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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10626/22
No. Cion doc.:	11531/08 - COM(2008) 426 final
Subject:	Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

I. INTRODUCTION

At its meeting on 18 July 2022, the members of the Working Party on Social Questions continued the examination of the above proposal, based on a steering note prepared by the Czech Presidency.¹ The discussion focused on the disability provisions, specifically, 1) the compatibility of the latest text with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and 2) the question as to whether a temporary exemption from the requirement to provide reasonable accommodation to persons with disabilities was needed, given that the text already included the rule that reasonable accommodation does not have to be provided if doing so would cause an undue or disproportionate burden.

¹ Doc. 10626/22. The latest text appears in doc. 8549/21.

II MAIN ITEMS DISCUSSED

1. Question 1 presented by the Presidency:

Do you regard the provisions granting the Member States the right to request a temporary exemption from the requirement to provide reasonable accommodation as compatible with the UNCRPD? Please set out your reasoning in explicit terms.

2. Question 2 presented by the Presidency:

Do you see a need for such an exemption given that the proposal already includes the rule that reasonable accommodation does not have to be provided if it causes an undue or disproportionate burden? If yes, please explain further.

A clear majority of delegations (SE, FR, NL, IE, CY, FI, SK, PL, MT, BE, EE, AT, ES, LU, BG, SI and HR) expressed the view (in some cases, preliminary) that such an exemption was both incompatible with the UNCRPD and unnecessary. A number of delegations stressed the fact that other parts of the text already contained the necessary safeguards by stipulating that reasonable accommodation must only be provided if it does not impose a disproportionate burden. Other considerations mentioned included the following:

- the importance of providing reasonable accommodation in the context of ensuring the right to work for persons with disabilities (FR);
- the lack of clarity in Article 15, including the criteria that the Commission would use in assessing temporary exemptions, and its competence in the matter; a possible alternative might be to exempt Member States from penalties applicable under the Directive (FI);
- the fact that the obligation to provide reasonable accommodation is an individualised, reactive obligation assessed case by case (SK);

- the importance of ensuring legal certainty at the EU level in this area (BE); and
- the possible need for more time for introducing the national legislation regarding reasonable accommodation (AT, LU).

On the other hand, BG and RO supported exploring the idea of the suggested exemption, while also acknowledging the need for further work with a view to ensuring compatibility between the UNCRPD and the proposed Directive.

LV, IT and LT took more open positions, and stressed, respectively, the need for flexibility in order to manage the financial burden that would arise from the Directive (LV); the need for exemptions to be strictly exceptional and time-bound (IT), limited and focused (LT). While acknowledging the need to ensure coherence with the UNCRPD, PT also expressed a willingness to discuss different options with a view to finding a solution, unanimity being required before the Directive could be adopted. FI also signalled that flexibility might be needed in order to reach unanimity.

DK expressed the view that the current draft struck a reasonable balance between the rights of persons with disabilities and the need to avoid imposing a disproportionate burden, and that assessing the possible need for an exemption would need to be decided in the light of further analysis of the rights that flowed from the Directive.

The Commission stated that, if no temporary exemption was needed for the sake of unanimity, it preferred not to have any. Echoing FI, the Commission also noted that the proposed mechanism would also be problematic as currently drafted because it empowered the Commission to authorise exemptions. The conditions for any exemption should, according to the Commission, be included in the Directive itself.

III. OTHER ISSUES

BE also regretted the removal of the accessibility provisions from the draft Directive and expressed a preference for a horizontal approach, progressive implementation and longer deadline than five years for ensuring accessibility in new buildings. ES also regretted the removal of the accessibility provisions. The Commission explained that the Directive under discussion, being focused on discrimination, was not the right place for concrete accessibility provisions within the material scope.

DK entered a parliamentary scrutiny reservation.

PL reaffirmed its general reservation on the proposal.

All delegations have general scrutiny reservations at this stage of the negotiations.

IV. CONCLUSION

Delegations were invited to send in written comments by 31 July.

The Presidency undertook to reflect on the way forward on the basis of the discussion.

A set of new drafting suggestions will be tabled for examination by the Working Party on 30 September 2022.
