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REPORT

From:	Presidency
To:	Permanent Representations Committee (Part 1) / 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 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. Moreover, they continue to question the inclusion of social protection and education within the scope.

Some 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.

Two delegations have maintained a general reservation on the proposal as such.

For the time being, all delegations have maintained scrutiny reservations on the text. CZ, DK 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 on 2 April 2009² under the Consultation Procedure. 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.

II. THE COUNCIL'S WORK UNDER THE ROMANIAN PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal,³ based on a set of Presidency drafting suggestions⁴ focusing on several issues including discrimination on multiple grounds, discrimination by assumption, instruction to discriminate, proportionate differences in treatment, access to goods and services, and accessibility. The Presidency also streamlined the text in line with the current legislative drafting principles.

a) Further clarifications of key concepts

i. Discrimination on multiple grounds (Article 2(3-a) and Recital 12ab)

Following input from delegations, the Presidency suggested to put this concept in a separate paragraph and introduced a terminological harmonization, replacing the term "multiple discrimination" by "discrimination on multiple grounds". Certain delegations expressed doubts about the narrowing of the concept of discrimination on multiple grounds to the four grounds in the proposal. However, in the Working Party of 16 May, a vast majority of delegations agreed with the changes made in relation to the above concept.

ii. Discrimination by assumption (Article 2(2)(d-a) and Recital 12a)

The Presidency introduced a new subparagraph in Article 2(2) regarding the concept of "discrimination by assumption", which had been introduced in the recitals during previous phases of the discussion. The Presidency's suggestion received broad support. However, a delegation expressed its concern about the transposition into national law of the definition of "discrimination by assumption", considering that both verbs "assumed" and "perceived" are used.

³ Meetings took place on 2 April and 16 May.

⁴ Docs. 7852/19 and 8812/19.

iii. Instruction to discriminate (Article 2(2)(d-b))

The concept of "instruction to discriminate" was introduced in a new subparagraph of Article 2(2). The Presidency provided explanations to the delegations stating that the concept has no official definition, yet it is contained in other existing equal treatment Directives to make the protection against discrimination more comprehensive. It has also been set out that this is an area which may evolve through jurisprudence.

b) **Proportionate differences in treatment (Article 2(7) and Recitals 15 and 15a)**

Many delegations expressed a strong will to ensure the consistency of the proposal with the UNCRPD requirements and to streamline the text. While engaging in this effort, the Presidency also suggested the deletion of the paragraph dealing with proportionate differences in treatment on the grounds of age and disability in the context of the provision of financial services. This was the result of extensive discussions on the possibility to allow proportionate differences in treatment based on actuarial principles and statistical data, while not necessarily linking the health condition of a person to his or her disability. Still, several delegations expressed their doubts about the deletion, stating that the issue had already been dealt with in earlier phases of the discussion on the proposal and that it was important to keep these provisions concerning insurance, banking and other financial services. The Presidency concluded that further discussions and fine-tuning would be required.

c) **Access to goods and services (Article 3(1)(d))**

In the provision on access to goods and services, the Presidency suggested to delete the text "which are offered outside the context of private and family life" and to keep only the part which reads "which are available to the public". The suggestion was a result of discussions on the possibilities to offer goods and services within the realm of private life, but still making them available to the public (e.g. on social media and platforms), and whether such situations constitute discrimination. A small number of delegations could not support the suggested deletion and called for a return to the previous wording. Further discussions would be needed regarding the provision.

d) **Disability provisions**

In the Presidency's drafting suggestions, the provisions on disability were further clarified and the references to the UNCRPD were harmonized throughout the text. In particular, in Recital 20ab the importance of ensuring accessibility for persons with disabilities on an equal basis with others was further emphasized.

III. CONCLUSION

Tangible progress has been made under the Romanian Presidency on a number of issues. Despite the broad support for the objectives of the proposed Directive, technical work and further political discussions are needed before the required unanimity can be reached in the Council.
