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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Enhancing anti-discrimination in the European Union
- policy debate

Delegations will find attached a steering note prepared by the Presidency, with a view to facilitating the discussion at the EPSCO Council on 24 October 2019.

Enhancing anti-discrimination in the EU

1. Discrimination in the European Union

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The Union's aim is to promote peace, its values and the well-being of its peoples. Also, the Union also shall, among other things, combat discrimination.

Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination based on any grounds, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Nevertheless, one in five people in the European Union experience discrimination or harassment on different grounds or on a combination of grounds¹. Some groups, such as minorities within minorities, for example transgender persons with an immigrant background, risk becoming victims of discrimination, sexual harassment and violence more frequently than others. In most Member States, intersectional discrimination is not covered by national legislation.

In addition, the economic impact of discrimination on Member States leads to GDP loss and loss in tax revenue as well as increased costs related to healthcare and other services. Often discrimination goes unpunished.

Underreporting on discrimination is also widespread: gaps in legislation or ineffective implementation could convey a false message that some forms of discrimination are tolerated. 62 % of the EU population agrees that new measures are needed to close the existing protection gaps².

¹ European Commission (2015), Special Eurobarometer 437: Discrimination in the EU in 2015.

² Ibid.

2. The role and the importance of the proposal for an Equal Treatment Directive

In order to fill in the gaps in EU legislation on non-discrimination, on 2 July 2008 the European Commission issued a proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (*Equal Treatment Directive*, COM(2008) 426 final). At present, these four grounds are covered in EU legislation only in the area of employment and occupation (Council Directive 2000/78/EC).

Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal is now based on Article 19 of the Treaty on the Functioning of the European Union (TFEU), requiring unanimity in the Council and the consent of the European Parliament.

Despite the efforts of more than 20 Presidencies since 2008, the required unanimity has yet to be found in the Council. The concerns of the Member States relate especially to the legal certainty of the proposed directive, the division of competences between the Union and the Member States, and the concrete impact of the directive, including the financial costs.

Regardless of the mandate and obligation of the EU to actively combat discrimination, the current situation of EU legislation in the field of non-discrimination creates an artificial ‘hierarchy’ of protected grounds of discrimination.

3. Enhancing anti-discrimination: ways forward

Finland’s Presidency is organising a policy debate on equal treatment at the EPSCO meeting on 24 October with a view to exploring possible ways of tackling discrimination outside of the field of employment and occupation more efficiently.

According to many replies from Member States to the questionnaire sent by Finland's Presidency in July 2019, achieving a comprehensive legal framework at EU level is the primary means of combating discrimination. According to many Member States, their national anti-discrimination legislation is appropriate. However, there is a need for more efficient implementation of existing legislation. Women, persons with disabilities, LGBTBI people, ethnic minorities, including Roma and immigrants, and poor people are considered to run the highest risk of being discriminated against. Persons facing multiple or intersectional discrimination are also mentioned.

Member States mention the following means of combating discrimination: strategic work including Action Plans at EU level, EU funding, mainstreaming, awareness raising, stronger support for victims and equality bodies, and tackling hate speech. The importance of comprehensive and reliable data on discrimination is also recognised.

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Against this backdrop, ministers are invited to reply to the following questions:

- Q1:** How would you explain the fact that, despite existing legislation and the strong political commitment of the European Union and its Member States to combat it, discrimination is still a major challenge in European societies?
- Q2:** What is your government planning to do in order to intensify the fight against discrimination?
- Q3:** Bearing in mind the deadlock in the negotiations on the proposed Equal Treatment Directive, what in particular should the European Union and the incoming European Commission do to resolve the situation with a view to increasing the efficiency of anti-discrimination measures and filling in the gaps in anti-discrimination legislation?