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REPORT

From:	Presidency
To:	Permanent Representations Committee (Part 1) / Council
No. prev. doc.:	14071/17
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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 - 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 legislation[1] 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 2000/43/EC, 2000/78/EC and 2004/113/EC.

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 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, in the past, 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 continue to question the inclusion of social protection and education within the scope. Two delegations have maintained general reservations.

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.

For the time being, all delegations have maintained general scrutiny reservations on the proposal. CZ, DK, MT and UK have maintained parliamentary scrutiny reservations. The Commission has 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 2009[2]. 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. Jean Lambert (UK/LIBE/Greens/European Free Alliance) is currently the EP Rapporteur.

II. THE COUNCIL'S WORK UNDER THE ESTONIAN PRESIDENCY

Under the Estonian Presidency, the Working Party on Social Questions continued its examination of the proposal,[3] based on two sets of Presidency drafting suggestions.[4]

The discussions in the Working Party focused, in particular, on the following main issues:

a) Multiple Discrimination ***(Article 2(2) and 2(3-a) and Recitals 12 and 12ab)***

In its drafting suggestions, the Presidency sought to clarify the notion of multiple discrimination, which had been previously introduced into the text, in order to provide better protection to victims of discrimination.

The Presidency emphasised that multiple discrimination was common in practice, yet very difficult to prove, and that, moreover, the specific discrimination grounds involved in cases of multiple discrimination were often covered in different instruments. Thus the draft Directive under negotiation covers religion or belief, disability age and sexual orientation, whereas discrimination on the grounds of sex is addressed in Directive 2004/113/EC[5] and discrimination on the grounds of racial or ethnic origin is addressed in Directive 2000/43/EC.[6]

The Presidency therefore suggested introducing cross-references to the above-mentioned Directives into Article 2(3-a) and explaining the concept in a recital as follows:

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3 Meetings took place on 20 September and 14 November.

4 See 11857/17 and12480/17.

5 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. OJ L 373, 21.12.2004, p. 37.

6 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. OJ L 180, 19.7.2000, p. 22.

"*Multiple discrimination is understood as discrimination, in any of its forms, occurring on the basis of the combination of two or more of the following grounds: religion or belief, disability, age or sexual orientation, or, in some circumstances, sex, or racial or ethnic origin. Such multiple discrimination could also occur through the combination of two or more grounds, which taken separately would not give rise to discrimination against the person concerned*" (Recital 12ab).

Many delegations reiterated their support for the inclusion of the concept of multiple discrimination in the draft Directive and welcomed the new wording introduced.

Also strongly welcoming the inclusion of multiple discrimination, the Commission stressed the need to ensure that multiple discrimination on the grounds of sex and race, being the only form of multiple discrimination excluded by the definition, was fully covered. Moreover, following earlier suggestions by certain delegations, the Commission supported adding a reference to Directive 79/7/EEC[7] to the text.

However, two delegations were unable to accept the inclusion of multiple discrimination, citing, *inter alia*, doubts regarding its practicability. Certain other delegations maintained scrutiny reservations on this issue.

b) **<u>Equality Data</u>** ***(Article 15(4)) and Recital 28)***

In its drafting suggestions, the Presidency had reworded the requirements pertaining to the collection of statistics, seeking to provide greater flexibility to the Member States, calling on them to promote the collection of data on equal treatment and discrimination, in accordance with national legislation and practice and in accordance with applicable Union law, in particular that regarding the protection of personal data.

Many delegations welcomed the new wording.

[7] Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. OJ L 6, 10.1.1979, p. 24.

c) **Other issues** ***(Recitals 2a, 4, 5a, 6, 7, 12, 12ab, 21 and 28)***

The Presidency made a number of adjustments to the recitals, including by adding a specific Recital on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (Recital 2a) and references to political declarations made by the Council on the subject of discrimination (Recital 5a), as well as to the Commission's Recommendation on the European Pillar of Social Rights (Recital 7).

III. OUTSTANDING ISSUES

Further discussion is needed on the questions mentioned above, as well as on a number of other outstanding issues, including the following:

- the scope of the Directive, certain delegations being opposed to the inclusion of social protection and education therein;
- remaining aspects of the division of competences and subsidiarity; and
- legal certainty regarding the obligations that would be established by the Directive.

Further details of delegations' positions can be found in docs.12362/17 and 14071/17.

IV. CONCLUSION

Although real progress has been made under the Estonian Presidency on the issues discussed, further political discussion is needed before the required unanimity can be reached in the Council.