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NOTE

from : The Presidency
to : The Working Party on Social Questions
on : 18 March 2010

No. prev. doc. : 6847/10 SOC 157 JAI 165 MI 67
No. Cion prop. : 11531/08 SOC 411 JAI 368 MI 246

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

Delegations will find attached a set of Presidency drafting suggestions concerning Articles 4, 4a, 4b and 15 and Recitals 19b-20c of the above proposal.

Changes in relation to the previous version (doc. 16063/09 ADD 1) are indicated as follows: new text is in **bold**, and deletions are marked "[...]".

Recitals 19b - 20c

(19b) Measures to ensure accessibility for persons with disabilities, on an equal basis with others, to the areas covered by this Directive play an important part in ensuring full equality in practice. Such measures should include the identification and elimination of obstacles and barriers to accessibility. They should not impose a disproportionate burden.

(19c)

(19d) Improvement of accessibility can be provided by a variety of means, including application of the "universal design" principle. **According to the United Nations Convention on the Rights of Persons with Disabilities**, "universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest possible extent, without the need for adaptation or specialised design. "Universal design" should not exclude assistive devices for particular groups of persons with disabilities where this is needed.

(20) Legal requirements¹ and standards on accessibility have been established at European level in some areas while Article 16 of Council Regulation 1083/2006 of 11 July 2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999² requires that accessibility for disabled persons is one of the criteria to be observed in defining operations co-financed by the Funds. The Council has also emphasised the need for measures to secure the accessibility of cultural infrastructure and cultural activities for people with disabilities³.

(20a) In addition to general measures to ensure accessibility, individual measures to provide reasonable accommodation play an important part in ensuring full equality in practice for persons with disabilities to the areas covered by this Directive. [...]

¹ Regulation (EC) No. 1107/2006 and Regulation (EC) No 1371/2007.

² OJ L 210, 31.7.2006, p.25. Regulation as last amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p.6).

³ OJ C 134, 7.6.2003, p.7

(20b) In assessing whether measures to ensure accessibility or reasonable accommodation would impose a disproportionate burden, account should be taken of a number of factors including the size **and resources of the organisation or enterprise [...]**, as well as the costs and possible benefits of such measures. A disproportionate burden would arise, for example, where significant structural changes would be required in order to provide access to movable or immovable property which is protected under national rules on account of their historical, cultural, artistic or architectural value.

(20c) The principle of accessibility is established in the United Nations Convention on the Rights of Persons with Disabilities. The principles of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC¹ and the United Nations Convention on the Rights of Persons with Disabilities.

Articles 4, 4a, 4b and 15

Article 4

Accessibility for persons with disabilities

1. Member States shall take the necessary and appropriate measures to ensure accessibility for persons with disabilities, on an equal basis with others, within the areas set out in Article 3 [...].
2. Such measures shall **take into account** the identification and elimination of obstacles and barriers to accessibility, with regard, **inter alia**, to the physical environment, **to transportation** and to information and communication technology and systems.

¹ OJ L 303, 2.12.2000, p. 16.

- 3. This Directive shall not apply to the design and manufacture of goods. Member States, taking into account the importance of undertaking measures to ensure accessibility for persons with disabilities in a comprehensive manner, should promote the research and development of universally designed goods, promote their availability and use, and promote universal design in the development of standards and guidelines.**
- 4. For the purpose of paragraph 1, measures to ensure accessibility for persons with disabilities should not impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of whether the measure in question is impracticable and unsafe and could not be made practicable and safe by a reasonable change to rules, policies or practices or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services.**
- 5. This Directive shall be without prejudice to the provisions of European Union law providing for detailed standards or specifications on the accessibility of particular goods or services.**

Article 4a

Reasonable accommodation for persons with disabilities

- 1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided within the areas set out in Article 3, unless this would impose a disproportionate burden.**
- 2. Reasonable accommodation means necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities access on an equal basis with others.**

3. For the purposes of assessing whether measures necessary to comply with **this Article [...]** would impose a disproportionate burden, account shall be taken, in particular, of:¹
- a) **the size and resources of the organisation or enterprise;**
 - b) **the balance between the estimated cost and the possible benefits of increased access for persons with disabilities;**
 - c) **the respect for the historical, cultural, artistic or architectural value of the movable or immovable property in question.**
4. **The burden shall not be deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.**

Article 4b (deleted)

[...]

Article 15

Implementation

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest [4 years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions.

¹ Article 4a(3(a) and (c) and Article 4)(4) include elements taken from former Article 4b(1).

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to ensure accessibility as set out in Article 4 [...] has to be **progressively** complied with, **as follows**:
 - a) **immediately after adoption regarding new buildings, facilities and infrastructure, as well as existing buildings, facilities and infrastructure undergoing significant renovation, when undertaken with public funding;**
 - b) at the latest **1** year after adoption regarding new buildings, facilities and infrastructure, as well as existing buildings, facilities and infrastructure undergoing significant renovation, **when exclusively funded by private initiatives;**
 - c) **at the latest 20** years after adoption regarding all other existing buildings, facilities and infrastructure;

Member States wishing to use any of these additional periods shall inform the Commission at the latest by the date set down in paragraph 1 giving reasons. Member States shall also communicate to the Commission by the same date an action plan laying down the steps to be taken and the timetable for achieving the gradual implementation of Article 4. They shall report on progress every two years starting from this date.