



Council of the
European Union

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NOTE

From: Presidency
On: 26 November 2014
To: Permanent Representatives Committee/Council

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

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.

II. STATE OF PLAY

The proposed Directive has been discussed in the Working Party on Social Questions under every Presidency since the second semester of 2008 and the EPSCO Council has been regularly informed of the progress achieved.

A 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. 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. It is recalled that the Council Legal Service issued an Opinion on the legal basis for the proposal in 2008.²

The European Parliament adopted its Opinion under the Consultation Procedure on 2 April 2009³.

² 14896/08.

³ See doc. A6-0149/2009. Ulrike Lunacek (AT/LIBE/Greens/European Free Alliance) has been appointed Rapporteur by the newly elected Parliament.

Despite extensive discussions and redrafting exercises in the Working Party, it has not yet been possible to reach the required unanimity in the Council. Against this background, the Presidency considers that a new momentum is required with a view to overcoming the current impasse. The Presidency also notes that the newly appointed Commission considers the proposed Directive to be a priority file. While the swift adoption of the Directive would be the most desirable outcome, the Presidency believes it is necessary to consider all possible solutions, including the option of establishing enhanced cooperation in the area covered by the proposal.

III. NEXT STEPS

To take stock of the progress made by different Presidencies over the last few years and in order to have a clear understanding of the state of play, the Italian Presidency considers this to be an opportune moment to discuss the file at the Ministerial level.

The Presidency plans an orientation debate at the EPSCO Council on 11 December 2014, aimed at identifying the remaining obstacles that prevent the Council from reaching unanimity on the proposal.

In particular the outstanding issues⁴ concern:

- the overall scope of the proposed Directive (certain delegations having reservations with regard to the inclusion of social protection and education within the scope);
- the envisaged calendar for implementation;
- the division of competences between the EU and its Member States;
- the need to respect the principle of subsidiarity; and
- legal certainty in the Directive as a whole.

The Presidency wishes to explore all possible avenues for making progress.

⁴ See also annotated consolidated text (15705/14 ADD 1, doc to follow)

IV. PROCEDURAL CONSIDERATIONS

The proposal originally fell under Article 13 TEC, which provided for unanimity in the Council and consultation of the European Parliament. Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal now falls under Article 19 TFEU; thus unanimity in the Council is required, following the *consent* of the European Parliament. In other words, the European Parliament will need to give its consent before the Council can adopt the Directive.

It is noted that the procedure and functioning of enhanced cooperation is based on Article 20 TEU and Articles 326 to 334 TFEU. The consent of the European Parliament would be needed for the authorisation of the enhanced cooperation and would be needed again if Article 19(1) TFEU were to be used for an act implementing it.⁵

V. CONCLUSION

The Committee invites the EPSCO Council to hold an orientation debate based on the following questions:

- 1) What are the main outstanding issues concerning the provisions on social protection, education and persons with disabilities and how could they be solved? Would you support a longer deadline for the implementation of certain provisions?
- 2) Should it prove to be impossible to reach the required unanimity, would establishing enhanced cooperation in the area covered by the proposal be an appropriate alternative?

⁵ Additional information that may be of relevance is available in docs. 9142/08 and 17220/10.