference can be even more accentuated because of cultural differences (e.g. lower gym membership in Romania, lower number of visits to cafes/restaurants etc.) which means, there is less of a benefit to making such facilities accessible. This may warrant a country-by-country approach rather than a one-size-fits-all solution and the proposed Directive (in particular Article 4(2)) – as it was worded in 2008 – allows Member States' flexibility in this area as set out above.

Furthermore, there is a marked difference between sectors depending on a range of characteristics such as number of entities, number of visits, or costs of change. In the **education sector**, the benefits are limited by the lower than average proportion of persons with disabilities amongst the pupil population. Concerning **public administration/courts**, the relatively low benefits across the sectors can be explained by the estimated amount of time a typical person uses such facilities, rarely for public administration and almost never for courts. As regards the public sphere, as transport is already covered in EU legislation, this leaves accessibility of the public environment, namely **street crossings**, to be covered by the proposed Directive. While the lack of data prevents a more accurate analysis, the benefits could be quite high given the importance of accessibility in this area.

As argued above, the effectiveness of the proposed Directive in the area of access is assumed to be highest when business premises/websites are certified. However, this could be costly. On the other hand, self-compliance may lead to low levels of compliance. Therefore, considerable thought should be paid to **identifying the most optimal way of ensuring compliance**.

As noted above, beyond time and quality savings there is a considerable potential for **safety benefits** especially with regards to safety in public spaces and in housing where most accidents take place. This is especially relevant as the EU's population gets older and a larger proportion of individuals require accessible housing. This is another area for future research.

With regard to broadcasting, current duties on accessibility are less based on the costs and benefits of accessibility and are more geared towards meeting certain public service broadcasting obligations. The question here is whether every television channel (and internet website) should be made accessible – which may not make sense – or whether such a duty should be limited to channels and websites run by larger private or public entities only.

Finally, and perhaps most importantly, there is a marked difference between requiring accessibility at public premises (publically or privately owned) on the hand, and requiring housing to be accessible. While the net costs of accessibility of public-access facilities appear relatively low, requiring all housing to be accessible does not appear to be reasonable. This may require a **differentiated approach to public and non-public access premises**.

With regard to public access facilities and services, there is a lack of data available in the EU on current accessibility levels. Therefore, a considerable amount of further research would need to be conducted to ascertain the implications of what each and every sector should do to ensure proportionate access to goods and services in line with Article 4.2 of the proposed Directive.

#### **IV – Ground and sector specific compliance costs in relation to the right of persons with disabilities to living in the community**

The above section covers estimates for access to goods and services for the majority of those with disabilities, namely those with physical and sensory disabilities.

These are important preconditions to meet one of the requirements of the UNCRPD which is that persons with disabilities should have the option to live in the community instead if in an institution (Article 19). However, this objective will generate costs, and possibly benefits, for service providers in relation to care for those when they will chose to live in the community.

##### **1. Key assumptions for the calculation of costs and benefits for SMEs and public service providers of persons with disabilities making the transition from institutional to living in the community**

The section below sets out the potential impacts and costs of transition to independent living, assuming that most, if not all, of the affected persons would choose to live in the ‘community’ rather than in an institution, based on the approach discussed in [Chapter 2.IV](#) in Part II.

#### **Box 28: Key assumptions for the calculation of costs and benefits for SMEs and public service providers related to the transfer of persons with disabilities from institutional to living in the community**

- The size of the institution is used as proxy for ‘institutional culture’. Thus, the larger the institution, the larger the prevalence of the features or components associated with ‘institutional culture’.
- Based on definitions used in the sector, an ‘institution’ is defined as a facility with more than 30 places, where 80% or more of the residents have a disability. Smaller institutions and care homes are considered as a community living arrangement.
- It is assumed that the level of care provided in the community will be the same as in the institution (e.g. the quality of care provided should be higher than or equal

to that provided in the institution).

- Persons with disabilities will tend to choose living in a community over living in an institution because of the reasons outlined in chapter 5 of part II. However, given that some institutions may need to stay open as not all individuals may willingly choose to live in the community, it is assumed that this preference will lead to the closure of 80% of institutions; **20% of institutions will remain operational.**
- Consequently, costs and benefits will be calculated with a view to have by the end of the implementation period, **80% of persons with disabilities living previously in an institution then living in a community.**
- In a **5 year implementation schedule**, costs and benefits are therefore calculated on the basis that each year 16% of patients will make the transition to community living and 16% of institutions will close down.
- In a **20 year implementation schedule**, it is assumed that each year 4% of patients will make the transition to community living and 4% of institutions will close down.
- The calculations consider the operational costs that are saved as a result of closing institutions.
- **Per-patient costs for living in the institution** are derived from available literature sources and rely on data for costs in the **UK** and in **Spain**.
- Data points from the **UK** (where most data and information is available) and **Spain** are **adjusted for each of the five countries** by taking account of an index for their standard of living from EUROSTAT data (e.g. **Spain** = 100; **Germany** = 124.6; **Czech Republic** = 81.4). This creates a **range of possible per-patient costs of living in an institution** for each of the five Member States.
- The difference in per-patient costs and benefits for service providers of **living in an institution vs living in a community** is determined through examination of the available literature (DECLOC, ANED and national level reports). While certain studies have claimed that the costs are the same or similar, we have made the assumption based on the studies that 'living in the community' may be, on average, 10% more costly on an on-going basis than living in an institution. If two systems have to be kept operational in parallel, the associated costs will be higher.
- The total change-over cost for each of the five Member States is constructed as a range, taking into consideration the **number of persons with disabilities currently living in an institution**, according to data from ANED, DECLOC and other sources.
- Given that the UNCRPD refers to the right of an affected individual to live in the community as opposed to an institution, it is assumed that the benefits are widely acknowledged and are not disputed. These benefits include increased participation (or ability to participate) in the labour market/undertake other economic activity and contribute to paying taxes and social security payments; increased/additional earnings from employment; improved physical and/or mental health; increased control over care; increased levels of confidence. The multitude and extent of the benefits to individuals and society is not disputed but are not monetised either because they are outside the scope of this work.

Overall a like-for-like comparison of the five countries is challenging given the very different ways in which this issue has been tackled (or not tackled). Therefore, given these differences, a certain amount of context is needed before prospective costs and benefits of change can be provided.

## 2. Situation in the Member States

In the **Czech Republic**, there has been very little indication in recent years as to the extent to which existing institutions have been dismantled. According to the ANED 2009 synthesis report, in the **Czech Republic**, progress has been static since 2000. Moving away from large institutions and creating viable options for community care are still the main challenge. Up-to-date, viable options for living in a community have been created only in the region of the capital. Given the above considerations, it is assumed that the **Czech Republic** is not yet compliant with the UNCRPD, and the process of transition to independent living is in a very early stage.

Although **Germany** has implemented a policy that supports independent living (e.g. through personal budgets that are paid directly to the person with disabilities or to a supporting institution), recent data indicates a rollback towards institutionalisation, and the infrastructure of care and assistance is still dominated by the institutional approach. The ANED 2009 report suggests that personal budgets have not been sufficient to cover the needs of people with disabilities where the level and/or complexity of the disability has been higher, thus incentivising some people with disabilities to revert back to institutional care. In this context, **Germany** cannot be considered compliant to the UNCRPD.

In **Romania**, legislation relevant to the area does not provide any support for independent living<sup>263</sup>. Suitable alternatives for living in institutions have not been sufficiently developed. Prevention of the institutionalisation of people with disabilities was the focus in **Romania** discussed in the ANED and DECLOC report; as was the restructuring/closing down of institutions where minimal quality standards are not implemented. In 2009, it was reported that **Romania** is still developing new institutions (some of which are large).

**Spain** has developed legislation that articulates specific aspects of support for independent living, such as the right to personal assistance<sup>264</sup>. Some of the issues identified for **Spain** include differences/heterogeneity across regions in provision of assistance to and the lack of information regarding services for people with disabilities. As of 2009 (ANED), investments were still being made in developing residential institutions, including institutions for people above 65 with intellectual disabilities. The

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<sup>263</sup> Ibid., p.12

<sup>264</sup> ANED, 'The Implementation of Policies Supporting Independent Living for Disabled People in Europe: synthesis report', 2009, p. 12

'Concluding Observations'<sup>265</sup> issued for **Spain** by the **CRPD Committee** in September 2011 point out several shortcomings for progress in implementing Article 19 'Living independently and being included in the community'. The report points out the lack of adequate services and their availability overall and especially in rural areas. As a result, there is a concern that a feasible alternative to institutionalisation is still lacking. The committee is also concerned about relevant legislation that might limit eligibility for receiving personal assistance.

Regarding costs of de-institutionalisation, the 2009 ANED report on **Spain** suggests that the annual expenditure per person with disability in a 'dependency situation'<sup>266</sup> in a residential centre is €17,554; the annual expenditure per person with disability not in a 'dependency situation' in a residential situation is €12,095; and the annual expenditure per person in alternative lodging systems (i.e. outside an institution) is €7,830<sup>267</sup>. The report thus seems to suggest that the spending required for a person with disabilities is lower outside an institution than inside. The numbers, however, need to be interpreted with caution. The report did not comment on the comparability of the **level of care** provided by these alternative arrangements nor did it comment on whether the support allocated was based on need or subject to budgetary constraints. However, given the lack of data from any other sources, the data available for **Spain** are, used as a proxy measure to estimate costs in the other four Member States.

**Sweden** (along with **Denmark** and Norway) is one of the three European countries which does not have any form of large-scale institutions (with more than 30 places and with 80% residents that have disabilities). In **Sweden**, persons can decide of their own volition where and how they want to live, not only by law, but according to NGOs, in practice as well<sup>268</sup>. Also, in **Sweden** persons with disabilities are legally entitled to receive full financial support for necessary personal assistance<sup>269</sup>. Comparing the situation in **Sweden** with the broad interpretation of when Article 19 can be considered implemented, it appears that **Sweden** is compliant. It would then be useful to evaluate how much it has cost **Sweden** to deinstitutionalise. According to two studies carried out in **Sweden**<sup>270</sup> (cited in the ANED synopsis report), the introduction of support for independent living through personal assistance actually saved the Swedish taxpayers at least 29 billion SEK between 1994 and 2007 (around €3.33 billion). Data on the

<sup>265</sup>CRPD Committee 'Concluding observations of the Committee on the Rights of Persons with Disabilities', 2011,p 7, available at <http://www.internationaldisabilityalliance.org/en/crpd-reports-0>, accessed 1 November 2013

<sup>266</sup> Dependency situation refers to persons who need continuous support in their daily life.

<sup>267</sup> It was not indicated whether the latter considers persons with disability with or without dependency.

<sup>268</sup> ESSL foundation 'ESSL Social Index Pilot Study 2010, Situation of Persons with Disabilities' 2010, p. 17.

<sup>269</sup> ESSL foundation 'ESSL Social Index Pilot Study 2010, Situation of Persons with Disabilities' 2010p.58

<sup>270</sup> Ratzka, A. (2007). Independent Living for people with disabilities: from patient to citizen and customer. <http://www.independentliving.org/docs7/ratzka20071022.html>; and Socialstyrelsen (2008) Personlig assistans enligt LASS ur ett samhällsekonomiskt perspektiv Rapport från Socialstyrelsen (Assistance under LASS from a socio-economic perspective).

**changeover costs and impacts** during the transition phase were however, not found. The main challenge with attempting to use the experience of **Sweden** to estimate potential impacts and costs in the other Member States is that **Sweden** spends about twice as much on community care than the next highest country. Therefore, while it is a best practice country, it could be expensive to emulate. In fact, recently concerns about the costs of spending on independent living have been raised, and a review of the policy is imminent<sup>271</sup>.

### **3. Estimations for the magnitude of possible costs to private and public service providers incurred during the transition from institutional to independent living**

Given the above context, literature findings and discussions with experts<sup>272</sup>, it is acknowledged that, on average, living in a community can be slightly more expensive than living in an institution<sup>273</sup>.

The conservative estimate we make here is that living in a community will be 10% more expensive than living in an institution. Where data on cost per annum is not available, proxy values are derived from data items in the Personal Social Services Research Unit (PSSRU) report on '*Unit costs of health and social care 2011*'<sup>274</sup> and reported costs for **Spain**. The average rate of the cost items that were relevant for this estimation<sup>275</sup> was £717 (British pounds) per residential week which is approximately €830 (euros) per residential week, or €43,160 per annum. The **UK** estimates include building and on-going costs, as well as salary costs and other revenue costs. It excludes personal budgets. In **Spain**, the annual expenditure per person with disability in a 'dependency situation'<sup>276</sup> in a residential centre is €17,554; the annual expenditure per person with disability not in a 'dependency situation' in a residential situation is €12,095. Assuming that half of the

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<sup>271</sup> ANED The Implementation of Policies Supporting Independent Living for Disabled People in Europe: synthesis report, 2009, p. 15.

<sup>272</sup> Literature review suggests that on average, living in a community will not be more expensive than living in an institution. This has been the overall conclusion in, for example, the DECLOC report, ANED 2009 report and DG Employment, Social Affairs and Equal Opportunities 2008 report.

<sup>273</sup> Expert consultation with Dr Jeni Beecham and Dr Martin Knapp of PSSRU. Literature sources Office for Disability Issues 'The costs and benefits of independent living, executive summary', 2007, p. 8. Available at: <http://odi.dwp.gov.uk/docs/res/il/costs-benefits-summary.pdf>, accessed 8 August 2013; and A Case study in European Expert Group on the Transition from Institutional to Community-based Care 'Common European Guidelines on the Transition from Institutional to Community-based care', November 2012 <http://www.enil.eu/wp-content/uploads/2012/12/Guidelines-11-16-2012-For-dissemination-WEB.pdf>, p. 51.

<sup>274</sup> Available at: <http://www.pssru.ac.uk/project-pages/unit-costs/2011/index.php>, accessed 2 August 2013.

<sup>275</sup> Blended rate of three categories reported in the PSSRU report '*Unit costs of health and social care 2011*': 'Local authority care homes for people with mental health problems' £711 per resident week establishment costs, includes 'buildings and on-going costs' and 'salary costs and other revenue costs', p. 36; 'Private sector residential care homes for people with mental health problems' £673 per resident week establishment costs, p. 37, and 'Residential home for younger adults with physical and sensory impairments' (p. 68) £768 per resident week, p. 37.

<sup>276</sup> Dependency situation refers to persons who need continuous support in their daily life.

residents will be in a 'dependency situation', and half will not, the annual expenditure per person with disability in an institution is estimated to be €14,825.

Thus, the costs estimated for the **UK** per annum are about three times those calculated for **Spain**. In the case of **Spain**, it is not clear what cost components have been considered in the estimate, for example, whether it includes the buildings and on-going costs, rather than only labour cost, as considered in the **UK** case. The **UK** and **Spanish** data are nevertheless fit for further use to develop scenarios for estimation of the magnitude of possible costs. Proxies are adjusted for each Member State according to the level of GDP (PPS<sup>277</sup> adjusted) per capita as follows:

**Table 25: Cost assumptions per person per annum of institutional care for persons with disabilities**

Member State	GDP (PPS) per capita level <sup>278</sup>	Spanish proxy for living in an institution (€ per annum per resident)	UK proxy for living in an institution (€ per annum per resident)	UK proxy for operating an institution (€ per annum per resident)
<b>Czech Republic</b>	79/81.4	12,074	30,997	3,623
<b>Germany</b>	121/124.6	18,493	47,476	5,548
<b>Romania</b>	49/50.5	7,489	19,226	2,247
<b>Spain</b>	97/100	14,825	38,059	4,448
<b>Sweden</b>	128/131.8	19,563	50,223	5,869

Another key assumption is that, although most persons with disabilities would choose to live in a community, a certain proportion of persons with disabilities (here assumed to be 20%) will remain in institutions. It is assumed that the amount of **institutions remaining** open is the same as the proportion of people choosing to remain in institutions (i.e. 20% of institutions remain open). Another assumption is that, in the long run, some of the institutions would remain open, representing 20% of the overall cost of operating institutions; and 80% of the cost of operating institutions (building and on-going costs) would be saved (= benefits). It is assumed that there are no economies of scale/scope. In the five year scenario, every year 16% of individuals would switch over to community living (80% divided by 5). In a **20 year implementation schedule**, each year 4% of patients will make the transition to community living and 4% of institutions will close down (80% divided by 20).

<sup>277</sup> Purchasing Power Standards (PPS)

<sup>278</sup>Data from Eurostat 1 June 2013:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00114>, accessed 6 August 2013.

**Table 26: Possible costs of changeover from institutional to community living**

Member State	No of persons with disabilities in institutions	Cost of changeover to community living in 1 year (€ million)*	Cost of changeover 5 year implementation, including savings from closure of 80% of institutions € million (€ per person)**	Cost of changeover 20 year implementation, including savings from closure of 80% of institutions € million (€ per person)**
<b>Czech Republic</b>	21,000 <sup>279</sup>	274 - 703	170 (6,471) - 518 (19,748)	62(2,346) - 188 (7,179)
<b>Germany</b>	69,000 <sup>280</sup>	1,378 - 3,538	946 (10,975) - 2,700 (31,311)	344 (3,986) - 982 (11,387)
<b>Romania</b>	17,027 <sup>281</sup>	138 - 354	69 (3,253) - 245 (11,489)	25 (1,175) - 89 (4,173)
<b>Spain</b>	19,486 <sup>282</sup>	312 - 801	205 (8,401) - 602 (24,704)	74 (3,049) - 219 (8,982)
<b>Sweden</b>	0 <sup>283</sup>	0	0	0

\*This is the cost of transition and is not compared to the status quo

\*\*As above, assuming a 80% changeover rate

#### 4. Concluding remarks

Despite the general political agreement on the need for persons who are resident in institutions to have the choice to live 'in the community', it is striking that only two European-level studies of note have been conducted in this area and neither of these provides a comparable picture of the relative costs of moving to community living.

Overall, the changeover costs are relatively low over 20 years, at least in comparison to the costs of providing greater accessibility for the larger population of persons with sensory and mobility disabilities.

One issue which may be challenging is the apparent trend or reversal towards keeping institutions open while this assessment is based on the assumption that with respecting the right of persons with disabilities would lead to steadily closing institutions. From a cost perspective, this may mean keeping two systems (institutions and community) running at the same time in a higher proportion than assumed in this assessment which

<sup>279</sup>Number of people living in large residential institutions according to 2006 data by QUIP, published in the ANED 2009 country report on the **Czech Republic**, p. 6.

<sup>280</sup> In 2006, there were 0.66 million recipients in institutional care financed through the long-term care insurance; amongst them were 69,000 persons who lived in institutions for disabled people. (Bundesministerium für Gesundheit, 2008, p. 22).

<sup>281</sup> ANPH, Quarterly statistical bulletin on labor and social protection No.2 (66) / 2009 at 31 March 2009, <http://www.mmuncii.ro/ro/632-view.html>, accessed 2 August 2013.

<sup>282</sup> In DECLOC country report on **Spain**.

<sup>283</sup> According to the definition used in this impact assessment, **Sweden** does not have any institutions.



may lead to the duplication of costs while implementing the UNCRPD and the proposed Directive in the way shown here would be less costly.

However, it has to be taken into account that the proposed Directive refers to the UNCRPD but without specifically referring to Article 19 on living in the Community.

## **V – Ground and sector specific compliance costs in relation to equal treatment of older persons – Healthcare and social care**

As outlined in the Chapter 2.VI of Part II, in relation to age, the only possible discrimination examined here is the one occurring in the health sector and for those older than 65 years of age. While age discrimination may also occur in the area of insurance, this is not covered as provided usually by large companies – which are outside of the scope of this study – dominate this sector.

### **1. Provisos and key assumptions regarding the assessment of age discrimination in healthcare**

With regard to possible age discrimination in health care, three important provisos need to be made.

Firstly, given the size of the sector (circa €1 trillion turnover per annum) and its complexity, it was **not possible within this study to cover the sector in its entirety**. Such a study would take several years and considerable resources. However, as stakeholders have identified age discrimination in healthcare as a major concern, effort has been made to examine whether there are instances of discrimination in two major, representative health care areas or case studies as identified by experts: secondary health (example of renal failure) and mental health (depression). The two examples identified have then been used to shed some light on the potential costs and benefits to service providers from implementing the proposed Directive in health care.

Secondly, even within these two areas, it became evident during the analysis that while there may exist differential treatment between the under 65s and the over 65s – which may on the face of it appear to constitute age discrimination – there may be very good **objective reasons** (e.g. safety of the patient) why health care professionals differentiate based on age.

Thirdly, and linked to the second proviso, it has to be mentioned that no jurisdiction has provided an **across the board definition** of what age discrimination means in practice and when it may be objectively justified. Along with **Belgium**, the **UK** is the only country which has legislated for age discrimination. However, the **UK** has also taken a sector-by-sector approach to objective justification and focuses on making sure that procedures are in place to **reduce age discrimination** rather than focus on ensuring that the exact same level of treatment is provided to the under and over 65s.

**Box 29: Key assumptions for the calculation of costs and benefits of reducing age discrimination in the health sector**

- Treatment, in the health sector, is based on medical need and no other criteria;
- Possible lack of capacity or budgetary or other constraints are not taken into account when calculating costs and benefits of equal treatment in the provision on health care based on need.

## 2. Secondary health care – case study on renal failure

As outlined in [Chapter 2.VI.6](#) of Part II the case examined looked at older persons (i.e. over 65s) being offered kidney dialysis instead of a transplant which is the assumed preferred option.

Based on a methodology developed by experts in the field and information provided by national experts in the five countries surveyed, the results below show the magnitude of impacts in case the ‘gap’ was eliminated at once, and there were no constraining factors (e.g. availability of donors, or clinical factors constituting objective discrimination). The costs have been adjusted by using the QALY concept described previously. The column ‘difference in percent of patients receiving the preferred option’ refers to a situation where a person over 65 needing a transplant is proportionately less likely to receive it than a person under 65.

**Table 27: Different treatment for kidney failure for persons over the age of 65**

Member State	Difference in percent of patients receiving the preferred treatment option	Cost of dialysis treatment in € per annum	Cost of transplant in €	Net benefit of policy change per annum (€ million)
<b>Czech Republic</b>	10%	40,000	25,000	5.4
<b>Germany</b>	6%	35,714	57,500	-22.9
<b>Romania</b>	1%	3,000	20,000	-0.6
<b>Spain</b>	0%*	39,500	47,000	0*
<b>Sweden</b>	NA	63,440	19,500	NA

*\*For **Spain**, treatment data showed no difference in treatment between different age groups. The preferred treatment (transplant) covered 9% of patients in all age groups.*

These results reflect the costs and benefits of policy change per annum. The benefits are calculated by using the QALY concept, where the measure is not discounted over time and therefore does not consider the 5 and 20 year implementation period. Based on expert advice, the QALY gain per annum from dialysis is 0.4; the gain from transplant is 0.7. In layman’s language, this means that transplants lead to a better quality and longevity of life post treatment. The same QALY gain is assumed for the five Member States.

## Remarks

A first glance at the table above would suggest that the findings are inconclusive given the fact that (i) the relative costs of transplant and dialysis differ markedly from country to country and (ii) the country where the greatest 'discrimination' could be seen as taking place – the **Czech Republic** – is the one where the discriminatory option (dialysis) is actually more expensive.

Regarding (i), this differential in costs is reflected in other jurisdictions. For example, in the **UK**, the indicative cost of a kidney transplant (including induction therapy but excluding NHSBT costs) in 2008 was in the range of £17,000 (circa €20,000) per patient per transplant with immuno-suppression treatment adding £5,000 per patient per year. This is in line with figures from the **Czech Republic**.

The average cost of dialysis, on the other hand, is £30,800 per patient per year (or approximately €35,000)<sup>284</sup>. This means that kidney transplants are more economic in the **UK** and would be more prevalent were it not for a shortage of donors (which is the case in most if not all EU countries<sup>285</sup>). With regards to variance in dialysis cost figures, the **UK** figure compares with possible costs in the **US** where a year of dialysis treatment is estimated at \$67,000 (approx. €46,000 at 2008 rates)<sup>286</sup>. In this case, the choice of treatment may be decided based on the availability of organs etc. rather than on cost criteria. With regards to the **Czech Republic** and **Germany** (and possibly the **UK**), while the difference in treatment for the over 65s vis-à-vis the under 65s could possibly be explained by transplant rationing in favour of the latter, there is no clear evidence to confirm this.

In short, different patients (or their insurers) in different jurisdictions seem to face very different costs for different procedures. This may mean that even the assessment of a particular area for potential age discrimination – let alone comparing across five countries – is not possible without further in-depth analysis of the drivers of different treatment levels.

### 3. Mental health care – case study on depression

The study has assumed the same prevalence rate (12.5% across the population of people aged 16 and above) of depression for all five countries. This is consistent with the literature findings where Barua *et al* suggest that the prevalence of depression among older people is 10.3% worldwide, based upon a review of previous studies<sup>287</sup>. The WHO estimates the rate between '10 and 20% depending on cultural circumstances'<sup>288</sup>.

<sup>284</sup>Information found at:

[http://www.organdonation.nhs.uk/newsroom/fact\\_sheets/cost\\_effectiveness\\_of\\_transplantation.asp](http://www.organdonation.nhs.uk/newsroom/fact_sheets/cost_effectiveness_of_transplantation.asp)

<sup>285</sup>Information found at:

[http://ec.europa.eu/health/blood\\_tissues\\_organs/docs/ev\\_20121009\\_facts\\_figures.pdf](http://ec.europa.eu/health/blood_tissues_organs/docs/ev_20121009_facts_figures.pdf)

<sup>286</sup> Information found at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2441769/> - study from 2008.

<sup>287</sup> Barua et al., 'Prevalence of depressive disorders in the elderly' (2011), *Annals of Saudi Medicine*.

<sup>288</sup>In Barua et al., 'Prevalence of depressive disorders in the elderly' (2011), *Annals of Saudi Medicine*, p. 620.

Country specific rates were not used due to a lack of reporting on the issues and a lack of comparability of data across the countries. For example, some Member States used data based on self-reported depression and others based on thorough diagnosis. Some took into account depressive episodes and other episodes of anxiety.

Treatment cost per annum per patient ranged between €300 in **Romania**<sup>289</sup>, €600 in the **Czech Republic**<sup>290</sup>, and €1,000 in the remaining countries. The benefit of treatment is expressed in QALY per annum. The QALY gain of treatment is 0.191.

**Table 28: Different treatment of persons over the age of 65 in the area of depression**

Member State	Approximate population with depression (age above 16, million)	Estimated gap between proportion of patients receiving treatment in different age groups (age 16-64, and age 65+)	Current net benefits of treatment per annum (€ million)	Net benefits of treatment per annum with no difference in treatment (€ million)	Policy gain per annum (€ million)
<b>Czech Republic</b>	1.1	10%	1,456	1,644	<b>188</b>
<b>Germany</b>	8.4		10,626	11,997	<b>1,371</b>
<b>Romania</b>	1.9		2,712	3,062	<b>350</b>
<b>Spain</b>	4.9		6,125	6,915	<b>790</b>
<b>Sweden</b>	1.0		1,231	1,390	<b>159</b>

#### 4. Findings

The findings indicate that equal treatment of depression amongst the over-65s would lead to **substantial net benefits**. One of the challenges here lies in identifying the reasons for the existing gap – is it down to discriminatory treatment or is it due to other causes such as different age groups' views on how depression should be addressed (e.g. an older person may not report depression) or with what objective (e.g. to allow the person to get back to work etc. in which case those of a working age would possibly get preference). While it is far beyond this study to determine these reasons, it appears from the above that a greater focus on treating depression in the over 65s would reap considerable benefits.

<sup>289</sup><http://sanatate.bzi.ro/cat-ii-costa-boala-pe-romani-si-care-sunt-cele-mai-frecvente-afectiuni-8766>, accessed 20 July 2013.

<sup>290</sup> Study team estimate based on <http://www.solen.sk/pdf/Filip.pdf>, accessed 20 July 2013.

## VI - Sexual orientation specific compliance costs- Social advantages

The initial assessment of sexual orientation discrimination in Chapter 2.VII of Part II determined that the area where significant costs were most likely was with respect to social advantages. Further examination revealed that this would in fact be the case only in the **Czech Republic**. This is because **Spain**, **Sweden** and **Germany** already give equal rights in this area to single sex partnerships while **Romania** does not recognise such partnerships in any form and are therefore outside of the scope of the proposed Directive

Therefore, it is expected that the proposal, if adopted, could only result in additional costs for the **Czech Republic**, where same-sex civil partners do not enjoy the same rights as married heterosexual couples in a number of areas, possibly including survivor pensions, preferential income tax treatment, inheritance and gift tax and stamp duty etc.

Drawing on the costs examined in the **UK** Civil Partnership impact assessment, the cost of equal treatment for the **Czech Republic** can thus be estimated to be €280,000 over five years and €1.4 million over 20 years or €3 million over five years and €17 million over 20 years (drawing on expected costs from changing income tax regulations in **Germany**). The overall possible impact is expected to be very low due to evidence from Scandinavia and the **UK** where the number of single-sex partnerships registered has been very low. Another reason is that the adoption of national legislation would mostly affect employment discrimination rather than discrimination outside the workplace. These costs would therefore be associated with the existing Employment Directives.

## Chapter 4 – Conclusions

This study had as its main objective to assess the potential costs and benefits that SMEs and public service providers could experience as a result of the implementation of the Commission's proposed Equal Treatment Directive of 2008. This was carried out with respect to **five selected Member States** – the **Czech Republic**, **Germany**, **Romania**, **Spain** and **Sweden**; these being considered a representative sample of Member States for the purposes of the assessment.

The impact assessment turned out to be an extremely challenging task given the broad scope and open wording of the proposed Directive. In order to overcome these challenges, a host of **assumptions** as to how the proposed Directive could best be implemented had to be made. Likewise a range of data **proxies and estimates** had to be used to overcome the lack of information available in this area. The **literature review** was vital to this process. Examining not only national approaches around the world to equality legislation and relevant impact assessments, but also the ways in which legislation has been implemented, how international law has developed and how the courts have interpreted a range of relevant equality notions, have all come into play in the attempt to ascertain what **SMEs and public service providers** might have to contribute to the implementation of the proposed Directive.

The Commission impact assessment which accompanied the proposed Directive outlined many of the costs and benefits for individuals and society which could result from

reduced levels of discrimination across the grounds of disability, age, sexual orientation and religion and belief. In the ‘EPEC study’ which supported the Commission impact assessment, a range of costs associated with discrimination were outlined. Particular attention was paid to such issues as lower lifetime earnings of individuals due to discrimination in areas such as education and health.

However, the Commission impact assessment did not examine the costs for public and private providers of goods and services. The purpose of this study has been to partially **fill this gap**. The approach has necessarily been narrower than the EPEC study and the Commission impact assessment as it focuses on the measures which the proposed Directive would require and which are likely to have a **significant cost**.

Perhaps unusually for a set of conclusions, much of the following sections are focused on **key methodological issues** which have arisen in this study and how the costs and benefits have been assessed. This is important, not just in order to understand the findings, but also to provide useful insights into how the proposed Directive might be implemented and some of the challenges to implementing the proposed Directive as it was adopted in 2008.

## **I - Identifying significant costs resulting from the proposed Directive for SMEs and public service providers of goods and services**

In order to determine what areas should be subjected to a detailed assessment, the sectors and grounds of discrimination identified in the EPEC study as being most relevant were used as a starting point.

From this base, a process of elimination was carried out whereby only those measures that have a potential to have a **significant cost for SMEs and public providers of goods and services** were retained. In addition, a range of other factors were taken into account to determine what issues should be excluded from a detailed cost assessment.

For each of the combinations of sector and discrimination grounds, a further analysis was carried out to better identify what **sub-sectors** should be examined and with respect to what particular issues. **Criteria** such as the most affected groups, representative examples of discrimination and exemptions within the proposed Directive were also used during this process. The final list of areas to be assessed is provided below:

**Table 29:** Specific subsectors and affected entities examined

Final list of areas subjected to detailed impact assessment			
<b>Education</b>	Disabilities	Primary and secondary schools/ vocational and tertiary sectors	Mobility/Sensory impairment
<b>Social Care</b>	Disabilities	Social care (‘Living in the Community’)	Persons with disabilities living in institutions
<b>Health Care</b>	Age	Renal Failure and Mental Health	Over 65

Final list of areas subjected to detailed impact assessment			
<b>Social Advantages (security)</b>	Sexual Orientation	Taxes/Benefits etc.	Lesbian, gay, bisexual couples in civil partnership/marriage arrangements
<b>Housing</b>	Disabilities	Residential housing (rental and sales)	Mobility/Sensory impairment
<b>Media</b>	Disabilities	Broadcasting	Sensory impairment (hearing impaired)
<b>Other Goods and Services:</b>	Disabilities	Public Administration/Judiciary	Mobility/Sensory impairment
	Disabilities	Walkways/ Public Thoroughfares	Mobility/ Sensory impairment
	Disabilities	Hotels, Restaurants, Cafes etc.	Mobility/ Sensory impairment
	Disabilities	Commercial Sports (e.g. small sports venues)	Mobility/Sensory impairment
	Disabilities	Gyms and Swimming Pools	Mobility/ Sensory impairment
	Disabilities	Entertainment/culture (e.g. cinemas, theatres, public clubs etc.)	Mobility/Sensory impairment
	Disabilities	Retail and other walk-in services	Mobility/Sensory impairment

## II – Administrative and regulatory and generic compliance costs

Having identified the sectors that will be assessed, the different types of costs and benefits that could occur have been enumerated. In basic terms, these have been split between:

- Regulatory costs falling on public authorities/ state actors;
- Generic compliance costs which apply to all areas and grounds and fall on providers;
- Sector specific compliance costs which vary between sectors and grounds and also fall on providers.

An important aspect to note is that every Member State involved, and each compliance entity covered (SMEs, School etc.), is already implementing/complying with a number of **EU anti-discrimination Directives** and **national laws**. In short, where the proposed Directive would lead to additional costs, these would often relate to **reinforcing what is already being done** at administration/entity level.

Regulatory and generic compliance costs over a five year implementation period were estimated to range from €78 million euro in the **Czech Republic** to €492 million in **Germany**. Over 20 years, the costs rise from €97 million in the **Czech Republic** to €675 million in **Germany**.

These would result from providers having to carry out a range of actions such as familiarisation with rules, resolving legal issues, self-audit, production of internal guidelines and codes of conduct, training etc.

Overall, while these costs could be seen as substantial, it should be noted that they relate to coverage of up to **6.5 million entities across the five countries** and to the implementation of a Directive which covers a very wide scope.

It is also clear that the **average annual cost** will be significantly lower in a 20 year implementation scenario. For example, in **Germany** this would amount to €98 million per year over a 5 year period, whilst over 20 years this would be just under €34 million per year or around a third of the annual cost over five years.

It should be borne in mind that costs will vary widely between different types of entities. Thus, a university for example could face costs of around €120,000. It is also expected that a number of these costs will be upfront and experienced in the first years of implementation.

Finally, it should be borne in mind that the above costs do not take into account **certification and enforcement costs**. There is no specific requirement in the proposed Directive on the former but depending on the approach costs could be low (self-regulation) or very high (enforced).

**Table 30: Estimated regulatory and generic compliance costs over first 5 and 20 years of the proposed Directive (with the exception of enforcement costs and certification of accessibility)**

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	78	97
Germany	492	675
Romania	132	147
Spain	451	608
Sweden	79	117

### III - Disability discrimination and access to goods and services

While the proposed Directive covers four different grounds of discrimination, by far the greatest impact in terms of costs to providers (as well to benefits resulting from their accommodations) is in the area of disability and access to goods and services.

In terms of the calculation of costs, this is broadly split between actions which must be carried out by anticipation (usually through the **establishment of national standards**) and ad hoc adjustments as and when they are needed.



With limited guidance contained in the proposed Directive (e.g. it does not say what actions should be taken by anticipation, what should be ad hoc, and what is proportionate), the approach taken in this study has been to identify a range of **actions** which are likely to be as **effective and legally certain** as possible whilst being **efficient**. To determine this approach, international legislation, in particular the UNCRPD, as well as national impact assessment studies carried out in **Australia, the Netherlands, Sweden, Switzerland, United Kingdom and United States**, have been strongly relied-upon. In addition, an extensive analysis of the literature and stakeholder consultations have helped determine the nature of discrimination that occurs and the types of action that may be necessary to reduce this discrimination.

The approach has required a range of **assumptions** to be made including:

- The majority of costs would be incurred in making adjustments to premises;
- Mandatory accessibility standards would be in place which are proportionate and effective;
- Such standards could be tailored to different sectors;
- Housing is treated differently to other 'public access' premises;
- Public service providers would have to make greater adjustments compared with SMEs;
- Implementation could take place over a longer period than 5 years (namely over 20 years).
- Benefits would be based on assumptions about the time saved/quality improvement resulting from the accessibility measures.

## 1. General considerations

For 'public access' provision of goods and services at premises/on websites (education, health, public administration, in 'HORECA' facilities, entertainment/culture venues, exercise facilities and retail/service outlets), the scenario used in this study found that while the **benefits** in terms of time saved and better enjoyment of facilities would be **extensive**, they are not high enough over a five year time period to cover the costs. Even over a 20-year time horizon, the costs would exceed the costs and benefits scenario.

However, over **20 years** the gap would be considerably lower due to **falling costs** (mostly due to a longer investment period) and **greater benefits** (i.e. due in part to a greater number of beneficiaries, namely an ageing EU population with greater accessibility needs). The table below shows the results of the analysis. One of the major reasons for greater per capita costs in the **Czech Republic** and **Romania**, for example, is the fact that average earnings, which are low in these countries, are used as a proxy for 'value of time' benefit estimates.

Overall, based on the scenario examined, the costs (mostly premises adjustments) and benefits would most likely **cancel-out over approximately a 30-year implementation period**. This would suggest that a separate 'premises/facilities' implementation period may be warranted in addition to the standard 4/5-year implementation period. It is notable that this is the approach put forward by the Council in its amendments to the proposed Directive.

**Table 31: Scenario of net costs (costs minus benefits) for ‘public access’ sectors covered**

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
<b>Czech Republic</b>	1,092	659
<b>Germany</b>	4,341	1,679
<b>Romania</b>	1,143	576
<b>Spain*</b>	5,674	3,224
<b>Sweden</b>	735	440

*\*Spain is estimated to have a very large number of HORECA and retail outlets and other walk-in establishments.*

## 2. Reduced need for assistance

The vast majority of costs will relate to making premises and websites, where relevant, accessible. While there may be ‘soft’ or ad hoc costs of accommodating persons with disabilities, these should be minimal or even zero when one takes into account the fact that premises adjustments may actually reduce the need to provide assistance (e.g. once a store is properly accessible, a person may not need additional assistance in the store) and the fact that greater accessibility will of course lead to more business. Moreover, the above results should not be viewed in isolation and should be combined with the **benefits covered in the EPEC study**.

## 3. Certification

The costs of certifying that each entity meets accessibility rules would also be extensive. Without correcting for GDP, these costs could range from €35-50 million in **Sweden** to €270-380 in **Spain**. Thus requiring each entity to certify that his business, school etc. is accessible could be relatively high.

## 4. Housing

With regards to the other accessibility areas covered – housing, media broadcasting and accessibility of the built environment (e.g. streetscapes) – an assessment of the costs requires greater clarification of the proposed Directive’s scope in this area.

### **Box 30: Considerations regarding accessibility in the area of housing**

In the area of housing, it is unclear if it is intended that anyone selling or renting a residence is required to make it accessible. Housing is different to the above ‘public access’ providers of goods and services for a range of reasons of which three stand out. Firstly, housing comprises approximately 75% of the EU’s non-industrial building stock. Requiring each residence to be accessible would result in very large costs, even over 20 years. Secondly, as the average housing churn (the rate at which

someone moves residence) is about 5% per annum, this would mean that the benefits from such an obligation would be relatively low (given that adjusted accommodation would come up for rent or sale relatively infrequently and equally persons with disabilities will, on average, seek new housing relatively infrequently). Thirdly, in comparison with other areas, where the service has to be accessible but not necessarily the premise, it would be reasonable to assume that any given housing unit would have to be 100% accessible. These considerations mean that accessibility to housing would impose relatively high costs, but relatively low benefits.

However, there are several good reasons for greater accessibility of housing. Firstly, as the EU population ages, there will be a much greater need for accessible housing. The benefits which accrued here would not only relate to access issues; they would probably also lead to safety gains in terms of reduced number of falls/accidents which would help save certain health costs. Secondly, the inclusion of housing in the proposed Directive may also allow leaseholders to make accessibility changes themselves, as is the case in the UK.

The approach taken in the **US**, **Australia** and the **UK** has been used here to assess costs. This means that only common areas and/or social housing are covered to any great extent. To take a more extensive approach is likely to entail much higher costs, and indeed this approach is similar to amendments made by the Council to the proposal.

The results below show the potential costs of adjusting housing and demonstrate the difference in costs that could be expected were a '**by anticipation approach**' for all housing is to be adopted, as opposed to an '**ad hoc approach**' based on specific need.

**Table 32: Potential costs for adjusting housing**

Member State	Ad-hoc 5/20-Year Scenario (€ million)**	Anticipation 5/20-Year Scenario (€ million)**
<b>Czech Republic</b>	35/99	224/610
<b>Germany</b>	1,200/2,100	3,600/7,700
<b>Romania</b>	25/78	219/619
<b>Spain</b>	216/570	1,200/3,700
<b>Sweden</b>	146/435	1,200/3,200

## 5. Broadcasting

With regard to broadcasting, current duties on accessibility are less based on ensuring that all service providers (e.g. channels) are accessible (e.g. have subtitled/captioned programming), and are more geared towards ensuring that a limited number of operators meet certain public service broadcasting obligations. The question here is

whether every television channel (and internet website) should be made accessible – which may not make sense from a cost perspective – or whether such a **duty should be limited** to channels and websites run by larger private or public entities only. In theory, the same logic applies to broadcasting on other media forms – such as on-line – and even to websites in general: should all media forms and websites be required to be accessible or only those over a certain size/coverage. This issue is not clear from the proposed Directive.

Taking a limited approach whereby only the largest **4 broadcasters per Member State** would have subtitling obligations, the costs would range from €1.9 million (**Romania**), to €3.3 million (**Czech Republic**), €4.6 million (**Spain**), €4.8 million (**Germany**) and €5.9 million (**Sweden**).

## **6. Accessing providers of goods and services**

Finally, with regards to getting to and from facilities which offer goods and services, while the accessibility of public transport is already covered under EU legislation, other means of ‘getting around’ the **built environment** are not. For example, arguably under the proposed Directive, streetscapes and crossings should be made accessible. Given the amount of time a typical person spends in the built environment, the possible **benefits in this area could be considerable**.

Whilst the proposed Directive is not explicit about what changes would be necessary, analysis was carried out to assess the cost of making street crossing accessible. Over a 5 year period, these costs would range from €102 million (**Czech Republic**), to €410 million (**Romania**), €434 million (**Sweden**), €785 million (**Spain**), €1,449 million (**Germany**).

## **IV - Disability discrimination and living in the community**

Beyond the area of access to general goods and services, it was assumed that the proposed Directive will be in line with the UNCRPD and in particular require that all persons with disabilities currently resident in institutions have a **right to independent or ‘community living’**. On a like for-like basis in terms of quality of treatment, this would lead to a proportionately small increase in costs of around 10%. However, this analysis was complicated by the fact that costs (and existing levels of treatment) across the five countries appear to vary considerably.

However achieving this goal is not as simple as moving all persons from institutions to the ‘community’. The literature also indicates that not all persons affected may be able to live in the community and as a result, the two systems of ‘community living’ and ‘institutions’ may have to exist in parallel, thereby leading to **additional costs of maintaining two systems**.

**Table 33: Possible cost of changeover from institutional to community living**

Member State	Cost of changeover 5 year implementation, including savings from closure of 80% of institutions € million (€ per person)**	Cost of changeover 20 year implementation, including savings from closure of 80% of institutions € million (€ per person)**
<b>Czech Republic</b>	170 (6,471) – 518 (19,748)	62(2,346) – 188 (7,179)
<b>Germany</b>	946 (10,975) – 2,700 (31,311)	344 (3,986) – 982 (11,387)
<b>Romania</b>	69 (3,253) – 245 (11,489)	25 (1,175) – 89 (4,173)
<b>Spain</b>	205 (8,401) – 602 (24,704)	74 (3,049) – 219 (8,982)
<b>Sweden</b>	0	0

*\*This is the cost of transition and is not compared to the status quo yet*

*\*\*As above, assuming a 80% changeover rate*

*\*\*\*Sweden does not have any 'institutions'*

## V - Age discrimination and healthcare

The review of the literature and stakeholder positions strongly indicated that age discrimination occurs in the area of healthcare. However a more in-depth analysis presented a number of challenges, one of which relates to the **size and complexity of the sector** (circa €1 trillion turnover per annum), and the other to actually **defining what is meant by age discrimination**.

### 1. Objectively justified age discrimination

Age discrimination – as opposed to differential treatment by age – is permitted as a general rule when it is objectively justified. However, the proposal for the Directive is silent on what steps must be taken by Member States to undertake such a justification process e.g. if it should be done on sector-by-sector basis.

In comparison to the area of disability where there is considerable experience/best practice examples available from other jurisdictions, for age discrimination there are very few countries (e.g. **Belgium, UK, Australia**) which have relevant legislation in place and even fewer (only the **UK**) which have costed its implications. The age discrimination legislation in the **UK** – introduced in 2012 – focuses on putting in place systems and processes to identify possible age discrimination in the health sector, and less on the costs of actually addressing it where it may occur.

### 2. Treatment of kidney failures and of mental health problems to illustrate costs and benefits of equal treatment of older persons in the health sector

With regards to the analysis undertaken and in the light of the size and complexity of the healthcare sector, an examination of the costs and benefits of reducing all age discrimination was not possible. Instead, the areas of kidney treatment and treatment of mental health were focussed on as examples (See [Chapter 2.VI](#) in Part 2).

### *Kidney treatment*

Across the five countries, while there was *some* **limited evidence of differential treatment** of the under and over 65s, it was not possible to conclude if the driver of such differences related to age discrimination *per se* or whether there were other justifiable reasons for different treatment (e.g. safety of the patient; effectiveness of the treatment etc.). For example, in the area of kidney failure, the assessment looked at differences in kidney transplants (the preferred treatment) and dialysis. It appeared that the main driver of treatment related more to the **availability of kidney donors** and less to considerations of age. In short, the assessment was inconclusive.

Nevertheless, an assessment was made of the costs of ensuring increased access to kidney transplants (taken to be the preferred treatment option in most cases).

These showed that in the **Czech Republic** there could be a net benefit of €5.4 million per year of reducing possible discrimination. This compares to increased costs of €22.9 million and €0.6 million in **Germany** and **Romania** respectively, with no costs or benefits in **Spain**. No data was available with respect to **Sweden**. However, these results should be taken with caution given the lack of certainty as to the exact drivers of differences in treatment.

### *Treatment in the area of mental health (depression)*

Differential treatment in the area of mental health (depression) was more clear-cut in that expert advice did identify that the over-65s receive less treatment (corrected for need). Based on an analysis of costs and benefits, it can be seen that across the five Member States, there would be a **net benefit** in removing the treatment gap between the over and under 65s. These benefits would range from €159 million (**Sweden**), to €188 million (**Czech Republic**), €350 million (**Romania**), €790 million (**Spain**), and €1,371 million (**Germany**).

## **3. Conclusion**

One result of these case studies is that it appears that the reasons for differential treatment – which may or may not be justifiable – differ not only from sector to sector but also within sectors. Therefore, any assessment of the measures needed to implement the proposed Directive in this area would first need to take account of the particularities of the service offered. This in turn may require a comprehensive audit of areas within sectors where age discrimination takes place before any conclusions can be drawn.

Overall, given the size of the health care sector, adjustments needed to remove age discrimination could, if they are needed, have a **large financial impact**. However, any assessment of the costs and benefits of doing so would have to be built-upon a clear specification of **what constitutes age discrimination** in the sector on the one hand and what differential treatment can be justified on the other.

## VI - Sexual orientation discrimination and social advantages

Analysis indicates that discrimination on the grounds of sexual orientation is predominantly driven by personal prejudice (as opposed to deliberate policies or legislation). Addressing such forms of discrimination would rely largely on training and enforcement action which would have **minimal cost implications** for goods and services providers. However, the assessment did identify that where there is already provision of certain social advantages to heterosexual married or 'partnership' couples by public authorities, the proposed Directive may bring about change.

However, with respect to the scope of this study and the five Member States examined, it was notable that only one Member State, the **Czech Republic**, is likely to encounter **some costs** in this field. Drawing on the **UK** Civil Partnership Impact Assessment, the cost of equal treatment for the **Czech Republic** was estimated as being in the region of €280,000 over five years and €1.4 million over 20 years or €3 million over five years and €17 million over 20 years .

No costs were expected for the other Member States: **Romania** does not recognise same sex partnerships and their social advantages would not be covered by the proposed Directive; **Spain**, **Germany** and **Sweden** all have or have plans in place for equal treatment between different partnerships and they should therefore already be compliant with the proposed Directive.

## VII - General conclusions

Overall, it can be seen that the proposed Directive has the potential to result in a wide range of costs and benefits to SMEs and public service providers. However, given the broad approach taken in the proposed Directive, Member States would have significant scope to implement the proposal in a way which allows them to limit costs.

Importantly, the methodology used in this report to assess potential costs and benefits comprised a very large number of **assumptions** and **hypotheses**. Most of these were based on existing practice from around the world and arguably reflect an approach which seeks to **achieve a balance** between equal treatment rights, reasonableness, and proportionality.

However, the line between achieving that balance or crossing towards an approach focused on cost reduction at the expense of a fundamental right is a difficult one to tread. A number of amendments proposed by the **Council** seek to move the proposed Directive toward greater legal clarity and a limitation in obligations. To a large extent, these proposals appear to reflect approaches from around the world and are similar to the approaches adopted in this study. Nevertheless, it will depend on method of implementation whether they remain sufficiently protective of the equality principle.

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## **Annexes**

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## Annex 1: Table comparing the analysis of the Commission's initial proposal and the latest draft of the Council

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
<i>Art. 1 Purpose</i>	This Directive lays down a framework for combating discrimination, including multiple discrimination, on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.	<i>Art. 1 Purpose</i>	This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment within the scope of Article 3.	The purpose of the Commission proposal is open-ended – to put into effect the equal treatment principle in any area 'other than ... employment and occupation.' The Council draft clarifies that the purpose covers only those areas enumerated in Article 3 (on scope) of the proposed Directive. Since the Council version has deleted the area of 'social advantages' from its Article 3, this further limits the Directive's purpose.
<i>EP amendment 37, Multiple Discrimination</i>	2. Multiple discrimination occurs when discrimination is based: (a) on any combination of the grounds of religion or belief, disability, age, or sexual orientation, or (b) on any one or more of the grounds set out in paragraph 1, and also on the ground of any one or more of i. sex (in so far as the matter	<i>Recital (13)</i>	(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the European Union should, in accordance with Article 8 of the Treaty on the Functioning of the European Union, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple	The EP amendment introduces the term 'multiple discrimination' and links not only the four grounds of discrimination covered by the Commission proposal but also the grounds of sex, racial or ethnic origin and nationality, which are already partly covered by Directives 2000/43/EC and 2004/113/EC.  The term 'multiple discrimination' is

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	<p>complained of is within the material scope of Directive 2004/113/EC as well as of this Directive),</p> <p>ii. racial or ethnic origin (in so far as the matter complained of is within the material scope of Directive 2000/43/EC as well as of this Directive), or</p> <p>iii. nationality (in so far as the matter complained of is within the scope of Article 12 of the EC Treaty).</p> <p>3. In this Directive, multiple discrimination and multiple grounds shall be construed accordingly.</p>		discrimination.	only used once in the Council version. It is found in Recital (13), where it is used in relation to discrimination on the grounds of sex.
<i>Art. 2 Concept of Discrimination</i>	1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.	<i>Art. 2 Concept of discriminations</i>	<p>1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no discrimination on any of the grounds referred to in Article 1.</p> <p>For the purposes of this Directive, discrimination means:</p> <p>(a) direct discrimination;</p> <p>(b) indirect discrimination;</p> <p>(c) harassment;</p> <p>(d) instruction to discriminate</p>	Council has added 'discrimination by association'.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			against persons on any of the grounds referred to in Article 1; (e) denial of reasonable accommodation for persons with disabilities; (f) direct discrimination or harassment by association	
	2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;		2. For the purposes of paragraph 1, the following definitions apply: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;	No change.
	(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the		(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that	No change.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	means of achieving that aim are appropriate and necessary.		aim are appropriate and necessary;	
	3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.		(c) harassment shall be taken to occur where unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States;	Council has added a sentence giving MSs the option of defining harassment in national laws and practice – a potential limitation in scope.
	4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.	Art. 2(1)	For the purposes of this Directive, discrimination means: ... (d) instruction to discriminate against persons on any of the grounds referred to in Article 1;	Equivalent.
EP amendment 41 (Discrimination based on assumptions)	4a. Discrimination based on assumptions about a person's religion or belief, disability, age or sexual orientation or because of association with persons of a particular religion or belief,	Art. 2(1)	For the purposes of this Directive, discrimination means: ... (f) direct discrimination or harassment by association	The EP amendment has added the concept of discrimination based on assumption and association; Council has added the concept of 'discrimination by association' but only if the discrimination is 'direct'

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	disability, age or sexual orientation, shall be deemed to be discrimination within the meaning of paragraph 1.			discrimination.
	5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.		(d) denial of reasonable accommodation for persons with disabilities shall be taken to occur where there is a failure to comply with Article 4a of the present Directive;	Equivalent.
			(e) direct discrimination or harassment by association shall be taken to occur where a person is discriminated against or harassed due to his or her association with persons of a certain religion or belief, with a disability, of a given age, or of a certain sexual orientation. 3(blank) 4.(blank) 5.(blank)	Council has added 'discrimination by association'.
	6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the		6. Differences of treatment on grounds of age shall not constitute discrimination, if they are objectively justified by a legitimate aim, and if the means of achieving that aim are	Council has modified COM provision by adding term 'objectively'.  More significantly, Council has added

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary.		appropriate and necessary. Differences of treatment where more favourable conditions of access are offered to persons of a given age, in order to promote their economic, cultural or social integration, are presumed to be non-discriminatory.	option for MSs to offer more favourable conditions on grounds of age in order to promote economic, cultural or social integration.
	In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.	Art. 3(2)(b)	(b) the organisation of Member States' social protection systems, including decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and services and on conditions of eligibility related to age and disability - including age limits - for these benefits and services;	Council version provides for MS to fix conditions of eligibility related to age and disability age as a condition for access to social protection benefits in the Article 3 provision on scope.
	7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.		7. In the provision of financial services, - proportionate differences in treatment on the grounds of age do not constitute discrimination for the purposes of this Directive, if age is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable	Council has expanded the COM provision considerably but it remains equivalent in intent and scope.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			<p>statistical data;</p> <p>- proportionate differences in treatment on the grounds of disability do not constitute discrimination for the purposes of this Directive, if the disability is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable statistical data or on relevant and reliable medical knowledge.</p>	
			<p>Providers of financial services who decide to apply proportionate differences of treatment on the grounds of age or disability shall, upon request, provide information to customers and relevant judicial and complaints bodies on the reasons explaining those differences of treatment.</p>	<p>Council addition requiring financial service providers to provide explanations for differences in treatment on request.</p>
	<p>8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and</p>		<p>8. This Directive shall be without prejudice to measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of</p>	<p>Council added term 'safety'; otherwise no change.</p>



Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.		criminal offences, for the protection of minors, for the protection of health and safety and for the protection of the rights and freedoms of others.	
<i>Art. 3 Scope</i>	Discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:	<i>Art. 3 Scope</i>	Within the limits of the competences conferred upon the European Union, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:	Council has added reference to the 'limits of the competences conferred upon the EU'.
	(a) Social protection, including social security and healthcare;		(a) social protection, including social security, social assistance, social housing and healthcare;	Council has further defined what constitutes social protection by adding 'social assistance' and 'social housing'.
	(b) Social advantages;		(b) (blank)	Council has deleted term 'social advantages'.  A number of CJEU cases have interpreted the notion of 'social advantages' which appears in Article 7(2) of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community ('[a worker]

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
				<i>shall enjoy the same social and tax advantages as national workers'</i> <sup>291</sup> ). In the <i>Christini v SNCF</i> case <sup>292</sup> , the Court held that the term can be interpreted as covering all advantages regardless of an existing link with an employment contract – in this case, the right to a reduced railway fare. Other CJEU cases have recognised an allowance to handicapped adults, a special unemployment benefits for young people and the right to be able to use a minority language before a national court as types of 'social advantages'. There is no exhaustive list of social advantages, and each Member State decides what is considered as a social advantage in relation to its national context. However, the CJEU has made clear that any reference to an employment contract is irrelevant.
	(c) Education;		(c) education;	No change.
	(d) Access to and supply of goods and other services which are		(d) access to and supply of goods and other services, including	The Council version removes the COM provision restricting

<sup>291</sup> Art. 7 (2) of the **Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community**

<sup>292</sup> ECJ, *Fiorini (née Cristini) v. SNCF*, Case 32/75 [1975] ECR 1085, 30 September 1975

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	available to the public, including housing. Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.		housing, which are available to the public and which are offered outside the context of private and family life.	application of requirement to provide non-discriminatory access to and supply of goods and services to individuals only if performing a professional or commercial activity, and replaces it with another phrase restricting application only where outside 'of private and family life'. This potentially enables broad interpretation of what constitutes private and family life.
	2. This Directive is without prejudice to national laws on marital or family status and reproductive rights.		2. Notwithstanding paragraph 1, this Directive does not apply to: (a) matters covered by family law, including marital status and adoption, as well as laws on reproductive rights;	No change.
			(b) the organisation of Member States' social protection systems, including decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and services and on conditions of eligibility related to age and disability - including age limits - for these benefits and services;	Addition by Council.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			(c) (blank)	
	3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education.		(d) the content of teaching, and the organisation and funding of the Member States' educational systems, including education for people with special needs and age limits in the area of education.	Equivalent.
	Member States may provide for differences in treatment in access to educational institutions based on religion or belief.		3. Member States may provide that differences of treatment based on a person's religion or belief in respect of admission to educational institutions, the ethos of which is based on religion or belief, in accordance with national laws, traditions and practice, shall not constitute discrimination.	Council additions require that MSs exercising the option of providing for differences of treatment on basis of religion or belief with respect to access to educational institutions must have national laws, traditions and practice setting forth such an ethos.
			These differences of treatment shall not justify discrimination on any other ground referred to in Article 1.	This addition by Council seems aimed in particular at ensuring protection from differences of treatment on the basis of sexual orientation.
			3a. This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols.	Council addition.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.		4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief.	Council deleted sentence about promoting equality between men and women.
	5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.		5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.	No change.
<i>Art. 4 Equal treatment of persons with disabilities</i>	1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:	<i>Art. 4 Accessibility for persons with disabilities</i>	1. Member States shall take the necessary and appropriate measures to ensure accessibility for persons with disabilities, on an equal basis	Council deleted 'social advantages' from its Article 3. It also deleted the specific mentions of housing and transport with respect to supply of

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments.		with others, within the areas set out in Article 3. These measures should not impose a disproportionate burden.	<p>goods and services, which are particularly relevant to the concept of accessibility.</p> <p>However, it also added the descriptor 'on an equal basis with others', which has the effect of strengthening the requirement of ensuring accessibility.</p> <p>See below for discussion of how Council handles COM requirement of anticipation, including through appropriate modifications or adjustments.</p>
	Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.			
			1a. Accessibility includes general anticipatory measures to ensure the effective implementation of the principle of equal treatment in all areas set out in Article 3 for persons	Council version requires 'general anticipatory measures to ensure effective implementation'. The bracketed phrase '[and with a medium or long-term commitment]' –

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			with disabilities, on an equal basis with others[, and with a medium or long-term commitment]. 2. Such measures shall comprise the identification and elimination of obstacles and barriers to accessibility, [as well as the prevention of new obstacles and barriers] in the areas covered in this Directive. 3. (blank) 4. (blank) 5. (blank)	if agreed – would effectively allow MS some room for interpretation of how much time could be allowed for such anticipatory measures.  At a minimum, according to the Council version, duty holders would be required to identify and eliminate ‘obstacles and barriers to accessibility’. ‘Prevention of new obstacles and barriers’ is still in brackets also.
			6. Paragraphs 1 and 2 shall apply to housing only as regards the common parts of buildings with more than one housing unit. This paragraph shall be without prejudice to Article 4(7) and Article 4a.	The Council version provides specific limits on how the accessibility requirement (including anticipatory measures) would apply to housing.
			7. Member States shall progressively take the necessary measures to ensure that sufficient housing is accessible for people with disabilities.	The Council version obliges MS to take progressive steps in ensuring sufficient supply of housing for persons with disabilities.
Art. 4(1)	b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case,	Art. 4a <i>Reasonable accommodation for persons</i>	1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable	Equivalent, except that the Council version limits the requirement of reasonable accommodation to only those areas set out in its Article 3, i.e.,

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	reasonable accommodation shall be provided unless this would impose a disproportionate burden.	<i>with disabilities</i>	accommodation shall be provided within the areas set out in Article 3, unless this would impose a disproportionate burden.	the area of social advantages are not included.
			2. 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].	Compare to COM Article 4(1)(a) which requires measures necessary for effective, non-discriminatory access to 'be provided by anticipation, including through appropriate modifications or adjustments'. The Council wording arguably weakens the COM focus on anticipation.
			3. In the provision of housing, paragraphs 1 and 2 shall not require the provider to make structural alterations to the premises or to pay for them. Without prejudice to paragraphs 1 and 2, the provider shall accept such alterations, if they are funded otherwise.	The Council version exempts providers of housing from having to make structural alterations or to pay for them. However, if such alterations are otherwise funded (presumably through public funds, or the funds of the person with disability), the provider must make such alterations.
	2. For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in	<i>Art. 4b Provisions concerning accessibility and reasonable</i>	1. For the purposes of assessing whether measures necessary to comply with Articles 4 and 4a would impose a disproportionate burden, account shall be taken, in particular,	Addition by Council setting out criteria for determining what would constitute a disproportionate burden.



Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.	<i>accommodation</i>	<p>of:</p> <p>a) the size, resources and nature of the organisation or enterprise</p> <p>b) the estimated cost;</p> <p>c) the estimated benefit for persons with disabilities[, and the discriminatory impact of not providing the measures], taking into account the frequency and duration of use of the relevant goods and services;</p> <p>d) the life span of infrastructures and objects which are used to provide a service;</p> <p>e) the historical, cultural, artistic or architectural value of the movable or immovable property in question; and</p> <p>f) the safety and practicability of the measures in question.</p> <p>The burden shall not be deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.</p> <p>2. Article 4 shall apply to the design and manufacture of goods, unless this would impose a</p>	

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			disproportionate burden. For the purpose of assessing whether a disproportionate burden is imposed in the design and manufacture of goods, account shall be taken of the criteria set out in Article 4b(1).	
<i>Art. 4</i>	3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.		3. Article 4 and 4a shall not apply where European Union law provides for detailed standards or specifications on the accessibility or reasonable accommodation regarding particular goods or services.	Council addition; appears to be a reference to the COM's current work on a proposal for an Accessibility Act which would use the New Approach for setting standards for particular goods.
<i>Art. 5 Positive action</i>	With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.	<i>Art. 5 Positive action</i>	1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.  2. In particular, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt more favourable provisions for persons with	No change to the Commission proposal; the additional paragraph by the Council allows MS to maintain or adopt more favourable provisions for persons with disabilities.

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			disabilities as regards conditions for access to social protection, including social security, social assistance and healthcare; education; and certain goods or services which are available to the public, in order to promote their economic, cultural or social integration.	
<i>Art.6 Minimum requirements</i>	1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.	<i>Art. 6 Minimum requirements</i>	1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.	No change.
	2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.		2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.	No change.
<i>Art. 7 Defence rights of</i>	1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are	<i>Art. 7 Defence rights of</i>	1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are	No change.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.		available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.	
	2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.		2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.	No change.
	3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.		3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.	No change.
<i>Art. 8</i>	1. Member States shall take such	<i>Art. 8</i>	1. Member States shall take such	No change.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
<i>Burden of proof</i>	measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.	<i>Burden of proof</i>	measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.	
	<p>2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> <p>3. Paragraph 1 shall not apply to criminal procedures.</p> <p>4. Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.</p> <p>5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with Article 7(2).</p>		<p>2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> <p>3. Paragraph 1 shall not apply to criminal procedures.</p> <p>4. Member States need not apply paragraph 1 to proceedings in which the court or other competent body investigates the facts of the case.</p> <p>5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with</p>	No changes.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
			Article 7(2).	
<i>Art. 9 Victimisation</i>	Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.	<i>Art. 9 Victimisation</i>	Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment	No change.
<i>Art. 10 Dissemination of information</i>	Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.	<i>Art. 10 Dissemination of information</i>	Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.	No change.
<i>Art.11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination	<i>Art. 11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.	Council deleted the COM reference to NGOs.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	on the grounds and in the areas covered by this Directive.			
<i>Art. 12 Bodies for the Promotion of Equal treatment</i>	1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.	<i>Art. 12 Bodies for the Promotion of Equal treatment</i>	1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.	Council deleted the COM reference to rights under other Community acts.
	2. Member States shall ensure that the competences of these bodies include: - without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, - conducting independent surveys		2. Member States shall ensure that the competences of these bodies include: (a) without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, (b) conducting independent surveys concerning discrimination, and	No change.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	concerning discrimination, - publishing independent reports and making recommendations on any issue relating to such discrimination.		(c) publishing independent reports and making recommendations on any issue relating to such discrimination.	
<i>Art. 13 Compliance</i>	Member States shall take the necessary measures to ensure that the principle of equal treatment is respected and in particular that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished; (b) any contractual provisions, internal rules of undertakings, and rules governing profitmaking or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.	<i>Art. 13 Compliance</i>	Member States shall take the necessary measures to ensure that the principle of equal treatment is respected within the scope of this Directive and in particular that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished; (b) any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.	No change.
<i>Art.14 Sanctions</i>	Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise	<i>Art. 14 Sanctions</i>	Member States shall lay down the rules on sanctions applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment	No substantial change; substitution of 'infringements' for term 'breaches'.



Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.		of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.	
		<i>Art. 14a Gender mainstreaming</i>	In accordance with Article 8 of the Treaty on the Functioning of the European Union, the Member States shall, when implementing this Directive, take into account the aim of eliminating inequalities, and of promoting equality, between men and women.	Addition by Council.
<i>Art. 15 Implementation</i>	1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by .... at the latest [two years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. When Member States adopt these measures, they shall contain a	<i>Art. 15 Implementation</i>	1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by .... at the latest [4 years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official	Council has added 2 years to the deadline for transposition of the requirements.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.		publication. The methods of making such reference shall be laid down by Member States.	
	2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to provide effective access as set out in Article 4 has to be complied with by ... [at the latest] four [years after adoption].		2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to ensure accessibility as set out in Articles 4 and 4b has to be complied with by, at the latest, [5 years after adoption] regarding new buildings, facilities, vehicles and infrastructure, as well as existing buildings, facilities and infrastructure undergoing significant renovation and by [20 years after adoption] regarding all other existing buildings, facilities, vehicles and infrastructure.	<p>Council version provides for the possibility of MS having another year (5 years compared to COM proposal of 4 years) for ensuring application of the accessibility for persons with disabilities obligation to new buildings, facilities, vehicles and infrastructure as well as existing buildings, etc. undergoing significant renovation.</p> <p>It also provides for MS to opt for as much as 20 years for 'all other existing buildings, facilities, vehicles and infrastructure'. This implies that existing vehicles including public transport could be used for another 20 years.</p>
	Member States wishing to use this additional period shall inform the Commission at the latest by the		Member States wishing to use any of these additional periods shall inform the Commission at the latest by the	Council has added a requirement that Member States that wish to opt for additional implementation time must

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	date set down in paragraph 1 giving reasons.		date set down in paragraph 1 giving reasons. Member States shall also communicate to the Commission by the same date an action plan laying down the steps to be taken and the timetable for achieving the gradual implementation of Article 4 [, including its paragraph 7]. They shall report on progress every two years starting from this date.	draw up an action plan with the steps to be taken and a timetable, and report on progress every two years.
<i>Art. 16 Report</i>	1. Member States and national equality bodies shall communicate to the Commission, by ....at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.	<i>Art. 16 Report</i>	1. Member States shall communicate to the Commission, by .... at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.	No change.
	2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming,		2. The Commission's report shall take into account, as appropriate, the viewpoints of national equality bodies and relevant stakeholders, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, <i>inter alia</i> , provide an	Council mentions national equality bodies.

Article no.	Provisions of the proposed Anti-Discrimination Directive	Article no.	Corresponding provision in latest Council instrument	Comments/Problems
	this report shall, inter alias, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.		assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.	
<i>Art. 17 Entry into force</i>	This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.	<i>Art. 17 Entry into force</i>	This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.	No change.
<i>Art. 18 Addressees</i>	This Directive is addressed to the Member States.	<i>Art. 18 Addressees</i>	This Directive is addressed to the Member States.	No change.

## Annex 2: Table comparing UN Convention on Rights of Persons with Disabilities (UNCRPD) to provisions of the proposed Directive

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
<i>Art. 1 Purpose</i>	The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.	<i>Art. 1 Purpose</i>	This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.	In addition to disability, the proposed ETD also covers discrimination on grounds of religion or belief, age and sexual orientation. It does not cover discrimination in the field of employment and occupation, since that is covered in other EU legislation.
	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.		No equivalent provision	The proposed ETD does not define disability.
<i>Art. 2 Definitions</i>	For the purposes of the present Convention: <ul style="list-style-type: none"> <li>"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;</li> </ul>		No equivalent definition	No equivalent definition

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	<ul style="list-style-type: none"> <li>"Language" includes spoken and signed languages and other forms of non-spoken languages;</li> </ul>		No equivalent definition	No equivalent definition
	<ul style="list-style-type: none"> <li>"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;</li> </ul>	Art. 2 <i>Concept of Discrimination</i>	<p>For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.</p> <p>For the purposes of paragraph 1:</p> <ol style="list-style-type: none"> <li>direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;</li> <li>indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim</li> </ol>	<p>The UNCPRD has a very inclusive definition of 'discrimination on the basis of disability' covering all human rights and fundamental freedoms.</p> <p>The proposed ETD first defines the principle of equal treatment in terms of non-discrimination, and then goes on to give an expanded definition of discrimination.</p> <p>The ETD adds that certain types of discrimination may be acceptable 'if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary.' The UNCPRD does not provide a similar ground for exemption.</p>

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
			<p>and the means of achieving that aim are appropriate and necessary.</p> <p>Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.</p> <p>An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.</p> <p>...</p> <p>6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not</p>	

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
			<p>preclude the fixing of a specific age for access to social benefits, education and certain goods or services.</p> <p>7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.</p> <p>8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.</p>	
	<ul style="list-style-type: none"> <li>"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</li> </ul>	<i>Art. 2 Concept of Discrimination</i>	<p>5. Denial of reasonable accommodation in a particular case as provided for by Article 4(1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.</p>	<p>Both the UNCRPD and the proposed ETD provide that the concept of reasonable accommodation includes making 'appropriate modifications or adjustments'.</p> <p>Both exclude measures that would</p>



Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	exercise on an equal basis with others of all human rights and fundamental freedoms;	Art. 4(1)(a) & (b)	<p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <p>a. The measures necessary to enable persons with disabilities to have effective nondiscriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.</p> <p>b. b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular</p>	<p>impose a 'disproportionate burden'. The UNCRPD also mentions 'undue burden'.</p> <p>The ETD goes beyond the UNCRPD by stipulating that the measures should be provided 'by anticipation'. On the other hand, the ETD provides that the measures 'should not require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto'.</p>

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
			case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.	
	<ul style="list-style-type: none"> <li>"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.</li> </ul>		No equivalent definition	No equivalent definition
<i>Art. 3 General principles</i>	<p>The principles of the present Convention shall be:</p> <ol style="list-style-type: none"> <li>Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;</li> <li>Non-discrimination;</li> <li>Full and effective participation and inclusion in society;</li> <li>Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;</li> <li>Equality of opportunity;</li> <li>Accessibility;</li> </ol>	<i>Preamble (1)</i>	In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community	The proposed DIRECTIVE does not have a provision setting forth principles, but its preamble does mention a number of EU principles which are somewhat equivalent.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	<ul style="list-style-type: none"> <li>g. Equality between men and women;</li> <li>h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.</li> </ul>	<i>Preamble (3)</i>	<p>law.</p> <p>This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.</p>	
<i>Art. 4 General obligations</i>	<p>1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:</p> <ul style="list-style-type: none"> <li>a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present</li> </ul>	<i>Art. 4 Equal treatment of persons with disabilities</i>	<p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <ul style="list-style-type: none"> <li>a) The measures necessary to enable persons with disabilities to have effective nondiscriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by</li> </ul>	<p>Article 4 of the UNCPRD sets forth a long list of general obligations for States Parties. The closest general provision in the proposed Directive is its Article 4 requiring equal treatment of persons with disabilities.</p> <p>In addition, a few specific obligations can be matched with equivalent provisions in the proposed Directive, such as the obligation to adopt the laws and regulations needed for implementing both instruments and to</p>

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	Convention;		<p>anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.</p> <p>1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by .... at the latest [two years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p>	abolish or modify any legal provisions that constitute discrimination.
	b. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;	<i>Art. 15 Implementation</i>		
		<i>Art. 13 Compliance</i>	<p>Member States shall take the necessary measures to ensure that the principle of equal treatment is respected and in particular that:</p> <p>a. any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;</p>	See above.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
			b. any contractual provisions, internal rules of undertakings, and rules governing profitmaking or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.	
	a. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;		See above	See above
	b. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;		See above	See above
	c. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;		See above	See above
	d. To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum		No equivalent provision	No equivalent provision

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;			
	e. To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;		No equivalent provision	No equivalent provision
	f. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;		No equivalent provision	No equivalent provision
	g. To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and		No equivalent provision	No equivalent provision

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	services guaranteed by those rights.			
	2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.	<i>Art. 4 Equal treatment of persons with disabilities</i>	1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities: a) The measures necessary to enable persons with disabilities to have effective nondiscriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.	The UNCRPD requires measures related to economic, social and cultural rights to be taken to the maximum of available resources, in order to progressively realize those rights.  In contrast, the proposed Directive requires the measures needed to have access to certain economic rights to be provided by anticipation, albeit without imposing a disproportionate burden.
	3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities,	<i>Art. 11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which	The proposed Directive requires MS to 'encourage dialogue' with stakeholders. The UNCRPD goes beyond this by requiring SP to 'closely consult with and actively involve persons with disabilities'.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.		have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.	It specifically mentions 'children with disabilities', whereas the proposed Directive contains no mention of children.
	4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.	Art. 5 <i>Positive action</i>  Art. 6 <i>Minimum requirements</i>	With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.  1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.  2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.	Both the UNCRPD and the proposed Directive emphasise that their provisions are just the minimum requirements, and that States can provide even more rights for persons with disabilities.  They also emphasise that they should not be used to reduce any protections of the rights of persons with disabilities.



Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.			The proposed Directive is addressed to the Member States, which would include all parts of any federal MS.
<i>Art. 5 Equality and non-discrimination</i>	1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.	<i>Preamble (3)</i>	This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence	Equivalent.
	2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.		See above reference to Article 21 of the Charter.	Equivalent
	3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.	<i>Art. 4(1)</i>	b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be	Equivalent

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		<i>Art. 4(2)</i>	provided unless this would impose a disproportionate burden.  For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.	
	4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.	<i>Art. 5 Positive action</i>	With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.	Equivalent
<i>Art. 6 Women with</i>	1. States Parties recognize that women and girls with disabilities are	<i>Preamble (13)</i>	In implementing the principle of equal treatment irrespective of	The proposed Directive recognises in its preamble that women are often the

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
<i>disabilities</i>	subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.	<i>Art. 3 Scope</i>	religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.  4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.	victims of multiple discrimination, but it does not include a provision specifically on protecting women with disabilities from such multiple discrimination.
	2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.		See above	See above
<i>Art. 7 Children with disabilities</i>	1. States Parties shall take all necessary measures to ensure the full		No equivalent provision	The proposed Directive contains no mention of children.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.			
	2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.		No equivalent provision	The proposed Directive contains no mention of children.
	3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.		No equivalent provision	The proposed Directive contains no mention of children.
<i>Art. 8 Awareness-raising</i>	1. States Parties undertake to adopt immediate, effective and appropriate measures: a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;	<i>Art. 10 Dissemination of information</i>	Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.	The UNCPRD sets forth a positive and far-reaching obligation on SPs to actively take a number of measures to raise awareness of society at large.  The proposed Directive only requires MS to make the persons concerned, i.e., primarily persons with disabilities, aware of the measures adopted.
	b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and		No equivalent provision	See above

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	age, in all areas of life;			
	c. To promote awareness of the capabilities and contributions of persons with disabilities.		No equivalent provision	See above
	Measures to this end include: a. Initiating and maintaining effective public awareness campaigns designed: i. To nurture receptiveness to the rights of persons with disabilities; ii. To promote positive perceptions and greater social awareness towards persons with disabilities; iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;		No equivalent provision	See above
	b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;		No equivalent provision	See above
	c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;		No equivalent provision	See above

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.		See Article 10 above for a somewhat equivalent provision here.	See above
<i>Art. 9 Accessibility</i>	1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.	<i>Art. 4 Equal treatment of persons with disabilities</i>	<p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <p>a) The measures necessary to enable persons with disabilities to have effective nondiscriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.</p> <p>b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case,</p>	<p>Both include access to the physical environment, transport, and other facilities and services open or provided to the public.</p> <p>The UNCPRD also includes information and communications in its provision on accessibility, which makes it broader in a sense than the proposed Directive.</p> <p>The UNCPRD also has specific provisions on social protection, health care, education and access to and supply of goods, so the two instruments are mostly comparable.</p> <p>The one area where the proposed Directive goes beyond the UNCPRD is in its mention of “social advantages”. However, the proposed Directive also goes into some detail concerning how to define disproportionate burden, whereas this notion of disproportionate burden is not mentioned in the UNCPRD’s Article 9.</p>

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
			<p>reasonable accommodation shall be provided unless this would impose a disproportionate burden.</p> <p>2. For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned</p> <p>3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.</p>	
	These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:		See Article 4(1)(a) above.	The UNCRPD goes beyond the proposed Directive by requiring identification and elimination of obstacles and barriers.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;		See Article 4(1)(a) above.	Equivalent
	b. Information, communications and other services, including electronic services and emergency services.		No equivalent provision	As noted above, the proposed Directive does not include information and communications in its provisions; it does however mention access to services.
	2. States Parties shall also take appropriate measures to: a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.
	b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;	<i>Art. 3 Scope</i>	Discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:  (d) Access to and supply of goods and other services which are available to the public, including housing. Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.	Equivalent.



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	c. Provide training for stakeholders on accessibility issues facing persons with disabilities;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	become accessible at minimum cost.			
<i>Art. 10 Right to life</i>	States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.
<i>Art. 11 Situations of risk and humanitarian emergencies</i>	States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.
<i>Art. 12 Equal recognition before the law</i>	1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.	<i>Art. 7 Defence of rights</i>	1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after	Equivalent protection

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			<p>the relationship in which the discrimination is alleged to have occurred has ended.</p> <p>2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.</p> <p>3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.</p>	
	2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.		No equivalent provision	This is found in the Charter on Fundamental Rights.
	3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.		See Article 7(2) above.	

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	<p>4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.</p>	<p>Art. 8 <i>Burden of proof</i></p>	<p>1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.</p> <p>2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> <p>3. Paragraph 1 shall not apply to criminal procedures.</p> <p>4. Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.</p> <p>5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with Article 7(2).</p>	Equivalent protection

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		<i>Art. 9 Victimisation</i>	Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.	
	5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
<i>Art. 13 Access to justice</i>	1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal	<i>Art. 7 Defence of rights</i>	1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of	The proposed Directive only provides for protection of the rights of those who consider themselves wronged, whereas the UNCPRPD provides for the protection of persons with disabilities even if indirect participants, e.g., as witnesses.

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	proceedings, including at investigative and other preliminary stages.		equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.	
	2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 14 Liberty and security of the person</i>	1. States Parties shall ensure that persons with disabilities, on an equal basis with others: a. Enjoy the right to liberty and security of person; b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.			
<i>Art. 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment</i>	1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
	2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
<i>Art. 16 Freedom from exploitation, violence and abuse</i>	1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
	2. States Parties shall also take all appropriate measures to prevent all		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.

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	forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.			
	3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
	4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.



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	place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.			
	5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 17 Protecting the integrity of person</i>	Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 18 Liberty of movement and nationality</i>	1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:  a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of	<i>Art. 3 Scope</i>	5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons	The UNCRPD goes beyond the proposed Directive here.

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	<p>disability;</p> <p>b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;</p> <p>c. Are free to leave any country, including their own;</p> <p>d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.</p>		concerned.	
	2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 19 Living independently and being included in the community</i>	States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full	<i>Art. 4 Equal treatment of persons with disabilities</i>	<p>1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:</p> <p>a) The measures necessary to enable persons with disabilities to</p>	The UNCRPD goes beyond the proposed Directive here in providing for the equal right of all persons with disabilities to live in the community.

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	enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:		have effective nondiscriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.	
	a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	the community, and to prevent isolation or segregation from the community;			
	c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 20 Personal mobility</i>	d. States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by: e. Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;		No equivalent provision. However, see Article 4(1) cited above.	The UNCRPD goes beyond the proposed Directive here.
	f. Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	g. Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	h. Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
<i>Art. 21 Freedom of expression and opinion, and access to information</i>	States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:	<i>Art. 11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.	The UNCPRPD goes beyond the proposed Directive here.
	a. Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.
	b. Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their		No equivalent provision	The UNCPRPD goes beyond the proposed Directive here.

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	choice by persons with disabilities in official interactions;			
	c. Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	d. Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	e. Recognizing and promoting the use of sign languages.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 22 Respect for privacy</i>	1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	with disabilities on an equal basis with others.			
<i>Art. 23 Respect for home and the family</i>	1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: a. The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;	<i>Art. 3 Scope</i>	2. This Directive is without prejudice to national laws on marital or family status and reproductive rights.	The proposed Directive does not have an equivalent provision.
	a. The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	b. Persons with disabilities, including children, retain their fertility on an equal basis with others.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	2. States Parties shall ensure the		No equivalent provision	The UNCRPD goes beyond the

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.			proposed Directive here.
	3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.



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	is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.			
	5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 24 Education</i>	<p>1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:</p> <p>a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;</p> <p>b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;</p>	<i>Art. 3 Scope</i>	<p>1. Discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:</p> <p>(c) Education;</p> <p>...</p> <p>2. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education.</p> <p>Member States may provide for differences in treatment in access to educational institutions based on religion or belief.</p>	The UNCRPD goes beyond the proposed Directive here.

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	c. Enabling persons with disabilities to participate effectively in a free society.		4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.	
	<p>2. In realizing this right, States Parties shall ensure that:</p> <p>a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;</p> <p>b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;</p> <p>c. Reasonable accommodation of the individual's requirements is provided;</p>		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.

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	<ul style="list-style-type: none"> <li>d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;</li> <li>e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.</li> </ul>			
	<p>3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:</p> <ul style="list-style-type: none"> <li>a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;</li> <li>b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;</li> <li>c. Ensuring that the education of persons, and in particular</li> </ul>		No equivalent provision	The UNCRRPD goes beyond the proposed Directive here.

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	children, who are blind, deaf or deaf/blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.			
	4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.		No equivalent provision	The UNCRRPD goes beyond the proposed Directive here.
	5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable		No equivalent provision	The UNCRRPD goes beyond the proposed Directive here.

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	accommodation is provided to persons with disabilities.			
<i>Art. 25 Health</i>	<p>States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:</p> <ol style="list-style-type: none"> <li>Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;</li> <li>Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including</li> </ol>	<i>Art. 3 Scope</i>	<p>Discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:</p> <ol style="list-style-type: none"> <li>Social protection, including social security and healthcare;</li> </ol>	The UNCPRD goes beyond the proposed Directive here.

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	<p>among children and older persons;</p> <p>c. Provide these health services as close as possible to people's own communities, including in rural areas;</p> <p>d. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;</p> <p>e. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;</p> <p>f. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.</p>			
<i>Art. 26 Habilitation and</i>	1. States Parties shall take effective and appropriate measures, including	<i>Art. 3 Scope</i>	Discrimination shall apply to all persons, as regards both the public	The UNCRPD goes beyond the proposed Directive here.

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<i>rehabilitation</i>	<p>through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:</p> <ol style="list-style-type: none"> <li>Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;</li> <li>Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.</li> </ol> <p>2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.</p> <p>3. States Parties shall promote the</p>		<p>and private sectors, including public bodies, in relation to:</p> <ol style="list-style-type: none"> <li>Social protection, including social security and healthcare;</li> </ol>	

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.			
<i>Art. 27 Work and employment</i>	<p>1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:</p> <p>a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;</p> <p>b. Protect the rights of persons with</p>		No equivalent provision	As mentioned earlier, the EU covers discrimination in the field of employment and occupation in other EU legislation.



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	<p>disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;</p> <p>c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;</p> <p>d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;</p> <p>e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;</p> <p>f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;</p> <p>g. Employ persons with disabilities</p>			

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	<p>in the public sector;</p> <p>h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;</p> <p>i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;</p> <p>j. Promote the acquisition by persons with disabilities of work experience in the open labour market;</p> <p>k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.</p>			
	2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
<i>Art. 28 Adequate standard of living and social</i>	1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families,	<i>Art. 3 Scope</i>	Discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:	The UNCRPD goes beyond the proposed Directive here.

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<i>protection</i>	including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.		(a) Social protection, including social security and healthcare;  See also Article 4(1) cited above.	
	2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs; b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes; c. To ensure access by persons with disabilities and their families		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

Article no.	Provisions of the UN Convention on Rights of Persons with Disabilities	Article no.	Provisions of the proposed Equal Treatment Directive	Comments/Problems
	<p>living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;</p> <p>d. To ensure access by persons with disabilities to public housing programmes;</p> <p>e. To ensure equal access by persons with disabilities to retirement benefits and programmes.</p>			
Art. 29 <i>Participation in political and public life</i>	<p>States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:</p> <p>a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:</p> <p>i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;</p>		<p>See Article 4(1)(b) above.</p> <p>See also Article 11 on Dialogue with relevant stakeholders.</p>	

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	<p>ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;</p> <p>iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;</p>			
	Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including: Participation in non-governmental organizations and associations	<i>Art. 11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination	The UNCRPD goes beyond the proposed Directive here.

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	concerned with the public and political life of the country, and in the activities and administration of political parties; Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.		on the grounds and in the areas covered by this Directive.	
<i>Art. 30 Participation in cultural life, recreation, leisure and sport</i>	1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities: a. Enjoy access to cultural materials in accessible formats; b. Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; c. Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.		See Article 4(1)(b) above.	The UNCRRPD goes beyond the proposed Directive here.
	2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to		No equivalent provision	The UNCRRPD goes beyond the proposed Directive here.

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	develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.			
	3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures: a. To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels; b. To ensure that persons with disabilities have an opportunity to		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	<p>organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;</p> <p>c. To ensure that persons with disabilities have access to sporting, recreational and tourism venues;</p> <p>d. To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;</p> <p>e. To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.</p>			
<i>Art. 31 Statistics and data collection</i>	1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.



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	<p>shall:</p> <ul style="list-style-type: none"> <li>a. Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;</li> <li>b. Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.</li> </ul>			
	2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
	3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.
Art. 32 <i>International cooperation</i>	1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the		No equivalent provision	The UNCRPD goes beyond the proposed Directive here.

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	<p>realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:</p> <ul style="list-style-type: none"> <li>a. Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;</li> <li>b. Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;</li> <li>c. Facilitating cooperation in research and access to scientific and technical knowledge;</li> <li>d. Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of</li> </ul>			

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	technologies. 2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.			
Art. 33 <i>National implementation and monitoring</i>	1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.		No equivalent provision	The UNCPRD goes beyond the proposed Directive here.
	2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national	Art. 12 <i>Bodies for the Promotion of Equal treatment</i>	1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.	Equivalent

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	institutions for protection and promotion of human rights.		2. Member States shall ensure that the competences of these bodies include: – without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, – conducting independent surveys concerning discrimination, – publishing independent reports and making recommendations on any issue relating to such discrimination.	
	3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.	<i>Art. 11 Dialogue with relevant stakeholders</i>	With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.	Equivalent
<i>Art. 34 Committee on Rights of Persons w.</i>	1. There shall be established a Committee on the Rights of Persons with Disabilities...		n/a	n/a

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<i>Disabilities</i>				
<i>Art. 35 Reports by States Parties</i>	1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned. 2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests....	<i>Art. 16 Report</i>	1. Member States and national equality bodies shall communicate to the Commission, by ....at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive. 2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.	Different reporting requirements
	5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.		No equivalent provision	No equivalent provision
<i>Art. 36 Consideration</i>	1. Each report shall be considered by the Committee, which shall make		n/a	n/a

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<i>of reports</i>	such suggestions and general recommendations on the report as it may consider appropriate ...			
<i>Art. 37 Cooperation between States Parties &amp; Committee</i>	1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate...		n/a	n/a
<i>Art. 38 Relationship of the Committee with other bodies</i>	In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:...		n/a	n/a
<i>Art. 39 Report of the Committee</i>	The Committee shall report every two years to the General Assembly...		n/a	n/a
<i>Art. 40 Conference of States Parties</i>	1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention...		n/a	n/a
<i>Art. 41 Depositary</i>	The Secretary-General of the United Nations shall be the depositary of the present Convention.		n/a	n/a
<i>Art. 42 Signature</i>	The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.		n/a	n/a

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Art. 43 <i>Consent to be bound</i>	The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations		n/a	n/a
Art. 44 <i>Regional integration organizations</i>	<p>1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention...</p> <p>2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence. ...</p> <p>4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice</p>		--	The UNCPRD provides for the EU as a regional organisation to become a party, which the EU has done.

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	versa.			
<i>Art. 45 Entry into force</i>	1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession...	<i>Art. 17 Entry into force</i>	This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.	
<i>Art. 46 Reservations</i>	1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted. 2. Reservations may be withdrawn at any time.		n/a	n/a
<i>Art. 47 Amendments</i>	1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations....		n/a	n/a
<i>Art. 48 Denunciation</i>	A State Party may denounce the present Convention by written notification to the Secretary-General...		n/a	n/a
<i>Art. 49 Accessible format</i>	The text of the present Convention shall be made available in accessible formats.		n/a	n/a
<i>Art. 50 Authentic texts</i>	The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.		n/a	n/a
		<i>Art.14 Sanctions</i>	Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive,	Nothing equivalent in the UNCPRD



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			and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.	

### Annex 3: Analysis of the five Member States' legal frameworks on equal treatment relating to the areas examined

- Analysis of the five Member States' legal frameworks on equal treatment relating to **disability and education**

There is a prohibition of discrimination in education on the ground of disability under **Swedish** law<sup>293</sup>. In addition, general rules on accessibility in the Planning and Building Act described in the Section on Housing apply. Thus, all new schools and schools that are being re-modelled must comply with the requirements on accessibility in the Planning and Building Act. Furthermore, the Education Act stipulates that schools have an obligation to provide children with special support for their development<sup>294</sup>. The support must be tailored to the child's needs and circumstances. Support from the municipality is provided all the way from preschool through to high school.

**Czech** Anti-discrimination Act prohibits discrimination on grounds of age and disability in the access to and provision of education<sup>295</sup>. The material scope of existing laws covers all agencies involved in the education system - primary, secondary and tertiary, private, state or self-governed entities (only public universities have a self-governing capacity, all other educational establishments are state or privately run). There are also specific provisions in relation to discrimination grounds of disability in the area of education. Nevertheless, they concern special needs education which is outside the scope of the Proposed Directive<sup>296</sup>.

In **Germany**, the General Act on Equal Treatment applies to education. Discrimination on the ground of disability in the area of education is, hence, not permitted as far as it relates to contracts under civil law, e.g. discrimination against students at a private language school<sup>297</sup>. As far as accessibility of schools is concerned, the main legislation on barrier-free building is issued at Länder level. However, it covers only cases where new buildings are built or where existing buildings are altered. All Länder<sup>298</sup> have adopted requirements for the construction or alteration of buildings or building works that are accessible to the public and this includes education institutions<sup>299</sup>. As regards higher

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<sup>293</sup> Discrimination Act (chapter 2, Section 5) – Swedish legal report – see annex.

<sup>294</sup> [The Education Act](#) (*Skollag (2010:800)*) – Swedish legal report – see annex.

<sup>295</sup> *Antidiskriminační zákon*, no. 198/2009 Coll.

<sup>296</sup> Decree No. 73/2005 Coll., on Education of Children, Pupils and Students with Special Educational Needs and of Extraordinary Talented and Students.

<sup>297</sup> General Act on Equal Treatment, (Section 2(1) No 7 AGG).

<sup>298</sup> Building Law is under the competence of the Länder.

<sup>299</sup> According to the Ministry of Building and Traffic of North Rhine-Westphalia, for example, this means that the building works are intended to be visited by a group of persons that cannot be determined in advance. Residential buildings are not open to public even if they are visited occasionally by visitors, tradesmen, suppliers and other service providers. See this document available on the Internet:

[http://www.mbwsv.nrw.de/service/downloads/Bauen/Landesbauordnung\\_LBO\\_/Erlaeuterungen\\_zu\\_55\\_BauO\\_NRW.pdf](http://www.mbwsv.nrw.de/service/downloads/Bauen/Landesbauordnung_LBO_/Erlaeuterungen_zu_55_BauO_NRW.pdf).

education, the Länder have Universities and Colleges Acts. For instance, the Act of Universities and Colleges of North Rhine-Westphalia (*Hochschulgesetz*) establishes the rule that universities must take the special needs of disabled or chronically ill students into account<sup>300</sup>.

There are no explicit provisions prohibiting discrimination on grounds of handicap or disability in **Romanian** law. Article 11 of the Government Ordinance No.137/2000 sanctions as discrimination refusing access to a person or a group of persons to the education system- public or private, of any kind, degree and level - based on one of the prohibited grounds. The list of prohibited grounds covered in this article does not explicitly include handicap or disability. However, it must be read in conjunction with the open-ended list prescribed in the general part of the law, at Art. 2(1). Non-discrimination provisions apply at every stage of the educational system, including admission, enrolment, evaluation and examination. Romania also has national legislation to ensure education buildings are accessible<sup>301</sup>. Thus, persons with a disability have the right to support services in education, equipment, furniture inside the class, textbooks and lectures that are accommodated to the type and degree of the disability, to use assistive equipment and software during exams at all levels of education, and free accommodation in school camps once every year<sup>302</sup>. Furthermore, as public utility buildings, educational institutions are subject to the reasonable accommodation requirement under Romanian law<sup>303</sup>.

Regarding accessibility of educational buildings in **Spain**, Spanish law expressly provides that educational centres should be adapted to the accessibility conditions laid down in Law 51/2003 and its implementing regulations<sup>304</sup>.

Equal treatment and non-discrimination have been consolidated as basic principles of education in Spain<sup>305</sup>. In setting the rules for the admission of pupils to public and private schools, the LOE (article 84) provides: "In no event shall there be discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance".

<sup>300</sup> Section 3(5) of the Act of Universities and Colleges of North Rhine-Westphalia (*Hochschulgesetz*).

<sup>301</sup> Articles 18 and 19 of the Law 448/2006 apply to the principle of accessibility in the field of education.

<sup>302</sup> Articles 18 of the Law 448/2006 apply to the principle of accessibility in the field of education.

<sup>303</sup> Chapter IV of the Law 448/2006, on accessibility and accommodation for persons with handicap., Art 62.

<sup>304</sup> Article 110, [Organic Law 2/2006](#) (*Ley Organica de Educacion* (LOE)).

<sup>305</sup> For example, the first three principles of quality listed in the LOE refer to equal treatment and equal opportunities as follows: "a) Quality in education for all pupils, regardless of their social condition and circumstances; b) Fairness, guaranteeing equality of opportunities, educational inclusion and non-discrimination, and acting to offset personal, cultural, economic and social inequalities, especially those due to disability; Transmission and implementation of values fostering personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice, and that help overcome discrimination of any kind".

- Analysis of the five Member States' legal frameworks on equal treatment relating to **disability and housing**

In **Sweden**, discrimination on the grounds of age in the area of housing is covered by anti-discrimination provisions in the access and supply of goods and services. Concerning disability discrimination, as mentioned in the paragraph on goods and services, Swedish law provides for housing adaptation grants to persons with disabilities<sup>306</sup>. The aim of the act is to give persons with disabilities a chance to live an independent life in their own homes. The Social Services Act also requires municipalities to establish accommodation with special services for those who need such assistance<sup>307</sup>. In addition, Swedish law requires all new buildings and buildings being modified to be accessible and useable to persons with reduced mobility or orientation capacity<sup>308</sup>. If however the facilities are intended for vacation houses with up to two apartments or concern accessibility to one- or two-storey family houses, the obligation may be waived if, having regard to the terrain, it is not reasonable to meet the requirements<sup>309</sup>.

Discrimination on grounds of age and disability in the area of housing can be found in **Czech** law under the general prohibition of discrimination in the access to goods and services including housing<sup>310</sup>. This legal provision only applies when the goods and/or services are offered or supplied to the public. In the context of housing, this provision follows the interpretation of the Proposed Directive which states that transactions carried out in the private or family context are not covered by the directive.

**Romanian** law considers as discrimination the refusal to sell or rent land, a house or an apartment on one of the prohibited grounds of discrimination, including age and including handicap (the list being open-ended, a larger definition of disability may apply)<sup>311</sup>. Moreover, Law 448/2006 provides that persons with handicap have special rights related to housing, can be given priority for renting apartments at lower levels in public residential buildings, can be provided with an extra room compared to the ordinary norm when renting in public residential buildings and have the right to pay the minimum rent level prescribed by the law. Accessibility rules apply to existing public residential buildings<sup>312</sup> and to the renovation, consolidation, etc. of any type of residential building carried out with public money<sup>313</sup>. Under Romanian law, concerning public residential buildings, accommodation is mandatory when requested by handicapped tenants.

In **Spain**, most of the equality provisions<sup>314</sup> related to access to housing apply to both older and disabled persons. Spanish legislation provides that the common-hold

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<sup>306</sup> [The Act on Housing Adaptation](#) (*Lag (1992:1574) om bostadsanpassningsbidrag m. m.*).

<sup>307</sup> [The Social Services Act](#) (*Socialtjänstlag (2011:453)*), Section 7, Chapter 5.

<sup>308</sup> [The Planning and Building Act](#) (*Plan- och bygglag (2010:900)*), Chapter 8, Section 1.

<sup>309</sup> [The Planning and Building Act](#) (*Plan- och bygglag (2010:900)*), Chapter 8, Section 6.

<sup>310</sup> Act no. 198/2009 Coll on Anti-Discrimination Law.

<sup>311</sup> Art. 13 of the Government Ordinance No.137/2000.

<sup>312</sup> Art.62 (1).

<sup>313</sup> Art.63 (2).

<sup>314</sup> [Law 49/1960 on Horizontal Property](#) (*Ley de propiedad horizontal*), as amended by Law 26/2011.

association, at the request of the owners of a certain apartment in which disabled people or people over 70 years of age either live, work, or provide voluntary services, is obliged to update the accessibility installations necessary for proper use of those with a disability, or to install the necessary mechanical and electronic devices that support communication with the outside world.

Spanish law also establishes a quota of accessible dwellings for persons with disabilities of 4 per cent<sup>315</sup> of officially protected and social housing projects and housing projects of any other nature constructed, promoted or subsidised by a public administration or any other body forming part of or linked to the public sector<sup>316</sup>. The design of dwellings in this category is to be such as to facilitate access by persons with reduced mobility, the normal performance of their motor activities and their integration into the nucleus in which they live (e.g. with respect to door widths which should not be less than 0,70 m., stairs, lift, etc.).

**German** law prohibits age and disability discrimination in the access to housing under the General Act on Equal Treatment<sup>317</sup>. Rental agreements will only be covered by this provision if the rental agreement can be considered as 'bulk business'. In the area of housing, German law specifies that rules for bulk business apply when the landlord rents out at least 50 flats<sup>318</sup>.

Another way to promote barrier-free housing in Germany is through Länder-funded housing. The Länder grant public assistance for barrier-free housing and have exclusive legislative competency for regulating social housing. But there is also federal law on this subject<sup>319</sup>. As a result, the Länder can adopt their own laws but if they have not yet adopted measures, federal law continues to apply. Grants for the construction of new housing, modernisation of old buildings and the purchase of existing accommodation can also be provided. Additional aid can be granted for special building measures to meet the needs of disabled or elderly people<sup>320</sup>. Provisions in favour of persons with a disability or reduced mobility renting an apartment have also been enshrined in German law<sup>321</sup>. It provides that the tenant can require the consent of the landlord to modification measures needed to ensure that disabled persons can access or make full use of the premise<sup>322</sup>. The landlord does not carry the costs for the measures and can refuse his consent under certain circumstances. Persons with disabilities are eligible to assistance by the state for provision, alteration, equipment and maintenance of an apartment that meets their special needs<sup>323</sup>.

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<sup>315</sup> Article 47(1).

<sup>316</sup> LISMI, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-1982-9983>.

<sup>317</sup> AGG, Section 2(1) No 8.

<sup>318</sup> Section 19(5) Sentence 3 AGG.

<sup>319</sup> Law on Social Housing Promotion' (Wohnraumförderungsgesetz des Bundes).

<sup>320</sup> Sections 12(2). Law on Social Housing Promotion' (Wohnraumförderungsgesetz des Bundes).

<sup>321</sup> The rental law reform in 2001 introduced a new provision in the Civil Code (BGB)

<sup>322</sup> Section 554a Civil Code.

<sup>323</sup> (Section 55(2)No 5 of the Social Code Book 5).

- Analysis of the five Member States' legal frameworks on equal treatment relating to **disability and media**

**Swedish** legislation prescribes that media service providers of TV broadcasts, on demand TV or Tele text other than through cable must devise the service in such a way that it becomes accessible for persons with functional impairments, by texting, interpreting, audio description or other similar techniques<sup>324</sup>. This also includes media service providers that provide TV broadcasts or Tele text through cable.

According to **German** law, the providers of state television (ARD and ZDF) are to improve their barrier-free services within the limits of their technical and financial capacities<sup>325</sup>. Beyond this prescribed objective, which does not apply to private broadcasters, there are no laws relating to the barrier-free access of disabled persons to radio or TV programmes in Germany.

In **Czech** law, anti-discrimination in the area of media falls under the scope of the anti-discrimination provision in the access of goods and services under the Anti-discrimination Act<sup>326</sup>. As for the area of goods and services, a specific act also prohibits discrimination between consumers based on any grounds<sup>327</sup>. No specific anti-discrimination provisions in accessing media could be identified.

In **Romania**, accessibility also applies to media. However, there are very few explicit provisions applicable in this area. Audio-visual Law No.504/2002<sup>328</sup> only establishes within the mandate of the National Audio-visual Council the obligation "to encourage audio-visual media service providers to ensure accessibility for persons with visual or hearing impairments"<sup>329</sup>. There is no legal obligation for ordinary service providers to ensure accessibility to their audio-visual programs. There are no quotas of programmes which should be accessible to people with disabilities. The National Audio-visual Council<sup>330</sup>, regarding on-demand audio-visual media services, has obliged providers to make their web pages accessible for persons with visual or hearing impairments according to international standards of web accessibility.

**Spanish** legislation on audiovisual communication has set out minimum levels of availability of accessible multimedia for both public and private TV as well as a time-line to achieve these objectives<sup>331</sup>. It also establishes a system of offences and penalties<sup>332</sup> for those broadcasters which fail to comply with the foregoing standards (according to the gravity of the offence, a fine ranging from EUR 300 to 1,000,000 may be imposed).

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<sup>324</sup> [The Radio and Television Act](#) (*Radio- och tv-lag* (2010:696)).

<sup>325</sup> Section 3(2) of the Interstate Broadcasting Agreement (*Rundfunkstaatsvertrag*).

<sup>326</sup> Antidiskriminační zákon, no. 198/2009 Coll.

<sup>327</sup> Act No. 634/1992 Coll.

<sup>328</sup> Legea audiovizualului nr.504/2002.

<sup>329</sup> Legea audiovizualului nr.504/2002, (Art.10.(3).k).

<sup>330</sup> Decision No.320/2012 ((*Decizia Consiliului National al Audiovizualului nr.320/2012 privind furnizarea serviciilor media audiovizuale la cerere*).

<sup>331</sup> [Law 7/2010, of 31 May, General Law on audiovisual communication \(LGCA\)](#) (*Ley General de la comunicación audiovisual*).

<sup>332</sup> Title VI, the General Penalty Regime (*Title VI, Régimen sancionador básico*), artt. 55 ff.

- Analysis of the five Member States' legal frameworks on equal treatment relating to **disability and public administration and judiciary**

This legal analysis relates to equal treatment in access to goods and services in general. It takes into account public administration and judiciary in addition to hotels, restaurants, cafés, bars and nightclubs.

In **Sweden**, general provisions on discrimination prohibit discrimination on grounds of age and disability when supplying goods and services<sup>333</sup>. In addition, specific provisions require, for instance, public libraries and school libraries to pay specific attention to persons with disabilities by, for example, offering literature in forms tailored to their needs<sup>334</sup>. It also stipulates that public libraries and school libraries shall pay special attention to children and youth by providing books, information technology and other media appropriate to their needs<sup>335</sup>.

In relation to accessibility of public places, Swedish legislation requires obstacles to accessibility or usability in a public place to be promptly remedied, if, having regard to the practical and financial conditions, the obstacle is easy to remedy. Under this provision, public places refer to streets, roads, parks, plazas, or other areas that are for a common need, according to a land-use plan<sup>336</sup>. Other accessibility measures in the area of goods and services are taken as policy measures rather than legal provisions (e.g. making films accessible for persons with hearing impairments or providing state aid to the Swedish Sports Organisation for the Disabled).

In **Germany**, discrimination is prohibited on grounds of age and disability in the establishment, implementation or termination of general business transactions<sup>337</sup>. This provision applies to all contracts of bulk business, and is hence also applicable to contracts in the area of retail, commercial sports or commercial cultural events. For example, price reductions for certain age groups can therefore be illegal<sup>338</sup>. Concerning professional services, the applicability of the General Act on Equal Treatment depends on whether such a service would be classified as 'bulk business'. For instance, in the case of lawyers' services, this does not seem to apply. In relation to judiciary and administration, the non-discrimination provisions only apply to access and supply of goods and services governed by civil law, which is not applicable to the services of courts. Nevertheless, relating to discrimination on grounds of disability, some specific measures are in place to facilitate access of persons with disabilities to administration and judiciary. For instance, according to German federal law, the needs of persons with hearing or speech impairments must be taken into account in civil and criminal proceedings<sup>339</sup>. In relation

<sup>333</sup> Discrimination Act chapter 2, Section 12.

<sup>334</sup> [The Library Act](#) (*Bibliotekslag* (1996:1596)) Section 8.

<sup>335</sup> [The Library Act](#) (*Bibliotekslag* (1996:1596)) Section 9.

<sup>336</sup> Chapter 1, Section 4, [the Planning and Building Act](#) (*Plan- och bygglag* (2010:900)).

<sup>337</sup> Section 19(1) No 1 of the AGG.

<sup>338</sup> 'Guidance to the AGG' published by the Federal Anti-Discrimination Agency, p. 19, available at: [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/agg\\_wegweiser\\_erlaeuterungen\\_beispiele.pdf?\\_\\_blob=publicationFile](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/agg_wegweiser_erlaeuterungen_beispiele.pdf?__blob=publicationFile).

<sup>339</sup> Sections 483 Code of Civil Procedure (ZPO), 66 and 259 Code of Criminal Procedure (StPO), and Section 186 Constitution of Courts Act (GVG).



to administration, accessibility measures are enshrined in legislation and provide for communication aid,<sup>340</sup> accessibility of correspondence and forms for hearing or speech impaired persons<sup>341</sup> and websites<sup>342</sup> for persons with disabilities. Correspondence and forms must be made available to blind or partially sighted persons in a way accessible to them. Similarly, websites of the administration must be accessible also to people with disabilities. Walkways and public thoroughfares do not fall under the scope of goods and services for discrimination on grounds of age. Nonetheless, in relation to disability, German federal law prescribes that public ways, squares and roads are to be designed barrier-free<sup>343</sup>. Furthermore, the Länder have taken similar provisions to ensure accessibility of walkways and public thoroughfares<sup>344</sup>.

There are no specific provisions creating *ad hoc* protections for the elderly in access to goods and services in **Spain**. The normative framework is provided by the LIONDAU<sup>345</sup> (as amended by Law 26/2011<sup>346</sup>, which enacts equality of opportunities and non-discrimination as regulatory principles. The LIONDAU applies to a numbers of sectors covering goods and services in a broad meaning. It covers inter alia: public spaces, infrastructure and construction, goods and services available to the public, public administration and administration of justice, cultural heritage etc. It requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. In relation to goods and services, Spanish legislation requires that physical or legal entities, public or private, providing goods or services available to the public offered outside the area of private and family life, must comply with the anti-discrimination principle in their activities and transactions<sup>347</sup>. In the area of public administration and administration of justice, the Spanish Government is tasked with adopting the basic conditions of accessibility and non-discrimination which cover public offices, bodies, services, citizens and services which participate in public affairs, including those relating to the administration of justice and participation in political and electoral processes. Relating to public spaces and buildings, basic conditions of accessibility and non-discrimination must be provided, to allow access to and the use of built public spaces and buildings. This will become mandatory following an agreed time-line.

The legislation covers all infrastructure and includes a time-line to differentiate the accessibility goals between new and existing infrastructures.

**Czech** Anti-discrimination Law provides for a general prohibition of discrimination on grounds of disability and age in the access to goods and services including housing<sup>348</sup>.

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<sup>340</sup> Section 9 of the BGG.

<sup>341</sup> Section 10 BGG and Section 9 BGG NRW.

<sup>342</sup> Section 11 BGG and Section 10 of the BGG NRW respectively.

<sup>343</sup> Section 8(2) of the BGG.

<sup>344</sup> For instance, the Act on Equal Opportunities for Disabled People North Rhine-Westphalia (BGG NRW) contains a corresponding provision in Section 7(2) in conjunction with Section 4 Sentence 3.

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<sup>345</sup> [LIONDAU](#).

<sup>346</sup> [Law 26/2011](#).

<sup>347</sup> Article 11 of the LIONDAO.

<sup>348</sup> Act no. 198/2009 Coll. on Anti-Discrimination Law.



This anti-discrimination provision applies to access to goods and services to the extent that they are offered or supplied under public law<sup>349</sup>. Another Act prohibits more specifically discrimination against consumers on any ground in the area of provision of goods and services. In this respect, discrimination means any differentiation between consumers, which could be not justified by legitimate reasons<sup>350</sup>.

In **Romania**, Art.10 of the Government Ordinance No.137/2000 prescribes a general clause prohibiting discrimination in access to various goods and services, including public administrative and legal services, bank loans and other contracts, entertainment/culture (e.g. theatre, cinema, museums, exhibitions, etc.), shops, hotels, restaurants, bars, clubs, or any other service provider, public or private. Age is a protected ground. Disability is a protected ground; as the list of protected grounds is open-ended the extended definition of disability may be included.

- Analysis of the five Member States' legal frameworks on equal treatment relating to **disability and social care**

In **Sweden**, persons with disabilities are encouraged as far as possible to live a normal life in their own homes. The 1992 Act on Housing Adaptation Grants contains provisions on housing adaptation grants to persons with disabilities<sup>351</sup>. The aim of the act is to give persons with disabilities a chance to live an independent life in their own homes. The Social Services Act requires municipalities to establish accommodation with special services for those who need such assistance<sup>352</sup>. The Act concerning Support and Service for Persons with Certain Functional Impairments contains provisions on special support and special service to persons with certain disabilities, such as personal assistance, the right to community living for adults, the right to community living for children, guidance, etc.<sup>353</sup> Swedish legislation also prescribes that social services shall ensure that persons who are not able to meet their own needs get the assistance necessary to achieve a fair standard of living<sup>354</sup>. Furthermore, the social welfare services shall work towards ensuring that persons who, for physical, mental or other reasons, encounter significant difficulties in their lives have the opportunity to participate in the life of the community.

In **Germany**, some measures are in place to enable elderly people to live at home as far as possible. Indeed, mandatory social care insurance covers permanent care for sick or disabled persons<sup>355</sup>. It is often used in cases where sick elderly persons cannot manage their daily lives anymore. They can receive assistance, e.g. to prepare food or for personal hygiene, which enables them to stay in their home and not to move to a retirement home. However, relating to the option of choosing to live in a community, this is mentioned in

<sup>349</sup> Art. 1(j) Act no. 198/2009 Coll. on Anti-Discrimination Law.

<sup>350</sup> Act No. 634/1992 Coll. on Consumer Protection, Art. 6.

<sup>351</sup> Lag (1992:1574) om bostadsanpassningsbidrag m. m.); <http://www.notisum.se/rnp/sls/lag/19921574.htm>.

<sup>352</sup> Section 7, Chapter 5 *Socialtjänstlag* (2011:453), <http://www.notisum.se/rnp/sls/lag/20010453.htm>.

<sup>353</sup> Lag (1993:387) om stöd och service till vissa funktionshindrade <http://www.notisum.se/rnp/sls/lag/19930387.HTM>

<sup>354</sup> (chapter 4, Section 1) The Social Services Act

<sup>355</sup> Social Code Book XI

reference to children with disabilities and not in to elderly disabled people. Indeed, the law says that assistance for disabled children must be planned in a way that they are not separated from their social environment, whereas there is no such provision for disabled adults. Discrimination on grounds of disability in the pursuit of social rights is forbidden by the Social Code<sup>356</sup>. Disabled persons can benefit from assistance in order to participate in the society. This included a series of rights such as home help<sup>357</sup>, aid to communicate with the environment<sup>358</sup> and aid for a self-determined life in supported housing<sup>359</sup>. Physical accessibility of social care facilities is also ensured under legislation of some Länder.

**Spanish** legislation on non-discrimination on grounds of age and disabilities in the area of social care falls under the scope non-discrimination provisions in the area of healthcare (see previous section on healthcare).

**Romanian** legislation includes a general prohibition of discrimination on grounds of age and disability in access to rights and facilities which can be interpreted as including social care<sup>360</sup>. In relation to disability, Law 448/2006 provides the right to social assistance for persons with disabilities based on an assessment of their individual needs from a medical and a psychological point of view<sup>361</sup>. The same piece of legislation prescribes that public authorities have general obligations such as making accessible all types of social services according to the individual needs of persons with a disability, hiring specialised staff to work with persons such persons, training the staff, ensuring home assistance and socio-medical care at home for persons with disabilities etc.<sup>362</sup> Furthermore, national law also states that the admission of a person with a disability to a residential centre, except for crises centres and protected homes, is made only when the person cannot be provided with protection and care at home or with other services in the community<sup>363</sup>.

**Czech Republic's** legislation in the area of social care provides for accessible and barrier-free social care facilities<sup>364</sup>. General technical requirements for buildings and their use by persons with reduced mobility ('persons with limited movement and orientation ability') are also enshrined in Czech law. They provide for instance that access to all spaces for use by the general public must be ensured by horizontal communications, stairs and parallel lead ramps or elevators without barriers. The Social Services Act also requires autonomy, independence and inclusion of disabled people into society<sup>365</sup>.

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<sup>356</sup>Social Code. Section 33c of Book

<sup>357</sup>Social Code, Section 54.

<sup>358</sup> Social Code. Section 55 No 4

<sup>359</sup> Social Code Section 55 No 6

<sup>360</sup> Art.10.(h) of the Government Ordinance No.137/2000.

<sup>361</sup> Chapter III Law 448/2006

<sup>362</sup> Art.31.(4) Law 448/2006

<sup>363</sup> Art.51.(4) of Law 448/2006

<sup>364</sup>The Act No. 183/2006 Coll., the Law on Spatial Planning and Construction (the Construction Act), and especially in the Regulation No. 398/2009 Coll., on general technical requirements for barrier-free use buildings.

.2(2)(e) of the Law on Spatial Planning and Construction

<sup>365</sup> Art. 2 of the Act no. 108/2006 Coll., on Social Care Services

- Analysis of the five Member States' **legal frameworks** on equal treatment relating to age and healthcare

In **German** law, the General Act on Equal Treatment prohibits discrimination on grounds of age and disability in the area of social protection, including social security and health services<sup>366</sup>. However, this section is not specified in the law and is of a rather declarative nature. It only applies where health services are given on a private basis. In addition, healthcare facilities, such as hospitals, are Land institutions (i.e. public institutions). Thus, they must be constructed or altered in a way to ensure barrier-free access according to the legislation in force in the Land. However, the duty to ensure barrier-free access applies only to new buildings or to alterations of existing buildings. The Länder have also adopted requirements for the construction of (privately or publicly run) buildings or building works that are accessible to the public.

In **Sweden**, discrimination in health and medical services on the ground of age is prohibited in the Discrimination Act<sup>367</sup>. Swedish law in relation to healthcare stipulates that respect for everyone's equal value and dignity must be the principle applying. According to Swedish law, health and medical services must also be accessible<sup>368</sup>. It also mentions that the person who is in the greatest need for medical care shall have priority to receive care. No mention of age category or priority on grounds of age could be identified. However, discrimination in health services does not preclude the application of legal provisions which prescribe a specific age, or any other differential treatment on the ground of age if the discrimination has a justified purpose and the means used are appropriate and necessary to achieve this purpose<sup>369</sup>. The Health and Medical Services Act stipulates that the County Councils must provide to their residents rehabilitation, aid for persons with disabilities and interpreter services for deaf persons<sup>370</sup>.

In **Spain**, Law 16/2003 on cohesion and quality in the National Health System entrusted the Government with promoting sufficient programmes for the removal of obstructions in health centres and services which, because of age or other factors, might render access difficult for users with mobility or communication problems. In relation to disability, the main provisions have been introduced by Law 26/2011, adapting the Spanish legislation to the UN Convention on the Rights of Persons with Disabilities<sup>371</sup>. It also regulates consent of persons with disabilities in various medical fields. This means that appropriate support measures including information in appropriate format must be accessible to them to provide their consent<sup>372</sup>. Law 16/2003 on cohesion and quality in the National Health System also provides that accessibility to health centres, services and benefits for persons with disabilities is a quality criterion with which the system must comply and

<sup>366</sup> Section 2(1) No 5 in conjunction with Section 1 of the AGG.

<sup>367</sup> Discrimination Act (chapter 2, Section 13).

<sup>368</sup> Discrimination Act (Section 2a).

<sup>369</sup> Discrimination Act (chapter 2, Section 13b).

<sup>370</sup> Discrimination Act (Section 3b).

<sup>371</sup> <http://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13241.pdf>

<sup>372</sup> Article 5 of Law 41/2002 read as follows: "If the patient is a person with disabilities, they will be offered appropriate support measures, including information in appropriate formats, following the rules set by the principle of design for all, in a form that is accessible and understandable to people with disabilities, to enable them to provide their consent".

also that newly-constructed health centres must comply with current regulations on promotion of accessibility and the removal of obstacles of all kinds to their implementation<sup>373</sup>. Training requirements (6months) of the healthcare staff assisting people with disabilities are set in Spanish law.

**Romanian** national law prescribes a general prohibition of discrimination in access to public healthcare services on grounds of inter alia age and disability<sup>374</sup>. Romania already has provisions promoting the rights of persons with disabilities in accessing healthcare<sup>375</sup>. For instance, this includes making available healthcare services in terms of transport, infrastructure, communication networks, and services etc. Furthermore, provisions referring to accessibility and accommodation for persons with disabilities also apply in the field of healthcare. Indeed, as providers of public services, both public and private healthcare providers fall under the obligation to ensure information about their services accessible to persons with visual, hearing or mental disability. This means that by 31 December 2007, public authorities were to have taken measures to use pictograms in all public services, adapt telephones with telefax and teletext for persons with hearing impairments and respect the accessibility requirement when acquiring new equipment and software. Similarly, hospitals or health clinics are considered as public utility buildings and must be accessible for persons with disabilities according to Romanian law<sup>376</sup>. In practice, no public information has been made available on the monitoring and evaluation of any measures ensuring accessibility of information and communication<sup>377</sup>. The latest monitoring report dates back to 2007 and only addresses physical accessibility of public buildings in cities with more than 50,000 inhabitants<sup>378</sup>.

There are no specific provisions protecting discrimination on grounds of age in the area of healthcare in **Czech Republic**. Discrimination on grounds of disability in the area of healthcare falls into the scope of the general Anti-discrimination act which states that indirect discrimination on grounds of disability shall also mean refusal or failure to take appropriate measures to enable a person with a disability to have access to public services. Only measures relating to accessibility of persons with reduced mobility (including people with disabilities and elderly persons) to medical facilities and healthcare buildings could be identified. They provide technical requirements for barrier-free access to those buildings.

- Analysis of the five Member States' legal frameworks on equal treatment relating to **sexual orientation and social advantages**

In **Sweden**, the Discrimination Act prohibits discrimination on the ground of sexual orientation with regard to social security<sup>379</sup>.

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<sup>373</sup>[Law 16/2003 on cohesion and quality in the National Health System](#)

<sup>374</sup>Government Ordinance 137/2000

<sup>375</sup>Law 448/2006 has a special section dedicated to the healthcare of persons with handicap (Chapter II – Section 1).

<sup>376</sup>Art.62 of the Law 448/2006

<sup>377</sup> Information collected through the Romanian legal expert.

<sup>378</sup> Information collected through the Romanian legal expert. Monitoring report available here: <http://www.anph.ro/admin/doc/upload/serviciu/Accesibilitati%202007.pdf>

<sup>379</sup> Discrimination Act, (chapter 2, Section 14).

Same sex marriage is authorised in Sweden<sup>380</sup> and the Cohabitees Act<sup>381</sup> applies to both heterosexual and homosexual couples.

Swedish legislation does not have any tax benefits based on marriage. However, there are tax exemptions for inheritance from spouses, widow/widower allowances, etc. which apply to all married couples, regardless of sexual orientation and the sex of the spouses.

In **Germany**, same-sex couples cannot marry but can register a life partnership with the same registry office that is competent to make a marriage under the Life Partnership Act (*Lebenspartnerschaftsgesetz*). The life partnership is almost equivalent to a marriage in all areas of law, except for income tax<sup>382</sup>.

**Czech** legislation has established Registered Partnership available only to same sex couples, with marriage exclusively for opposite sex couples. The Anti-discrimination Act<sup>383</sup> prescribes a general right to equal treatment and prohibition of discrimination with respect to social security. However, the Act No. 115/2006 Coll. on Registered Partnership is considered as *lex specialis vis-a-vis* the Anti-Discrimination Act. Given this, it is not possible to assess the limitations on registered partners as contravening the Antidiscrimination Act<sup>384</sup>. Registered partnership does not offer same-sex couples all the benefits that marriage grants. Registered partners are denied joint property rights, tenancy rights, and are excluded from joint taxation and survivor pension rights<sup>385</sup>.

Same-sex marriage is authorised in **Spain**. Spanish law prescribes that requirements and effects of the marriage are equal when the married persons are of the same or opposite sex". Same-sex couples are thereby granted all the rights of marriage, with respect to: succession (inheritance rights), social benefits, adoption etc. With regard to social security and other benefits, this covers: parental leave (excepting in the Region of Andalusia, by Regional Act 12/2007), widow's Pension and public social security which includes equal treatment for tax purposes.

Marriage for same-sex couples is expressly forbidden in **Romania**<sup>386</sup>. Same-sex marriage and same-sex civil unions legally concluded abroad are not recognised in Romania<sup>387</sup>. Same-sex couples do not have the right to legally register in national law. Civil partnership or any other form of civil union outside marriage is not regulated in national law for heterosexual couples or same-sex couples. Consequently, rights recognised to married heterosexual couples are not recognised to partners (outside marriage), whether heterosexual or homosexual

<sup>380</sup> [Marriage Code](#) (*Äktenskapsbalk* (1987:230).

<sup>381</sup> [The Cohabitees Act](#) (*Sambolag* (2003:376).

<sup>382</sup> A good overview is provided on the website of the Association of Lesbians and Homosexuals in Germany (LSVD), available at: <http://lsvd.de/77.0.html>.

<sup>383</sup> Anti-discrimination Act no. 198/2009 Coll.

<sup>384</sup> Boučková, P., Havelková, B., Koldinská, K. et al. 'Anti-Discrimination Law', Commentary, Prague: C.H. Beck, 2010, p. 118-119.

<sup>385</sup> Global Rights and IGLHRC, 'The Status of Lesbian, Gay, Bisexual, Transgender and Intersex Rights in the Czech Republic', Shadow Report, July 2007, p. 7.

<sup>386</sup> Art.277 of the Law No.287/2009 regarding the Civil Code (*Legea 287/2009 privind Codul civil*).

<sup>387</sup> Art. 277 of the Civil Code.

## **Annex 4: List of stakeholders consulted**

The following stakeholders were contacted in the consultation:

*List provided in alphabetical order*

- Academic Network of European Disability Experts (ANED)
- Age UK
- Association for Higher Education Access and Disability (AHEAD)
- Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE)
- Autism Europe
- Business Europe
- Care for Europe
- CECODHAS Housing
- Community of European Railways (CER)
- Confederation of Family Organisations in the European Union (COFACE)
- Conference of European Churches (CEC)
- Council of European Municipalities and Regions (CEMR)
- Council of European Professional and Managerial Staff (Eurocadres)
- Dr. Gudrun Kugler at the Observatory on Intolerance and Discrimination Against Christians in Europe
- Equality and Human Rights Commission (EHRC)
- Equity Action
- Euro Health Net
- Eurocarers
- EUROCITIES
- EuroCommerce
- Eurodiaconia
- European Association of Chambers of Commerce and Industry (Eurochambres)
- European Association of Cooperative Banks (EACB)
- European Association of Craft, small and medium sized enterprises (UEAPME)
- European Association of Service Providers for Persons with Disabilities (EASPD)
- European Blind Union (EBU)
- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)
- European Committee for Standardization (CEN)
- European Confederation of Executives and Managerial Staff (CEC)
- European Confederation of Workers' Cooperatives, Social Cooperatives and Social and Participative Enterprises (CECOP)
- European Council for Non Profit Organisations (CEDAG)
- European Disability Forum (EDF)
- European Federation of Older Persons (EURAG)
- European Federation of Unpaid Parents & Carers at Home (FEFAF)
- European Hospital and Healthcare Federation (HOPE)
- European Housing Network (EURHONET)

- European Network Against Racism (ENAR)
- European Network for Accessible Tourism (ENAT)
- European Network for Housing Research (ENHR)
- European Network for Legal Experts in the Non-Discrimination Field
- European Network of Equality Bodies (Equinet)
- European Network of Independent Experts on Social Inclusion
- European Network on Inclusive Education and Disability (incluD-ed)
- European Network on Independent Living (ENIL)
- European Network on Religion and Belief (ENORB)
- European Older People's Platform (AGE-Platform)
- European Platform on Mobility Management (EPOMM)
- European Social Network (ESN)
- European Trade Association of Hotels, Restaurants and Cafes (HOTREC)
- European Trade Union Confederation (ETUC)
- European Travel Agents' & Tour Operators' Associations (ECTAA)
- Finnish Hospitality Association
- Inclusion Europe
- Insurance Europe
- International Lesbian and Gay Association (ILGA Europe)
- Mental Disability Advocacy Center (MDAC)
- Mental Health Europe (MHE)
- Professor Lisa Waddington at Maastricht University, NL
- Professor Robert Wintemute at Kings College London, UK
- Professor Stefanos Grammenos at the Centre for European Social and Economic Policy (CESEP)
- Swedish Association of Local Authorities and Regions (SALAR)
- Union of European Rail Industry (UNIFE)

The following stakeholders contributed their input to the consultation:

- Care for Europe, Christian Concern, Alliance Defending Freedom and the Christian Legal Centre (joint response – referred to in report as ‘Care for Europe et al’)
- CECODHAS Housing
- Dr. Gudrun Kugler at the Observatory on Intolerance and Discrimination Against Christians in Europe
- EuroCommerce
- Eurodiaconia
- European Association of Cooperative Banks (EACB)
- European Blind Union (EBU)
- European Confederation of Executives and Managerial Staff (CEC)
- European Disability Forum (EDF)
- European Network Against Racism (ENAR)
- European Network on Independent Living (ENIL)
- European Network on Religion and Belief (ENORB)

- European Trade Association of Hotels, Restaurants and Cafes (HOTREC)
- European Travel Agents' & Tour Operators' Associations (ECTAA)
- Finnish Hospitality Association
- Insurance Europe
- International Lesbian and Gay Association (ILGA Europe)
- Irish Equality Authority – member of Equinet
- Swedish Association of Local Authorities and Regions (SALAR)
- The Federal Antidiscrimination Agency (DE) – member of Equinet



## Annex 5: Exemptions from the proposed Directive

Access to goods and services	---	<ul style="list-style-type: none"> <li>Private transactions (transactions between private individuals acting in a private capacity) are not covered. Only professional or commercial activities are covered.</li> </ul>	Explanation: letting a room in a private house ≠ letting a room in a hotel	Art.3
Education	---	<ul style="list-style-type: none"> <li>Organisation of the school system (explanation: selective admission to school)</li> <li>Organisation of education for people with disabilities</li> <li>School curriculum</li> </ul>	Reason: Competence of the Member States	Art. 3
Education	Religion	<ul style="list-style-type: none"> <li>Wearing of religious symbols in schools</li> <li>Access to religious educational institutions</li> </ul>	Reason: Competence of the Member States	Art.3
---	Religion	<ul style="list-style-type: none"> <li>Secular nature of the State: relationships with religious organisations</li> <li>Activities of churches or religious organisations</li> </ul>	Explanation: The diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity.	Art.3
---	Sexual orientation	<ul style="list-style-type: none"> <li>Laws on marital and family status</li> <li>Legally registered partnerships</li> <li>Adoption</li> <li>Reproductive rights</li> </ul>	Reason: Competence of the Member States	Art. 3
Insurance and banking services	Age and disability	Age and disability can be an essential element of the assessment of risk for certain products and therefore of price. However, the use of age and disability in the assessment of risk must be	Explanation: If age and disability could not be taken into account at all in the calculation of insurance prices, the additional costs would have to be entirely borne by the rest of the	Art. 2

		<p>based on accurate data and statistics.</p> <p>The proposed Directive does not affect national measurers based on public security, public order, the prevention of criminal offences, the protection of health and the rights and freedoms of others.</p>	<p>“pool” of those insured, resulting in higher overall costs.</p>	
All	All	<p>Positive action:</p> <p>With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.</p>	Measure on positive action.	Art. 5
		<ul style="list-style-type: none"> <li>• Discrimination on grounds of nationality</li> <li>• Conditions relating to the entry, residence and residence of third-country nationals and stateless persons.</li> </ul>		Art. 3

## **Annex 6: Stakeholder views on the proposed Directive and on the approach of this impact assessment**

This annex presents a short account of stakeholders' views to further complement background information and to explain how stakeholders' views were considered when refining the approach.

- **Results of the original consultation carried out by the European Commission**

As part of the European Commission's impact assessment which accompanied the 2008 proposed Directive, the Commission held a public consultation – 'Discrimination: Does it matter?' which attracted approximately 5,400 responses.

One of the main points commonly agreed by most stakeholders – business and civil society – was that there is evidence of discrimination on all the grounds covered by the proposal. There was also general agreement that a Directive could in theory allow for consistency across the EU.

In addition while there is also a general agreement that the Directive would incur significant costs, especially in the early stages of implementation, civil society believes that this would be outweighed by more long term economic and social benefits. Indeed certain civil society organisations see equality as a prerequisite for growth.

For the most part, the main concerns of business confederations related more to the legal uncertainty which would result from the general provisions contained in the proposal and less to the actual measures which would have to be taken. Additional bureaucratic or regulatory burden was another concern. As such, one alternative way put forward by business associations of reducing discrimination, and at the same time avoiding uncertainty, was to promote voluntary agreements. This, however, was seen as unacceptable to a number of civil society organisations.

The views of civil society suggest that disability is a horizontal issue which needs action in a variety of ways, in particular with regard to access to goods and services where persons with disabilities face challenges in a range of sectors in a number of different ways.

Regarding persons with more severe disabilities and the right as per the UNCRPD 'to live in the community', there is agreement that there should be a complete (or almost complete) move from institutions to community living. With regards to the costs of doing so, it is recognised that while the initial transition costs could be sizeable the on-going benefits should compensate these costs. The key variable here is the quality of community services which should be high. The role which EU structural funds can play in assisting this transition is of particular interest to stakeholders. Many of the same arguments are made as regards special needs versus mainstream schooling, which is specifically outside of the scope of the proposed Directive.

In contrast to disability, the position of the organisations focused on age discrimination concentrated on access issues where age discrimination is understood to be at its most prevalent. Age-platform Europe's response to the 2007 consultation focused on discrimination in the area of insurance and other financial services, access to healthcare, and age discrimination in the media. For both the disability and age discrimination grounds, more recent discussions have shifted to the effect that the recession is having on public services.

Regarding the views of organisations campaigning against discrimination on the grounds of sexual orientation, while it is recognised that equality legislation needs to be enforced and that this will have costs, the overall view (though not unanimous) is that the additional net benefits of serving all persons on an equal basis will be positive.

Finally, the main thrust of religious representation groups is to highlight the overall high importance of tackling discrimination against the vulnerable. However, there was considerable concern about the possibility that the proposal could impinge on religious freedoms, in particular with regard to sexual orientation. This highlights the difficulties in achieving a balance between a range of fundamental rights of which equality is but one.

- **Results of the consultation carried out by Milieu**

In the context of this impact assessment, Milieu carried out a consultation from mid-February 2013 until mid-April 2013. The purpose of this consultation was to receive additional information provided to the Commission in 2007/2008. Therefore the focus was less on receiving stakeholder positions and more on receiving feedback on the proposed approach and data on costs and benefits. A summary of the results of this consultation are provided below.

Please also note that findings of the consultation carried out by Milieu are used throughout the document to support the methodology.

#### Feedback on the proposed approach

Most respondents either agree with the study's approach to identifying areas which could entail significant costs when implementing the proposed Directive (e.g. ENORB), or are not able to comment on the selected areas because their entity/organisation does not gather information that could either confirm or dispute the selection of the high-cost areas (e.g. ILGA Europe, ENAR, CEC).

Care for Europe, Alliance Defending Freedom, Christian Concern and the Christian Legal Centre<sup>388</sup> did not agree that the listed areas were the only areas having the most significant cost implications and provided some additional elements that could be costly:

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<sup>388</sup> These organisations provided a joint response.

- 1) The rise in the cost of unnecessary litigation<sup>389</sup> (e.g. In the UK in 2011, the number of claims rose by 79% and of the 3,700 cases dealt with by the Tribunal Service, only 90 of them (2%) were successful. Sexual orientation claims rose by 20 % in the same period; likewise 3% were successful at Tribunal.)
- 2) Cost of implementing and demonstrating 'positive action' for public service providers (The Directive states that MS should encourage equal treatment through positive action in the same way the 2010 Equality Act does in the UK. The UK Government estimates the recurring costs of gathering and publishing required data on equality (in the same way the Directive requires) to be between £23 to £30 million (€28M to €37M) per year, as well as one-off familiarisation costs.)
- 3) The economic impact of a reduced field of procurement partners as a result of the requirement to promote equality.
- 4) The economic impact on certain SMEs of being excluded from the market place or at least a segment of it.

The suggestions of the joint response were considered and partially adopted. The cost of litigation is considered when estimating administrative, regulatory and compliance costs that are likely to arise from the Directive. Specifically, litigation costs considered include *additional legal infrastructure (besides equality body) and enforcement of sanctioning mechanisms* and an increase in costs for *legal advice* and for *dealing with complaints/queries*<sup>390</sup>. Regarding the second suggestion, one-off familiarization costs are considered, while 'positive action' is seen as voluntary and not required by the proposed Directive. The third suggestion has not been adopted because of interpretation of the proposed Directive, where the Directive would not impose obligations on procurement procedures. The fourth factor is seen as a cost of discrimination and a benefit if discrimination is removed. For certain service providers where certain groups are excluded from receiving the service, the Directive does not pose prohibitive measures if objective justification for non-provision can be shown.

The European Blind Union (EBU) was of the opinion that not all of the 16 areas listed in the questionnaire would have significant cost implications. For instance, it was suggested that designing accessible websites would not present any additional cost, if designed that way from the outset. The same applies to the built environment. Costs would be significant only where infrastructure has to be 'retrofitted' to enable access. EBU also suggests that sometimes accessibility of a service can be significantly improved through training of service providers, and this may not translate into significant costs, e.g. disability awareness training can be included in customer service training.

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<sup>389</sup> Quoted from the response, not the opinion of the project team.

<sup>390</sup> An expert working with SMEs also suggested that legal consultation fees for SMEs regarding client complaints should be included in the analysis. The experts also suggest that lawyers would have to be consulted regularly to proofread correspondences and would have to 'clear' advertisement policies. While the analysis does include consideration for legal consultation, the second suggestion was considered as a special case that would not apply to the majority of service providers.

The remarks of the EBU have been considered when developing the analysis and are in line with the research carried out during the study (e.g. the approach taken that discrimination in the areas of sexual orientation and religion and belief are largely rooted in prejudice, and the elimination of this discrimination would mostly entail training and awareness raising that are generally either costless or have low costs).

The Finnish Hospitality Association suggested that the subdomains analysed should more clearly cover hospitality industry. This suggestion has been taken on board and the hospitality industry has been selected as a specific sub-domain when considering the costs of ensuring accessibility for persons with disabilities.

Key issues raised at the 'response to the Directive' phase

In their responses to the Directive, some stakeholders such as The European Economic and Social Committee (EESC), the European Disability Forum (EDF), and the European Network Against Racism (ENAR) express concern that the Directive has not included measures to adequately address the issue of multiple discrimination.

Meanwhile, there is a clear difference in opinion as regards the new legislative measures that the horizontal Directive would bring about. Some stakeholders like The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and Business Europe (BE) feel the Directive could lead to greater legal uncertainty and instead favour non-binding and supportive measures to promote non-discrimination matters. On the other hand, a number of other stakeholders including ILGA-Europe, AGE-Platform, and the European Network for Accessible Tourism (ENAT) believe that non-binding measures would not be effective in many Member States whereas a horizontal Directive would allow for consistency and legal certainty across the EU.

Overall, stakeholders agree that the Directive would incur significant costs, especially in the early stages of implementation, although numerous stakeholders are also keen to stress that the economic and social benefits would be just reward for the required expenditure.

ENAR and Social Platform justify the cost implications of the Directive by explaining that equality is a pre-requisite to achieve sustainable, economic and inclusive growth whereby inclusive education, for example, enables more people to access the labour market but also improves the quality of education. It is also argued that SMEs would benefit from the Directive due to improved relations and a wider market of goods and services.

However, The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and BE state that SMEs and public services providers would be greatly affected by any additional costs resulting from the Directive as it would have significant bureaucratic and cost implications which will be particularly difficult for smaller organisations to manage. These stakeholders, along with CECODHAS Housing (consultation response), believe there are increasingly high standards – in terms of accessible goods, services and housing – which employers and

service providers are responding to in order to meet the current demographic trends. In this way, they argue that existing EU legal protection against discrimination is adequate.

#### Generic costs

Some stakeholders recognise there would be costs incurred to familiarise SMEs and public service providers with legislation. However, the European Trade Association of Hotels, Restaurants and Cafes (HOTREC) (consultation response) indicate that in very small enterprises, familiarisation with legislation will not take place as it is not easy for small entrepreneurs to comprehend, or allow the time to comprehend, legal texts.

ENAR believe the cost of systems audits are already covered and are not likely increase, but HOTREC, among others, feel costs may be high depending on the size of the company.

Stakeholders tend to agree that costs for legal advice may increase. However, some argue that this will only be the case if SMEs and service providers fail to implement the legislation properly. In contrast, a number of stakeholders feel that the reversal of the burden of proof will lead to significant costs through contracting insurance against the risks of claims and reliance on legal advice before starting a business.

Stakeholders in general suggest that the cost of training and awareness-raising would not be significant and could help to contribute to fewer court cases and legal fees, as well as to improving services. However, HOTREC claim it may be difficult to encourage micro enterprises in particular to comply with training and awareness-raising campaigns.

Some stakeholders state that the costs of drafting and disseminating guidance materials would be inexpensive if addressed through existing EU funding of projects, while others indicate that developing codes of conduct in any individual enterprise or service could amount to significant costs, particularly for micro enterprises.

It is assumed among stakeholders that providing information to the public would not be expensive, providing NGOs take some responsibility in informing the wider society of the legislation.

With regards to regulatory costs:

Stakeholders are divided on the potential extension of equality bodies. ILGA-Europe and ENAR recognise that the extension of the competences of existing equality bodies might have a costly impact but believe that by clarifying the rules applicable to all stakeholders, they encourage consumption and investments. Others, such as European Dignity Watch and Care for Europe et al argue that the extension of equality bodies would be poorly timed when Member States are increasingly constrained to reduce their public spending.

The costs of compiling data and statistics, and of monitoring a certification scheme would contribute to reducing costs linked to discrimination in the long-term, according to ENAR. On the other hand, Care for Europe et al point to the Equality Act 2010 in the UK and claim that the costs are neither proportionate nor justified.

## Costs related to discrimination of persons with disability

### General considerations

EDF feel that there is a higher cost for not having non-discrimination legislation and a segregated system for persons with disabilities, such as institutions versus community care, special schools versus mainstream, and unemployment benefits versus employment. EDF argue that equality will bring about greater participation, inclusion, and economic activities, and that SMEs could benefit significantly from important competitive advantage if EU requirements for accessibility are set up.

### Access to Goods and Services

It is broadly recognised by a number of stakeholders that making housing and buildings accessible would incur significant costs. The Finnish Hospitality Association (consultation response) states that the obligations could be especially financially burdensome to hospitality sector entrepreneurs who operate in older buildings and premises while HOTREC are concerned that the costs could lead to smaller SMEs closing down as a result of their inability to meet EU obligations. These concerns are also expressed by EuroCommerce (consultation response), The European Travel Agents' & Tour Operators' Associations (ECTAA) (consultation response), and CECODHAS Housing (consultation response), who go as far as to indicate that it is not economically viable in reality to make all existing dwellings accessible and adapted.

Furthermore, CECODHAS Housing state that it is estimated that in Germany there are currently around 600,000 adapted residential units, but up to 3 million will be needed by 2020, which would entail a cost of up to €225 billion for new construction and up to €30 billion for adaptation of existing dwellings. Another study by the Swedish Agency for Public Management (referenced in EDF – consultation response) estimated the costs to rebuild state buildings, schools, health centres, street environment and housing at 2,700 billion SEK.

Still on housing and buildings, it is recognised by a number of stakeholders that there is a greater cost associated with retrofitting buildings as opposed to implementing accessibility measures in the construction phase. To this end, the likes of HOTREC and the Finnish Hospitality Association (both consultation response) suggest that accessibility measures would be better implemented gradually through new construction in a way that is more predictable for entrepreneurs.

In terms of transport, some stakeholders, such as EDF (consultation response), state that public and private transport providers would face initial additional costs.

EDF (consultation response) also recognises that accessibility provisions in some goods and services, such as accessible televisions with regards to introducing the “eAccessibility yardstick”, have not been taken up over concerns of high costs to service providers.



Similarly, the European Association of Cooperative Banks (EACB) (consultation response) state that co-operative banks are under the obligation to implement many pieces of legislation and/or self-regulation aimed at tackling discrimination. While it is acknowledged that providing better access to banking services and premises leads to an increase in business opportunities, it is also noted that the implementation of such services requires substantial funding.

On a different note, the European Blind Union (EBU) and the European Network on Religion and Belief (ENORB) (both consultation responses) believe that a level playing field provided by regulation would be preferable to manufacturers, notably where it is not clear to them that there is a business case for accessibility. As EBU explains, if mainstream manufacturers built in accessibility they would sell products to people who otherwise wouldn't buy them. EBU also point to research findings which demonstrate that customers buy more from businesses when they are shopping online, where choice is greater. As such, accessible websites would provide a range of products and services to disabled customers, and this in turn would have a positive impact on the European economy.

#### Living in the Community

EDF and the European Network on Independent Living (ENIL) (both consultation responses) are keen to stress the savings that are possible through deinstitutionalisation in the long-term, but both also recognise that there would be significant initial costs in this area:

EDF state that there is a strong economic case for making the transition from institutions to community living for persons with disabilities, however a new care arrangement (such as community-based care) could be more expensive than the arrangement it is replacing, albeit the improved outcomes are valued sufficiently highly to justify the higher expenditure.

ENIL point to several published evaluations that have highlighted the reduced costs involved in the delivery of independent living support mechanisms, but suggest that there would be considerable costs involved in the initial transformational period. ENIL argue that these upfront costs would be offset in savings, at both service delivery and macro level, and thus there is the need to accept an 'invest to save' approach.

Costs related to discrimination of persons above the age of 65

#### General considerations

AGE-Platform state that, with an ageing population, refusing older people products is not economically savvy and getting rid of age barriers will mean less administrative costs for industry and a larger market. As AGE-Platform explains, it is therefore in the interests of Member States' economies to get rid of barriers to tourism and consumption.

## Healthcare

The area of health and social care, or indeed ageing in general, was seldom discussed by stakeholders. Eurodiaconia's 'Policy Recommendations' report (consultation response) does, however, indicate a significant increase in the number of organisations having to refuse assistance to eligible elderly social service users as a result of the economic crisis. In this way, it might be assumed that if people are currently being refused access to social services due to a lack of funds, the additional costs in this area will be high.

Costs related to discrimination on the grounds of sexual orientation

### Social Advantages:

As lesbian, gay and bisexual (LGB) people are not protected against discrimination outside employment in a number of Member States, ILGA-Europe point out that LGB citizens in those countries can presently be denied necessary healthcare, refused entry to a restaurant or a hotel, and denied social benefits or pensions (see Czarnecki – ILGA response to Directive). As such, ILGA-Europe anticipates that anti-discrimination legislation in this specific area will bring about costs (see ILGA consultation response). This point is also largely supported by ENAR and Care for Europe et al, who believe that the cost of putting the necessary legislative measures in place (see Care consultation response), as well as the cost of potential lawsuits to protect the rights of LGB people (see ENAR consultation response), could be high.

Costs related to discrimination on the grounds of religion & belief

While religion as a ground of discrimination is included in the Employment Equality Directive, it is excluded from the Racial Equality Directive, and ENAR (see 'unblocking Directive') argue that this separation between racial and religious discrimination gives rise to a number of difficulties as not all religious groups are considered to have ethnic characteristics. ENAR point to a number of examples – such as cases of patients being refused treatment or students being humiliated in schools due to their religion or belief – to stress the need for further EU legislation in order to protect such groups. ENAR accept that the issue of potential costs might need to be addressed but believe that this factor should not deter from the implementation of the Directive.

## **Annex 7: Estimated benefits of access to goods and services at premises/facilities in the US**

### US Study on Costs & Benefits of Access to Facilities

The benefits used in this impact assessment are largely based on the methodology used by the US Federal government in 2010 to extend the accessibility rules contained in the Americans with Disabilities Act Accessibility Guidelines (Standards) of 1991.

In a study conducted for the US's Department of Justice, the study's authors considered the costs and benefits of all changes made since 1991 to all facilities<sup>391</sup> where goods and services are provided to the public. Assuming a high level of existing accessibility at 90%, the study considered the welfare benefits (consumer surplus) of moving to 100% accessibility. All-in-all, more than 7 million public access facilities comprising 68 different types of facilities (e.g. hospitals, restaurants, shops) were assessed where some are visited ever day (e.g. public housing) and some are visited once a year or less (e.g. courts).

Based on the introduction of over 100 new requirements and a 40-year facility lifespan and a 7% discount rate, the net benefits were estimated at \$9.3 billion, with costs at \$12.8 billion and benefits at \$22 billion. If a 3% discount is used then the net benefits were estimated at \$40.3 billion, with costs at \$25.8 billion and benefits at \$66.2 billion. With both discount rates, the benefits still exceed the costs.

In terms of how benefits were calculated, the report monetises each of these components of 'value of time' metric that is an expression of a user's willingness to pay for changes to the facility. Specifically, the authors assessed the value of the reduced access time for persons with mobility and sensory disabilities resulting from the requirements on facility operators put in place between 1991 and 2010. The benefits result from:

- changes in access time (e.g. saved time going to, getting in and getting around facility)
- enhanced quality of facility access (e.g. greater comfort and/or less frustration in access)
- enhanced quality of facility use (hearing a performance; being able to see from vantage point; knowing that safe exit is possible etc.).

The US study then took these initial estimates and adjusted them according to a range of variables such as likelihood of use of accessible element (e.g. ramp very likely to be used; auxiliary aids less so), number of uses of said element during each visit (e.g. bathroom in a restaurant is likely to be used while an evacuation chair is not), relationship between type of disability and saving (e.g. wheelchair users more like to benefit than others for example),

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<sup>391</sup> The study did not concern remote access to goods and services such as via e-commerce/government, remote physical delivery (such as deliveries) and media.

and time resulting from each and every element. The US study also uses elasticity (responsiveness of consumers to changes in price) estimates to forecast additional sales for each type of facility resulting from greater access. For example, increased accessibility for public administration may result in no additional visits, because the pre-existing difficulty in access (aka the price) was not significant enough to deter visits.

For example, access time is the time that a visitor spends on getting to, in and around a restaurant, quality of access time is a measure of the increased comfort or enjoyment resulting from such an improvement, while enhanced use relates to other related benefits (e.g. from better restaurant lighting or from the knowledge that exit in the event of an emergency is available). The table below shows the time savings for persons with disabilities outlined in the report and for the sectors which are considered in this study. While the US study considered a whole host of other buildings (e.g. offices, prisons, golf courses etc.), the sectors shown in the table comprise over 70% of the facilities greater proportion of the overall visits made.

Category used in this Report	Similar US Category	Use Time (not moving around)	Current Access Time (getting in or moving around)	Total time spent using facility (approx)	Net Time Saving from Greater Accessibility	New Access Time	Time savings/ current access time	Total time saving per visit, adjusted for quality	% Gain
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
				(a) + (b)		(a)-(b)		(d)*((a)+(b))	(g)/(c)
Education	Nursery schools (Crèches)	3.50	3.97	<b>7.50</b>	0.13	3.84	3.5%	0.14	<b>1.9%</b>
	Elementary (Primary) Schools (average)	3.50	3.97	<b>7.50</b>	0.33	3.64	6.8%	0.27	<b>3.6%</b>
	Secondary Schools	3.50	3.97	<b>7.50</b>	0.11	3.86	3.2%	0.13	<b>1.7%</b>
	Undergraduate and Postgraduate	3.50	4.06	<b>7.50</b>	0.43	3.63	11.6%	0.47	<b>6.3%</b>
Public Administration & Judiciary	Judiciary (Courts)	2.00	2.71	<b>4.75</b>	0.07	2.64	2.7%	0.07	<b>1.5%</b>
	Office Buildings	1.00	0.69	<b>1.66</b>	0.01	0.68	1.4%	0.01	<b>0.6%</b>
HoReCa	Inns/ Hotels/Motels	0.00	4.58	<b>4.50</b>	0.18	4.40	4.1%	0.19	<b>4.2%</b>
		0.00	4.58	<b>4.50</b>	0.26	4.32	5.9%	0.27	<b>6.0%</b>
		0.00	4.58	<b>4.50</b>	0.23	4.35	5.3%	0.24	<b>5.4%</b>
	Restaurants (including fast food outlets, cafes, bars)	1.00	0.29	<b>1.50</b>	0.01	0.28	7.6%	0.02	<b>1.5%</b>
Exercise Facilities	Exercise Facilities (e.g. Gyms)	0.50	1.49	<b>2.00</b>	0.24	1.25	16.5%	0.25	<b>12.3%</b>
	Swimming Pools	1.00	2.32	<b>2.50</b>	0.72	1.60	31.1%	0.72	<b>28.9%</b>
Entertainment & Culture	Motion Picture House (Cinemas)	2.25	2.25	<b>2.50</b>	-0.01	2.26	6.6%	0.15	<b>5.9%</b>
	Theatre / Concert Hall	2.25	2.25	<b>3.50</b>	0.02	2.23	4.1%	0.09	<b>2.6%</b>
	Stadiums	4.00	4.00	<b>4.50</b>	0.08	3.92	23.2%	0.93	<b>20.6%</b>
	Auditoriums	2.80	2.80	<b>3.25</b>	0.01	2.79	8.1%	0.23	<b>7.0%</b>
	Convention Centres	2.00	2.00	<b>5.50</b>	0.17	1.83	4.8%	0.10	<b>1.7%</b>
	Museums, Historical Sites & Libraries	1.00	2.30	<b>3.25</b>	0.00	2.30	1.7%	0.04	<b>1.2%</b>
Retail	Single Level Stores (grocery stores; hardware stores; clothing)	0.00	1.02	<b>1.00</b>	-0.01	1.03	0.5%	0.01	<b>0.5%</b>
	Shopping Malls	0.00	1.67	<b>1.66</b>	0.07	1.60	5.8%	0.10	<b>5.8%</b>
	Indoor Service Establishments (walk-in premises)	0.00	1.34	<b>1.33</b>	0.00	1.34	1.0%	0.01	<b>1.0%</b>
Housing	Public housing	0.00	6.69	<b>12.50</b>	0.25	6.44	3.8%	0.25	<b>2.0%</b>
All numbers appear in decimal, not in seconds									
For cinemas and stores the numbers provided indicate there will be a loss of time overall. However the quality of the time spent will improve.									
Health is not included here; this will appear in revised draft final report									
All numbers refer to gain from move from 90 to 100% accessibility with the exception of swimming pools and exercise facilities where the move is from 60 to 100%.									

One of the main findings is that increased accessibility was expected to have a different impact depending on the nature of the good, how it is provided, how responsive customers are to changes etc. With the exception of exercise facilities, swimming pools (both of which are originally considered 60% rather than 90% accessible, and stadiums, the authors estimate time savings at between 0.6 and 7%.

In terms of gains to providers, the study does not examine this issue. However, it does calculate the quantity of additional sales resulting greater accessibility. Starting from assumed 13,695 million visits by persons with mobility and sensory disabilities, US public

facilities are expected to experience 0.5% more visits by persons with disabilities, or 75 million additional visits.

On the cost side, the authors estimated the amount of investment each and every type of facility would have to make to meet changes to the standard introduced since 1991. In terms of cost types Aside from alterations (49%), the costs included new construction costs (5%), space costs (12%), replacement costs (8%), O&M (8%), cost to other users and barrier removal (8%). They do not include certification/legal costs or internet costs and certain auxiliary aids. An existing high level of accessibility is assumed; the calculations also take into consideration investments made for the first set of regulations in 1991, and the fact that private entities<sup>392</sup> who made such investments are not required to make additional investments (the so-called safe-harbour clause). It also assumes that 50% barriers are 'readily achievable' i.e. as half of all barriers can be achieved 'readily', the benefits will occur straight away with the remaining benefits manifesting gradually as investment increases. Finally the analysis also takes into account investments already made at individual state level to meet the standards.

#### Comparison with the EU?

In terms of how this compares with the EU, it can be assumed that the EU buildings are considerably less accessible than in the US, in part due to the ADA but also a result of building age etc. That said, lower accessibility in the EU also means that the returns to investment in the EU should be higher. A direct comparison of the study with the EU is also not possible for a number of other reasons. One of the main difficulties in doing a comparison is that initial levels of accessibility in 1990 in the US and now in the EU are not known. Another major difficulty relates to the fact that the US standards are comparatively detailed compared with other jurisdictions where similar standards are in place, such as Switzerland and Australia.

Therefore there is no attempt made here to replicate the US in any way. Even if comparable and consistent data was available for the EU, such a study would take several years. Nevertheless, the types of benefits outlined in the US study – and there likelihood of occurring – are clear and can provide a basis on which to build scenarios on what benefits would result in the EU from greater access to goods and services at such facilities.

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<sup>392</sup> While public authorities cannot benefit from such a provision, they are only required to make programme accessibility. This means that it is not required to make each and every facility accessible, so long as the programme is accessible.

## Annex 8: Definition of disability – who is covered by the proposed Directive?

The notion of disability is not explicitly defined in the proposed Directive. However, the UNCRPD, which has been ratified by the European Union as a whole and by the Member States individually, provides a minimum common definition to which the EU Member States must adhere. Article 1 of the UN Convention on the Rights of Persons with Disabilities<sup>393</sup> states that:

‘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.’

This definition takes a new approach in that it is a social model of the notion of disability. In other words, it is the barriers in society which limit an ‘impaired’ person’s ability to participate that engenders the disability. Without such barriers, the person would not be considered as disabled.

Importantly, the ECJ has confirmed its intention to use the definition from the UNCRPD to interpret disability<sup>394</sup> and has provided further details to that end.

### ECJ details the definition of Disability<sup>395</sup>

‘The concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.’<sup>396</sup>

This developing reliance on the UNCRPD for the interpretation of terminology contained in the proposed Directive is also relevant to other issues such as the definition of reasonable accommodation or accessibility (see annexes).

It should also be noted that whilst this definition provides some guidance, in reality, Member States continue to take wide ranging approaches to the definition of disability and

<sup>393</sup> Article 1 UN Convention on the Rights of Persons with Disabilities: ‘The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. 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’.

<sup>394</sup> Judgements in Case C-13/05, Chacón Navas v Eurest Colectividades SA, (ECR [2006] I-6467) and joined Cases C-335/11 and C 337/11, Ring and Skouboe Werge, (ECR [2013] I-0000).

<sup>395</sup> Judgement in joined Cases C-335/11 and C 337/11 Ring and Skouboe Werge (ECR [2013] I-0000).

<sup>396</sup> Judgment in joined Cases C-335/11 and C 337/11 Ring and Skouboe Werge (ECR [2013] I-0000), paragraph 38.

will even change the definition depending on the objective e.g. different approaches in taxation compared with social welfare.

Whilst these differences have largely been left unchallenged, the ECJ has recently ruled that both curable and incurable illnesses which entail physical, mental or psychological limitation may be assimilated to a disability, thus maintaining a broad approach to the definition.

**A curable or incurable illness entailing a physical, mental or psychological limitation may be assimilated to a disability<sup>397</sup>.**

**ECJ Joined Cases C 335/11 and C 337/11 Ring and Skouboe Werge (2013)<sup>398</sup>**

Danish employment law provides that an employer may terminate the employment contract with a 'shortened period of notice' of one month if the employee concerned has been absent because of illness, with his salary being paid, for 120 days during the previous 12 months.

HK Danmark (a Danish trade union) brought an action because two employees were dismissed with a shortened notice period.

The trade union argued that the national legislation on the shortened notice period cannot apply to those two workers, since their absences because of illness were caused by their disability.

The Court concluded that disability can be a curable and incurable illness entailing a physical, mental or psychological limitation and which may hinder the full and effective participation of the person in society on an equal basis with others for a long-term period.

<sup>397</sup> ECJ, Press Release n°42/13 Luxembourg, 11 April 2013, Judgment in Joined Cases C-335/11 and C-337/11 Ring and Skouboe Werge. Available at:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130042en.pdf>.

<sup>398</sup> Judgment in joined Cases C-335/11 and C 337/11 Ring and Skouboe Werge (ECR [2013] I-0000).

## Annex 9: Assumptions on value of time savings used in benefit calculations

Sector	Facility	Total time spent in hours using facility per visit (unless otherwise indicated)	Assumed Time & Use Saving
Education	Nurseries	7.50	5%
	Primary Schools	7.50	5%
	Secondary Schools	7.50	5%
	University	7.50	5%
Health	Dental practices	1	5%
	Other	1	5%
Public Administration & Judiciary	Courts	4.75	5%
	Public Administration	11 hours per year	5%
Street Crossings		5 minutes per day	5%
HORECA	Hotels	4.50	5%
	Restaurants/Cafes/Bars	1.50	5%
Exercise Facilities	Gyms (Exercise Facilities)	2.00	10%
	Swimming Pools	2.50	10%
Entertainment & Culture	Cinema	2.50	5%
	Theatre / Concert Hall	3.50	5%
	Stadiums	4.50	5%
	Museums, Historical Sites & Libraries	3.25	5%
Retail	Grocery stores; hardware stores; clothing etc.	200 hours per year	5%
Housing		11 hours per day	0.20%



## Annex 10: Tables on elements considered for accessibility

Table 1: Summary of elements considered for disability accessibility (premises, auxiliary aids & internet)

	Disabled toilet	Disabled toilet (in existing WC)	Lift	Evacuation chair	Small ramp	Large ramp	External/chair lift	Door widen	Contrast colour/ better lighting	Bells, buzzers, flashing lights	Braille, contrast signs	Website access	Tele-coil/ loop	Disabled parking	Braille/large print docs	Guidance lines
<b>1. Education</b>																
Nurseries	0		0	✓	✓	0	0		✓	0	0	✓	✓	✓	0	
Primary	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	0	
Secondary	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	0	
University	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	0	
<b>2. Public administration/Judiciary</b>																
Public administration	0	✓	✓	✓	0	✓	✓		✓	✓	✓	0		✓		
Courts/judiciary	0	✓	✓	✓	0	✓	✓		✓	✓	✓	0		✓		
<b>3. Hotels, Restaurants, Cafés, Bars and Nightclubs (HORECA)</b>																
Hotels small	✓	0	0	✓	0	✓	✓		✓	✓	✓	✓	✓	✓	✓	
Hotels large	✓	0	✓	✓	0	✓	0		✓	✓	✓	✓	0	✓	✓	
Restaurants	0	✓	0	0	✓	0	0		✓	0	0	0	0	✓	✓	
Cafés	0	✓	0	0	✓	0	0		✓	0	0	0	0	0	✓	
Bars and Nightclubs	0	✓	0	0	✓	0	0		✓	0	0	0	0	0	✓	
<b>4. Exercise facilities</b>																
Gyms	US standards used															
Pools																

	Disabled toilet	Disabled toilet (in existing WC)	Lift	Evacuation chair	Small ramp	Large ramp	External/chair lift	Door widen	Contrast colour/ better lighting	Bells, buzzers, flashing lights	Braille, contrast signs	Website access	Tele-coil/ loop	Disabled parking	Braille/large print docs	Guidance lines
<b>6. Entertainment and Culture – disability</b>																
Cinemas	0	✓	✓	✓	✓	0	✓		✓	✓	✓	✓	✓	0	✓	
Theatres	0	✓	0	✓	✓	0	✓		✓	✓	✓	✓	✓	0	✓	
Museums/libraries	0	✓	0	✓	✓	0	✓		✓	✓	✓	✓	✓	0	✓	
<b>7. Retail - disability</b>																
Single floor	0		0	✓	✓	0	0		0	0	✓	0	0	0	0	
Two floor	0		0	✓	✓	0	✓		0	0	✓	0	0	0	0	
<b>8. Housing (visitability)</b>				✓	✓										✓	

Table 2: Summary of elements considered for disability accessibility (premises, auxiliary aids &amp; internet)

Social advantages – sexual orientation	Possibility to cover the cost of medical treatment from spouse's health insurance
	Right to compensation when partner dies during serving with the armed forces, the police or intelligence services or in cases where a partner of a serving soldier dies and other types of benefits relevant to the armed forces
	Right to compensation when partner dies based on the Employment Code, survivor pensions, income tax treatment as well as classification as regards inheritance and gift tax and stamp duty
Media	Subtitling all/selected programming
Walkways/pavements	All street crossings

## Annex 11: Compliance costs by sector

<u>Compliance Activity</u>	<u>Driver</u>	<u>Ground</u>	Education	Health	Public Administration/ Judiciary	Street Crossings	HoReCa (hotels, retail, catering)	Exercise Facilities	Entertainment & Culture	Retail	Media	Housing (ad hoc)
<b>Familiarisation with rules</b>	Reviewing legislation/ guidelines produced by equality body	<i>All grounds</i>	✓	✓	✓	0	✓	✓	✓	✓	0	✓
<b>Legal audit</b>	Where entity wants to ensure that it meets the Directive	<i>All grounds</i>	✓	✓	✓	0	✓	✓	✓	0	0	0
<b>System audits/dealing with complaints</b>	E.g. accessibility self-audit	<i>Mostly disability</i>	✓	✓	✓	0	✓	✓	✓	✓	0	✓
<b>Certification cost</b>	Third party certification	<i>Disability</i>	✓	✓	✓	0	✓	✓	✓	0	0	0
<b>Internal guidelines, checklists and codes of conduct</b>		<i>All grounds</i>	✓	✓	✓	0	✓	✓	✓	✓	0	0
<b>Staff Training</b>	Raising awareness amongst staff	<i>All grounds</i>	✓	✓	✓	0	✓	✓	✓	✓	0	0

## Annex 12: Disability and access to goods and services – background to results by sector

The text below provides additional details on the results provided in Chapter 3 of Part II. As a reminder the following sectors were covered:

**Table 1: Sectors & entities examined under ‘access to goods and services’**

Sector	Ownership/Size/Entity affected
Education	Mostly public but substantial private SME presence; includes nurseries, primary and secondary schools (including vocational); universities
Healthcare & Social Care	Mostly public or publically funded; includes hospitals, clinics, care homes; excludes pharmacies as covered already in retail category below
Public Administration & Judiciary	Public authority by definition; public administration buildings/courts
Walkways & Public Thoroughfares	Public authority by definition/street crossings
Hotels, Restaurants, Cafés, Bars (HORECA)	For the most part private sector (mostly SME)
Exercise Facilities	Mixture of public and private sector; Gyms & Swimming Pools
Retail	For the most part private; mostly SME
Broadcasting media	Mixture of public authority and private; television services, excludes internet and paper media
Housing	Mixture of public authorities and private individuals

The sections below cover the sector specific costs for the entities covered. They do not cover generic compliance costs such as training.

### Education

At present, it is estimated that there may be almost 190,000 educational establishments in the five countries (this includes nurseries, primary, secondary and vocational schools, as well as universities). While the current levels of physical accessibility differ by Member State, it is expected that a substantial proportion of educational establishments in all five countries might incur costs in ensuring that they:

- Have familiarised themselves with the relevant requirements, carried out legal and system audits, introduced the necessary internal procedures and staff training and certified their procedures and dealt with complaints;
- Provide educational materials in different formats for students with sensory impairments;

- Special accommodations made during exams; and
- Are physically accessible and operate and maintain accessibility infrastructure.

The costs do not cover special needs education (and more broadly the development of curricula and provision of separate religious instruction) as these are exempt from the proposed Directive. Likewise, the provision of accessibility equipment – beyond certain auxiliary aids – is not included.

Estimates of these costs, as well as of benefits associated with improved physical accessibility, are summarised in Tables 2 and 3. No distinction is made between the different types of educational establishments (publicly or privately run, SME or large) and costs and benefits to the whole education sector are considered in Tables 2 and 3.

**Table 2: Potential costs – education sector**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of establishments	Assumed investment per entity €	Assumed % accessible**		
Czech Republic	13,000	1,300 - 500,000	50% to increase to 100% in 10-15 years	74	-
Germany	88,000	3,500 - 256,000	40% & + 1 percentage point p.a.	993	1,095
Romania	10,000	1,500 -176,000		86	87
Spain	56,000	2,500 -336,000	42% + 1 percentage point p.a.	626	664
Sweden	17,000	3,500 -254,000	40% & + 1 percentage point p.a.	196	172

\*It is assumed that full physical accessibility might be achieved within the 20 year period under the baseline scenario and as such no additional building costs would arise

\*\*Where more accurate data exist, the accessibility rate is adjusted. Otherwise it is based on literature review of other impact assessments, where a 40% level of accessibility is assumed. For further details, please refer to Section 2 (methodology).

There is considerable range in this sector. The main outlier here is Spain which has a high number of schools as well as relatively high costs of accessibility elements. Romania has a relatively small number of establishments while Sweden has a high number.

**Table 3: Potential benefits– education sector**

Member State	Number of beneficiaries (pupils)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	60,000	10	.*
Germany	500,000	242	490
Romania	115,000	20	52
Spain	280,000	95	195
Sweden	60,000	42	85

*\*It is assumed that full physical accessibility might be achieved within the 20 year period under the baseline scenario and as such no access time savings would be accrued.*

The value of time is given by equating a child's time with that of the leisure time of a typical adult; the savings would be significantly less if the value was placed on the teacher's time. However it should be kept in mind that returns to education could be quite high. For example, the EPEC study provides information on returns to education resulting from a reduction of discrimination on the grounds of sexual orientation. Equivalent returns to education and increased prospects of employment should also accrue for disabled students. Other types of benefits, such as safety savings and 'self-esteem' benefits, have not been quantified here.

#### Healthcare and social care

As regards public access to health and social care facilities, it is assumed that primary healthcare establishments such as hospitals, GPs/doctors and clinics are already fully physically accessible (no further compliance costs). Pharmacies and opticians are often located on the 'High Street' with other commercial establishments; therefore these will be covered by the Retail sector analysis and are not included in these calculations.

Therefore, the types of establishment covered are limited to dental practices. An 'Other' category was also included should country experts feel there are other relevant buildings which have not been covered, as was the case for Spain.

It is estimated that there may be almost 26,000 relevant establishments in the five countries. A substantial proportion of establishments considered here might incur costs in relation to the same types of actions as for the other sectors covered under the provision of goods and services. These include familiarisation with the new requirements, carrying out system and legal audits, certification of compliance, staff training, handling complaints, and ensuring online and physical accessibility. The estimated costs and benefits are set out in the tables below.

As explained above, because the existing levels of accessibility for dental practices and other relevant establishments is not known, a flat 40% accessibility rate is assumed. It is assumed that, even without the Directive, an additional 1% of business premises will become accessible every year.

On the benefits side, persons with disabilities would accrue benefits associated with access time savings. Two main assumptions underpin the results below. First, as in most other sectors examined by this study, the accessibility measures could lead to a flat 5% increase in time savings for persons with mobility and sensory difficulties. Secondly, on average, each person with a disability will visit a dental practice once per year.

The estimated costs and benefits are set out in Tables 4 and 5.

**Table 4: Potential costs – healthcare sector**

Member State	Main Baseline Scenario			5-Year Scenario (€ million)	20-Year Scenario (€ million)
	No. of establishments	Total No. of buildings	Assumed % accessible		
Czech Republic	1,250	1,250	(40% + 1 percentage point p.a. assumed)	7	5
Germany	10,500	10,500		64	44
Romania	2,333	2,333		9	6
Spain	9,939	10,400		77	52
Sweden	1,400*	1,400		8	6

*\*Based on the number of licensed dentists in Sweden; assumes that half of dentists work in dental practices; and each practice is shared by three practitioners.*

**Table 5: Potential benefits – healthcare sector**

Member State	Number of visits by beneficiaries per year (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	10.5	3	9
Germany	57.4	31	71
Romania	6.3	<1	2
Spain	20.2	8	19
Sweden	9.5	1	2

Public Administration and Judiciary

Another public service which is important for citizens is public administration and the judicial service. As regards public access to public administration buildings, courts and websites and related services, it is estimated that compliance with the proposal might entail familiarisation with the new requirements, carrying out system and legal audits, certification of compliance, staff training, handling complaints, and ensuring online and physical accessibility. On the other hand, persons with disabilities would accrue benefits associated with access time savings.

The estimated costs and benefits are set out in Tables 6 and 7.



**Table 6: Potential costs – public administration/judiciary**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of buildings (PA/Court)	Assumed investment per entity €	Assumed % accessible		
Czech Republic	4,000/98	15-60,000	40%+ 1 percentage point p.a.	62	36
Germany	30,000/1,000	20-80,000		630	430
Romania	8,000/250	11-43,000		90	61
Spain	19,000/749	19-76,000		387	264
Sweden	3,500/84	20-80,000		72	49

*\* As the number of public administration buildings open to the public is unknown, the above figures are high level estimates based on population (10,000 for every five million persons; and estimated 20% are open to the public). The number of courts is based on actual data.*

While the assumed investment per building may appear low, many administrative buildings and judiciary buildings are only partially open to the public, typically on the ground floor. The assumption here is that only the parts that are open to the public would need to be retrofitted.

**Table 7: Potential benefits– public administration/judiciary**

Member State	Number of visits by beneficiaries per year (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	2	7	19
Germany	16.5	97	225
Romania	5	5	11
Spain	9.5	40	93
Sweden	2	16	37

In terms of the main factors which went into the above benefit calculation, taking the example of Germany, it is assumed that each person will visit a public administration institution twice a year. Since 10% of the population is assumed to have a disability, altogether people with disabilities would make 16 million visits per year. Based on data from the US, 1% of persons with disabilities attend a court hearing each year. The US data is used as a viable figure here. In the case of Germany, this amounts to about 80,000 court visits annually. As regards judicial proceedings these represent a small proportion of expected costs as the number of visits per year is much lower while auxiliary assistance for persons with sensory disabilities is already covered in law.

Overall, it can be seen that for all Member States, action in this area is likely to entail high net costs. However, this must be weighed against the important public interest value of accessibility in this area, not to mention ensuring a range of fundamental rights such as fair trial.

#### Built environment (Street crossings)

While this is not a typical good or service, it is still a public good which like transport<sup>399</sup> is very important for enabling access to buildings and other amenities. Although the coverage here is pavements which are essential for physical access to other goods and services, it could also be extended to parks and other amenities.

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<sup>399</sup> Accessibility in public transport is considered to be already covered in EU legislation.

Based on urban and suburban data from Sweden, it is assumed that the cost per capita of changing street crossings ranges from €25 in Romania to over €50 in Sweden. In addition, whilst no data has been found on the amount of time an average person spends in the built environment, this figure is essential to calculations. A minimalist assumption has been made that this amounts to 60 hours per year in the built environment, or 10 minutes per day (this taken as average and will clearly vary widely between individuals). However, it cannot be claimed whether this is an accurate reflection of reality or not and can only be taken as an illustrative example. For this reason the numbers below are illustrative.

**Table 8: Potential costs – street crossings**

Member State	Main Baseline Scenario % accessible	5-Year Scenarios (€ million)	20-Year Scenarios (€ million)
Czech Republic	50% to increase to around 90% in 10-15 years	102	25
Germany	40% + 1 percentage point increase p.a.	1,449	988
Romania		410	280
Spain	60% + 1 percentage point increase p.a.	785	535
Sweden	40% + 1 percentage point increase p.a.	434	296

The above calculations are based on a published estimate of the cost of making all street crossings in Sweden accessible, accounting for differences in population and price levels in the five case study countries. Thus, it is estimated, for example, that it would cost €40 per capita to make changes to all street crossings in Spain that are currently not accessible.

**Table 9: Potential benefits – street crossings**

Member State	Number of beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	1.0	35	17
Germany	8.2	660	1,530
Romania	1.9	37	85
Spain	4.7	230	540
Sweden	1.0	131	304

The main outlier here is the Czech Republic which is explained by the fact that it is expected that, under current plans, most street crossings will be accessible within 20 years.

All-in-all, given the fact that the number of street crossings is understood to vary significantly from one country to another, and since the calculation above is based on a Swedish example<sup>400</sup>, the above estimate is illustrative only and cannot be seen as a precise reflection of each of the countries. However, it does give some indication of both costs and benefits of making urban streetscapes accessible.

Finally, the above calculation does not take into account the amenity value of walking, of possible health benefits nor of safety benefits. However, whilst benefits from the perspective of a reduction in falls are not included above, there will be clear improvements in this respect. As such, and for illustrative purposes, the table below shows the possible benefits of improving accessibility in all public spaces. Since figures could only be calculated for public spaces and not crossing and pavements alone, it should be considered that these benefits are likely to be lower.

**Table 10: Estimated benefits from a 1% reduction in falls in public spaces\***

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	30	110
Germany	400	1,230
Romania	50	130
Spain	190	580
Sweden	30	110

*\*Please note that this table relates to falls in public spaces, which also refers to environments other than zebra crossings.*

#### Hotels, Restaurants, Cafés/Bars (HORECA)

There are approximately 610,000 HORECA establishments across the five Member States surveyed. Therefore this sector is of particular interest. This includes hotels (large and small) as well as bars, cafes and restaurants. The number of visits made by beneficiaries is over 1 billion a year across the five Member States.

<sup>400</sup> The estimate made in Sweden is based on 4000 crossings in the Stockholm municipality at €22,000 per crossing.

The costs of making all establishments accessible for people with ambulatory and sensory disabilities as well as costs of familiarisation, auditing, training, access certification, online accessibility (e.g. for hotel bookings) and other on-going costs (dealing with complaints, etc.) are estimated below for all companies (SMEs/large companies), together with the benefits accrued due to time saved as a result of improved physical accessibility. Tables 11 and 12 suggest that benefits exceed costs under all scenarios.

**Table 11: Potential costs – HORECA**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of outlets (Hotels/Other)	Assumed investment per entity	Assumed % accessible		
Czech Republic	10,000/50,000	9-76,000/ 3-12,000	40%+ 1 percentage point p.a.	320	<b>298</b>
Germany	35,000/ 170,000	7-106,000/4-16,000		2,050	<b>3,075</b>
Romania	5,000/ 35,000	6-52,000/2-8,000		204	<b>164</b>
Spain	15,000/270,000	13-94,000/3-11,000		1,210	<b>1,173</b>
Sweden	2,700/23,000	7-106,000/2-16,000		238	<b>383</b>

*\*For Germany and Sweden the large operating costs in this sector would lead to higher costs over 20 years than over 5 years.*

**Table 12: Potential benefits – HORECA**

Member State	Number of visits by beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	24	20	<b>56</b>
Germany	720	1,033	<b>2,388</b>
Romania	2.5	11	<b>25</b>
Spain	300	295	<b>691</b>
Sweden	42	91	<b>210</b>

Most visits relate to visits to restaurants and bar. The above differences may relate to cultural factors which are unknown. From a cost perspective, the main outlier is Spain – this is a reflection of the relatively very large number of restaurants, cafes and bars in Spain. From a user's point of view, the main outliers here are Germany and Romania where an average person visits a restaurant or café/bar 140 times a year and once a year respectively. While the German figures on visits are high, they are in line with consumer behaviour in the US.

#### Exercise Facilities (Gyms & Swimming Pools)

This category refers to facilities which are publically provided by commercial or public operators. The estimated costs of making gyms and swimming pools accessible for people with ambulatory and sensory disabilities as well as those of familiarisation, auditing, training, certification, online accessibility and other on-going costs (dealing with complaints, etc.) are estimated below, together with estimates of benefits arising from access time savings.

Swimming pools are problematic given the very large capital costs involved in retrofitting to allow for physical access. For instance, the 2010 US government assessment of making a swimming pool facility accessible noted that the cost could amount to \$110,000 (€84,500) per pool. On the other hand it was estimated that the benefits would be very large and outweigh these costs<sup>401</sup>. Likewise entry to gyms is quite different from having accessible gym equipment, which is not considered here. That said, the average cost of making a gym accessible in the US was estimated at \$21,000 (€16,100), including equipment. Given the lack of information on this in other literature, these US figures are used as proxies. Benefits are assumed at 10% rather than 5%, based on data used in developing accessibility to such facilities in the US.

**Table 13: Potential costs – exercise/swimming facilities**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of outlets	Assumed investment per entity	Assumed % accessible		
Czech Republic	450/200	8,050-32,000/ 42,500- 169,000	40%+ 1 percentage point p.a.	13	9
Germany	6,000/1,418			126	87
Romania	500/15			5	4
Spain	4,500/814*			85	59
Sweden	800/223			18	12

\*There are over 62,000 swimming pools in Spain. The 814 figure refers to municipal pools open to the public.

<sup>401</sup> The authors of the US report assume that as gyms and swimming pools were relatively inaccessible beforehand, the additional value of time change would be of the order of 16% (Gyms) and 31% (Pools).

The above figures clearly indicate that there are very large differences between the countries surveyed. With regards to pools, one may hazard a guess in saying that Spain's high number of pools relates to its tourist industry. One partial explanation for the low figures for the Czech Republic and Romania is that the number of indoor pools varied by a factor of 20 between Eastern and Western Europe, ranging from one pool for every 50,000 inhabitants in Western Europe to one for every 300,000 inhabitants in Eastern Europe<sup>402</sup>.

With regards to gyms and fitness clubs, there is a wide variation in membership and club numbers in Europe<sup>403</sup>. There is also a very large difference in ownership. For example in Spain of the 4,000 or so clubs in 2007, one third is publically owned. This contrasts with Germany where 10% are publically owned. Spain has the highest gym membership of the 5 countries.

**Table 14: Potential benefits – exercise facilities**

Member State	Number of visits by beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	2.4	4	10
Germany	28.5	38	88
Romania	1.3	<1	<1
Spain	25.2	16	39
Sweden	5.6	11	27

The net costs (benefits) in this area are low compared with other areas as the benefits of changes are relatively high. In other words, the assumed benefit of greater access to persons with physical disabilities to gyms etc., where no access was possible, could be considerable.

### Entertainment & Culture

In the entertainment & culture sector, cinemas, theatres, spectator sports venues, and museums/ libraries would be required to ensure that they are accessible for people with ambulatory and sensory disabilities. In addition, they would incur costs of familiarisation, auditing, training, certification, online accessibility and other on-going costs (dealing with complaints, etc.). On the other hand, persons with disabilities would

<sup>402</sup> Figures on swimming pool numbers are taken from: <http://www.swimmersguide.com/SwimmersGuideStats.aspx>

<sup>403</sup> See 2007 IHRS European Market Report:

<http://www.lesmills.com/files/globalcentral/Agents/Research/Industry%20Research/The%20IHRS%20European%20Market%20Report%202007.pdf>

benefit from reduced access times. These costs and benefits are set out in Tables 15 and 16 for all establishments, regardless of whether they are public/private and SME/large. The relative strength of costs and benefits depends on the scenario and timeframe considered.

**Table 15: Potential costs – entertainment & culture**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of venues	Assumed investment per entity	Assumed % accessible		
Czech Republic	7,260	14-104,000	40%+ 1 percentage point p.a.	133	92
Germany	20,000	17-124,000		408	283
Romania	12,600	10-74,000		160	110
Spain	6,600	19-136,000		188	130
Sweden	2,700	17-124,000		55	38

The vast majority of entities in this category are museums and libraries (circa 80%). The exception to this is Spain where museums/libraries count for 25%. Germany and Sweden has relatively few (or large) facilities in this area. On the other hand, the number of visitors to German entertainment facilities is high. Romania and the Czech Republic have a very large number of museums and libraries.

**Table 16: Potential benefits – entertainment & culture**

Member State	Number of visits by beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	3.5	3	8
Germany	88.2	176	408
Romania	2.9	1	3
Spain	19	22	52
Sweden	3.8	9	21



Retail (& other walk-in service establishments)

It is assumed that should the proposed Directive be adopted, retail outlets would be required to ensure that they are accessible for people with ambulatory and sensory disabilities and would also bear the costs of familiarisation, auditing, training, certification and other on-going costs (dealing with complaints, etc.). On the other hand, persons with mobility and sensory disabilities would benefit from reduced access times. Tables 17 and 18 summarise the expected costs and benefits for retail outlets, regardless of whether they are SMEs or large companies.

**Table 17: Potential costs – retail (e.g. shops)**

Member State	Main Baseline Scenario			Average 5-Year Scenario (€ million)	Average 20-Year Scenario (€ million)
	No. of outlets	Assumed investment per entity	Assumed % accessible		
Czech Republic	87,000	850-11,400	40%+ 1 percentage point p.a.	121	82
Germany	280,000	1,100-12,400		460	313
Romania	137,000	600-10,400		153	104
Spain	550,000	850-11,600		785	525
Sweden	49,000	1,100-12,400		82	56

Again while the assumed investment may appear low, experience in other jurisdictions with accessibility standards suggest otherwise. For instance, the Australian building code puts the cost of upgrading a small single-story shop at AUS\$2,500 (€1,769). As the building code does not anticipate that all shops in Australia would need such an upgrade, the real figure is likely to be lower.

In terms of the numbers provided above, the main outlier here is Spain where the number of outlets per million inhabitants, at 12,500 (550,000 total) is high compared to most countries (despite the same source being used for the data of all five Member States). Sweden has a relatively low number of retail outlets.

**Table 18: Potential benefits – retail**

Member State	Number of beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	1.0	17	46
Germany	8.2	126	292
Romania	1.9	29	67
Spain	4.7	73	170
Sweden	1.0	15	34

The above figures do not include other walk-in commercial premises which are not typically defined as retail outlets (e.g. service establishments) but may be similar. If one includes, for example, a very diverse mixture of such public and SME-dominated establishments (e.g. post offices, vets, legal and accounting activities, employment agencies, travel agents etc.), this adds significantly to the number of companies. The table below provides details of these across the five Member States.

**Table 19: Examples of ‘non-retail’ public access walk-in/service establishments**

Member State	Postal	Legal/ Accounting	Vets	Employment agencies	Travel agencies
	No. of Entities				
<b>Czech Republic</b>	458	50,330	2,301	1,857	6,130
<b>Germany</b>	8,562	96,413	9,130	7,349	10,449
<b>Romania</b>	599	8,185	1,613	1,614	2,569
<b>Spain</b>	6,045	154,216	7,880	2,693	10,798
<b>Sweden</b>	437	23,855	1,185	3,257	3,333

Given the nature of the service it is questionable whether these types of service have to be provided at the providers' premises or whether they can be alternatively provided in a third location. Overall, without this information it is not possible to estimate with any certainty the impact on such walk-in service providers.

In the US – where better figures are available – while there are over 800,000 retail establishments, there are over 3 million walk-in service establishments which are not categorised under retail. If applied to the above figures on retail – and taking the price of adjustment as equal – the total costs and benefits for walk-in establishments would increase over fourfold.

Taking all walk-in establishments together it appears that the largest costs of access will fall on this sector. This is not surprising given the fact that a large proportion of the goods and services a person consumes takes place at such establishments.

#### Media (Broadcasting)

In terms of sensory accessibility of television broadcasting, there appear to over 2,000 terrestrial, cable and satellite TV channels in the five Member States concerned. While official figures<sup>404</sup> suggest that a significant proportion of programming is subtitled, it appears that this only applies to the major (publically and privately owned) broadcasters. It is expected for many commercial broadcasters – of which a sizable amount is made up of SMEs – that subtitling is very low. While, there are no figures collected on this, it is assumed that 5% are subtitled.

**Table 20: Estimated costs – television subtitling (all channels)**

Member State	Main Baseline Scenario		5-Year Scenario (€ million)*	20-Year Scenario (€ million)*
	No. of TV channels	Assumed % Content Subtitled		
<b>Czech Republic</b>	150	5%	222	678
<b>Germany</b>	168		363	1,108
<b>Romania</b>	750		690	2,100
<b>Spain</b>	840		1,528	4,666
<b>Sweden</b>	170		316	966

*\*Costs are based on UK per hour cost of €300 adjusted for GDP PPS.*

<sup>404</sup> See: <http://www.eaccessibility-monitoring.eu/researchResult.aspx>.

The above figures imply that it would be extremely costly to make require that all programmes are subtitled.

Importantly, evidence suggests that no country requires full captioning<sup>405</sup>. In reality it appears that it is the main broadcasting channels which apply the highest subtitling rates. The costs and benefits of increasing subtitling for the top 4 in each country are estimated below.

**Table 21: Estimated costs – television subtitling (4 principal channels)**

Member State	Main Baseline Scenario		5-Year Scenario (€ million)**	20-Year Scenario (€ million)**
	No. of TV channels	Assumed % Content Subtitled		
<b>Czech Republic</b>	Top 4 in each country	46%	3.3	10.3
<b>Germany</b>		50%	4.8	14.6
<b>Romania</b>		50%	1.9	5.9
<b>Spain</b>		40%	4.6	14.0
<b>Sweden</b>		25%	5.9	18.0

\* Same for all scenarios due to rounding.

\*\*Costs are based on UK per hour cost of €300 adjusted for GDP PPS.

The clear outliers here are Romania and Spain which have many more channels than the other three countries.

In terms of benefits, an existing objective measure in terms of the value of use of subtitling was not identified. However, it is of interest to consider the likely extent of expenditure by persons with disabilities, compared with expenditure on subtitling. Public broadcasting is typically financed via television licences, government subsidies and advertising. Three of the five countries have television licence systems Czech Republic (€63/pa), Germany (€216/pa) and Sweden (€238/pa). Assuming that 4 percent of the EU population have hearing impairments, the total spend by this group would be (see Table 22 on the next page):

<sup>405</sup> Even those countries which have disability legislation in place for many years do not have full captioning/subtitling. For example in Australia, for terrestrial programming, 55% of all programmes between 6am and midnight must be captioned, and this will increase to 70% by December 2007. The quotas apply to the analogue as well as the digital services. For subscription television, there was an initial agreement in 2004 for at least 20 channels to provide closed captioning and then a further 20 channels commenced captioning within 2 years of the start of captioning (this happened in October 2004). The channels were required to caption 5% of output with a 5% increment each year. See page 237 of MeAC - Measuring Progress of eAccessibility in Europe Policy Inventory, 2007.

**Table 22: Estimated expenditure on television licence by the hearing impaired**

Member State	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	27	81
Germany	657	2,005
Romania	0	0
Spain	0	0
Sweden	144	441

*\*Low-end estimates are based on the current cost of a TV licence; however, TV licence is not required in Romania and Spain.*

In short it appears that the amount of money the hearing-impaired spend on public television through licence fees significantly exceeds the amount which an average company spends on subtitling.

### Housing

Housing is explicitly included in the proposal, to the extent that it is made available to the public. This is interpreted as meaning that the proposed Directive covers private housing which is for sale or rent. The approach taken here is different to the other sectors in a number of important ways:

- The level of existing housing which is accessible is estimated to be very low (1%);
- A typical person spends more time at home than consuming goods or services;
- A typical person only changes home every 20 years or so (e.g. 5 per cent or so);
- Unlike all other goods and services, the entirety of a home should be accessible;
- The high number of houses in the EU (circa 200 million);
- Most house renters/sellers, with the exception of property developers and agents, are not strictly businesses (however commercials transaction such as buying, selling, renting a home are covered in the proposed Directive).

Therefore, for this analysis, it is assumed that the requirements will be lower for landlords and sellers of property, than for other goods and services

providers. In detail, it is assumed that, as in the UK, the proposed Directive would lead to certain costs being incurred by landlords and home sellers due to the fact that houses/flats put up for rent or sale would have to be equipped with mobile accessibility aids (evacuation chair, small ramp) and rental/sales information would have to be provided in braille/large print. Of course, in the event of a rental, this scenario foresees that a landlord would have to allow the tenant to make investments to further increase accessibility, and pay for them himself. There would be no action on the part of the provider here.

In addition, landlords and sellers of homes would have to familiarise themselves with the new legal requirements and commission a system audit. On the other hand, it is expected that improved physical accessibility might result in access time savings for people with ambulatory disabilities.

As the proposed Directive does not specify what approach to take, the two main scenarios considered with regard to residential housing are:

- the *'ad-hoc accommodation'* scenario: only flats/houses offered for rent or sale to persons with disabilities would be subject to the requirements arising from the proposed Directive; and
- the *'anticipatory'* scenario: i.e. requirements would apply to all houses/flats offered for rent or sale.

The estimated costs and benefits are presented below for both of the above scenarios. No distinction is made between the different owners (public or private, small or large) and impacts on the whole housing stock are considered.

**Table 23: Estimated costs – residential housing – ad-hoc accommodation scenario**

Member State	Main Baseline Scenario		5-Year Scenario (€ million)**	20-Year Scenario (€ million)**
	No. of Dwellings (million)	% Accessible		
Czech Republic	5.5	10% + 1 percentage point p.a.	35	99
Germany	54		1,200	2,100
Romania	8.2		25	78
Spain	25.2		216	570
Sweden	2		146	435

**Table 24: Estimated costs – residential housing – anticipation scenario**

Member State	Main Baseline Scenario		5-Year Scenario (€ million)**	20-Year Scenario (€ million)**
	No. of Dwellings (million)	% Accessible		
Czech Republic	5.5	10%+ 1 percentage point p.a.	224	610
Germany	54		3,600	7,700
Romania	8.2		219	619
Spain	25.2		1,200	3,700
Sweden	2		1,200	3,200

The high numbers for Sweden are driven by a very high churn rate (13% of the population move every year). This is much lower in the other countries.

It should be borne in mind that the typical investment per house is likely to amount to just over €400 which would include very simple equipment like a small ramp or handles or an evacuation chair. This would only make a small additional amount of housing somehow more accessible.

Making all houses/accommodation fully accessible (through infrastructure changes) would be significantly more costly. A real benefit that could be achieved without the cost being imposed on landlords would be to require landlords to allow tenants to make the changes themselves, covered either with their own money or through other social spending. However the benefits of this cannot be calculated here as they would depend on what the person with the disability decides to invest in.

**Table 25: Hypothetical benefits from time saved (0.2%) – residential housing**

Member State	Number of beneficiaries (million)	5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	1.0	11	128
Germany	8.2	131	1,288
Romania	1.9	4	42
Spain	4.7	100	995
Sweden	1.0	130	860

Beyond time savings, given the large number of accidents in housing, safety benefits due to greater accessibility will be a key benefit. This is especially relevant for accommodation in an increasingly ageing EU where a large percentage of the population will need accessible housing.

It should be noted that the above estimates of benefits do not include these safety gains. However, for illustrative purposes, the table below provides an indication of safety-related benefits, assuming that the measures outlined above were to result in a 1% reduction in falls at home. While taking safety benefits into account reduces the gap between costs and benefits, costs still outweigh benefits under most scenarios. It should also be noted that these estimates are based solely on statistics related to falls amongst the over 65s. Whilst these are likely to represent the majority of falls (including amongst persons with disabilities), a wider group of persons would also benefit, thus increasing the overall benefit from a reduction in falls.

**Table: Estimated benefits from a 1% reduction in falls at home**

Member State		5-Year Scenario (€ million)	20-Year Scenario (€ million)
Czech Republic	70	230	
Germany	810	2,470	
Romania	90	270	
Spain	380	1,150	
Sweden	70	230	

In summary, it appears that it would be more proportionate to make a certain number of houses fully accessible than to require limited expenditure by the general population of renters or sellers.





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In 2008, the European Commission presented a proposal for a Directive to address discrimination outside the workplace based on the grounds of age, disability, sexual orientation, and on religion or belief.

While the European Parliament and Member States generally supported the proposal, some Member States have expressed concerns, among others, in relation to the potential costs of the proposed Directive, its lack of legal certainty and the lack of assessment of the costs and benefits that its implementation would place on service providers.

This study has therefore been commissioned by the European Parliament to facilitate agreement on the proposal by providing insight into possible costs for Small and Medium Sized Enterprises (SMEs) and public service providers. While most of the costs related to equal treatment measures will be very low, the assessment shows also that a range of costs for these actors have a potential to be significant.

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