

The horizontal equal treatment directive: Why it needs to be adopted

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Abstract

This article addresses the reasons why Proposal COM(2008)426, often referred to as the horizontal equal treatment directive, should be adopted as soon as possible in order to protect persons across the EU against discrimination on the grounds of religion and belief, disability, age and sexual orientation outside the employment sphere, a protection that is currently lacking. The arguments for this are, first, that adoption would deal with some of the reasons for the hierarchy between discrimination grounds that is said to exist in EU law. Second, and most important, adoption of the proposal would fulfil, to a large extent, the positive obligations of the EU and of the Member States under the Convention on the Rights of Persons with Disabilities. The latter part of this article analyses the CRPD and compares this to Proposal COM(2008)426 in its present compromise form to establish this.

Keywords

Horizontal equal treatment directive, discrimination, disability discrimination, Convention on the Rights of Persons with Disabilities, CRPD, reasonable accommodation, multiple and intersectional discrimination.

1. Introduction

In February 2025, the European Union (EU) Commission announced¹ that it planned to withdraw Proposal COM(2008)426, often referred to as the horizontal equal treatment directive, which

1. Commission Work Programme 2025, 11 February 2025, Annexe 4, p. 25: https://commission.europa.eu/strategy-and-policy/strategy-documents/commission-work-programme/commission-work-programme-2025_en.

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extends the protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation beyond the employment sphere.² At present, Directive 2000/78/EC³ prohibits discrimination on these grounds in the areas of employment and occupation, while Directive 2000/43/EC⁴ protects against discrimination on the grounds of race and ethnic origin in the areas of employment and occupation, social protection, social advantages, education and access to and the supply of goods and services which are available to the public. Proposal COM(2008)426 extends the protection against discrimination on the four grounds to all areas covered by Directive 2000/43/EC. The reason given for the withdrawal was: 'No foreseeable agreement – the proposal is blocked and further progress is unlikely'.⁵ Even though the Belgium Government, in 2024, brought out a Compromise Proposal,⁶ which addressed many of the concerns raised by the Member States against the original proposal, three Member States – Germany, Italy and the Czech Republic – have not agreed, which means that the proposal has not been adopted because it requires unanimity in the Council.⁷

The proposed withdrawal led to a lot of criticism from NGOs dealing with discrimination,⁸ but also from the European Parliament, with a clear majority of MEPs expressing strong opposition to the withdrawal and highlighting the importance of the proposed Directive in closing existing legislative gaps.⁹ Fourteen European Member States also sent a letter to the EU's Equality Commissioner, Hadja Lahbib, urging the European Commission to reconsider its decision to axe the proposal.¹⁰ The Commission then decided not to withdraw the proposal after all, and to redouble its efforts to get it adopted,¹¹ which is positive news for victims of discrimination based on religion or belief, disability, age and sexual orientation. Every effort should be made to get the proposal adopted quickly. However, the latest Progress Report from the Council from November 2025

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2. 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 2008/0140 (CNS).
 3. Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [2000] OJ L 303/16.
 4. Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L 180/22 (the race Directive).
 5. Commission Work Programme 2025, Annexe 4, p. 25.
 6. Council of the European Union, Interinstitutional File: 2008/0140(CNS), Directive on implementing the principle of equal treatment (article 19) – Progress report, 10817/24, 14 June 2024. Hereafter this is referred to as the 'Compromise Proposal'.
 7. Article 19 Treaty on the Functioning of the European Union (TFEU).
 8. See, for example, 'Equality Betrayed: Commission Unilaterally Gives up on Anti-discrimination Law', a Statement by Nine European NGOs, 17 February 2025, www.edf-feph.org/publications/equality-betrayed-commission-unilaterally-gives-up-on-anti-discrimination-law/.
 9. European Parliament, Legislative Train Schedule, Anti-discrimination Directive, www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-anti-discrimination-directive.
 10. See Politico, *Don't Kill Equal Treatment at Work Bill, EU Countries and MEPs Tell Commission*, 4 July 2025, www.politico.eu/article/equal-treatment-work-bill-eu-countries-parliament-hadja-lahbib-gender-race-sexuality-disability-religion-roberta-metsola/.
 11. See, e.g., M.I. Iribarren and P. Soler, Exclusive: Commission has Change of Heart on Anti-discrimination Directive, *Euronews*, 24 July 2025, www.euronews.com/my-europe/2025/07/24/exclusive-commission-has-change-of-heart-on-anti-discrimination-directive; M. Lund Nielsen, 'Commission Revives Anti-discrimination Directive After 17-year Standstill', *Euractiv*, 24 July 2025, www.euractiv.com/section/politics/news/commission-revives-anti-discrimination-directive-after-17-year-standstill/.

states that three Member States still maintained general reservations and, thus, that the Presidency has been unable to put forward a new compromise text.¹²

This article analyses two legal reasons why it is important to keep the Compromise Proposal on the agenda and make every effort to get it adopted. There are also some policy reasons: first, adoption sends out a political message that the Commission and the EU are taking the fight against discrimination seriously. Second, it fits in with the founding values in Article 2 of the Treaty of the European Union (TFEU) and with the Charter of Fundamental Rights of the EU (the EU Charter). Both are referred to in Recital 5(ab) of the Compromise Proposal. Third, it is more in line with the Commission's work programme 2025, which states that 'discrimination based on gender, disability, sexual orientation or race has no place in our society, but for many people in Europe it is a daily reality'. This article will not further discuss these reasons but will focus on two legal questions which adoption of the Compromise Proposal addresses: first the present hierarchy of discrimination grounds in EU law and the way in which the Compromise Proposal contributes to reducing this hierarchy (section 3). Second, the most important reason why it is suggested that the Proposal should be adopted: it goes a long way towards implementing the positive obligations imposed by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on the States parties, which include not only all 27 EU Member States, but also the EU itself, as it has signed and ratified the Convention. This analysis includes an examination of the CRPD and a comparison of the Convention with the provisions of the Compromise Proposal (section 4). Before addressing these issues, a short overview of the main changes made to Proposal COM(2008)426 will be given.

2. Comparison COM(2008)426 and the Compromise Proposal

Over the years, Proposal COM(2008)426 has been amended and the Belgian Presidency brought this all together in the Compromise Proposal. Because of this, a comparison is made between the latter and the original Proposal. The progress report from the Council of November 2025 confirmed what was stated in the Compromise Proposal: that three Member States still have reservations relating to legal certainty, the division of competences and compliance with the principle of subsidiarity, and the impact, particularly in terms of financial implications.¹³ In the EU Council Meeting of 1 December 2025, 'Ministers took note of a progress report on the proposed equal treatment directive', but no agreement was reached on its adoption.¹⁴

In relation to legal certainty and the division of competences and subsidiarity, the Compromise Proposal has added a number of Articles and Recitals to Proposal COM(2008)426 to clarify the material scope in relation to areas that were seen as unclear and possibly outside the Union's competence, like social protection,¹⁵ education¹⁶ and financial services.¹⁷ It also added further

12. Council of the European Union, Interinstitutional File, 2008/0140(CNS), Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – Progress report, 14921/25, 11 November 2025.

13. Council of the EU Progress report, 14287/25, p. 2. Compromise Proposal, p. 2. See also O. Bartlett, 'The EU Legislative Institutions and Disability Rights: Uncovering the Factors that Block Progress and Offering Insights for Future Advocacy', in D. Ferri and E.S. Krolla (eds.), *Actors and Roles in EU Disability Law* (Hart Publishing, 2025), p. 123.

14. See www.consilium.europa.eu/en/meetings/epsco/2025/12/01/.

15. Article 3(2)(b) and Recitals 17a, 17b and 17f.

16. Article 3(2)(d) and Recitals 17a and 17g.

17. Articles 2(2)(7a) and 2(2)(7) and Recital 15(ab).

explanations for the justification of age and disability,¹⁸ and in relation to the duty of reasonable accommodation for persons with disabilities.¹⁹ Article 4 of Proposal COM(2008)426 determined that: effective access for disabled people ‘shall be provided by anticipation’, subject to the defence of imposing a disproportionate burden; and, that, in some cases individual measures of reasonable accommodation may be necessary, but this should, again, not impose a disproportionate burden or should not require major changes to a product or service. Article 4a of the Compromise Proposal replaced this Article 4 and the anticipatory duty of providing access has been dropped. It will be clear that this change also addresses the reservations regarding the financial impact of the proposed Directive.

However, the 2025 Progress Report refers to a Report by the Organisation for Economic Co-operation and Development, which highlights the economic and social costs of discrimination and suggests that the benefits of a horizontal equality directive would outweigh the costs.²⁰ This is also the conclusion of an 2025 impact assessment report commissioned by the European Parliament Research Service.²¹ The latter points to the monetary gains of adopting the Directive through increasing labour market participation, reducing dependency on subsidies and health care costs. Adoption will also generate long-term efficiency savings by fostering inclusion, legal certainty and social cohesion.²² Impact assessments done in some of the Member States also confirm that the costs are to be low or insignificant compared with the benefits.²³

In relation to the principle of subsidiarity, Recital 9 of the Compromise Proposal has a more extensive explanation that a careful assessment of the principles of subsidiarity and proportionality has been made compared to Recital 30 of Proposal COM(2008)426. The EPRS study also found that the Compromise Proposal responds to the need for EU action and complies with the principles of subsidiarity and proportionality.²⁴ Moreover, the Court of Justice of the EU (CJEU) has only given guidance to national courts on possible measures and on what needs to be taken into account when assessing whether there is a disproportionate burden, but has clearly left it to the national courts to decide on these issues.²⁵

3. Hierarchy of discrimination grounds

Adoption of the Compromise Proposal would deal to a large degree with the hierarchy of discrimination grounds which is said to exist in EU anti-discrimination law, because EU law provides more protection against discrimination on the ground of racial and ethnic origin than on the grounds in

18. Articles 2(5a) and 2(6) and Recitals 14-a and 14a.

19. Article 4a and Recitals 19a–20d.

20. Council of the EU Progress report, 14287/25, p. 3, referring to: Organisation for Economic Co-operation and Development, *Combating Discrimination in the European Union*, 2025, www.oecd.org/en/publications/combating-discrimination-in-the-european-union_29c2c36a-en.html.

21. European Parliament Research Service, *Proposal for a Horizontal Equal Treatment Directive Complimentary Impact Assessment*, PE 774.698, November 2025: [www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2025\)774698](http://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2025)774698).

22. EPRS, 2025, p. V–VI.

23. Council of the EU Progress Report, 14287/25, p. 4.

24. EPRS, 2025, p. IV.

25. Case C-485/20 XXXX v. *HR Rail SA*, EU:C:2022:85, para. 40; repeated in Case C-631/22 *J.M.A.R. v. Ca Na Negreta SA*, EU:C:2024:53, para. 45.

Directive 2000/78/EC.²⁶ The latter Directive covers the areas of employment and occupation, while, as mentioned above, Directive 2000/43/EC covers a number of other areas as well. Article 3(1) of the Compromise Proposal would extend the protection on the grounds of religion or belief, disability, age and sexual orientation to: access to social protection, in so far as it relates to social security, and to social assistance, social housing and healthcare; access to education, and access to and supply of goods and services, including housing, which are available to the public. This is the same as the areas covered by Directive 2000/43/EC, although the Compromise Proposal puts this in slightly different wording. Adoption of the Compromise Proposal would, therefore, deal to a large degree with one of the main reasons for the hierarchy. Or, as a 2025 Briefing Paper for the European Parliament states, ‘the proposed law could help to reduce the “artificial hierarchy of grounds” in EU anti-discrimination legislation’.²⁷ However, Article 3(2) and 3(3a–5a) of the Compromise Proposal contain a number of exceptions, which are not present in Directive 2000/43/EC, so adoption would not completely take away the hierarchy in relation to the material scope.

The hierarchy of discrimination grounds has also been said to exist because Article 13 of Directive 2000/43/EC imposes a duty on Member States to ‘designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin’. Directive 2000/78/EC does not impose any such duty for the grounds covered in that Directive but Article 12 of Proposal COM(2008)426 did. This has been dropped from the Compromise Proposal. However, Directive 2024/1499²⁸ on minimum standards for equality bodies refers to Directive 2000/78/EC in a number of places (for example, Article 1(2)), suggesting that equality bodies should already cover the grounds of discrimination in Directive 2000/78/EC. Article 14b of the Compromise Proposal determines that the proposed Directive is added to all the articles in Directive 2024/1499 which mention Directives 2000/43/EC, 2000/78/EC and the gender equality directives,²⁹ which suggests that the mandate of the equality bodies already include discrimination based on religion or belief, disability, age and sexual orientation.³⁰ It must be noted that most Member States have equality body/bodies covering all or most of the grounds covered by EU anti-discrimination law, including the grounds covered by the

26. See D. Schiek, ‘A New Framework on Equal Treatment of Persons in EC Law’, 8(3) *European Law Journal* (2002); E. Barry, ‘Different Hierarchies – Enforcing Equality Law’, in C. Costello and E. Barry (eds.), *Equality in Diversity The New Equality Directives* (Irish Centre for European Law/Irish Equality Authority, 2003); M. Bell and L. Waddington, ‘Reflecting on Inequalities in European Equality Law’, 28(3) *European Law Review* (2003); E. Howard, ‘The Case for a Considered Hierarchy of Discrimination Grounds in EU Law’, 13(4) *Maastricht Journal of European and Comparative Law* (2007); E. Howard, ‘EU Anti-discrimination Law: Has the CJEU Stopped Moving Forward?’, 18(2–3) *International Journal of Discrimination and the Law* (2018).

27. M. Fernandes, M. Arenga and K. Grosse Kohorst, *Council Directive on Equal Treatment: Potential European Added Value*, European Parliament Research Service, Briefing European Added Value in Action, PE 765.772, February 2025, p. 10.

28. Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC, OJ L 2024/1499.

29. Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, [2004] OJ L 373/37. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, [2006] OJ L 204/23 (the gender equality directives).

30. See also Recital 27 of the Compromise Proposal.

Compromise Proposal.³¹ It is, therefore, unclear why the original Article 12 has been dropped in the Compromise Proposal, as it would have been clearer to retain it. That would also explicitly establish that this reason for the hierarchy of discrimination grounds in EU law no longer exists.

Contributing to the hierarchy is one more difference between the race and gender equality directives and both Directive 2000/78/EC and the Compromise Proposal: there is a similar general exception clause in Article 2(5) Directive 2000/78/EC and Article 2(8) of the Compromise Proposal which is absent from the other Directives. The latter reads:

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

Article 2(5) of Directive 2000/78/EC only mentions that the measures must be ‘necessary’ for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others. Article 2(8) of the Compromise Proposal not only adds that these measures must also be ‘appropriate’ but seems to add more legitimate aims for such exceptions. However, the words ‘appropriate’ and ‘necessary’ suggest that the measures taken under these two articles are subject to a proportionality test: that they must serve one of the legitimate aims mentioned and be appropriate to achieve that legitimate aim. According to Ellis and Watson, Article 2(5) was added to Directive 2000/78/EC at the final stages of the negotiations, because ‘it was thought necessary to prevent members of harmful cults, paedophiles and people with dangerous physical and mental illnesses from gaining protection’.³² A number of authors expressed concerns about the breadth of this general exception after the Directive was adopted.³³ However, the CJEU has consistently held, in a number of cases, that Article 2(5), as an exception to the principle of equal treatment, must be interpreted strictly and has applied the above proportionality test to the exception.³⁴

31. See European Network of Legal Experts in Gender Equality and Non-discrimination, *A Comparative Analysis of Non-discrimination Law in Europe 2024*, p. 122–129, www.equalitylaw.eu/downloads/6276-a-comparative-analysis-of-non-discrimination-law-in-europe-2024.

32. E. Ellis and P. Watson, *EU Anti-Discrimination Law* (2nd ed., Oxford EU Law Libraries, 2012), p. 402–403. Authors add a footnote that ‘it is highly questionable whether paedophilia would be considered by the CJEU to be a sexual orientation’.

33. See, e.g., P. Skidmore, ‘EC Framework Directive on Equal Treatment in Employment : Towards a Comprehensive Community Anti-discrimination Policy’, 30(1) *Industrial Law Journal* (2001); M. Bell, *Anti-discrimination Law and the European Union* (Oxford University Press, 2002), p. 32, 52; E. Ellis, ‘The Principle of Non-discrimination in the Post-Nice Era’, in A. Arnall and D. Wincott (eds.), *Accountability and Legitimacy in the European Union* (Oxford University Press, 2002), p. 291, 300; D. Schiek, 8(3) *European Law Journal* (2002), p. 302.

34. Case C-341/08 *Domnica Petersen v. Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe*, EU:C:2010:4, para. 60; Case C-447/09 *Prigge and Others v. Deutsche Lufthansa AG*, EU:C:2011:57, para. 56; Case C-193/17 *Cresco Investigation GmbH v. Markus Achatzi*, EU:C:2019:43, para. 55; Case C-396/18 *Gennaro Cafaro v. DQ*, EU:C:2019/929, para. 42; Case C-518/22 *J.M.P. v. AP Assistenzprofis GmbH*, EU:C:2023:956, para. 53; C-356/21 *TP (Audiovisual editor for public television)*, EU:C:2023:9.

In conclusion, adoption of the Compromise Proposal would be a step in the right direction in relation to the protection of people against discrimination on the grounds of religion or belief, disability, age and sexual orientation, because it goes towards removing some of the reasons for the hierarchy, especially in relation to the material scope. However, it would not completely take this hierarchy away, because of the absence of a duty to assign an equality body for the four grounds covered by this proposal and the presence of a general exception clause in its Article 2(8).

4. Convention on the Rights of Persons with Disabilities

It is argued that adoption of the Compromise Proposal would go a long way towards fulfilling the EU's and the Member States' positive obligations under the CRPD. This Convention was adopted in 2006 and is the only international convention which has been signed and ratified by the EU itself as well as by all 27 EU Member States. This means, according to Waddington and Broderick, 'that the EU and its Member States have, in combination, accepted all the obligations flowing from the CRPD, including those which relate to disability equality'.³⁵ According to the Committee on the Rights of Persons with Disabilities (the Committee) 'Promoting equality and tackling discrimination are cross-cutting obligations of immediate realization. They are not subject to progressive realization'.³⁶ The Convention thus imposes positive obligations on the EU and all Member States as it requires them to take action to ensure and protect the right of persons with disabilities to equality and non-discrimination. This is clear throughout the CRPD, but also from Article 4, which includes under a: 'to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention'.³⁷

The Committee has also, in its concluding observations on the combined second and third periodic reports of the EU, expressed its concerns about 'the confinement of anti-discrimination legislation for persons with disabilities to employment and vocational training'.³⁸ It recalled its previous concluding observations and recommendations, that the EU 'undertake sustained efforts to generate the necessary political support to pass the Equal Treatment Directive' (referring to COM(2008) 426); that the EU 'ensures that legal protection against discrimination, including the denial of reasonable accommodation, includes all areas of all European Union competences and all modalities of European Union action'; and, that the EU 'improve explicit legal protection of persons with disabilities against multiple and intersectional forms of discrimination, in all areas of life'.³⁹ This suggests that the Committee sees adoption of the proposal as necessary to comply with the EU's obligations under the CRPD.

35. L. Waddington and A. Broderick, *Combating Disability Discrimination and Realising Equality*, European Network of Legal Experts in Gender Equality and Non-discrimination, Directorate General for Justice and Consumers (Publication Office of the European Union, 2018), www.equalitylaw.eu/downloads/4760-combatting-disability-discrimination-and-realising-equality-a-comparison-of-the-CRPD-and-eu-equality-and-non-discrimination-law-pdf-690-kb, p. 32.

36. Committee on the Rights of Persons with Disabilities, General Comment 6 'Equality and Non-discrimination', CRPD/C/GC/6, 2018, para. 12. In the following, all General Comments refer to the General Comments of this Committee.

37. See further on this *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities*, Chapter 2, Obligations of States Parties under The Convention, www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-two-the-convention-in-detail-4.html.

38. Committee on the Rights of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of the European Union, CRPD/C/EU/CO/2-3, 21 March 2025, para. 18.

39. Committee on the Rights of Persons with Disabilities, 2025, para. 19.

Recital 2a of the Compromise Proposal mentions the fact that the EU has signed the CRPD and, thus, that the provisions of the Convention form ‘an integral part of the European Union legal order and Union legislation should therefore be interpreted in a manner that is consistent with the CRPD’. This has also firmly been established in the case law of the CJEU.⁴⁰

Recital 2a of the Compromise Proposal also states:

In its Communication ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030’, the Commission highlights the persistent inequalities and discrimination against persons with disabilities outside the field of employment, such as social protection, healthcare, education, and access to goods and services, including housing, and the need for further progress in EU legislation on these matters. This Directive contributes to address those issues, along with other actions taken at Union and Member States level in the implementation of the CRPD.

Adoption of the proposal is, therefore, necessary to tackle these persistent inequalities, something that is confirmed in the Strategy itself.⁴¹ It is submitted that adoption would fulfil many of the EU’s and the Member States obligations under the CRPD, especially because the Convention is an integral part of the EU legal order. This is important because the CRPD contains a broad definition of ‘disability’; has a broad material scope going beyond employment; clearly defines ‘reasonable accommodation’ and imposes a duty of reasonable accommodation as well as a duty of accessibility on the States parties; explicitly states that denial of reasonable accommodation and of accessibility are forms of disability discrimination; and addresses multiple and intersectional discrimination. Each of these points will be analysed and compared to the Compromise Proposal.

A. Definition of ‘disability’ and the social model

Article 1 CRPD gives a definition of disability which reads: ‘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.’ Recital 19a of the Compromise Proposal gives the same definition of disability and refers to the case law of the CJEU, see below.

Article 2 CRPD defines discrimination and reasonable accommodation as follows:

‘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;

40. See, for example: Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring, v. Dansk Almenlystigt Boligselskab, and HK Danmark, acting on behalf of Lone Skouboe Werge, v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation*, EU:C:2013:222, para. 30 and 32; Case C-363/12 *Z. v. A Government Department, The Board of Management of a Community School*, EU:C:2014:159, para. 73 and 75; Case C-395/15 *Mohamed Daoudi v. Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal*, EU:C:2016:97, para. 40–41.

41. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030*, COM(2021)101, para. 13.

‘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.

Waddington and Broderick call the adoption of the CRPD ‘a paradigm shift in the approach to disability and equality at the international level’ from the medical model of disability to the social model. The former ‘focuses on functional limitations or impairments and on attempts to “cure” those limitations’.⁴² In contrast, the social model of disability ‘recognises that disability arises from the interaction between individuals with impairments and the social, attitudinal and environmental barriers which hinder a person with a disability’.⁴³ Authors also point out that the CRPD ‘embraces the human rights model of disability, which builds on the social model and, furthermore, recognises human diversity and intersectional forms of discrimination’.⁴⁴ In the words of the Committee, ‘the human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity.’⁴⁵

B. Substantive and inclusive equality

The Committee also points out that the CRPD moves away ‘from a formal model of equality to a substantive model of equality’. It explains that ‘formal equality seeks to combat direct discrimination by treating persons in a similar situation similarly’. This ‘may help to combat negative stereotyping and prejudices, but it cannot offer solutions for the “dilemma of difference”, as it does not consider and embrace differences among human beings’. In contrast to this, substantive equality ‘seeks to address structural and indirect discrimination and takes account of power relations. It acknowledges that the “dilemma of difference” entails both ignoring and acknowledging differences among human beings in order to achieve equality’.⁴⁶ The Committee continues that:

Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity. The Convention is based on inclusive equality.⁴⁷

42. Waddington and Broderick, p. 8; General Comment 6, para. 8.

43. Waddington and Broderick, p. 8 and p. 36–39.

44. Waddington and Broderick, p. 8 and p. 36–39. For more information on the models of disability see the authors cited by Waddington and Broderick, p. 36, footnote 37; and, C. Barnes and G. Mercer, *Implementing the Social Model of Disability: Theory and Research*, (The Disability Press, 2004). On the social and human rights models see: Waddington and Broderick, p. 37–39; A. Lawson and A. E. Beckett, ‘The Social and Human Rights Models of Disability: Towards a Complementarity Thesis’, 25, 2, *International Journal of Human Rights*, 2021, p. 348–379.

45. General Comment 6, para. 9.

46. General Comment 6, para. 10.

47. General Comment 6, para. 11. See also Waddington and Broderick, p. 8–9 and 38–39.

This clearly shows that the CRPD is grounded on the social and human rights models of disability and that it embraces substantive and inclusive equality.

An important point to note is that Article 5(2) CRPD imposes a duty on States parties 'to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds'. This thus imposes a positive obligation on the EU and its Member States. This duty means, according to the Committee, 'an obligation to enact specific and comprehensive anti-discrimination legislation...with effective legal remedies and sanctions in relation to intersectional discrimination in civil, administrative and criminal proceedings'.⁴⁸ Directive 2000/78/EC represents such legislation in the areas of employment and occupation, and adoption of the Compromise Proposal would make this protection available in other areas as well.

C. CJEU and the definition of disability and reasonable accommodation

The definition of disability and the social model it represents has been embraced by the CJEU for the interpretation of the term 'disability' in Directive 2000/78/EC, with references to the CRPD definition in the case law.⁴⁹ For example, in *Ring and Werge*, the CJEU held that:

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.⁵⁰

However, Waddington and Broderick state that it is arguable that the CJEU fails to fully embrace the CRPD's human rights model of disability, because the Court requires 'that an individual not only has an impairment but also experiences a limitation directly related to that impairment'. This seems to exclude 'individuals who are disabled simply because of socially created barriers, such as false assumptions and prejudices about an individual's ability, and possibly even barriers in the physical environment'. In contrast, the CRPD 'seems to recognize as disabled those people with an impairment who are disadvantaged purely by environmental factors ("various barriers")'. Authors call upon the CJEU to clarify this.⁵¹

General Comment 6 mentions that States parties should enact disability-inclusive anti-discrimination laws with a broad personal and material scope that provide effective legal remedies. Laws can only be effective if the definition of disability 'includes those who have long-term physical, including psychosocial, intellectual or sensory impairments, and should include past, present, future and presumed disabilities, as well as persons associated with persons with disabilities'.⁵² In answer to Waddington and Broderick's argument, Recital 12a of the Compromise Proposal makes

48. General Comment 6, para. 22.

49. See for example, Cases C-335/11 and C-337/11 *Ring and Werge*, para. 37–39; Case C-363/12 *Z*, para. 76; Case C-395/15 *Daoudi*, para. 42; Case C-354/13 *Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft, v. Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund*, EU:C:2014:2463, para. 53; Case C-270/16 *Carlos Enrique Ruiz Conejero v. Ferroservicios Auxiliares SA, Ministerio Fiscal*, EU:C:2018:17, para. 28; Case C-397/18 *DW v. Nobel Plastiques Ibérica SA*, EU:C:2019:703, para. 41.

50. Cases C-335/11 and C-337/11 *Ring and Werge*, para. 38.

51. Waddington and Broderick, p. 58–59.

52. General Comment 6, para. 73(b).

clear, with reference to the case law of the CJEU, that discrimination includes treating someone less favourably or harassing them because they are associated with a person with a certain religion or belief, disability, age or sexual orientation or because they are assumed to have one of these characteristics.⁵³ This appears to counteract Waddington and Broderick's argument.

The inclusion of these forms of discrimination and the acceptance of the social model of disability by the CJEU can be seen as a positive development for the protection against discrimination of persons with disabilities in the EU. The Compromise Proposal would strengthen this by explicitly giving a definition of disability in Recital 19a which follows the definition in Article 2 CRPD.

The CJEU has also accepted the definition of the term 'reasonable accommodation' in Article 2 CRPD and has held that it follows from this that that provision prescribes a broad definition of the concept of 'reasonable accommodation'.⁵⁴ Recital 20 of the Preamble of Directive 2000/78/EC mentions that the duty of reasonable accommodation means that 'appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources'. In *Ring and Werge*, the CJEU held that this list is non-exhaustive and that reasonable accommodation measures may be material or organizational.⁵⁵ In *HR Rail*, the CJEU mentioned that the measures 'may be physical, organisational and/or educational'.⁵⁶ In *Ring and Werge*, the CJEU concluded that a reduction in working time may constitute a reasonable accommodation.⁵⁷ And, in *HR Rail*, the CJEU suggested that reassignment to another job with the same employer may constitute an appropriate measure.⁵⁸ This shows that the CJEU uses the definition of 'reasonable accommodation' as laid down in Article 2 CRPD to interpret this concept in Directive 2000/78/EC broadly, although it has stressed repeatedly that this duty is subject to the defence of imposing a disproportionate burden.⁵⁹ The broad interpretation can also be seen as a positive development for persons with disabilities in the EU. Article 4a of the Compromise Proposal would strengthen this by explicitly giving the definition of reasonable accommodation from Article 2 CRPD.

D. Material scope

However, these judgments of the CJEU concern Directive 2000/78/EC and thus only apply to the CRPD definitions of disability and of reasonable accommodation within the sphere of employment and occupation, although there is no reason to believe that the CJEU would not also use these definitions in its interpretation of the terms if the Compromise Proposal was adopted. Adoption of the proposal and extending the protection against disability discrimination and the provision of reasonable accommodation beyond the employment sphere would fulfil the obligations of the EU and the Member States under the CRPD, which also goes beyond the employment sphere. This is clear from General Comment 6, which states that States parties should 'ensure that non-discrimination

53. The recital refers to Case C-83/14 '*CHEZ Razpredelenie Bulgaria*' AD v. *Komisija za zashtita ot diskriminatsia*, EU:C:2015:480 and Case C-303/06 *S. Coleman v. Attridge Law and Steve Law*, EU:C:2008:415.

54. Cases C-335/11 and C-337/11 *Ring and Werge*, para. 53; repeated in Case C-485/20 *HR Rail*, para. 40.

55. Cases C-335/11 and C-337/11 *Ring and Werge*, para. 49 and 55.

56. Case C-485/20 *HR Rail*, para. 40.

57. Cases C-335/11 and C-337/11 *Ring and Werge*, para. 56.

58. Case C-485/20 *HR Rail*, para. 43.

59. E.g.: Cases C-335/11 and C-337/11 *Ring and Werge*, para. 58; Case C-485/20 *HR Rail*, para. 45.

legislation extends to the private and public spheres, covers areas including education, employment, goods and services, and tackles disability-specific discrimination'.⁶⁰ That the CRPD goes beyond the employment sphere is also clear from other articles. For example, Article 9(1) CRPD mentions access 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 rural areas. This applies to (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; and (b) information, communications and other services, including electronic services and emergency services.⁶¹ There are also articles dealing with education (Article 24), health (Article 25), work and employment (Article 27), participation in political and public life (Article 29) and participation in cultural life, recreation, leisure and sport (Article 30).

The material scope of the Compromise Proposal can be found in Article 3(1), which, as mentioned, applies to both public and private sectors, including public bodies, and encompasses access to social protection, in so far as it relates to social security, and to social assistance, social housing and healthcare; education; access to and supply of goods and services, including housing, which are available to the public. Article 3(1) also gives further explanations on what all this means. Articles 3(2) and 3(3) give a number of exceptions. Recitals 17a, 17 b, 17f, 17g and 17h also contain further information. It is suggested that, if the Compromise Proposal is adopted, the EU has implemented the CRPD's material scope, while taking into account the division of competences of the EU and the Member States in the different areas covered.

E. Reasonable accommodation and accessibility

Apart from the definition of reasonable accommodation in Article 2 CRPD, the provision of reasonable accommodation is mentioned in Article 5(3), which concerns equality and non-discrimination; in Article 14(2) for persons with disabilities who are deprived of their liberty; in Article 24(2)(c) concerning education and Article 24(5) regarding tertiary education, vocational training, adult education and life-long learning; and, in Article 27(1)(i) in relation to the workplace.

Article 9(1) CRPD, mentioned above, aims to enable persons with disabilities to live independently and participate fully in all aspects of life. To do this, States parties are under a duty to provide accessibility for persons with disabilities, on an equal basis with others, to the areas mentioned in the article.

Paragraph 25 of General Comment 2 clearly sets out the difference between the duty of accessibility and the duty of reasonable accommodation.

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

In contrast to this, the duty of reasonable accommodation is

60. General Comment 6, para. 73(c).

61. For further explanation see: Committee on the Rights of Persons with Disabilities, General Comment 2 'Article 9: Accessibility', CRPD/C/GC/2, 2014, para. 17.

an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, ... in order to enjoy her or his rights on an equal basis in a particular context. ... Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation.⁶²

General Comment 6 expands on this by stating that the *ex ante* duty of accessibility is a proactive, systemic duty; while the *ex nunc* duty of reasonable accommodation is an individualized reactive duty. The latter requires the duty bearer to enter into dialogue with the individual with the disability, and is applicable not only if the person with a disability requests accommodation, but also if the duty bearer is aware or should have been aware of the disability and the need for accommodation.⁶³

General Comment 6 explains that 'reasonable accommodation' is a single term and that the word 'reasonable' should not be misunderstood as an exception clause, as a distinct qualifier or modifier of the duty. The term is a reference to the relevance, appropriateness and effectiveness for the person with the disability. The term 'disproportionate or undue burden' is also a single concept that sets the limit of the duty to provide reasonable accommodation. Both terms – 'disproportionate' and 'undue' – should be considered synonyms. This makes clear that a request for reasonable accommodation is limited when it imposes a possible excessive and unjustifiable burden on the accommodating party. The duty of reasonable accommodation is also to be distinguished from preferential treatment and affirmative action measures.⁶⁴ General Comment 6 also sets out potential factors to be considered in relation to reasonable accommodation, which include 'financial costs, resources available (including public subsidies), the size of the accommodating party (in its entirety), the effect of the modification on the institution or the enterprise, third-party benefits, negative impacts on other persons and reasonable health and safety requirements'.⁶⁵ The way this is worded – 'key elements that guide the implementation of the duty to provide reasonable accommodation include' – indicates that this is not an exhaustive list. In the same paragraph, General Comment 6 makes clear that the costs of reasonable accommodations should not be borne by the person with the disability, and that the burden of proof rests with the duty bearer, who will have to prove that the burden on them would be disproportionate or undue.

Therefore, the duty of reasonable accommodation is imposed only if this does not constitute a disproportionate or undue burden. However, the duty to implement accessibility is unconditional and entities that need to provide accessibility cannot omit doing so by referring to the burden this would impose on them.⁶⁶ General Comment 2 explains that the duty of accessibility means States parties have an obligation to ensure that all newly designed, built or produced objects, infrastructure, goods, products and services are fully accessible for persons with disabilities. In contrast, the obligation to provide accessibility to the existing physical environment, transportation, information and communication and services open to the general public is to be implemented gradually and States parties should establish definite time frames and allocate adequate resources for the removal of existing barriers; should clearly describe the duties of different authorities and entities; and

62. General Comment 2, para. 26. See also General Comment 6, para. 41.

63. Ibid. 6, para. 24.

64. Ibid. 6, para. 25.

65. Ibid. 6, para. 26.

66. Ibid. 2, para. 25 and 26.

should establish effective monitoring mechanisms and monitor sanctions.⁶⁷ General Comment 2 also makes clear that States parties are not allowed to use austerity measures as an excuse to avoid ensuring gradual accessibility for persons with disabilities.⁶⁸ General Comment 6 explains that, because the gradual realization of accessibility may take time, 'reasonable accommodation may be used as a means to provide access to an individual in the meantime, as it is an immediate duty'.⁶⁹

Article 4a of the Compromise Proposal imposes a duty of reasonable accommodation and uses the definition of Article 2 CRPD (Article 4a(2)). Article 4(5) then sets out what needs to be taken into account to assess if a reasonable accommodation measure would impose a disproportionate burden: the size, resources, nature and net turnover and profit of the duty bearer; the negative impact on the person with a disability affected by the fact that the appropriate and necessary measure is not provided; the estimated cost of the appropriate and necessary measure; the estimated benefit for persons with disabilities generally, taking into account the frequency and duration of use of the relevant goods and services and the frequency and the duration of the relationship with the seller or provider; the amount of public funding available to the duty bearer for taking the appropriate and necessary measure; the historical, cultural, artistic or architectural value of the movable or immovable property in question; and the safety and practicability of the measures in question. The burden shall not be deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

This complies with the CRPD and the factors mentioned in General Comment 6. Here, again, the wording – 'account shall be taken, in particular' – indicates that this is not an exhaustive list. What both lists show and what is also clear from the term 'disproportionate' is that a balancing, a careful weighing of a number of factors is required to establish whether there is a disproportionate burden. Recital 19ca of the Compromise Proposal explains that reasonable accommodation is usually provided 'on a case-by-case basis to a person in the form of modifications and/or support in specific circumstances' and can be temporary. The reference to a 'case-by-case' basis suggests that this duty is an *ex nunc* duty, as it is in the CRPD. This is supported by the use of the terms 'where needed in a particular case' in Article 4(2) of the Compromise Proposal.

Above it was mentioned that Article 4 of Proposal COM(2008)426 contained a duty of reasonable accommodation but also an accessibility duty where it stated that effective access for disabled people 'shall be provided by anticipation'. This latter duty was subject to the defence that it did not have to be provided if this would impose a disproportionate burden. 'By anticipation' suggests that this was an *ex ante* duty of accessibility. However, this duty is not in the Compromise Proposal. The Presidency explanations at the start of this Proposal state that the text was redrafted to clarify the obligations regarding reasonable accommodation for persons with disabilities, which is 'to be distinguished from an obligation to ensure accessibility, which previously had been deleted'.⁷⁰ Article 4a(4) of the Compromise Proposal makes clear that 'the provisions of this Article shall be without prejudice to the provisions of Union law covering accessibility or reasonable accommodation in respect of particular goods or services'. Recitals 2a and 19ab of the Compromise Proposal both refer to the principle of accessibility in Article 9 CRPD, while Recital 20d refers to a number of EU Regulations and Directives which cover accessibility. However, although the Compromise

67. Ibid. 2, para. 24.

68. Ibid. 2, para. 25.

69. Ibid. 6, para. 42.

70. Compromise Proposal, p. 3, point 1.

Proposal does not contain a duty of accessibility, there are EU Regulations on access for disabled people and persons with reduced mobility to air travel,⁷¹ bus and coach travel⁷² and rail travel;⁷³ and Directives on the accessibility of the websites and mobile applications of public sector bodies⁷⁴ and on the accessibility requirements for products and services.⁷⁵ The latter Directive came into force on 28 July 2025 and covers smartphones and computers, payment terminals and self-service terminals (for example, ATM and ticketing machines and check-in machines), telephony and audio-visual services, transport and banking services, and e-books and e-commerce. However, both Article 5 of Directive 2016/2102 and Article 14 of Directive 2019/882 contain the disproportionate burden defence. This appears to go against the accessibility requirements in Article 9 CRPD because, as mentioned above, this duty is unconditional and not subject to this defence.⁷⁶ This suggests that the EU Accessibility Directives do not fully comply with the unconditional accessibility duty imposed by the CRPD, but further discussion of this goes beyond the subject of this article.

F. Denial of reasonable accommodation is a form of discrimination

The definition of disability in Article 2 CRPD, quoted above, states that denial of reasonable accommodation constitutes discrimination. This is also laid down in Article 2(2)(e) of the Compromise Proposal. This already appeared to be the case under Article 5 of Directive 2000/78/EC, as that declares that reasonable accommodation for persons with disabilities must be made ‘in order to guarantee compliance with the principle of equal treatment’. This was confirmed by the CJEU in *Nobel*.⁷⁷ It is submitted that it is important that denial of these duties is seen as a form of discrimination because, first, the CRPD imposes a duty on States parties to provide, in discrimination cases, to ‘shift the burden of proof in civil procedures from the claimant to the respondent in cases where there are facts from which it may be presumed that there has been discrimination’.⁷⁸ Article 10 of Directive 2000/78/EC and Articles 8 of Proposal COM(2008)426 and of the Compromise Proposal also contain this shift in the burden of proof. If denial of reasonable accommodation is a form of discrimination, the reversal of the burden of proof would thus also apply to this. Second, the duty of reasonable accommodation embraces substantive equality: it acknowledges that some persons need to be treated differently in order to achieve real, factual equality. Third, the duty can be said to promote inclusive equality, to promote the inclusion and participation of persons with disabilities in all areas of life. The duty also clearly recognizes the social model of disability

71. Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, [2006] OJ L 204/1.

72. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, [2011] OJ L 55/1.

73. Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union’s rail system for persons with disabilities and persons with reduced mobility, [2014] OJ L 356/110. Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers’ rights and obligations (recast), [2021] OJ L 172/1.

74. Directive 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, [2016] OJ L 327/1.

75. Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, [2019] OJ L 151/70.

76. General Comment 2, para. 25.

77. Case C-397/18 Nobel, para. 71–72.

78. General Comment 6, para. 73(i).

and puts the onus on society to remove the social barriers in order for persons with disabilities to participate in society on an equal footing with other persons.

G. Multiple and intersectional discrimination

The CRPD addresses multiple and intersectional discrimination which is clear from Article 6, which mentions that ‘women and girls with disabilities are subject to multiple discrimination’. General Comment 1 repeats this, but adds intersectional forms of discrimination.⁷⁹ General Comment 2 is even clearer as it mentions that ‘accessibility should especially take into account the gender and age perspectives for persons with disabilities’.⁸⁰ In 2016, the Committee brought out a specific General Comment 3 on women and girls with disabilities. This states that ‘there is strong evidence to show that women and girls with disabilities face barriers in most areas of life. These barriers create situations of multiple and intersecting forms of discrimination’.⁸¹

General Comment 3 gives the following definitions:

‘Multiple discrimination’ refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated. ‘Intersectional discrimination’ refers to a situation where several grounds interact with each other at the same time in such a way as to be inseparable. Grounds for discrimination include age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation.⁸²

This shows that the CRPD recognizes and prohibits discrimination on both multiple and intersecting grounds and acknowledges that a large number of discrimination grounds can interact with each other.

Proposal COM(2008)426 mentioned multiple discrimination in its Preamble, but did not contain a prohibition of this form of discrimination in any of its articles. In contrast, Article 2(3) of the Compromise Proposal makes clear that discrimination on a combination of grounds is also covered. In doing so, it provides ‘better recognition of “real life” cases of discrimination’ because ‘an estimated three in four people identify with more than one characteristic that pertains to the personal scope of the proposed law’, according to the 2025 Briefing Paper for the EU Parliament.⁸³

Recital 12ab of the Compromise Proposal explains

It can be important to take into account the specific situations of disadvantage resulting from multiple discrimination, including intersectional discrimination, in order to reflect the complex reality of discrimination cases as well as in order to enhance the protection of its victims. Intersectional discrimination is understood as discrimination, in any of its forms, occurring on the basis of any combination of two or

79. Committee on the Rights of Persons with Disabilities, General Comment 1, ‘Article 12 equal recognition before the law’, CRPD/C/GC/1, 2014, para. 35.

80. General Comment 2, 13. This is repeated in para. 29 while para. 40 mentions that the gender dimension needs to be taken into account in relation to access to health care.

81. Committee on the Rights of Persons with Disabilities, General Comment 3, ‘Article 6: women and girls with disabilities’, CRPD/C/GC/6, 2016, para. 2.

82. Ibid., para. 4.

83. M. Fernandes, M. Arenga and K. Grosse Kohorst, *Council Directive on Equal Treatment: Potential European Added Value*, p. 11.

more of the following grounds, including where taken separately the situation would not give rise to discrimination against the person concerned: religion or belief, disability, age or sexual orientation, as well as a combination of one or more of these grounds and any of the grounds protected under Directive 2000/43/EC, Directive 2004/113/EC or Directive 79/7/EEC.

The explicit mentioning of the fact that in cases of intersectional discrimination there might not be discrimination if the grounds are taken separately appears to be overruling the CJEU judgment in *Parris*,⁸⁴ where discrimination on the ground of sexual orientation and/or age was claimed. The CJEU found that there was no direct or indirect discrimination on the grounds of sexual orientation; there was no direct age discrimination; and, although the CJEU appears to have recognized that ‘discrimination may indeed be based on several of the grounds set out in Article 1 of Directive 2000/78’, it concluded that there can be no ‘discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation’.⁸⁵ Therefore, the CJEU rejected a claim for intersectional discrimination where no claim exists on either of the grounds separately. The Compromise Proposal makes clear that this is no longer the case.⁸⁶

5. Conclusion

It has been argued that the reversal of the decision by the EU Commission to withdraw COM(2008) 426 is a very positive development and that all efforts should be made, by the EU institutions as well as by all EU Member States, to adopt the proposal very quickly. Adoption would increase the protection against discrimination on the grounds of religion or belief, disability, age and sexual orientation as well as against multiple and intersectional discrimination. This would benefit those most vulnerable to discrimination across the EU. It has been argued that adoption would deal to a large extent with the current hierarchy between discrimination grounds which is said to exist in EU law, as it extends the protection against the covered grounds of discrimination beyond the employment sphere. The Compromise Proposal could be stronger in explicitly prescribing the designation of an equality body or bodies for the grounds covered, although most Member States already have bodies covering these grounds. Therefore, if the Compromise Proposal is adopted, the main difference between Directive 2000/78/EC and that Proposal on the one hand and the race and gender equality directives on the other which remains would be the general exception clause in Article 2(5) of Directive 2000/78/EC and Article 2(8) of the Compromise Directive.

Another reason why it was argued that the proposal should be adopted urgently is that its adoption would go a long way towards fulfilling the EU’s positive obligations under the CRPD. As all Member States are also States parties to the Convention, adoption and then implementation of the Compromise Proposal would also fulfil their positive obligations under the Convention to a large extent.

84. Case C-443/15 *Parris v. Trinity College Dublin and Others*, EU:C:2016:897.

85. Case C-443/15 *Parris*, para. 50, 60–61, 75, 78, 80 and 82.

86. This is in line with a number of developments in the EU, within the Commission, the Council and the Parliament and the recognition of intersectional discrimination in Article 3(2)(e) of Directive 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, [2023] OJ L 132/21. See on this: E. Howard, ‘Intersectional Discrimination and EU Law: Time to Revisit Parris’, 24(4) *International Journal of Discrimination and the Law* (2024) and the authors referred to there.

This is why the three Member States, who are still objecting, should drop their objections and agree to the adoption.

A number of issues were analysed in relation to the CRPD and compared with the provisions of the Compromise Proposal. First, the CRPD is important because it embraces the social and human rights models of disability, and aims at substantive and inclusive equality for persons with disabilities, as is clear from the definitions of disability and of reasonable accommodation. These had already been accepted by the CJEU, but are made explicit in the Compromise Proposal. Second, the extension of the material scope of the protection against discrimination on the grounds of religion or belief, disability, age and sexual orientation beyond the employment sphere in the Compromise Proposal aligns with the wider protection the CRPD provides.

Third, the duty of reasonable accommodation in Directive 2000/78/EC and in the Compromise Proposal also conforms with the provisions of the CRPD. Moreover, the Convention and the explanations on this in several General Comments of the Committee on the Rights of Persons with Disabilities can be used as an interpretative tool by the CJEU and the national courts in the Member States. It was shown that the CJEU already uses the CRPD in this way. Fourth, and linked to the previous point, is the clear statement that denial of reasonable accommodation is a form of discrimination in both the Convention and in the Compromise Proposal, which is especially important because it means that the reversal of the burden of proof also applies to this denial. As mentioned above, the Compromise Proposal does not contain a duty of accessibility, but this is provided by a number of other EU Regulations and Directives. Whether these completely comply with the duty of accessibility in the Convention can be questioned, as the EU Directives regarding accessibility do allow for the defence that the duty would impose a disproportionate burden, which the Convention does not. However, the Compromise Proposal and these Regulations and Directives do implement the CRPD to a large extent. The fifth and last issue addressed was the provision of protection against multiple and intersectional discrimination, which is clearly recognized in both the CRPD and the Compromise Proposal.

All the reasons stated here make it imperative that the Compromise Proposal is adopted as soon as possible. However, disappointingly, the Council Meeting in December 2025 again failed to reach consensus about its adoption. It is hoped that the Commission will not see this as a reason to withdraw the Compromise Proposal, as this would go against what it itself highlighted in its Disability Strategy 2021–2030 about the need for further progress in EU legislation and the contribution of the Proposal to addressing the persisting inequalities and discrimination against persons with disabilities outside the field of employment. Without adoption of the Compromise Proposal, many people across the EU, especially those belonging to one or more vulnerable groups, will continue to lack protection against discrimination outside the employment sphere.

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