



**COUNCIL OF
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REPORT

from : The Presidency
to : Permanent Representatives Committee (Part I) / Council (EPSCO)

No. prev. doc. : 16134/13 SOC 933 EGC 20 JAI 1003 MI 1022 FREMP 180
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
- Progress Report

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 Directive would prohibit discrimination on the above-mentioned grounds in the following areas: social protection, including social security and healthcare; social advantages; education; and access to goods and services, including housing.

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

At the time, a large majority of delegations 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 social value within the EU. In particular, several delegations have underlined the significance of the proposal in the context of the implementation 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 maintained general reservations, questioning the need for the Commission's proposal, which they see as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality.

Certain other 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.

For the time being, all delegations have maintained general scrutiny reservations on the proposal. CZ, DK, FR, MT and UK have maintained parliamentary scrutiny reservations. The Commission has meanwhile affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

The European Parliament adopted its Opinion under the Consultation Procedure on 2 April 2009². 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. Kathalijne Maria Buitenweg (Group of the Greens / European Free Alliance) served as Rapporteur. The new EP Rapporteur is Raúl Romeva I Rueda (Group of the Greens / European Free Alliance).

II. THE COUNCIL'S WORK UNDER THE LITHUANIAN PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal under the Lithuanian Presidency,³ focusing on the scope, the concept of access and the concept of discrimination, based on a questionnaire and drafting suggestions prepared by the Presidency.⁴ In addition a number of technical amendments were suggested with a view to improving the clarity and consistency of the text. Delegations broadly welcomed the drafting suggestions as having usefully advanced the discussion.

a) The concept of discrimination (Article 2 and Recitals 12 and 12a)

In its drafting suggestions, the Presidency returned to *a single definition of discrimination*, delegations having raised concerns over the idea of creating different definitions for different discrimination grounds. Delegations broadly supported this approach.

b) The concept of access (Article 3(1) and Recitals 17a and 17f)

The Presidency suggested *a differentiated concept of access*, access to social protection and access to education being defined more narrowly than access to goods and services. The Presidency retained in Recital 17a a clarification of this definition specifying that access does not include the determination whether a person is eligible to receive social protection or education. Delegations broadly supported this approach, although several Member States expressed a preference for placing the entire definition of access in Article 3.

c) Division of competences (Recitals 17f and 17g)

The Presidency reworded Recital 17f with a view to clarifying the delineation of national competences for social security, social assistance, social housing and healthcare, particularly with respect to the financing and management of social protection systems and matters of eligibility. Delegations broadly supported this approach.

³ Meetings on 18 October and 7 November.

⁴ 11489/13, 14640/13 and 15502/13.

The Presidency had removed the specific reference to the Member States' competences for "social housing" from Recital 17g. Certain delegations preferred retaining this reference in the text.

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Further details of delegations' positions are set out in 14850/13, 16134/13 and 16684/13.

III. OUTSTANDING ISSUES

Further discussion is also needed on a number of other outstanding issues, including the following:

- the overall scope, certain delegations being opposed to the inclusion of social protection and education within the scope;
- anticipatory measures (usually "accessibility") aimed at ensuring equal treatment for persons with disabilities;
- the implementation calendar;
- further aspects of the division of competences and subsidiarity; and
- legal certainty in the Directive as a whole.

IV. CONCLUSION

Further progress has been made under the Lithuanian Presidency, particularly through clarification of the concepts of discrimination and access. However, there is still a need for substantial further work on the proposal.