

**CHRISTIAN CONCERN FOR OUR NATION
&
THE CHRISTIAN LEGAL CENTRE**

**Information and Action Pack on the
European Union “Equal Treatment”
Directive**

November 2009



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*Please watch our 15 minute TV Interview with Professor William Wagner who explains the issues in this EU Directive.
You can locate the video at www.ccfon.org/leuwagner*

On 2nd July 2008, the European Commission published their proposed Council Directive on “Equal Treatment.”¹ The European Parliament thereafter voted in favour of the Directive and proposed suggested amendments at its plenary session on 2nd April 2009.² The European Parliament also proposed amendments. The Directive and proposed amendment are now before the Council of Ministers. We expect a final vote by the Council of Ministers within the next month or two.

The proposed Directive creates a frightening threat to free speech and the free exercise of religious conscience. If executed in its current form, the Directive increases inequality for Christians and places perilous restrictions on Christians expressing their faith. Indeed, if implemented, we expect increased censorship of Christian expression and Government-sanctioned persecution of Christians. Across the European Union, Governments and individuals often use existing E.U. equality law and policies to compel Christians to act against their consciences. Such law currently prohibits, in a variety of contexts, discrimination based on certain published classifications. For example, E.U. law enacted in Member States prohibits discrimination in employment based on sexual orientation and religion or belief. The proposed Directive casts a much wider net, extending such prohibitions to healthcare, social security, housing and education—as well as to individuals “performing a professional or commercial activity” in the provision of goods and services available to the public.

This paper addresses key concerns with the Directive and presents persuasive arguments against its passage. It is our hope that you use this information to effectively engage in the policy-making process. Together, we ultimately must persuade the Council of Ministers to defeat this dangerous threat to freedom of expression and religious liberty.

Discrimination and Harassment—When Vagueness Becomes Perilous

Many problems with the E.U.’s so-called “Equal Treatment” Directive exist, but perhaps the most troubling is its harassment provision. The Directive prohibits not just discrimination, but also indirect discrimination. Included within the parameter of discrimination is something the directive calls “harassment”. The Directive vaguely defines “harassment” in Article 2(3) to include unwanted conduct having:

...the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Because God created human life in His image, the innate positive value of every person stands as a sacred tenet for all Christians. Harassing a fellow human being is antithetical to this sacred standard. No true Christian would, therefore, ever harass another human being (at least as that term is conventionally understood). “Harassment,” as vaguely defined in the Directive however, allows an individual to accuse someone of harassment merely for expressing something the individual allegedly perceives as offensive. Thus, even if a Christian or Christian organisation possesses no intent to offend or harass, once someone decides to perceive the Christian’s expression as offensive, that person can commence legal action. Once legal action commences against the Christian (or a Christian organisation), the burden of proof shifts to the Christian to prove that the accuser was not “harassed”. In an action brought by an accuser, the accused Christian or Christian organisation faces severe sanctions, including payment of an unlimited monetary amount to the accuser.

Armed with its arbitrary harassment provisions and draconian penalties, the Directive emerges as an instrument holding the potential to inflict cultural genocide. It is quite clear that those with an anti-Christian agenda will wield a weapon capable of extinguishing Christian expression in Europe.

With so much at stake, Christians must provide reasons to the Council of Ministers as to why they ought to veto this perilous proposal. Many persuasive arguments against the passage of the Directive exist. Indeed, the proposed scheme as devised by the EU is wholly inconsistent with fundamental principles of good governance under the rule of law. In this regard, the Directive:

- 1) Unconscionably fails to provide fair notice of the conduct it purports to prohibit;
- 2) Inexcusably chills free speech and the exercise of the religious conscience;
- 3) Unfairly places the burden of proving an accusation on the accused—whilst deeming a violation to exist even when the accused possesses no intent to offend, harass, or discriminate;
- 4) Conspicuously lacks balancing mechanisms and exceptions necessary to protect the religious conscience; and
- 5) Reprehensibly infringes an individual’s right to associate.

A summary of each of the arguments against the passage of the Directive follows.

The Directive Unconscionably Fails to Provide Fair Notice of the Conduct it Purports to Prohibit

The rule of law provides predictability for individuals in the conduct of their affairs.³ An unambiguously drafted law affords prior notice to the public of conduct proscribed. In this way, the rule of law provides predictability for individuals in their personal and professional behaviour. Although citizens may choose to roam between legal and illegal actions, Governments of free nations insist that laws give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly.

The ambiguous language of the harassment provision fails to provide the public with adequate notice of the kind of conduct that is prohibited by the law. This failure creates an impossibly precarious proposition for Ministers and other Christians attempting to discern what constitutes prohibited harassment, so as to conform their personal and professional behaviour to the law. Because accusers with anti-Christian agendas can use ambiguity in the law to decide, after the fact, what expression the law prohibits, the possibility of facing oppressive civil litigation is always unpredictable.

One especially ambiguous phrase is particularly troublesome: “offensive environment.” As used in the harassment provision, this phrase is so vague (and morally relative in its potential applicability) that it is impossible for any reasonable person to discern permissible from prohibited expression.⁴

When, as here, ambiguous language prevents notice of what constitutes prohibited conduct, accusers (and sympathetic authorities) arbitrarily define the prohibited conduct *after* the commission of the act. Thus, the speech prohibited by the harassment provision wholly depends (at best) on the whim of an accuser’s personal feelings—rather than on a clearly expressed rule of law articulated in the language of the provision.

The Directive Inexcusably Chills Free Speech and the Exercise of Religious Conscience

When a law vaguely regulates free expression, as does the Directive, an ominous chill on the exercise of fundamental freedoms accompanies its implementation. The chill is especially bitter when an accused faces unlimited monetary sanctions, as one does under the Directive. Compelled by the piercing chill of an unpredictable financial penalty, members of the public cease to exercise their basic liberties. They fear to assemble, pray, preach, worship, or even speak. Moreover, State-sanctioned speech suppression inhibits a citizen from participating in the political and policy-making process. It also inevitably leads to individuals using the power of the State to persecute Christians and their organisations, eventually evicting the Christian worldview from all aspects of society. Here the dearth of clarity and consequent lack of notice in the harassment provision denies religious believers the right to preach or to make converts—and makes it virtually impossible for religious individuals or groups to deliver goods and services to the public. This is wrong. Censuring an idea simply because the idea is informed by ancient sacred tenets prevents thousands of years of wisdom from informing the public ethic. A citizen who attempts to inform the public ethic should not face litigation and risk punishment simply because the citizen’s ideas are informed by sincerely-held religious truths—even when someone allegedly perceives those truths as offensive.

In a democracy, freedom of expression is not needed to protect the ideas of people with whom those in power agree—it is needed to protect people who express ideas with which those in power do *not* agree. Thus, the test of a functioning moral democracy is not whether the Government protects speech with which it agrees—it is whether it will protect expression it (and members of society) finds offensive. Instead of censoring or punishing speech, the answer must always be more speech—at least in a democracy valuing freedom. Selective enforcement and punishment of a citizen’s expression sends a bitter chill throughout the whole of society. Government-sanctioned suppression of religious expression is never, therefore, an appropriate public policy for any democratic institution valuing good governance under the rule of law.

Institutional integrity cannot exist without personal virtue. Good governance and civic institutional integrity rest on the virtue of its citizens. Religious ideas support and nurture this virtue and should, therefore, always be permitted within the marketplace of ideas.

The Directive Unfairly Places the Burden of Proving an Accusation on the Accused—
Whilst Deeming a Violation to Exist Even When the Accused Possesses No Intent to Offend,
Harass, or Discriminate

A fair legal process ranks amongst the most important imperatives of good governance under the rule of law. Fair legal process generally demands an accuser to prove the truth of allegations made against another in litigation. Facilitating those with an anti-Christian agenda, however, a different rule continues to evolve for “discrimination” cases.⁵ Under the Directive, once an accuser presents a basic case of discrimination to a court, the burden of proof shifts to the accused, who must then prove a negative (e.g. in a harassment case, that the alleged expression did not create an offensive environment as perceived by his or her accuser).

Moreover, under the Directive, “discrimination” occurs even when an accused individual’s expression is not accompanied by any intent to harass or offend. Thus, even if the intent of the accused is compassionate and loving in connection with some expression, a violation nonetheless exists if the accuser perceives the requisite offense. Likewise, if a decision coincidentally results in an unequal impact on a protected class, a violation occurs—even if the person making the decision possessed purely honourable motives with no intent to discriminate.

Taken together, the burden-shifting procedures in the Directive, along with the lack of intent required to establish a violation, all but abandons any hope of a fair legal process for someone accused of harassment. For these reasons alone, the Council of Ministers ought to reject the proposed Directive. At the very least though, we must persuade the Council of Ministers to remove these devastating harassment provisions.

The Directive Lacks Balancing Mechanisms and Exceptions
Necessary to Protect Religious Conscience

The Directive’s provisions cover individuals or organisations “performing a professional or commercial activity” in the provision of goods and services. To be sure, the Directive, on its face, appears to prohibit religious discrimination here. In reality however, it fails to include balances and religious exemptions necessary to protect the exercise of one’s conscience or the manifestation of one’s faith. The intentional choice not to include balancing mechanisms conspicuously ignores the necessity of providing protection in connection with conflicts inevitably arising out of:

- Differences between those expressing religious tenets of one religion and the doctrines of another religion; or
- Differences between those expressing religious tenets on sexual conduct and those professing a “sexual orientation.”

Indeed, the draft Directive fails to even consider the implications of conflicts between religions and beliefs or between religion and “sexual orientation”. The resulting internal inconsistency poses special risks of litigation against Christians who express sincerely-held religious beliefs inconsistent with other religions. Likewise, without a religious exemption, Christians holding sincerely-held sacred beliefs on traditional marriage and the natural family face legal action. Thus, in areas of conflict, it is imperative the Directive include balancing and a religious conscience exemption. Why should a Christian photographer who believes in Christian marriage have to photograph and support a same-sex civil partnership registration event? A democratic society should not force a choice of being true to your faith or risking legal action.

The Directive Reprehensibly Infringes on an Individual’s Right to Freedom of Association.

A fundamental liberty in all free nations is the right to associate and meet together without imposition of restrictions.⁶ The Directive’s compliance provisions, however, mandate Member States to take measures that virtually guarantee a devastating infringement on the right to freedom of association.

Under the compliance provisions, States must enact measures to ensure that:

...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.

This oppressive provision permits no differences in treatment within the context of the Directive based on religion or “sexual orientation”.⁷ By expressly targeting an association’s internal rules and contracts, the Directive purposefully stifles a Christian organisation’s capacity to determine its own rules and associational choices.

Examples of How Individuals May Use the Directive’s Provisions Against Christians and Christian Organisations

The proposed law expressly covers individuals performing a “commercial activity” in the provision of goods and services available to the public. Thus, the Directive empowers any individual with an anti-Christian agenda to allege offence in this context in connection with discussions about faith or sexual ethics. For example, in a Christian book and coffee shop, such a conversation might arise whilst selling books or serving coffee. If, during the conversation a Christian sales assistant states he believes Jesus is the only way to God, or that he does not believe that same-sex civil partnerships are pleasing to God, the customer may allege offence and sue. A Christian Minister, expressing a biblical truth while running a Christian homeless shelter or soup kitchen faces similar threats. Again, recall that the prohibitions and penalties in the Directive expressly cover an individual performing a professional activity in the provision of a service available to the public. Query whether your Minister, preaching from the pulpit during Sunday service, could on Monday find himself in court? The Directive provides no exceptions for religious organisations. Finally, under the compliance provisions, a Christian association with internal rules limiting membership or leadership to believers may no longer be able to do so. Such provisions will result in more unnecessary legal battles for Christians pleading freedom of thought, conscience and religion and freedom of association. The litigation

possibilities for those wanting to oppress Christian values and beliefs abound in such a surreal legal environment.⁸

Conclusion

Free and democratic societies provide fair notice in the law of prohibited conduct. The proposed Directive here does not. Societies valuing good governance under the rule of law use fair judicial process and procedures. The proposed Directive here does not. A good government protects the fundamental freedoms of its citizens, including freedoms of speech, association, and religious conscience. The proposed Directive here does not. Taken together, these failures send a chill throughout a democracy as citizens inevitably cease to exercise basic liberties.

To be sure, vague provisions and unfair processes provide the means for individuals and sympathetic authorities to efficiently advance a political agenda. The insidious consequences of doing so, however, include the deterioration of fundamental democratic principles and good governance under the rule of law. Christians, and all those who value freedom, must act now.

Action to Take

The UK Government, as one of the 27 Member States, is in the process of negotiating on the contents of the Directive in the Council of the European Union (the Council of Ministers). Passing the Directive requires unanimity. In view of its effect upon Christian freedoms, we seek to persuade at least one of the Member States to veto it.

Christian Action across Europe

- **First and foremost, pray for a miracle that Member States reject this Directive. We serve a mighty God.** In order to become EU law, this proposed Directive needs to be adopted unanimously by all EU Member States and a veto by a single nation could stop it.
- If you have contact with Christians in other European countries, or if you are able to write to an Equality Minister in another European State, please try to alert them to the implications of this Directive for Christian religious liberty. **This is the most effective action that you can take besides praying.**

As the Council of the European Union has the final say on the Directive, it is important that Ministers responsible for equality issues are aware of our concerns. We suggest that you ask your MP to raise the issue with the Equality Minister for your country.

Please Write to Your MP and your Equality Minister. In the UK, Harriet Harman, in her capacity as Minister for Women and Equality, serves as the lead Minister for this Directive. Letters regarding the Directive should be sent for the attention of The Rt. Hon Harriet Harman, QC, MP, Minister for Women and Equality: harmanh@parliament.uk and geo.corres@geo.gsi.gov.uk.

To write to your MP, please address your letter to his/her name, followed by: "House of Commons, London, SW1A 0AA". MPs can be faxed through: www.faxyourmp.com. E-mail addresses of all MPs can be found on the following website: <http://www.writetothem.com>.

Please see our list of Equality Ministers for other European countries in Appendix II. If you know of Christians in other European countries, please encourage them to raise objections with their own Equality Ministers and ask their own country to veto the Directive.

Tips for writing

Correspondence should be factually accurate, present a clear argument, and show consideration of the issues involved. Example Letters are given in this pack and can be used to give you an idea of the sort of thing to write. Make letters individual by focusing on arguments you feel most strongly about.

You will find example letters below in Appendix I, which have been written to send to British representatives, but are generally applicable. If you have contact with Christians in other European countries the letters could be changed to make them suitable for their own political representatives, relevant Minister, Prime Minister and European country.

Please note that the letters contain a choice of paragraphs which are appropriate only for one or other kind of representative. Please ensure you choose the appropriate paragraphs depending on whether you are writing to your MP or your Minister for equality. Please ensure you delete the inappropriate paragraphs and that you do not simply copy and paste letters without editing them. Please remove the headings from the letters as they are merely for the purpose of indicating the particular issue the letter covers.

How to write

- Be polite, concise and to the point
- Limit your letter to one, or at very most two, sides of A4
- Tell them who you are. You could include your profession and information to support your opinion, for example if you have a business and are writing about your fear of falling foul of the discrimination provisions, you could say what the effect on your business might be. If you serve the public in your job or if you work voluntarily, that would also be a useful thing to mention, particularly if you can use it in your arguments.
- State why you are writing to your MP/the equality Minister and ask your MP to raise the matter with the Minister responsible for equality in your country
- Focus on one, or at the most two arguments
- Put your arguments in your own words if at all possible
- Do not be afraid to mention your faith.

Infringement of Christian Religious Liberties in the UK under Equality Laws and Policies

When writing, please use some of these examples of religious intolerance in the UK brought about because of anti-discrimination or equality laws or policies:

- A Christian nurse was suspended for offering to pray for a patient.⁹
- A Christian primary school receptionist could yet face dismissal for asking for support from her church friends after her primary-school aged daughter was scolded at school for talking about Jesus.¹⁰
- A Christian foster mother has been struck off the local council's register because a 16 year-old Muslim girl in her care became a Christian.¹¹
- A Christian worker for British Airways was not allowed to wear a small cross necklace at work.
- A Christian radio presenter was dismissed as a result of a discussion of a Muslim speaker's claim that Jesus was not the only prophet considered to be the Way, the Truth and the Life.¹²
- Christian Foster parents have had an 11 year-old child temporarily removed from their care, because they did not wish to promote homosexuality to the child.¹³
- A magistrate was forced to resign because his employers refused reasonably to accommodate his conscientious objection to placing children with same-sex carers by screening him from such cases.¹⁴
- A Christian relationships counsellor was dismissed merely for raising difficulties he might have with providing sex therapy to same-sex couples in the future.¹⁵
- Catholic adoption agencies have closed rather than comply with The Equality Act (Sexual Orientation) Regulations 2007 by allowing same-sex adoption.
- A Homelessness Prevention Officer was suspended, and later sacked, by Wandsworth Council for encouraging a homeless woman with an incurable medical condition to look to God for help.¹⁶
- A Homelessness Charity suspended a Christian for answering questions about his faith to a work colleague.¹⁷
- A Christian teacher has been suspended from a senior post for complaining that a staff training day was used to promote homosexual rights.¹⁸
- Several University Christian Unions suffered discrimination because of their adherence to core Christian beliefs.

APPENDIX I

EXAMPLE LETTERS

PLEASE SEE “TIPS FOR WRITING”, ABOVE FOR INSTRUCTIONS ON HOW TO USE THESE LETTERS

Costs to Business

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

I am writing to you in your capacity as Minister for Women and Equality in order to express my concern about the likely effects of the European Equal Treatment Directive for businesses, which I believe you are in the process of negotiating in the Council of the European Union.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP in order to express my concern about the likely effects of the European Equal Treatment Directive for businesses.*

Whilst it is a laudable aim to eradicate unfair discrimination from public life, I believe the Directive will do much more harm than good in its present form. In particular, it will create much more red tape and expense for small businesses, who are already struggling to survive in the current economic recession.

There is little evidence regarding the extent of costs to businesses if the Directive is passed, but there is some data on the Directive submitted by those with interests in businesses. *Business Europe's* submission mentioned a recent German University study, which states that new German laws transposing EU Directives resulted in German companies spending an extra €1.73bn annually on compliance. These costs were seen in some cases as being “disproportionate to the number of potential discrimination cases”. In the UK in 2005, the updating of just a single strand of equality law in the Sex Discrimination Act is likely to have cost small employers between £6.3m and £9.5m based on them spending only 10-15 minutes reading the guidance.

In my view, the European Union is overstepping its authority by creating Directives such as this one, which is surely a matter for national Governments, not for the European institutions. This proposed model does not fit with the British way of doing business. This is tantamount to social engineering and should not be allowed.

Please see next page

Please use your influence to oppose the inclusion of the grounds of “sexual orientation” and “religion or belief” in the Directive, which are likely to cause businesses the most trouble. The Directive was originally aimed at creating a level playing field for people with disabilities, and that is how it should be. Disability is an unchangeable characteristic, and the disabled should be protected. People’s views on sexual orientations are variable and should not be protected by heavy-handed legislation.

The temporary and transient nature of service provision should not allow for potential compensation claims of harassment to be made against a business without a prior fixed monetary upper limit. Businesses should not be put under such financial threats. Such allegations are best dealt with under an internal complaints system within a business. There is no incentive for businesses to harass customers, as this ruins customer goodwill. However, the threat of legal proceedings from a disgruntled customer could spell ruin for a small business already struggling to survive.

Already bed and breakfast owners are facing legal action for refusing to accommodate homosexual couples in double rooms in the UK and Roman Catholic adoption agencies have had to close rather than comply with The Equality Act (Sexual Orientation) Regulations 2007 by facilitating same-sex adoption.

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

Please use your influence in the Council of the European Union to stop this Directive from being passed without the amendments mentioned above.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

Please raise this issue with the Minister for Equality in this country and suggest that s/he* prevents this Directive from being passed without the amendments mentioned above.*

Yours sincerely,

*[*Please delete as appropriate.]*

Harassment, Free Speech & Freedom of Conscience

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

I am writing to you because you hold the post of Minister for Women and Equality. Please consider the points I raise below in relation to the proposed European Equal Treatment Directive, as I think it will have a number of very serious unintended consequences.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP, because I think that the proposed European Equal Treatment Directive will have a number of very serious unintended consequences. Please consider carefully the points I raise below.*

Whilst no-one should be unfairly discriminated against or harassed, the proposed Directive would allow customers who wish to practise a particular sexual orientation or who hold anti-Christian beliefs to persecute providers of goods or services who hold traditional, Christian beliefs. This is because if a Christian says or does anything that offends a customer when they are providing them with a service or selling them something, the customer will be able to sue them for an unlimited amount of compensation on the accusation of “harassment”. This is a charter for people who take offence at the message of the Christian Gospel. It will have a terribly chilling effect on freedom of speech and will prevent Christians from following their consciences in saying what they think, or in providing goods or services which do not conflict with their beliefs.

Freedom of speech and freedom of thought, conscience and religion are meant to be our fundamental rights and it is ironic that a piece of legislation that is meant to protect religious people actually does the opposite.

Already under equality laws and policies in the UK, Roman Catholic adoption agencies have felt forced to close rather than place children with homosexual couples and several University Christian Unions have suffered discrimination because of their adherence to core Christian beliefs.

The way to remedy this situation would be to take both the ground of “sexual orientation” and the ground of “religion or belief” out of the Directive, so that it protects disabled and elderly people, who need such protection, rather than trying to protect religious and homosexual people and failing miserably by failing to consider conflicting rights.

Please see next page

[Please use the following 2 paragraphs if you are writing to your Equality Minister and delete them if you are writing to your MP:]

Please use your voice and your vote in the Council of the European Union to stop this Directive from chilling our freedom of speech and riding roughshod over our freedom of conscience. The hallmark of a democratic society is the freedom it allows for the practise of religion and for freedom of speech.*

Please suggest an amendment to remove both “sexual orientation” and “religion or belief” from the grounds in the Directive, so that our fragile social cohesion will not be shattered. Otherwise, please vote against this Directive as a whole.*

[Please use the following 2 paragraphs if you are writing to your MP and delete them if you are writing to your Equality Minister:]

Please use your influence to stop this Directive from chilling our freedom of speech and riding roughshod over our freedom of conscience. The hallmark of a democratic society is the freedom it allows for the practise of religion and for freedom of speech.*

Please raise this issue with the Minister responsible for equality in this country and suggest an amendment to remove both “sexual orientation” and “religion or belief” from the grounds in the Directive, so that our fragile social cohesion will not be shattered. Otherwise, suggest that the Minister votes against this Directive as a whole.*

Yours sincerely,

*[*Please delete as appropriate.]*

Silencing Christians and Religious Liberties

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

As Minister for Women and Equality, I believe you have responsibility for negotiating the proposed European Equal Treatment Directive with other Equality Ministers in the Council of the European Union. I am seriously concerned that the Directive will have unintended consequences and will drastically reduce the freedoms of religious people.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP, because I am seriously concerned that the proposed European Equal Treatment Directive will have unintended consequences and will drastically reduce the freedoms of religious people.*

Whilst it would be very good if Christians could be protected from discrimination and harassment in every area of life, the Directive is likely to increase the harassment of Christians by people claiming to be offended and using the courts as a threat against anyone saying anything they really believe in accordance with their consciences. Christians (and other religious people who have traditional views) would be better protected if both “religion or belief” and “sexual orientation” were removed from the Directive.

If the above grounds are not removed from the Directive, it seems that the only other way in which Christians and religious people’s freedom of speech and freedom of conscience could be protected, is if the Directive contained balancing mechanisms between different sets of rights. There is also a need to provide a religious conscience exception both here and in the Equality Bill. Christians in a democratic society (which should allow open competition in the market-place of ideas) should not be faced with the painful choice between following their faith and risking legal action.

The proposed Directive leaves the inevitable conflicts between people’s rights for the courts to decide, yet in recent times, the courts have not seen their way clear to protecting the rights of the Christian community.

You will probably have heard of the Christian nurse, Caroline Petrie, who was suspended from her job for offering politely to pray for a patient because of an “equal opportunities policy”. Florence Nightingale said that nurses should pray for their patients. There have been many similar cases, such as the homelessness officer who was suspended and then dismissed for suggesting to a terminally-ill client that she might consider putting her faith in God and the Christian Minister who was removed from hosting a radio programme because he dared to contradict the teaching of a Muslim preacher on a radio programme.

Please see next page

If the Directive is not amended to provide balancing mechanisms between religious rights and between the rights of religious people and those who wish to make others facilitate their practice of homosexuality by the provision of goods and services, it should be opposed.

The Directive could be improved if it contained balancing mechanisms.

An example of such a clause is as follows:

Article 3 paragraph 5a (new)

(5a) The prohibition of discrimination and the principle of equal treatment do not apply to the maintenance or adoption by Member States of measures intended to achieve balance between, or to allow exceptions for, either of the grounds of religion or belief or sexual orientation in areas of conflict between them, or between the rights of those who are characterised by those grounds, even if those conflicts should arise between two individuals or two groups who are characterised by the same ground. Member States have a duty to ensure that measures are taken to ensure that the implementation of the Directive is compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

Please use your voice and your vote in the Council of the European Union to suggest amendments to the Directive to provide the necessary protections, or alternatively to remove the grounds of “sexual orientation” and “religion or belief” from the Directive. If neither of these measures is taken, please vote against the Directive. It is entirely wrong that a Christian could be sued without limit simply for expressing Biblical beliefs; we are better off without it.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

Please raise this matter with the Minister responsible for equality issues and ask him/her* to suggest amendments to the Directive to provide the necessary protections, or alternatively to remove the grounds of “sexual orientation” and “religion or belief” from the Directive. If neither of these measures is taken, please encourage the Minister to vote against the Directive. It is entirely wrong that a Christian could be sued without limit simply for expressing Biblical beliefs; we are better off without it.*

Yours sincerely,

*[*Please delete as appropriate.]*

Religious Conscience Exceptions

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

I have been informed that as Minister for Women and Equality, you are involved in negotiating the proposed European Equal Treatment Directive. I have some very weighty concerns about the effects of this Directive, which threatens to ride roughshod over the freedom of thought, conscience and religion of European citizens.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP, because I have some very weighty concerns about the effects of the proposed European Equal Treatment Directive, which threatens to ride roughshod over the freedom of thought, conscience and religion of European citizens.*

The Directive is meant to offer additional protection to Christians and those of other religions when they are purchasing goods or a service. In actual fact, it does more harm than good by compelling Christians to provide their services or supply goods to individuals or groups who may wish to use any excuse to sue them for discrimination. Christians and others will no longer be free to refuse to accommodate homosexual couples, or to supply their buildings to Muslim preachers in any European country.

The serious issue of the freedom of the press, television and radio has not been considered. The Gender Directive on goods and services excludes the contents of advertising and the media, which is entirely appropriate. Christians in the media will be censored and this will infringe editorial independence and freedom of expression. It will result in the broadcasting of only liberal views and not traditional Christian beliefs, for fear of litigation. This threatens democracy itself. A marketplace of ideas is what European democracies thrive on. The Equality Bill also requires the content of advertising and the media to be exempt from equality law. We do not want to live in a country or a European Union that censors the media.

The Directive could be improved if it contained a general exemption so that any religious person acting in accordance with their conscience would not be subject to the discrimination and harassment provisions.

An example of such a clause is as follows:

Please see next page

Article 2 paragraph 5a (new)

(5a) Conduct on the part of a person or an organisation that does not conform to the principles set out in the provisions of this Directive shall not be considered to be a form of discrimination within the meaning of paragraph 1 where such conduct is motivated by moral standards based on religion or belief.

Such an exemption is necessary so that Christians and other religious people can retain their freedom of speech and their freedom to express their faith in compassionate action without violating their consciences to avoid litigation. Without such an exemption, the Directive should be vetoed.

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

Please veto the Directive as a whole, or use your influence in the Council of the European Union to ensure an amendment is included in one of the enabling Articles that would preserve the right to freedom of conscience for religious people.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

Please raise this matter with the Minister for equality and suggest that s/he* vetoes the Directive as a whole, ensures that an amendment is included in one of the enabling Articles to preserve the right to freedom of conscience for religious people.*

Yours sincerely,

*[*Please delete as appropriate.]*

Harassment/Free Speech

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

I understand that as the Minister for Women and Equality, you are responsible for negotiating and signing up to the proposed Equal Treatment Directive in the coming months.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP to register my concerns about the proposed Equal Treatment Directive that is currently being negotiated in the Council of the European Union.*

I am very concerned that rather than eradicating discrimination and harassment, the Directive will allow religious people to be persecuted by those who do not share their faith. Clearly, the Directive has a good and praiseworthy aim, but it “uses a sledgehammer to crack a nut”, because the harassment provisions are drafted in such a way that anyone who is offended when a religious person asserts the truth of their view in the context of providing goods or a service can sue them. Holding even “offensive” religious views is not a civil wrong. It is a matter of free speech.

Freedom of speech is a time-honoured tradition and one of our cultural values, not to mention a “human right”. People should be able to say whatever they wish (as long as it does not encourage crime etc), even if the Government does not agree with it. It would be a very great loss to our country and to every country across Europe if people were too afraid to say what they thought because other people might be offended and sue them.

Being sued under the harassment provisions is also very daunting for an alleged offender, for three reasons:

- The shifting of the burden of proof means that the alleged offender will have to prove a negative, i.e. that s/he did not “harass” the alleged victim;
- There is no upper limit to the amount of compensation that can be awarded against the offender—a provision that is punitive in nature; and
- The harassment provisions in the Directive are too vague for people to know how to comply with them. They are too subjective. No-one can know in advance what kind of words or actions might offend someone else and it is the “victim’s” view that will be their judge, rather than common sense.

This is a litigant’s charter to silence views s/he disagrees with. Anyone can claim to be offended by something someone says or does, but to bring in the long arm of the law and allow people

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to sue each other over offence is not going to promote social cohesion; instead, it will do it irreparable damage.

As a bare minimum, the harassment provisions should be removed from the Directive, as they are a Pandora's Box that will result in a litigation culture and a drastic chill on freedom of speech across Europe. Some lawyers have even warned of "cultural genocide" for Christians and religious people.

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

Please could I ask you to use your influence in the Council of the European Union to prevent this heavy-handed and ill-drafted law from being used to oppress people?*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

Please could I ask you to raise this matter with the Minister responsible for equality so as to prevent this heavy-handed and ill-drafted law from being used to oppress people?*

Yours sincerely,

*[*Please delete as appropriate.]*

Fairness/Burden of Proof

Dear

Proposed European Equal Treatment Directive

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

I have been informed that as Minister for Women and Equality, you are to negotiate the text of the proposed European Equal Treatment Directive. I have some very weighty objections to this Directive, which extends the reversal of the burden of proof in discrimination cases to the provision of goods and services.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

I am writing to you as my MP, because I have some very weighty objections to the proposed European Equal Treatment Directive, which extends the reversal of the burden of proof in discrimination cases to the provision of goods and services.*

The Rule of Law is an important principle of good governance and justice. Ironically, the Directive starts by mentioning the rule of law and then fails to adhere to its principles. Laws should be clear and should allow people to see in advance what kind of behaviour will break them. They should also be sure that they will not face spurious accusations that they cannot defend themselves against.

This Directive breaches both of those principles, in addition to riding roughshod over religious rights, freedom of conscience and freedom of expression. The Directive's provisions on harassment are so vague that it is impossible to know in advance what speech or actions might be considered to "harass" others as the definition of "harassment" is subjective and is determined by the alleged victim's perception. This is a licence to make false accusations. The Directive then goes on to allow the burden of proof to be shifted to the defendant on the basis of a mere *prima facie* case, so that the defendant is left to prove a negative. This makes it doubly difficult to avoid being sued for an unlimited amount of money, all of which is a terrible injustice to those who simply wish to express their dearly-held religious beliefs.

People could be unjustly accused of discriminating against others simply because they have chosen to follow their consciences. They could be accused of "harassment" because they expressed an unpopular view about their faith, or about homosexuality. This will also produce a terrible chill on freedom of speech, as everyone will be too scared to say what they think in case it offends someone.

Schools, colleges, broadcasters, advertisers, medics, agencies and every other kind of business will have to "tread on eggshells" to avoid being sued for discrimination. Any business or educational institution with a religious ethos will struggle to survive in such a climate of

Please see next page

repression. The media and advertisers will be forced to reduce current affairs and debate programmes to mere platitudes to avoid offending anyone.

Neither the Government, nor the institutions of the EU should allow the mantra of “equal treatment” to blind them to the very real discrimination against religious people that this Directive will cause. Its true effect will be to undermine Christian beliefs and values across Europe.

[Please use the following paragraph if you are writing to your Equality Minister and delete it if you are writing to your MP:]

Please use your influence in the Council of the European Union to vote against the extension of the burden of proof to the field of goods and services and to vote against the Directive as a whole.*

[Please use the following paragraph if you are writing to your MP and delete it if you are writing to your Equality Minister:]

Please raise this matter with the Minister responsible for equality and urge him/her* to vote against the extension of the burden of proof to the field of goods and services and to vote against the Directive as a whole.*

Yours sincerely,

*[*Please delete as appropriate.]*

APPENDIX II

Representatives of the Governments of the Member States who regularly take part in Council meetings of the Council of the European Union

Please contact the Prime Minister of each country and Ministers who may have some responsibility for Equality Issues.*¹

This list was obtained at the following link:

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeid=3540>

Belgium

VAN ROMPUY Herman

Prime Minister

MILQUET Joëlle

Deputy Prime Minister and Minister for Employment and Equal Opportunities

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=9681&lang=en>

Bulgaria

STANISHEV Sergei

Prime Minister of the Republic of Bulgaria

MASLAROVA Emilia Radkova

Minister for Labour and Social Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=209904&lang=en>
[n](#)

Czech Republic

TOPOLÁNEK Mirek

Prime Minister

NEČAS Petr

Deputy Prime Minister and Minister for Labour and Social Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=174484&lang=en>
[n](#)

Denmark

RASMUSSEN Lars Løkke

Prime Minister

¹ * **Note that in some countries there is not a specific Equality Minister so we have listed those who may possibly have some remit. In such unclear cases the first port of call would be the Prime Minister and to ask him or her to act upon and take note of your Christian concerns and to forward a copy of your correspondence to the relevant Ministers.**

STØJBERG Inger

Minister for Employment and Minister for Equal Opportunities

HORNBECH Birthe Rønn

Minister for Refugees, Immigration and Integration, and Minister for Church Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=3550&lang=en>

Germany**MERKEL Angela**

Federal Chancellor

VON DER LEYEN Ursula

Federal Minister for Family Affairs, Senior Citizens, Women and Youth

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=164&lang=en>

Estonia**ANSIP Andrus**

Prime Minister

PEVKUR Hanno

Minister for Social Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=174152&lang=en>

Ireland**COWEN, Brian**

Taoiseach (Prime Minister)

AHERN, Dermot

Minister for Justice, Equality and Law Reform

ANDREWS, Barry

Minister of State at the Department of Health and Children, at the Department of Education and Science, and at the Department of Justice, Equality and Law Reform (with special responsibility for children and young people)

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=513&lang=en>

Greece**KARAMANLIS Konstantinos**

Prime Minister

SPILIOTOPOULOS Aris

Minister for Education and Religious Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=3597&lang=en>

Spain

RODRÍGUEZ ZAPATERO José Luis

Prime Minister

AÍDO ALMAGRO Bibiana

Minister for Equality

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=118&lang=en>

France

FILLON François

Prime Minister

YADE Rama

Minister of State with responsibility for foreign affairs and human rights

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=18816&lang=en>

Italy

BERLUSCONI Silvio

Prime Minister

CARFAGNA Mara

Minister without portfolio, Minister for Equal Opportunities

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=231059&lang=en>

Cyprus

CHRISTOFIAS Demetris

President of the Republic of Cyprus

DEMETRIOU Andreas

Minister for Education and Culture

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodelD=174172&lang=en>

Latvia

DOMBROVSKIS Valdis

Prime Minister

DOMBROVSKIS Valdis

Minister for Children, the Family and Integration

KOŅE Tatjana

Minister for Education and Science

DĀLDERIS Ints

Minister for Culture

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=174706&lang=en>
[n](#)

Lithuania**KUBILIUS Andrius**

Prime Minister

DAGYS Rimantas Jonas

Minister for Social Security and Labour

STEPONAVIČIUS Gintaras

Minister for Education and Science

VILKAITIS Remigijus

Minister for Culture

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=175150&lang=en>
[n](#)

Luxembourg**JUNCKER Jean-Claude**

Prime Minister, Minister of State, Minister for Finance

JACOBS Marie-Josée

Minister for the Family and Integration, Minister for Equal Opportunities

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=3669&lang=en>

Hungary**BAJNAI Gordon**

Prime Minister

FICSOR Ádám

Minister without Portfolio

HERCZOG László

Minister for Social Affairs and Labour

HILLER István

Minister for Education and Culture

KISS Péter

Minister for Social Policy

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=174117&lang=en>
[n](#)

Malta

GONZI Lawrence

Prime Minister

DALLI John

Minister for Social Policy

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=174208&lang=en>
[n](#)

The Netherlands

BALKENENDE Jan Peter

Prime Minister, Minister for General Affairs

ROUVOET André

Minister for Youth and the Family, Deputy Prime Minister

PLASTERK Ronald

Minister for Education, Cultural Affairs and Science

DONNER Piet Hein

Minister for Social Affairs and Employment

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=3681&lang=en>

Austria

FAYMANN Werner

Federal Chancellor

HUNDSTORFER Rudolf

Federal Minister for Labour, Social Affairs and Consumer Protection

HEINISCH-HOSEK Gabriele

Federal Minister for Women's Affairs and the Civil Service

SCHMIED Claudia

Federal Minister for Education, the Arts and Culture

MITTERLEHNER Reinhold

Federal Minister for Economic Affairs, the Family and Youth

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=17029&lang=en>

Poland

TUSK Donald

Prime Minister

BONI Michał

Minister, Member of the Council of Ministers

FEDAK Jolanta

Minister for Labour and Social Policy

PAWLAK Waldemar

Deputy Prime Minister, Minister for Economic Affairs

ZDROJEWSKI Bogdan

Minister for Culture and National Heritage

KWIATKOWSKI Krzysztof

Minister for Justice, Chief Public Prosecutor

KUDRYCKA Barbara

Minister for Science and Higher Education

DOWGIELEWICZ Mikołaj

State Secretary, Office of the Committee for European Integration

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=225697&lang=e>

[n](#)

Portugal**SÓCRATES José**

Prime Minister

VIEIRA DA SILVA José

Minister for Labour and Social Solidarity

RODRIGUES Maria de Lurdes

Minister for Education

PINTO RIBEIRO José António

Minister for Culture

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=187342&lang=e>

[n](#)

Romania**BOC Emil**

Prime Minister

PREDOIU Cătălin Marian

Minister for Justice and Civil Liberties

SÂRBU Marian

Minister for Labour, the Family and Social Protection

PALEOLOGU Theodor

Minister for Culture, Religious Affairs and National Heritage

ANDRONESCU Ecaterina

Minister for Education, Research and Innovation

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=210242&lang=en>

Slovenia

PAHOR Borut

Prime Minister

SVETLIK Ivan

Minister for Labour, the Family and Social Affairs

ŠIRCA Majda

Minister for Culture

LUKŠIČ Igor

Minister for Education and Sport

GASPARI Mitja

Minister without portfolio, responsible for growth and European affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=174842&lang=en>

Slovakia

FICO Robert

Prime Minister

ČAPLOVIČ Dušan

Deputy Prime Minister for the Knowledge-Based Society, European Affairs, Human Rights and Minorities

MIKOLAJ Ján

Deputy Prime Minister and Minister for Education

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=174939&lang=en>

Finland

VANHANEN Matti

Prime Minister

THORS Astrid

Minister for Migration and European Affairs

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=26902&lang=en>

Sweden

REINFELDT Fredrik

Prime Minister

MALMSTRÖM Cecilia

Minister for European Affairs

SABUNI Nyamko

Minister for Integration and Equal Opportunities

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=4112&lang=en>

United Kingdom

BROWN, Gordon

Prime Minister, First Lord of the Treasury and Minister for the Civil Service

You can write to the Prime Minister at the following address:

10 Downing Street,

London,

SW1A 2AA

You can fax the Prime Minister on 020 7925 0918.

HARMAN, Harriet

Leader of the House of Commons (and Lord Privy Seal), Minister for Women and Equality

Harriet Harman MP

House of Commons

London

SW1A 0AA

Fax: 020 7219 4877

E-mail: harmanh@parliament.uk and geo.corres@geo.gsi.gov.uk.

<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=17865&lang=en>

<http://findyourmp.parliament.uk/constituencies/kirkcaldy-and-cowdenbeath/messages/new>

APPENDIX III

CCFON/ CLC response to the GEO UK Consultation on the EU Proposal for an Equal Treatment Directive

Please see this link for full details of our response including suggested amendments (e.g., a religious conscience exception—discussed on pages 14 to 20):

http://www.ccfon.org/docs/CCFON_and_CLC_Response_to_GEO_Consultation_on_the_EU_Equal_Treatment_Directive_24_July_2009.pdf

Suggested Clauses Needed for a Religious Conscience Exception:

Article 2 paragraph 5a (new)

(5a) Conduct on the part of a person or an organisation that does not conform to the principles set out in the provisions of this Directive shall not be considered to be a form of discrimination within the meaning of paragraph 1 where such conduct is motivated by moral standards based on religion or belief.

Article 2 paragraph 9 (new)

This Directive shall not preclude differences in treatment if the difference in treatment is justified by a legitimate aim and the means of achieving that aim are rationally related to it. Such differences in treatment shall not constitute discrimination. For the purposes of this Directive, the free exercise of conscience on the grounds of religion or belief constitutes a legitimate aim.

APPENDIX IV

Response to the Swedish President's Proposed Changes by the Council of the European Union

Directive Update—The Council of the European Union:

Why the Swedish Presidency's Note Suggestions¹⁹ Will Not Address the Concerns of European Christian Citizens

The Directive is now being examined and negotiated under the Swedish Presidency in the Council of the European Union. The Swedish Presidency aims to get the text agreed by November 2009, but this time-frame may not be realistic. A progress report was provided on 2nd June 2009.²⁰ The Swedish Presidency provided a set of drafting suggestions in a note from the Presidency dated 17th July 2009.²¹ This commentary is based upon that note, which is referenced as a link in endnote 26, together with the Swedish Presidency's latest suggestions of 7th September 2009. There will be other meetings to follow at regular intervals. The text of the proposed Directive, to which the Swedish Presidency note suggests amendments, can be found at the following link (Please see the endnote)²². This update is only part of the ongoing negotiations on this Directive, as there will be further meetings.

As Christians, we profoundly object to the Directive covering both “religion or belief” and “sexual orientation”. We hope and pray that a European Nation will veto this Directive. If passed, it will undermine Christian beliefs and values and allow Christians throughout Europe to be sued for unlimited damages for simply expressing their biblical beliefs in providing goods or services. There is no religious belief exception to prevent Christians from having to provide goods and services that are contrary to their fundamental religious beliefs not to promote homosexuality and not to promote other religions or beliefs. We have already seen in Britain how such laws can result in a care home with a Christian ethos being threatened with having its funding removed.²³ Sharing one's faith with others is seen as offensive and could be construed as “harassment” under the disciplinary and grievance procedures in National Health Service Guidance.²⁴ A Roman Catholic social club has been threatened with legal action due to its refusing a booking from witches.²⁵ The Directive will indirectly discriminate against and impact the employment of Christians, as employers will fear that not following the Directive could ruin their business by exposing them to the liability of compensation without a fixed upper limit. Christian employers will also be forced to face the unfortunate choice of remaining true to their faith or facing the risk of legal action.

The proposals by the Swedish Presidency, so far²⁶ have not addressed:

- the need for proper exceptions and balancing mechanisms for fundamental human rights in the enabling articles;
- the need to remove the harassment provisions from the Directive;
- the necessity of providing a religious conscience exception where speech or actions in the provision of goods and services that appear to be discriminatory are carried out as the result of a religious belief;
- the need to exclude education (public or private) and the content of media and advertising;

- the need to provide a simpler general description of “goods and services” in the enabling Article, 3 (as in the parallel Gender Directive²⁷), and to make the Directive less complicated;
- the fact that the Directive moves into areas of social policy that should be reserved for Member States themselves to decide (known as national competence) according to the principle of subsidiarity;
- the need to change the burden of proof so that a claim alleging discrimination or harassment has to be proved by the person making the allegation;
- the provisions allowing for punitive compensation without a prior fixed upper limit;
- the concerns of churches, Christian organisations and Member States with religious traditions and cultures;
- the necessity of protecting those with religious beliefs from being indirectly discriminated against and harassed as a result of the Directive;
- the vague wording on exceptions for churches, religious organisations and individuals and the need to protect them from State interference; and
- the issue of conflicts between those practising different religions or beliefs and between those practising a religion or belief and those wishing to live out their particular sexual orientation.

This failure to address such important issues, will result in the type of Directive that should not see the light of day in a democratic society, since the hallmark of a democratic society is one in which there is freedom of religion without interference by the State. The failure to address the lack of protection between adherents of different religions and between those groups and individuals and persons wishing to practise homosexuality (contrary to many religious beliefs) will result in this Directive being used as a tool to silence Christians and to persecute them simply for their beliefs.

Instead the Swedish Presidency notes propose amendments that include the following:

- Recital 9 correctly states what “services” are considered to be within the meaning of Article 50 of the EC Treaty. The paradox here is that case law²⁸ has determined that education is not a “service” within the meaning of Article 50 (previously Article 60) and should therefore be excluded from the Directive.²⁹ That case, known as *Humbel*, also provides an extremely good reason why the Directive should only refer to goods and services in general terms in Article 3 and should include a reference to “services within the meaning of Article 50”.³⁰
- Instead of restricting the reach of harassment law, Recital 12a (new) suggests extending the reach of discrimination and harassment law to recipients of allegedly discriminatory conduct when they are discriminated against or harassed because of prejudice against “persons associated with” them, for instance through their families, friendships, employment or occupation. For example, if a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her association with her husband. This proposed amendment to the Recital, makes an unjustified jump from the principle in an employment law case³¹ on prohibiting discrimination or harassment specifically on the grounds of disability, to discrimination on any of the other grounds and for goods and services as well as employment. This is said to be for the reason of “clarity” when no

such need exists or is justified. This should not be extended beyond the field of employment and disability.

- A new recital 14a allows for differences in treatment regarding services such as the provision of alcoholic drinks on the grounds of age and disability. This fails to address the need for differences in treatment when collecting blood for donation and the need for restrictions in the light of the increased health risks associated with collecting the blood of those who practise a particular sexual orientation. British law provides such restrictions.
- Recital 17, whose contents should be in Article 3 rather than in a mere Recital, refers to the freedom of religion not the freedom of “thought, conscience and” religion. On 7th September 2009, it was reported that a change had been suggested that the freedom of expression and the freedom of the press should be included. However, advertising and the media are still not excluded from the Directive’s articles. The Swedish Presidency’s recent note has added the suggestion that:

...the simple expression of a personal opinion or the display of religious symbols or messages should be presumed as not constituting harassment.

This is a proviso placed in the Recitals. The Maruko case shows how this does not provide much reassurance at all, as that case overruled a Recital. In addition it must be presumed that the reverse of the presumption in the suggested amendment applies, so that a more complex religious message may constitute “harassment”. It is also couched in terms of prefixing any expression with the notion of giving an opinion. The difference here is between an expression of faith as objective truth, which may be ruled out by the amendment here. It may necessitate Christians adding the proviso “It is my opinion that” if they wish to talk about what they believe. If there was any doubt that this Directive was about restricting religious freedom, then the wording here would clearly remove such doubt when there is a need to analyse any such wording. Is the Bible too complex a form of expression for this Directive, because it may not be given as an opinion but as truth? Harassment needs to be removed from the Directive in totality; nothing less will do.

- Recital 17d (new) correctly indicates that the Directive should not apply to economic transactions that do not constitute a professional or commercial activity for the individual undertaking them. The Recital leaves it to national laws to determine what the concept of “professional or commercial activity” is. In our opinion this should clearly exclude goods, services or facilities provided voluntarily or free of charge.
- Recital 17e (new) is an unsuccessful attempt to argue that the Directive does not alter the division of competence in areas such as education, social security and healthcare. This is illogical when recital 17b effectively applies the Directive to financial matters regarding some of these issues. All of these areas should be excluded in the enabling Articles to provide full protection for National Competence.
- Recital 17f (new) is illogical, as it allows States to organise national security systems and health care schemes, as well as eligibility for, and the extent of benefits. It then suggests applying the prohibition of discrimination provisions to the practical applications of financial benefits as outlined in Recital 17(b). Organising something is of no use if you are not allowed to say how it is run day-to-day. Article 152(5) of the EC Treaty makes it clear that the organisation and delivery of health “services” and medical care is a matter for Member States. The delivery of a health “service” must include the

“provision” of that health service whether or not such provision is discriminatory. The Directive therefore incorrectly states that the EU has competence in this area by including it within Article 3(1) (a) of the Directive.

- Recital 17g (new) refers to exclusive Member-State competence for the content of teaching and the organisation of national educational systems. The real way of addressing such competence issues is to exclude every facet of education, both public and private.³² The proposed Recital even limits the freedom of Member States to allow for restrictions on admission to classes and participation in them. Christian Unions and associations of those who hold other religious beliefs may wish reasonably to restrict admission to and participation in classes or programmes of religious instruction to those who adhere to such religious beliefs. The freedom of association so dictates.
- Recital 17h (new) correctly states that the Directive does not apply to matters covered by family law, marital status, adoption, or laws on reproductive rights. It has included “adoption” but should include “fostering” as well. There have been a number of cases in Britain where there have been difficulties with fostering³³ as a result of the exclusion of religious beliefs from the Public Square. However, this statement should also be in the enabling articles, not only in the descriptive Recitals without any provisos on competence. The *Maruko* case³⁴ showed how a Recital in an Employment Directive in such an area could be overridden.

The descriptive Recitals carry much less weight than the enabling Articles themselves. The Swedish Presidency suggests the following changes to the Articles:

Article 1

- Article 1 attempts to reassure Member States that discrimination will only be eradicated from the Directive “within the scope of Article 3” and that therefore their competence to pass legislation in this area remains. In our opinion, this is merely window-dressing, because the Explanatory Memorandum to the Directive on the scope of Article 3 mentions competence issues and because the Directive clearly limits Member-State Competence in the areas that it covers.

Article 2

- The suggested changes to Articles 2(1) and (2) toughen up the Directive to emphasise the principle of equal treatment. This is a principle that was used in the Maruko case to override the “without prejudice” to National Competence on family law and marital status Recital provisions in the Employment Directive to allow sexual orientation pension rights for same-sex couples to triumph.
- Article 2(3) covers the contentious issue of harassment in this Directive. Harassment should be deleted from the Directive. Nothing less than the complete removal of the harassment provision will do.
- Article 2(3a) compounds the problem of harassment in the provision of goods and services by extending its “protection” to recipients of allegedly discriminatory conduct when they are harassed because of prejudice against “persons associated with” them. This proposed change is totally unnecessary and should be removed.
- Article 2(6) allows for differences in treatment, but only as regards age and disability discrimination. The suggested change on 7th September made it clear that this was a matter for Member States’ discretion. Why are such differences in treatment not allowed on the grounds of “religion or belief” and “sexual orientation”, when such differences are clearly needed to protect religions and sexual ethics based on religious beliefs? A further extra proviso in Article 2(6a) (new), suggested in the Swedish Presidency note of 7th September 2009, allows for differences of treatment of persons with a disability if the difference is designed to protect their health and safety and if the means of achieving that aim are appropriate and necessary.
- Article 2(8) has not been changed, but fails adequately to repeat the rights in the European Convention on Human Rights in Articles 8(2), 9(2), 10(2) and 11(2), where they are needed.³⁵ The religious right in Article 9(2) to manifest one’s belief allows only *minimal* interference with religious belief “subject only to such limitations as...are necessary in a democratic society...”. They include the need not just to maintain the protection of health, but also the protection of “morals”. The word “morals” is something missing from this Directive.

Article 3

- Article 3(1) unsuccessfully tries to placate Member States over the issue of National Competence by stating that the Directive is “Within the limits of powers conferred upon the Community” and then proceeds to cover areas that should not be within

Community competence at all. It would be far better to exclude the areas mentioned in Article 3(1) (a) to (d) from the Directive altogether, for example in the way that the Gender Directive does for education.

- Article 3(1) (d) allows the concept of “professional or commercial activity” to be defined by national laws and practice, but the Directive should make it clear that the whole of Article 3(1) only applies to “services” within the meaning of Article 50 of the EC Treaty and does not include goods and services provided without charge.
- Article 3(2) states that the Directive does not alter the division of competences between the European Community and the Member States. This is misleading and does not provide any reassurances as the *Maruko* case has already allowed intrusion upon areas of National Competence (see above for details). Matters covered by family law, including marital status, adoption and laws on reproductive rights should be excluded from the scope of the Directive and this Article should repeat the proposed Recital 17h without any provisos on competence. Fostering should be added to that list.
- Article 3(2) is important and excludes the content of teaching or activities; it should be made clear that this applies to both public and private education. Education on a public or private basis should be excluded as in the parallel Gender Directive.
- Article 3(3) helpfully allows Member States to restrict access to educational institutions on the grounds of religion or belief in accordance with national laws, traditions and practice, which includes faith schools. Admissions to faith schools should continue to be exempt from restrictions, because freedom of religion require that parents should be able to have their children educated in accordance with their beliefs, as stated in Article 18 of the International Covenant on Civil and Political Rights 1966, (a General Assembly Resolution of the United Nations that was ratified by the UK on 20th August 1976 <http://www.unhchr.ch/pdf/report.pdf>). Article 18 requires signatory Governments to respect “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions” (see: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).
- Article 3(3a) states that “This Directive is without prejudice to national measures authorising or prohibiting the wearing of religious symbols”. This should instead say that the provisions of the Directive are without prejudice to Article 9 of the European Convention on Human Rights in measures authorising or prohibiting the wearing of religious symbols and that these should not be unreasonably restricted.
- Article 3(4) remains the same as the Directive as initially proposed by the Commission. Its wording does not provide adequate protection for churches and religious organisations. After the words “or concerning the status and activities of churches and other organisations based on religion or belief”, the following sentence should be added: “*This Directive must be interpreted in such a way as to maintain respect for the status and activities of Churches and other religious organisations, associations or communities based on religion or belief under national law*”. Our suggested change would take account of Recital 19 and the Declaration II of the Amsterdam Treaty.

Article 5

- Article 5(2) adds further exceptions to allow for more favourable treatment for those who would otherwise suffer from age and disability discrimination as regards conditions for social protection (including social security and healthcare), social advantages,

education and access to certain goods and services which are available to the public, to promote their economic, cultural or social integration. Why are there not provisions to allow for more favourable treatment for those who hold a religion or belief, particularly as there are care homes with a religious ethos that are currently suffering due to discrimination provisions that were set up specifically for elderly persons of a particular religion or belief? Such unintended consequences must be avoided. Education also requires such specific provisions, as do organisations and associations based on religion or belief, which should be entitled to restrict access and membership to those who adhere to their religious ethos.

In summary, the changes proposed by the Swedish Presidency fail to address the concerns of National Competence, which are best dealt with by inserting exclusions into the enabling Articles so that family law, adoption, fostering, laws on reproduction, education, social protection including social security and healthcare, social advantages, housing and the content of media and advertising are not covered by the Directive. They also fail to deal with the concerns of Christians, which are best dealt with by removing **both** “religion or belief” and “sexual orientation” from the Directive and at the very least removing harassment and providing a religious conscience exception.

The final text of the Directive is not known as there will be a whole series of meetings with suggested changes and amendments in the lead-up to the final vote. However, the examination of the first two meetings under the Swedish Presidency shows that the concerns of Christian citizens will not be addressed and that the best option would be for as many countries as possible to veto of the Directive.

APPENDIX V

Desirable Potential Exclusions from the Scope of the Directive

a) Exclusion of Education

A similar piece of legislation known as the “Gender Directive”³⁶ that seeks to combat discrimination in the field of goods and services excludes education in its Article 3(3). In our opinion, this Directive should also exclude education. The argument for the inclusion of education in the scope of the Directive is based on the unproven EU Legislative Impact Assessment, which argues that “homophobic” bullying and harassment in school reduces the earning capacity of the victim later in life. This contradicts the evidence of a UK Government Consultation entitled *Getting Equal* from 2006, which presents an impact assessment that claims that the “average annual salaries of lesbians and gay men” are “up to £10K higher than the national average”.³⁷ The levels of “homophobic” bullying are in fact similar to levels of bullying amongst all children. For example, the Stonewall study of 1,145 LGB pupils in the UK in 2007, found that 65% of LGB pupils³⁸ had experienced bullying compared to a national survey of bullying of 4,772 pupils in 2006, which found that an even higher 69%³⁹ of all children complained of being bullied. School policies and laws should be formed at national or even local level (rather than European level) and should include “homophobic” bullying as one aspect of bullying in general. Bullying of a heterosexual child who is one foot taller than his classmates is no less serious for that particular child than any other form of bullying.

Education should not be included within the Directive, as its focus is the provision of goods and services. The case of *Humbel (263/86)*⁴⁰ found that education is not a service and that “Courses taught in a technical institute which form part of the secondary education provided under the national education system cannot be regarded as services for the purposes of Article 59 of the EEC Treaty” and that “The first paragraph of Article 60 of the EEC Treaty provides that only services ‘normally provided for remuneration’ are to be considered to be ‘services’ within the meaning of the Treaty”. (Article 60 is now known as Article 50 of the EC Treaty). This case is relevant because the present Directive covers goods and services and if education is not a service, it should be excluded and the Directive should state explicitly that it does not apply to any kind of education. The text of Article 3(3) of the Directive leaves open the possibility that the it may still be applied to education that does not fit within the exact wording of this section, for example private education or educational seminars provided by any other organisations including not-for-profit organisations or charities.

The inclusion of education imposes a politically-correct notion of what can and cannot be taught in private education that is not organised by the State and allows secularist European values to intrude upon our fundamental freedoms of religion and of expression in a manner that is totally out of proportion and unmerited. The full implications of including education in this Directive have not been properly considered.

b) Exclusion of the Content of Media and Advertising

The forerunner to this Directive was an earlier Directive on equal treatment in the provision of goods and services for men and women known as the Gender Directive.⁴¹ In Article 3(3) of the Gender Directive, both the media and advertising were excluded. This proposed Directive

is wider because it does cover these areas and so prohibits discrimination in the fields of media and advertising.

The Directive exposes TV and the press both to censorship and to allegations of harassment by journalists when interviewing or when reporting on issues of homosexuality or religion or belief. The defence of freedom of expression will not prevent allegations of discrimination being made or being used to intimidate Christian journalists and media professionals. The abolition of discrimination in the media and in advertising may result in the promotion of same-sex relationships to young children and the advertising of consumer products using homosexual couples. Such adverts may become commonplace across Europe as a result of this Directive, contrary to many parental sensibilities and religious beliefs.

The European Parliament did advise that the advertising and media sectors should be excluded from the scope of this Directive in its new Article 3(5a).⁴²

The impact of this Directive on the freedom of the press and editorial freedom of television has not been considered. Nor does it appear to be public knowledge.

c) Exclusion of Christian Businesses

The Directive also should not apply to commercial transactions where it would cause a conflict between the fundamental human rights of freedom of thought, conscience and religion and equal access to services. The EU authorities have not adequately respected religious rights and have advocated that the Directive should impact upon these fundamental rights in the context of business, so as to protect the right of equal access to services. A Christian printer can refuse to print leaflets for a political party he disagrees with. He should also be allowed to refuse to print material that offends his religious beliefs, for example, because it promotes homosexuality. Christians should be free to conduct their businesses according to their consciences.

APPENDIX VI

Overview of Changes to the EU Anti-Discrimination Directive Proposed by the EU Parliament on 1st and 2nd April 2009

The amendments to the Directive that were proposed by MEPs in their **advisory capacity**⁴³ seek significantly to extend the EU's anti-discrimination jurisdiction, including into areas that the Commission stated are best determined by Member States themselves. This includes the exemptions granted to Churches and other religious organisations, the rules governing marital or family status, adoption, "reproductive rights" and faith schools (i.e. the addition of extra conditions for faith schools that seek to restrict admissions to those of a particular faith).

The European Parliament has advised that the extent of anti-discrimination law should be expanded in several ways. Firstly, it wishes to extend the scope of the Directive so as to cover "multiple discrimination". Secondly, it also adds the concept of "discrimination by association", which refers to the situation where an individual is discriminated against because of their association with another person. Thirdly, it seeks to extend the concept of "discrimination by association" in a new paragraph 4a that has been added to Article 2, and in amendments to Article 2, paragraph 2, to include persons who are, or are "assumed" to be associated with such persons. Thus, a person may be accused of discrimination because they assumed someone was of a particular age, disability, religion or belief or sexual orientation even if they were not.⁴⁴ The European Parliament has also advised the insertion of a new Article 9a, which would require Member States actively to promote equality when "formulating and implementing laws, regulations, administrative provisions, policies and activities" in the areas that fall within the scope of the Directive.

The duty placed on Member States requiring them "actively [to] promote equality" is an entirely different concept from that of implementing the "principle of equal treatment" and is a much more assertive stance, which is meant to apply to all of the different equality strands and thus it does not respect the differences between them and the need for exceptions. It may be argued that the EU Parliament is seeking to turn public sector employees into a force of politically-correct Equality Officers by means of a Directive that contains no upper limit on civil compensation penalties. This is because the concept of the "promotion of equality" may require state-sector employees to promote other religions and sexual orientations such as homosexuality that are contrary to Christian beliefs. The recent cases discussed above in Appendix I have shown how the terms "equality" and "diversity" have been interpreted to require the promotion of values contrary to Christian beliefs. It is far beyond the competence of the European authorities to dictate to States that they should act in such a way. It seeks to impose European equality values on the peoples of Europe in place of Christian beliefs and values, which are undermined in consequence.

In the plenary session debate of the European Parliament on 1st April 2009, Italian MEP Marco Cappato (ALDE/Radicals) said that he was a "100%" in favour of freedom of religion, but contradicted this assertion by saying he was opposed to exceptions for religious institutions and churches.

This contrasts with Jim Allister, QC, MEP (Northern Ireland) who said:

Mr President, I will be voting against this report and this proposed directive for three reasons. First of all, I dissent from the belief that the EU, rather than national governments, should be legislating on these issues, believing every Member State is best placed to decide if it needs to strengthen such legislation. If ever there was a subsidiarity issue, this should be it.

My second reason is that the new offence of harassment has the alarming prospect of, in fact, curbing the rights in respect of freedom of speech and freedom of religion, particularly for those who proclaim a Christian message. Christians preaching the gospel, particularly in a public place to people of other faiths who take offence and who claim it is an assault on their dignity, could be breaching this law. Likewise, defending and promoting a biblical approach to heterosexual marriage could allow litigious gay rights activists to claim harassment.

The third reason is that the measures within the directive are disproportionate and inadequately balanced. It compels the Christian printer, for example, to accept an order to print material which offends his religious beliefs, whereas he should be free to conduct his business according to his conscience.

Without essential balancing mechanisms, this directive will become an instrument which in fact creates discrimination. Thus, to me, it is an unnecessary directive infringing basic rights, particularly of people of faith and conscience, and illustrates all that is over-reaching, meddling and wrong-headed within the EU.⁴⁵

a) National Decision-Making as Opposed to EU Decision-Making

These advisory changes proposed to the Directive by the European Parliament can be seen as going back on a promise that there are certain areas that Member States alone can determine without European interference. This promise is known as the principle of “subsidiarity” and is enshrined in Article 5 of the current version of the EC Treaty.⁴⁶ In a Communication from the Commission in July 2008 it was stated that:

The diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity. Issues such as the organisation and content of education, recognition of marital or family status, adoption, reproductive rights and other similar questions are best decided at national level. The draft Directive does not therefore require any Member State to amend its present laws and practices in relation to these issues. Nor does it affect national rules governing churches and other religious organisations and their relationship with the state. So, for example, it will remain for Member States alone to take decisions on questions such as whether to allow selective admission to schools, whether to recognise same-sex marriages, and the nature of any relationship between organised religion and the state.... The proposal therefore draws on practice in several Member States and includes provisions limiting its application to the commercial provision of goods and services. Private individuals are covered only in so far as they are performing their commercial activity.⁴⁷

The Explanatory Memorandum to the Proposed Directive on the Scope of Article 3 makes similar points.⁴⁸ However, even without the changes suggested by the European Parliament, there are many provisions of the original version of the Directive that do in fact breach the principle of subsidiarity.

On 1st and 2nd April, an amendment, number “81”, was tabled by MEPs in order to have the Directive rejected on the grounds of violating this principle of subsidiarity, namely that national competence should be used to decide issues rather than European authority and on the grounds of creating a disproportionate amount of red tape. Unfortunately, the amendment was unsuccessful, but it did receive a larger share of the European Parliament’s vote than did the vote to approve the Directive overall.

b) Safeguards for Churches and other Religious Organisations

If accepted by the Council, the change to Article 3(4) advised by the European Parliament would allow the reach of the Directive to extend to the activities of churches or other religious organisations “where [they] fall within EU competence”.⁴⁹ This amendment is also contrary to Declaration 11 of the Treaty of Amsterdam,⁵⁰ which affirms the respect of the EU for the status of such groups under national law. Churches and other religious organisations may well be unaware of the lack of protection for them, as well as the lack of exceptions applying to them in the proposed Directive. Yet the provisions in the Directive may result in Christian churches and other religious organisations being sued for refusing to promote homosexuality or Islam, contrary to their freedom of thought, conscience and religion, if it is argued that they (Christian churches and organisations) come within EU jurisdiction. There is no protection for a church’s right to restrict its membership or access to any of its activities even within the Directive as originally proposed. This contrasts with the Equality Act 2006, which does provide protections for religious organisations from interference by other religions or beliefs where they wish to restrict their activities, membership and the disposal of their premises in such a way as to avoid causing offence on the grounds of the religion or belief in question, or on the grounds of the purpose of the organisation.⁵¹ The lack of protections of this nature in the Directive may mean that churches will be required to offer both membership and Holy Communion to atheists and to non-believers.

The changes to the Directive appear to have been proposed on the ideological basis that no discrimination whatsoever should be allowed and that therefore there should be no exceptions. This mirrors a recent European Resolution⁵² that sees the balancing of such protective rights (including those relating to religion) as “escape clauses” that serve to “codify existing discriminatory practices” and reminds the European Commission⁵³ that the Directive must be in line with existing case-law in the area of lesbian, “gay”, bisexual and transgender (LGBT) people’s “rights”, notably the *Maruko* ruling⁵⁴. In our opinion, the *Maruko* ruling is an over-emphasised solitary case on pensions, which should not enjoy a wider application or legitimacy than the particular application of equal treatment to the pension scheme that was being considered in that case.

Refusing to provide proper balances or protections in the Directive flies in the face of a comparative study conducted across Europe in 2006, which found that many countries in the EU already permit broad exceptions designed to respect freedom of religion, when passing national measures to combat discrimination outside the field of employment law.⁵⁵

c) The Status of Marriage and the Family

The Commission stated as recently as last year that the “recognition of marital or family status, adoption, reproductive rights and other similar questions are best decided at national level.”⁵⁶ The European Parliament advises in its amendments to recital 17⁵⁷ and article 3(2),⁵⁸ that the

exception for national determination of marriage or family status including reproductive rights should be removed and replaced by an overall promotion of EU determination in every area of the Directive. It actually says that this does not alter the division between EU competence and Member State competence. However, it is clear that recital 17 and article 3(2) will provide a basis for arguing that these areas of family life are now within the competence of the EU, especially when combined with the *Maruko* case,⁵⁹ which applied the principle of equality to the question of same-sex couples' pension rights.

This loss of national protections for the status of marriage and the family is likely to force religious adoption agencies to close across Europe with a loss of respect for the diversity of the religious views in each State on such issues. In the field of "reproductive rights", it may well lead to 2-mother families being given IVF treatment, thus ignoring the child's need for a father (which has already happened as a result of legislation in the UK),⁶⁰ as well as adoption and fostering by same-sex couples being allowed throughout the European Union. This does not respect the religious diversity amongst Europe's nations.

Even without these changes, the Explanatory Memorandum for the Directive⁶¹ states, "Member States remain free to decide whether or not to institute and recognise legally registered [civil] partnerships. However, once national law recognises such relationships as comparable to that of spouse[s]... the principle of equal treatment applies." From a religious point of view, marriage and same-sex civil partnerships are not equivalent; the former is a legal and religious ceremony and institution, the latter a legal matter only – and one that is treated differently in law. Assurances were given in the UK when same-sex civil partnerships were introduced that they were not a backdoor to same-sex marriage. Case law in the UK has refused to recognise foreign same-sex "marriages" as marriages under English law due to the difference in legal vehicles used for civil partnerships vis-à-vis marriages and because in English and Irish case law marriage is recognised as being between a man and a woman.⁶² The original version of the Directive may well lead to "gay" marriage contrary to religious beliefs in Holy Matrimony and the changes proposed by the European Parliament—if accepted—make this even more likely. Negotiations for this Directive are likely to be completed under the Swedish Presidency. In Sweden, "gay" marriages have been allowed in a civil or religious ceremony from 1st May 2009.⁶³

"Equality" should mean respecting the diversity of values and beliefs, but the European and secularist interpretations of the term have been used to oppress the church and to marginalise Christian values. This same interpretation may well lead to the closure of Roman Catholic adoption agencies across Europe as it has done in Great Britain.

In our opinion, to clarify matters and avoid confusion between areas of national and EU competence, the Directive should state clearly that it does not apply to laws on the status of marriage or the family, including reproductive rights. A proposed Recital may improve the situation by stating that: "This Directive does not apply to matters covered by family law including marital status and adoption, and laws on reproductive rights". The *Maruko* case allowed a Recital to be over-ruled, so it is important that this exclusion is stated clearly in both the Recitals, and more importantly within the enabling Articles, without any provisos on national or European competences in these matters. This is because there is an increasing pressure to extend European competences and arguing that there is no alteration of competences just serves to allow a loophole to exist. It is far better to have a simple outright exclusion in both the Recitals and the Articles.

d) Education and Admissions to Faith Schools

The original version of the Directive correctly allowed national competence to prevail regarding differences in the admissions policies of educational institutions based on religion or belief. The European Parliament suggested the amendment in Recital 18, which adds several provisos so that educational institutions:

- may restrict access only on the basis of objective justifications,
- must act in good faith and with loyalty to the organisation's ethos,
- may not justify discrimination on any other ground, and
- must ensure that there are alternative educational institutions that are geographically accessible and form a reasonable alternative to them, in order to prevent indirect discrimination.

Also, Member States must ensure that these exceptions do not lead to “a denial of the right to education”.

Changes advised by the European Parliament to Article 3(3) also permit Member States to allow for differences in access to such establishments to maintain their particular character and ethos, provided that the right to education is not infringed and that the application of this exception does not justify discrimination on any other grounds. Please see this link for details of the relevant part of the proposed Directive and the changes to it advised by the European Parliament.⁶⁴

If passed, Article 3(3) would mean that pupils could be admitted who are prepared to be loyal to the establishment's ethos even though they are not necessarily committed to it, so non-Christians could be admitted. “Not justifying discrimination on any other ground” together with the geographical considerations, could extend access to secularists, atheists and the non-religious. Such EU provisions may ultimately lead to the destruction and dilution of the ethos of faith schools and are likely to destroy the principle that parents must be able to choose to have their children educated according to their religious beliefs in every European Member State. Removing the means by which these schools of religious character protect and enhance their valued ethos may well destroy them. The suggested changes, with all their different provisos and few exceptions, would also be cumbersome and difficult to implement.

These advisory amendments appear to infringe the exceptions in Article 2(b) of the Convention against Discrimination in Education, which allow for religious or linguistic discrimination in schools in keeping with parental wishes and do not contain such provisos.⁶⁵ They also appear to suggest that Member States should pass laws that would contravene Article 18 of the International Covenant on Civil and Political Rights 1966, (a General Assembly Resolution of the United Nations that was ratified by the UK on 20th August 1976.⁶⁶ Article 18(4) orders signatory Governments to respect “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”.⁶⁷ They also appear to be contrary to the EU Charter of Fundamental Rights (Article 14(3)),⁶⁸ which states that parents have the right to “ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions.” The Directive claims to respect the Charter in its Recital 3.

Member States can accept or reject any of the changes advised by the European Parliament through the Council of the European Union. All Member States must agree a single final text in order for the Directive to be passed.

References

¹ Proposal for a Council Directive on implementing the principle of equal treatment..., 2008/0140 (CNS); {SEC(2008) 2180; 2181} Commission of the European Communities (2nd July 2008). The Directive can be found at the following link (from page 13):

[http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com\(2008\)426_/com\(2008\)426_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com(2008)426_/com(2008)426_en.pdf).

² See debate on 1st April 2009 and text adopted on 2nd April 2009:

<http://www.europarl.europa.eu/activities/plenary/home.do?date=20090403&tab=LAST&language=EN>. The Amendments that were voted on are listed here:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0211+0+DOC+XML+V0//EN&language=EN>. A roll call was taken of MEPs' votes on this Directive on 2nd April 2009. 3 overall votes are relevant. To ascertain an MEP's views, please see the link below to answer the following questions:

• Firstly did the MEP vote in favour (+) of amendment 81 to reject the Directive due to red tape and violating National decision making as opposed to EU decision making (subsidiarity) (Please see pages 41 to 42)

• Secondly did an MEP vote against (-) the Directive (the amended proposal)? ((Please see pages 77 to 78)

• Thirdly did an MEP vote against (-) the Directive (the legislative resolution)? (Please see pages 79 to 80).

Key to symbols: in favour (+), against (-), abstention (0). Note also that there is a table of corrections to votes at the end of the document. The votes can be found at this link:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+PV+20090402+RES-RCV+DOC+PDF+V0//EN&language=EN>.

³ The European Convention on Human Rights, for example, guarantees individuals the right to prior notice of what constitutes prosecutable criminal conduct. European Convention on Human Rights *opened for signature* Nov. 5, 1950, Arts. 6 and 7, Europe. T.S. No. 5, [hereinafter "ECHR"]. To access the ECHR on the web, click here: <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>.

⁴ The vagueness of other phrases in the Directive also raises issues concerning lack of adequate notice. For example, the vagueness of the phrase "sexual orientation" fails to provide adequate notice of that which the Directive prohibits. Nothing in the Directive's promulgated classification suggests the "sexual orientation" of the relevant group is limited to humans of the same sex (i.e., homosexuals). Sexual orientation, though, comes in many forms. In addition to the group presumed to be protected in the instant case, does the Directive cover other groups of people with other sexual orientations? Does it cover, for example, a sermon about the conduct of a group of people whose sexual orientation is for extramarital sex (swingers/adulterers)? Does it cover discussion about the conduct of a group of people whose sexual orientation is for multiple partners within a marital relationship (polygamists)? What about a group of people whose sexual orientation is for young children (paedophiles)? Does it cover a group of people whose orientation is toward violence (e.g., serial killer rapists)? What about people whose sexual orientation is for dead humans (necrophilia)? What about people whose sexual orientation is for barnyard animals (bestiality)? Or those whose sexual orientation is toward one's own close relatives (incest)? Given the absence here of any statutory definition, the ambiguous language of the Directive arguably includes any and all such groups. Will an otherwise law abiding citizen, therefore, face prosecution for calling paedophilia or necrophilia bad?

⁵ The fact that other legal provisions, including Directives, already follow this unfair model does not mean that such unjust practices should continue.

⁶ Unless, of course, such restrictions are "necessary in a democratic society in the interest of national security or public safety". See Article 11 of the European Convention on Human Rights.

⁷ The agenda behind the compliance provision is exposed by its exceptions. The compliance provision allows for different treatment where the measures are designed to prevent or compensate for disadvantages suffered by those groups, or to promote the special needs of those groups (see Art. 5 and Recital 21).

⁸ Indeed, no limits exist as to the persecution the proposals could lead to:

- Faith schools having to admit non-Christians, thus challenging the criterion of admission based on faith or membership of a local church.
- Christian churches being sued for refusing Holy Communion or Baptism to non-Christians or practising homosexuals on the basis that they may have "discriminated against" such people on the grounds of "religion or belief" or "sexual orientation".

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- A demand for same-sex marriages in churches.
 - The loss of exemptions for religious organisations to act according to conscience in refusing activities to those of other religions or beliefs.
 - Christian churches and volunteers having to promote Islam and homosexuality contrary to members' beliefs.
 - Christian preachers finding themselves subject to harassment allegations simply for preaching on religious beliefs and/or sexual ethics where this offends the dignity of the non-religious or those of a different faith or of a homosexual orientation.
 - The loss of Christians' jobs across Europe as employers seek to follow the Directive by not discriminating in the provision of goods and services, even in minor areas that strongly conflict with their employees' religious beliefs. The Directive is likely to compel them to respect the diversity of customers' beliefs rather than to provide reasonable accommodation for the freedom of conscience and of religion of Christian staff.
 - European citizens disrespecting Christian values and beliefs, not only in a Church context, but also in every walk of life through the provision of goods and services.
 - Christians being sued (without the reassurance of an upper limit for civil compensation) for practising their beliefs, not only in church but also in their businesses.
 - Diminishment in the status of faith schools, the traditional family, marriage, Christian adoption agencies, churches and all religious organisations.
 - The adoption of reproductive "rights" (access to abortion and contraception).
 - The media and advertising suffering from a chilling effect on free speech and censorship and having to tread carefully to avoid accusations of harassment on the grounds of "religion or belief" or "sexual orientation".
 - The content of all educational provision outside the normal education system, such as seminars by faith-based or traditionalist charities or not-for-profit organisations becoming subject to a form of censorship, whereby they must eradicate every form of discrimination, whether good or bad. This in turn is likely to lead to legal action being taken against such bodies and thus have implications for academic freedom.
 - Christians being sued for harassment merely for explaining their faith to those of another religion or belief or sexual orientation in the context of providing goods or services to the public with this possibility being increased by the prospect of multiple discrimination claims, that is, discrimination on combined grounds.
 - The undermining of Christian values and beliefs and the oppression of those who hold politically-incorrect beliefs on equality, thus ignoring the diversity of European values and beliefs.
 - Every Member State coming under a duty actively to promote equality between persons, not only at the level of passing primary legislation, but also when formulating regulations, administrative provisions and measures in all areas covered by the Directive, according to Article 13.
 - See also the following articles on the Directive in *The Daily Telegraph*:
<http://www.telegraph.co.uk/news/newstoppers/religion/5140959/EU-directive-could-open-up-faith-schools-to-non-believers.html> and <http://www.telegraph.co.uk/comment/5141437/Christians-face-a-new-persecution.html>.

⁹ See: <http://www.ccfon.org/view.php?id=684>.

¹⁰ See: <http://www.ccfon.org/view.php?id=689>.

¹¹ See: <http://www.ccfon.org/view.php?id=685>.

¹² See: <http://www.ccfon.org/view.php?id=671>.

¹³ See: <http://www.ccfon.org/view.php?id=182>.

¹⁴ See: <http://www.ccfon.org/view.php?id=37>.

¹⁵ See: <http://www.ccfon.org/view.php?id=669>.

¹⁶ See: <http://www.ccfon.org/view.php?id=716>.

¹⁷ See: <http://www.christianlegalcentre.com/view.php?id=723>.

¹⁸ See: <http://www.christianlegalcentre.com/view.php?id=729>.

¹⁹ These were reported on 17th July 2009 with slight changes suggested, which were reported on 7th September 2009.

²⁰ See: The Council of the European Union, Brussels, Progress Report, 2nd June 2009 at: <http://register.consilium.europa.eu/pdf/en/09/st10/st10073-re01.en09.pdf>.

²¹ See: The Council of the European Union, Brussels, 10th July 2009, Note from the Presidency of 17th July 2009 at: <http://register.consilium.europa.eu/pdf/en/09/st11/st11774.en09.pdf>.

²² See: Annex A, from page 26 of the GEO Consultation Document, which provides the text of the proposed Equal Treatment Directive published in July 2008. See especially pages 26 to 32 on the Recitals and Pages 32 to 40 on the Articles at: http://www.equalities.gov.uk/pdf/GEO_EqualTreatment_final.pdf.

²³ See: <http://www.telegraph.co.uk/news/newstoppers/religion/3999004/Care-home-for-elderly-Christians-in-gay-row.html>.

²⁴ See: pages 22 and 61 of the DH Guidance: *Religion or Belief: a practical guide for the NHS* at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093133.

This guide has not been withdrawn despite press criticism:

<http://www.telegraph.co.uk/news/newstoppers/religion/4530384/NHS-staff-face-sack-if-they-discuss-religion.html>.

²⁵ See: <http://www.telegraph.co.uk/news/newstoppers/religion/5560105/Witches-coven-claims-religious-persecution-after-church-hall-ban.html>.

²⁶ See: Presidency Note reported on 17th July and 7th September 2009 at:

<http://register.consilium.europa.eu/pdf/en/09/st11/st11774.en09.pdf> and

<http://register.consilium.europa.eu/pdf/en/09/st12/st12792.en09.pdf> respectively.

²⁷ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

²⁸ See: *Belgian State v René Humbel and Marie-Thérèse Edel*. Case 263/86 at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61986J0263:EN:HTML>.

²⁹ See Article 3(3) of the Gender Directive which simply states that:

3. *This Directive shall not apply to the content of media and advertising nor to education.*

Recital 13 of the Gender Directive also states that the prohibition of discrimination:

...should not apply to the content of media or advertising nor to public or private education.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

³⁰ The *Humbel* case refers to public purse matters in relation to Article 50 of the EC Treaty (previously Article 60).

³¹ See Case C 303/06, *Coleman v. Attridge*, judgment of 17 July 2008, not yet reported.

³² See Gender Directive Article 3(3) and Recital 13: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

³³ See the cases listed here: <http://www.christianlegalcentre.com/search.php>.

³⁴ See Case C-267/06 *Tadao Maruko Versorgungsanstalt der deutschen Bühnen* at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0267:EN:HTML>.

³⁵ See: <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>.

³⁶ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

³⁷ See page 70 at: <http://www.communities.gov.uk/documents/corporate/pdf/565863.pdf>.

³⁸ See: http://www.stonewall.org.uk/education_for_all/research/1790.asp.

³⁹ See: http://www.bullying.co.uk/parents/National_Bullying_Survey_2006/Children.aspx.

⁴⁰ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61986J0263:EN:HTML>.

⁴¹ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

⁴² See: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0211&language=EN&ring=A6-2009-0149>.

⁴³ See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+20090402+ITEMS+DOC+XML+V0//EN&language=EN#sdocta16>. Scroll $\frac{3}{4}$ of the way down to see the original text and the advisory amendments to the Proposed Directive.

⁴⁴ See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+20090402+ITEMS+DOC+XML+V0//EN&language=EN#sdocta16>. Scroll $\frac{3}{4}$ of the way down to see the original text and the advisory only amendments to the Proposed Directive, in particular see amendments 7, 12, 16, 10 and 23, 32, 37, 38 and 41.

⁴⁵ See the report of the debate of 1st April 2009 relating to *Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation* at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090401+ITEM-014+DOC+XML+V0//EN&language=EN>.

⁴⁶ For the Consolidated Version of the Treaty Establishing the European Community, see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf>.

⁴⁷ See the related link for the *Communication on Non-discrimination and Equal Opportunities: A Renewed Commitment* at page 5: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=373>.

⁴⁸ See pages 8 and 9 at:

[http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com\(2008\)426_/com\(2008\)426_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com(2008)426_/com(2008)426_en.pdf).

⁴⁹ In Article 3(4) The Proposed Directive reads:

This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, 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. (Our emphasis).

The European Parliament has advised that should be changed to:

This Directive shall not apply to national law ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status, activities and legal framework of churches and other organisations based on religion or belief where this falls outside the competence of the EU. Where the activities of churches or other organisations based on religion and belief fall within EU competence, they shall be subject to the Union's non-discrimination provisions. It is equally without prejudice to national legislation ensuring equality between males and females. (The words in bold are the ones suggested by the European Parliament).

⁵⁰ See the Treaty of Amsterdam at p. 15: <http://www.eurotreaties.com/amsterdamfinalact.pdf>.

⁵¹ See section 57 of the Equality Act 2006:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_5#pt2-pb4-11g57.

⁵² See the Report on the situation of fundamental rights in the European Union 2004-2008:

[http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0479+0+DOC+PDF+V0//EN&language=EN)

[0479+0+DOC+PDF+V0//EN&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0019+0+DOC+XML+V0//EN&language=EN). See also the resolution supported by MEPs in January, which corresponds to the above report: *European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008* at paragraph 60: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0019+0+DOC+XML+V0//EN&language=EN>. See the *Daily Mail* report showing how the motion was supported: <http://www.dailymail.co.uk/news/worldnews/article-1116402/European-MPs-pass-resolution-critics-say-promote-abortion-homosexual-marriage.html>.

⁵³ The European Commission is the executive organ of Government of the EU.

⁵⁴ See Case C-267/06 *Tadao Maruko Versorgungsanstalt der deutschen Bühnen*, paragraph 38, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0267:EN:HTML>.

⁵⁵ See the *Comparative study of discrimination outside the area of employment* which was originally located at this link, but has now been removed from the website:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf.

⁵⁶ See: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=373>. See the “related link” on the right-hand side of the page to access the *Communication on Non-discrimination and equal opportunities: A renewed commitment*.

⁵⁷ See amendment 28 (the provisional edition of the text as at 6th April 2009) at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0211&language=EN&ring=A6-2009-0149>.

⁵⁸ See amendment 50 (the provisional edition of the text as at 6th April 2009) at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0211&language=EN&ring=A6-2009-0149>.

⁵⁹ See Case C-267/06 *Tadao Marukov Versorgungsanstalt der deutschen Bühnen* at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0267:EN:HTML>.

⁶⁰ See: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_080205.

⁶¹ See the Explanatory Memorandum prior to the proposal regarding Article 3, at page 8:

[http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com\(2008\)426_/com\(2008\)426_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/com(2008)426_/com(2008)426_en.pdf).

⁶² See: <http://www.bailii.org/ew/cases/EWHC/Fam/2006/2022.html> and

<http://www.bailii.org/ie/cases/IEHC/2006/H404.html>.

⁶³ See: <http://news.bbc.co.uk/1/hi/world/europe/7978495.stm>.

⁶⁴ In Recital 18, the Directive states that:

...national law may provide for differences in access to educational institutions based on religion or belief. Member States may also allow or prohibit the wearing or display of religious symbols at school. (Our emphasis).

The European Parliament has advised that this should be changed to:

...Member States may allow, only on the basis of objective justifications, for differences in access to educational institutions based on religion or belief when requiring individuals to act in good faith and with loyalty to the organisation's ethos, provided that this does not justify discrimination on any other ground and that other educational institutions are geographically accessible and form a reasonable alternative, in order to prevent indirect discrimination. Member States shall ensure that this does not lead to a denial of the right to education. (The words in bold are the ones suggested by the European Parliament).

In Article 3(3) the Directive states that:

...Member States may provide for differences in treatment in access to educational institutions based on religion or belief. (Our emphasis).

The European Parliament has advised that this should be changed to:

...Member States may allow for differences in access to educational institutions based on religion or belief, so as to maintain the particular character and ethos of such establishments and a plurality of educational systems, provided that this does not represent an infringement of the right to education and does not justify discrimination on any other grounds. Member States shall ensure that this does not lead to a denial of the right to education. (The words in bold are the ones suggested by the European Parliament).

⁶⁵ See: http://www.unesco.org/education/pdf/DISCR1_E.PDF.

⁶⁶ See: <http://www2.ohchr.org/english/law/ccpr.htm>.

⁶⁷ See: <http://www2.ohchr.org/english/law/ccpr.htm>.

⁶⁸ See: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.