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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Directive on equal treatment (Article 19)
- *Policy debate*

Delegations will find attached a steering note prepared by the Presidency, with a view to the policy debate on the above subject at the EPSCO Council on 12 June 2023.

Directive on equal treatment (Article 19)*Policy debate*

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.

The Council has already adopted legislation to prohibit discrimination based on the grounds mentioned in Article 19 of the Treaty on the Functioning of the European Union, namely, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.¹ Under the existing directives, discrimination is already prohibited in the field of employment on all these grounds. Discrimination in the field outside employment on the grounds of sex and ethnic or racial origin are also already prohibited under existing directives. However, the same level of protection has yet to be reached in the area outside employment when it comes to discrimination on the grounds of religion or belief, disability, age or sexual orientation.

According to the most recent Special Eurobarometer on discrimination, 17% of people in the European Union have experienced discrimination².

¹ See, in particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. See also Directive 2006/54/EC.

² European Commission, Special Eurobarometer 493: Discrimination in the EU (including LGBTI), 2019.

The situation varies between Member States. Some groups, particularly minorities, face a greater risk of discrimination than others. Although *minorities within minorities* are especially at risk, intersectional discrimination has yet to be covered by national legislation in most Member States. Meanwhile, discrimination is known to have a negative economic impact, including GDP loss and loss in tax revenue, and increased costs related to healthcare and other services.

Underreporting of discrimination is a widespread problem, linked to the uneven level of protection as well as to lack of awareness. Gaps in legislation and the ineffective implementation of existing laws can even create the impression that some forms of discrimination are tolerated, and the fact that discrimination often goes unpunished encourages impunity.

Only a minority of EU citizens believe that authorities' efforts to fight discrimination in their country are effective.³ New measures are clearly needed to close the existing gaps in the protection against discrimination.

The proposed Equal Treatment Directive

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 legislation 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.

³ *Ibid.*

The European Parliament adopted its Opinion on 2 April 2009⁴ 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.

The Council has not yet been able to reach the required unanimity on the proposal.⁵

Against this background, Ministers are invited to address the following questions:

1. *What do you see as persisting and newly emerging patterns of discrimination in the European Union and in your Member State?*
2. *What should be done to unblock the negotiations on the proposed horizontal Equal Treatment Directive? What concrete solutions do you suggest for meeting the concerns relating to the three main outstanding issues: legal certainty, subsidiarity and the implementation costs?*

⁴ See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) has been appointed Rapporteur by the current Parliament.

⁵ See doc. 9043/23.