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REPORT

From:	Presidency
To:	Permanent Representatives Committee / Council
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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>Progress Report</i>

I. INTRODUCTION

On 2 July 2008, the Commission adopted a proposal for a Council Directive aiming to extend the protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation to areas outside employment. Complementing existing EC legislation¹ in this area, the proposed horizontal equal treatment Directive would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; education; and access to goods and services, including housing.

¹ In particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

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A large majority of delegations has welcomed the proposal in principle, many endorsing the fact that it aims to complete the existing legal framework by addressing all four grounds of discrimination through a horizontal approach.

Most delegations have affirmed the importance of promoting equal treatment as a shared value within the EU. In particular, several delegations have underlined the significance of the proposal in the context of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). However, some delegations would have preferred more ambitious provisions in regard to disability.

While emphasising the importance of the fight against discrimination, certain delegations have questioned the need for the Commission's proposal, which they have seen as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality. Certain delegations have also requested clarifications and expressed concerns relating, in particular, to the lack of legal certainty, the division of competences, and the practical, financial and legal impact of the proposal.

Two delegations have maintained general reservations on the proposal as such.

For the time being, all delegations have maintained general scrutiny reservations on the text.

CZ and DK have maintained parliamentary scrutiny reservations. The Commission supports the search for a compromise, while maintaining a scrutiny reservation on any changes to its original proposal at this stage.

The European Parliament adopted its Opinion on 2 April 2009² under the Consultation Procedure. Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal now falls under Article 19 of the Treaty on the Functioning of the European Union; thus unanimity in the Council is required, following the *consent* of the European Parliament.

² See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) has been appointed Rapporteur by the current Parliament.

II. THE COUNCIL'S WORK UNDER THE SWEDISH PRESIDENCY

Following on from the discussions that had taken place in 2021 and 2022, which largely focused on the disability provisions,³ the Working Party on Social Questions⁴ continued its examination of the file based on a steering note⁵ tabled by the Swedish Presidency.

In its steering note, the Presidency invited delegations to indicate whether they saw a need for further clarification of certain key provisions concerning *the concept of discrimination* (Article 2), *the scope* (Article 3) and *reasonable accommodation for persons with disabilities* (Article 4a).

A large number of delegations saw no need for further clarification of the above elements. One delegation reiterated its view that the proposal did not respect the principle of subsidiarity. Others saw a need for further work on the three issues, as well as on other parts of the text. The main issues raised during the discussion included the following:

Article 2 – Concept of discrimination

One delegation called for the concept of discrimination to be more clearly defined, so as to avoid legal uncertainty and the need for the Court of Justice of the European Union (CJEU) to interpret the notion in the future.

Certain delegations wished to see the concept of *discrimination on multiple grounds* (including intersectional discrimination) clarified in the articles as well as in the recitals.⁶

Certain delegations called for the notions of *discrimination by association* and *discrimination based on assumptions* to be restored to the text.

One delegation wished to see the scope of the Directive extended to cover gender identity and gender expression alongside sexual orientation.

³ See docs. 9109/21, 14046/21 and 13070/22.

⁴ A meeting took place on 11 May 2023.

⁵ Doc. 8468/23.

⁶ See also Recital 12ab.

Certain delegations saw a need to clarify the provisions concerning permissible differences in treatment in the provision of financial services based on age or on a health condition that may be linked to a person's disability, including in the context of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

Article 3 – Scope

One delegation called for the provisions regarding “age” to be clarified so as to avoid legal uncertainty and the need for the CJEU to interpret those provisions in the future.

One delegation called for the qualifying reference to national “legal traditions” to be deleted, with a view to ensuring respect of the primacy of EU law (Article 3(1)). One delegation also questioned the exclusion of social security entitlements related to marital status from the scope of the Directive.

Article 4a – Reasonable accommodation for persons with disabilities

Certain delegations saw a need to clarify the specific rights and exemptions arising from the provisions concerning reasonable accommodation, including the concept of a disproportionate burden. Recalling the importance of maintaining consistency with the UNCRPD, several delegations also warned against any watering down of the disability provisions, including the longer deadline foreseen for the implementation of the requirement to provide reasonable accommodation (Article 15(2)). One delegation called for the accessibility provisions to be reintroduced in the text.

One delegation also pointed out the need to delete or align Article 12 in the light of the ongoing discussion on the proposed Directives on standards for Equality Bodies.

The Commission representative stressed the need to keep the ambition as regards the protection against discrimination on the grounds of disability and expressed the view that the Directive must, to the extent possible, be interpreted in a manner consistent with the UNCRPD. As regards accessibility, the Commission representative noted that the provision in the original proposal stating that the Directive is without prejudice to provisions of Union law covering accessibility in respect of particular goods or services, was maintained in the current text (Article 4a(4)). As regards the deletion of the provisions on effective non-discriminatory access, the Commission representative also recalled that it was necessary to ensure that this change would not reduce the protection of persons with disabilities in the areas covered by the Directive.

III. CONCLUSION

A large number of delegations reaffirmed their strong support for the proposal and its rapid adoption, many of them indicating that they could support the Directive as currently drafted. The Commission representative stressed that the Commission continued to view the adoption of the proposal as a priority and was willing to continue to support the negotiations, so as to make progress on the file. In the light of the time that has elapsed since the proposal was first tabled, several delegations also called for discussions at the political level with a view to breaking the deadlock, if possible.

While certain progress has been made during the latest discussions, which once again showed that the draft Directive is broadly supported, there is clearly a need for significant further work before the required unanimity can be reached in the Council.