



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 April 2009

8321/09

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OPINION OF THE LEGAL SERVICE *

Subject: Proposal for a Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (doc. 12892/2/08 REV 2)
- Legal basis

I. INTRODUCTION

1. The Working Party on Human Rights has asked the Council Legal Service for a written opinion on whether the Commission has proposed the correct legal bases for the draft Council Decision concerning the conclusion, by the European Community, of the UN Convention on the Rights of Persons with Disabilities ("the Convention"). The Commission has based its proposal on the following provisions of the EC Treaty: Articles 13, 26, 47(2), 55, 71(1), 80(2), 89, 93, 95, and 285, in conjunction with the 2nd sentence of the 1st paragraph of Article 300(2) and the 1st paragraph of Article 300(3).
2. **DELETED**

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3. **DELETED** According to the case-law of the Court of Justice, the choice of the legal basis for a Community measure must be based on objective factors which are amenable to judicial review and which include, in particular, the examination of the aim and the content of the measure.¹ Furthermore, if the measure pursues a twofold purpose or has a twofold component, and if one of those is the main or predominant purpose or component, whereas the other is merely incidental, this measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.² Only exceptionally, if it is established that the act simultaneously pursues a number of objectives that are inextricably linked, without one being secondary and indirect in relation to the other, may such an act be founded on the various corresponding legal bases if these legal bases are "compatible".³

II. AIM AND CONTENT OF THE CONVENTION

4. The aim of the Convention is stated in Article 1: "*The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity*".⁴

¹ See, for example, Case C-440/05, para. 61, Case C-155/91, para. 7, and Case C-42/97, para. 36.

² See, for example, Case C-338/01, para. 55.

³ See Case C-42/97, para. 38, Opinion 2/00, para. 23, and Cases C-94/03 and 178/03, paras. 36 and 43 respectively. See also the Legal Service note on the latter two cases in doc. 6548/06.

⁴ Underlining added. See also para. c) of the Preamble to the Convention: "*Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination*".

Article 3 specifies that: "*The principles of the present Convention shall be: (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) non-discrimination; (c) full and effective participation and inclusion in society; (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*"

5. As to the content of the Convention, its Article 4 defines general obligations for implementation of the Convention, and Article 5 prohibits all discrimination on the basis of disability, whilst permitting specific measures necessary to accelerate or achieve de facto equality of persons with disabilities (Article 5(4): positive discrimination).

The remaining substantive provisions of the Convention set out a series of specific rights and other measures for the benefit of persons with disabilities. The rights set out may be broadly divided into two those which are considered to be political and civil rights and those which are generally considered to be social, economic and cultural rights.

The political and civil rights are the following: right to life (Article 10), equal recognition before the law (Article 12), access to justice (Article 13), liberty and security of person (Article 14), freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15), freedom from exploitation, violence and abuse (Article 16), respect for the physical and mental integrity of the person (Article 17), liberty of movement and nationality (Article 18), freedom of expression and opinion (first part of Article 21), respect for privacy (Article 22(1)), respect for home and the family (Article 23), and participation in political and public life (Article 29).

The social, economic and cultural rights can be summarised as follows: rights for women with disabilities (Article 6), for children with disabilities (Article 7), accessibility to transport and other services (Article 9), rights in situations of risk and humanitarian emergencies (Article 11), the right to living independently and being included in the community (Article 19), the right to personal mobility (Article 20), the right to access to information (Article 21, 2nd part), the right to data protection (Article 22, 2nd sentence), the right to education (Article

24), the right of access to health care (Article 25), the right to habilitation and rehabilitation services (Article 26), the right of access to work and employment (Article 27), the right to an adequate standard of living and social protection (Article 28), the right to participation in cultural life, recreation, leisure and sport (Article 30), and the right to protection with regard to statistics and data collection (Article 31).

6. Many provisions of the Convention also include measures that do not constitute precise legal obligations but are rather aimed at encouraging positive attitudes towards persons with disabilities, e.g. through raising awareness in society and combating stereotypes. Measures envisaged for such purpose include public awareness campaigns and encouraging positive presentation in the media of persons with disabilities (e.g. Article 8 on awareness-raising). Equally, the Convention specifies in many cases, with regard to the rights that it sets out, that these rights are to be secured not only through legislative and administrative measures but also through social, educational and other measures (see e.g. Art. 16(1) concerning protection against exploitation and violence).

III. **DELETED**

8. **DELETED**

9. Article 13(1) EC reads as follows: "*Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred upon it by the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*".

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10. **DELETED**

11. **DELETED**

12. Article 13(2) EC allows for the Community to adopt "*incentive measures*" to support action taken by the EU Member States in order to contribute to the achievement of the objectives in Article 13(1). Article 13(2) specifies that such measures cannot involve any harmonisation of the laws and regulations of Member States.

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13. **DELETED**

14. Article 95 EC refers to the adoption of "*measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market*". **DELETED**

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16. **DELETED**

17. **DELETED**

18. The other legal bases proposed by the Commission for the decision on the conclusion of the Convention are Articles 26 EC (common customs tariff), Article 47(2) EC (freedom of establishment), Article 55 EC (freedom to provide services), Article 71(1) EC (common transport policy), Article 80(2) EC (sea and air transport), Article 89 EC (State aids), Article 93 EC (VAT and other indirect taxation) and Article 285 EC (statistics).
19. **DELETED**

20. **DELETED**
