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From:	Presidency
To:	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 - <i>Policy debate</i>

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 7 May 2024.

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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (Article 2 Treaty on European Union). In this context, one of the Union's aims is to combat discrimination. Article 19 of the Treaty on the Functioning of the European Union (TFEU) empowers the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.¹

The current anti-discrimination legal framework at European Union level is fragmented. It protects against discrimination in the field of employment on all the grounds mentioned in Article 19 TFEU, namely, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.² Outside the field of employment, however, discrimination is prohibited only on the grounds of sex and ethnic or racial origin; no protection exists at EU level against discrimination outside the field of employment on the grounds of religion or belief, disability, age and sexual orientation.³ Reinforced minimum standards on equality bodies will soon contribute to a better enforcement of the current legal framework.⁴

¹ In addition, Articles 153 and 157 TFEU mandate Union action in the field of equality between men and women with regard to labour market opportunities and treatment at work and especially in regard to equal pay for equal work or work of equal value.

² See, in particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, Directive 2006/54/EC, Directive 2019/1158/EU, Directive 2022/2381/EU, and Directive 2023/8970/EU.

³ See, in particular, Directive 2000/43/EC and Directive 2004/113/EC.

⁴ See Directives to be adopted on the basis of proposals number COM/2022/688 final and COM/2022/689 final.

In the most recent Special Eurobarometer on discrimination, respondents reported widespread discrimination in their country on the basis of religion or belief (42%), disability (49%), age (45%) or sexual orientation (54%).⁵ Around one in five (21%) respondents report that they have personally felt discriminated against or experienced harassment in the past 12 months. Examples include discrimination of persons aged 15-24 at cafés, restaurants, bars or nightclubs (25% of respondents) and when attending or applying to school or university (21%). Retired persons on the other hand report discrimination in shops or banks (18%) and when using or requiring healthcare services (17%). This confirms the data in the 2018 Fundamental Rights Report showing particular challenges older persons face as regards equal treatment.⁶

According to 2019 data issued by the EU Fundamental Rights Agency (FRA), discrimination against LGBT persons, including outside the field of employment, has been rising between 2012 and 2019 (from 37% to 43%).⁷

Some 25% of Muslim respondents to FRA's EU-MIDIS II survey say they experienced discrimination in the preceding 12 months because of their ethnic or immigrant background, which includes their religion or religious beliefs.⁸ Some 21% of Jewish respondents in a 2017 FRA survey on discrimination and hate crime against Jews⁹ say they experienced discrimination because of their religion or beliefs in one or more areas of their daily lives in the 12 months preceding the survey. Some 43% of persons with disabilities report facing difficulties in using everyday services, such as grocery shopping, banking, postal services, primary healthcare and public transport.¹⁰

⁵ European Commission, Special Eurobarometer 535: Discrimination in the EU in 2023 (December 2023).

⁶ FRA (2018), [Shifting perceptions: Towards a rights-based approach to ageing](#), Luxembourg, Publications Office.

⁷ [Equality in der EU 20 years from the initial implementation of the equality directives](#), FRA, April 2021; FRA (2020), [EU-LGBTI Survey II – A long way to go for LGBTI equality](#), Luxembourg, Publications Office, p. 10.

⁸ FRA (2017), [Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings](#), Luxembourg, Publications Office, p. 25.

⁹ FRA (2018), [Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU](#), Luxembourg, Publications Office, p. 60.

¹⁰ FRA (2017), [From institutions to community living – Part III: Outcomes for persons with disabilities](#), Luxembourg: Publications Office.

Discrimination has been exacerbated by recent world events. FRA already reported in 2022 an ‘exponential growth’ of antisemitic content online.¹¹ Muslim people also experience increasing discrimination, intimidation and harassment.¹²

Discrimination bears a cost for society. A 2023 study by the European Parliamentary Research Service (EPRS) estimates that completing the legal framework at EU level would generate an estimated net benefit of €55 million per year in terms of GDP if EU action would result in a 5% improvement in the educational achievement and health status of individuals discriminated against.¹³ Similarly, a 2018 study of the EPRS on the cost of non-Europe¹⁴ estimates the price of discrimination and non-inclusion of persons with disabilities in terms of (i) lost earnings due to the exclusion from the labour market, in the range of EUR 468-763 million; (ii) additional costs of access to goods and services, in the range of EUR 15-41 billion every year; (iii) higher costs of living, between EUR 15 and 41 billion; and (iv) lost earnings due to lower educational attainment, between EUR 61-98 million. On the other hand, figures show that, where implemented, reasonable accommodation measures tend to pay off, both in terms of productivity of employees as well as of economic benefits for companies. Similar types of costs were estimated in the impact assessment accompanying the 2008 proposal for an Equal Treatment Directive as regards discrimination based on sexual orientation.¹⁵

¹¹ [Antisemitism in 2022 - Overview of Antisemitic incidents recorded in the EU | European Union Agency for Fundamental Rights \(europa.eu\)](#)

¹² Communication from the Commission ‘No place for hate’, December 2023.

¹³ [Increasing European added value in an age of global challenges, Mapping the cost of non-Europe \(2022-2032\)](#)

¹⁴ [Cost of Non-Europe Report \(2018\).](#)

¹⁵ Doc. 11531/08 ADD 1, p. 34.

Addressing and preventing discrimination is also an investment in Europe's cohesion, competitiveness and resilience in an interconnected and fast-changing world. It ensures a more equitable society, increasing participation in economic and social life and reducing social exclusion. In the recent report of Enrico Letta entitled "Much more than a market"¹⁶, it was observed that "Persistent discrimination faced by specific groups, whether due to gender, disability, ethnicity, or other factors, hinders their full participation in our Single Market and undermines the promise of opportunity for all. This calls for targeted actions, renewed funding, and meticulous monitoring to dismantle systemic barriers." In the same vein, the Commission's Action Plan on Labour and skills shortages presented on 20 March 2024 states that it is essential to support the activation of underrepresented people and combat discrimination in education from an early age to address labour and skills shortages that risk hampering Europe's competitiveness.¹⁷

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 EU 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. The European Parliament adopted its Opinion on 2 April 2009¹⁸ under the Consultation Procedure. 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.

The Council has not yet been able to reach the required unanimity on the proposal, which was tabled 16 years ago. During the last policy debate held in June 2023 under the Swedish Presidency, Ministers explored ways to address the remaining concerns relating to legal certainty, subsidiarity, and implementation costs.

¹⁶ [Enrico Letta Report - Much more than a market \(April 2024\).](#)

¹⁷ [Tackling labour and skills shortages in the EU - European Commission \(europa.eu\)](#)

¹⁸ See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) has been appointed Rapporteur by the current Parliament.

The Belgian Presidency has undertaken substantial further work to address the outstanding concerns. The resulting text is set out in document 8616/1/24 REV 1.

Despite these efforts, the required unanimity in support of the compromise text has yet to be reached.

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

Given that the three main outstanding issues raised by delegations, which concerned legal certainty, subsidiarity and the implementation costs, have been addressed in the current compromise text, what further action would still be needed in order to allow the Council to reach a general approach on the Directive during the Belgian Presidency, also taking into account the rise in discrimination on the grounds and in the areas covered by the proposed directive?
