



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 November 2012

16063/12

**Interinstitutional File:
2008/0140 (CNS)**

**SOC 912
JAI 791
MI 716
FREMP 135**

REPORT

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

No. prev. doc. : 15567/12 SOC 870 JAI 743 MI 668 FREMP 128
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 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 CYPRUS PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal under the Cyprus Presidency,³ focusing on the scope, with particular reference to *access to social protection* and *access to education*. The discussions were based on Presidency drafting suggestions⁴ as well as on an annotated consolidated text summarising delegations' earlier positions.

a) **Access to Social Protection (Recitals 17a, 17b, 17d, 17e, 17f and 7g and Articles 3(1-2))**

In its first set of drafting suggestions, the Presidency sought to clarify the scope with regard to social protection by specifying, in particular, that the Directive would apply to "*access to social protection*" and that it prohibited discrimination "in the *access* to benefits and services *as determined by Member States*" (Recital 17a and Article 3(1)(a)).

A majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction. However, certain others questioned the advisability of reducing the scope by referring to "access," preferring to align the text with Directive 2000/43/EC. Certain delegations also called for the text and its practical implications to be clarified, including with respect to the issue of age discrimination, and for legal certainty to be improved.

Certain delegations continued to call for "social protection" to be removed from the scope.

³ Meetings on 8 October and 26 October.

⁴ 14228/12 and 14898/12 + COR 1.

b) Access to Education (Recitals 17a, 17f and 17g and Article 3(1(c)))

In its second set of drafting suggestions, the Presidency sought to clarify the scope by specifying, in particular, that the Directive would apply to "*access to education*," the organisation of education systems and the content of teaching and educational activities falling within the exclusive competence of the Member States.

A majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction.

However, certain others would, ideally, have preferred to align the text with Directive 2000/43/EC, where the term "access" is not included. Others also saw a need to clarify the text, including with respect to the issue of age discrimination.

Certain delegations continued to call for "education" to be removed from the scope.⁵

c) Delegations' Positions on the Text as a Whole

Having reviewed the annotated consolidated text reflecting the state of play of the discussions on the text as a whole, delegations updated their positions, lifting a number of reservations.⁶

⁵ Further details of delegations' positions are set out in 14701/12 + COR 1 and 15567/12.

⁶ A revised version of the consolidated text is contained in 12458/2/12 REV 2 (to be distributed in due course).

III. OUTSTANDING ISSUES NOT DISCUSSED UNDER THE CYPRUS PRESIDENCY

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

- remaining aspects the division of competences, the overall scope and subsidiarity;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;
- the implementation calendar;
- legal certainty in the Directive as a whole; and
- the overall impact of the proposal, including on SMEs.

IV. CONCLUSION

While significant progress has been made under the Cyprus Presidency in the attempt to clarify the scope, particularly as regards access to social protection and access to education, there is a clear need for extensive further work on the proposal.

The Committee is invited to take note of this Report and to forward it to the EPSCO Council on 6 December 2012.
