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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 - 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; 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 very large majority of delegations have 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. One delegation has maintained a general reservation. Certain other delegations continue to question the inclusion of social protection and education within the scope.

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 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.

On 11 December 2014, the EPSCO Council held an orientation debate on the file, during which it became clear that there was still considerable support for continuing work on the proposed Directive with a view to reaching the required unanimity, and that there was a lack of support for the idea of establishing enhanced cooperation instead.

II. THE COUNCIL'S WORK UNDER THE LATVIAN PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal,³ focusing mainly on the issues related to the scope, with some attention also being given to the concept of discrimination. The Presidency's drafting suggestions⁴ were supported in general by the Commission and broadly welcomed by delegations as a step in the right direction. The main elements discussed included the following:

1) Scope (Article 3(1) and 3(2) and Recitals 17-a, 17a, 17b, 17f, 17g and 17ga)

In its drafting suggestions, the Presidency sought to clarify the definition of the scope as well as the division of competences between the EU and its Member States.

² See doc. A6-0149/2009. Ulrike Lunacek (AT/LIBE/Greens/European Free Alliance) has been appointed Rapporteur by the newly elected Parliament.

³ Meetings on 23 February and 8 May.

⁴ See 5704/15 and 8149/15.

The work mainly focused on the issues of *social protection* and *education*, the Presidency endeavouring to define the scope in such a way as to spell out, as clearly as possible, the Member States' competence for the organisation and funding of their social protection systems and educational systems. The Working Party made substantial progress in fine-tuning the text, although further discussion will be required on some outstanding details. Moreover, on the basis of the current text, certain delegations maintained reservations on the inclusion of social protection and education within the scope.

2) **Concept of Discrimination (Article 2(6), 2(6a) and 2(8))**

- **Age-related pricing**

In its drafting suggestions, the Presidency added a new exemption for preferential charges, fees or rates in respect of persons in a specific age group (Article 2(6)(c)), the aim being to allow commercial entities to charge different rates based on the age of the customer. However, certain delegations felt that the exemption as currently worded was too broad.

- **Rights and freedoms of others**

The draft Directive as currently worded states that it shall be without prejudice, *inter alia*, to measures laid down in national law which, in a democratic society, are necessary for the protection of the rights and freedoms of others. The Presidency tried to clarify this provision to the effect that the rights and freedoms of others include "the right to freedom of expression and the freedom of the press". Certain delegations felt that the existing provision had been too broadly worded, while others suggested that freedom of expression and the freedom of the press were best mentioned in the recitals.

3) Presidency questionnaire

The Presidency circulated a questionnaire,⁵ inviting the Member States to clarify their current positions with regard to the scope of the Directive, the most important outstanding issues and the calendar for implementing the accessibility provisions. The Presidency has compiled the replies received into a single document,⁶ which it hopes will prove useful as background for future work on the file.

III. OUTSTANDING ISSUES

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

- various aspects of the disability provisions, such as accessibility and reasonable accommodation for persons with disabilities; consistency with the UNCRPD; exemptions for cases where detailed accessibility standards apply; the design and manufacture of goods; and the accessibility of new and existing buildings, facilities, transport services and infrastructure;
- 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 are set out in docs. 6499/15, 8679/15 and 9009/15.

⁵ 6081/15.

⁶ 8333/1/15 REV 1 (doc to follow).

IV. CONCLUSION

Clear progress has been made under the Latvian Presidency, particularly on the delineation of the scope and the division of competences. The discussions in the Working Party clearly confirmed that there was continued broad support for the Directive, the Commission representative and several delegations calling for rapid and concrete progress following the new impetus given to the discussions by the ministerial debate that took place in December. Nevertheless, it is clear that there is still a need for further work before the required unanimity can be reached.
