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REPORT

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

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.

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.

II. THE COUNCIL'S WORK UNDER THE ITALIAN PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal under the Italian Presidency,³ focusing mainly on the disability provisions. The drafting suggestions⁴ were supported in general by the Commission and broadly welcomed by delegations as a step in the right direction. The main elements discussed included the following:

1) Accessibility and reasonable accommodation for persons with disabilities

a) Criteria for determining "a disproportionate burden" (Article 4b)

In its drafting suggestions, the Presidency grouped the criteria for determining *a disproportionate burden* in a single article concerning both accessibility and reasonable accommodation (Article 4b). The Presidency also fine-tuned the criteria to the effect that 1) the frequency and duration of use of the relevant goods and services and 2) the frequency and duration of the relationship with the seller or provider, which are separate considerations, should be taken into account. Some delegations saw a need for further clarification.

² See doc. A6-0149/2009. Ulrike Lunacek (AT/LIBE/Greens/European Free Alliance) has been appointed Rapporteur by the newly elected Parliament.

³ Meetings on 15 September, 28 October and 17 November.

⁴ See 12228/14 and 14499/14.

b) Innovative measures (Recital 20-aa and 20-b)

In its drafting suggestions, the Presidency included a non-binding provision encouraging Member States to adopt *innovative measures* to secure the accessibility of cultural infrastructure and cultural activities for persons with disabilities. Delegations broadly supported this idea; however, some would have preferred broader wording covering all sectors. The Presidency also included a provision calling for innovative measures to ensure reasonable accommodation.

2) Scope in relation to the disability provisions (Articles 3, 4(8) and 15)

a) Design and manufacture of goods (Article 4(8))

The Presidency maintained *the design and manufacture of goods* within the scope of the draft Directive with regard to the elements providing for *accessibility* for persons with disabilities. However, certain delegations questioned this approach, which they found to be vague and unrealistic. The Commission defended the inclusion of the design and manufacture of goods, recalling that the provisions ruling out any disproportionate burden would also apply in this context.

b) Transport services (Article 15)

The Presidency suggested that "*transport services*" rather than "vehicles" be referred to in Article 15, so as to cover bus stops, stations, terminals etc. as well as vehicles. Some delegations have requested further clarification of the scope and the practical implications of the provisions that would apply to transport services.

c) Exemption for cases where detailed accessibility standards apply (Article 4b(3))

The provisions of the draft Directive concerning accessibility and reasonable accommodation for persons with disabilities would not apply where European Union law provides for *detailed standards or specifications* on the accessibility or reasonable accommodation regarding particular goods or services. In this context, the Working Party began to explore the possibility that detailed standards on accessibility adopted *nationally* might be exempted from the provisions of the Directive. The Commission has not excluded finding a solution to the underlying concern, provided that the objectives of the Directive are met.

d) "Accessibility Act"

A number of delegations have stressed the relevance of a possible future Commission proposal for an "Accessibility Act" in relation to the draft Directive. Such an instrument would have an internal market focus, meaning that it would seek to remove obstacles to the free movement of goods and services. The goods and services covered by the "Accessibility Act" would be exempted from the provisions of the draft Directive, according to the current provisions of the latter.

3) Implementation calendar (Article 15)

The Presidency maintained two separate deadlines for complying with the obligation to ensure accessibility for persons with disabilities as follows: *five years* after adoption regarding *new buildings, facilities, transport services and infrastructure* and *20 years* after adoption regarding *existing buildings, facilities, transport services and infrastructure*. Certain delegations have questioned the distinction between new and old buildings, or asked for it to be clarified.

Some delegations have also felt that more time is needed for implementing the provisions of the Directive, or that Member States should be allowed to request an extension. The Commission has expressed a preference for a single, realistic deadline.

4) Reporting (Articles 15(4) and 16 and Recital 8)

In its drafting suggestions, the Presidency included flexible *reporting provisions*: periodic reporting and monitoring of progress made should be considered (Recital 18) and Member States are required to collect data "as appropriate" and to monitor and evaluate the effectiveness of relevant measures, which could be done by means of measures such as setting baselines for measurable targets or by collecting relevant quantitative or qualitative data. (Article 15). Member States are also required to report to the Commission every five years.

III. OUTSTANDING ISSUES

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

- the overall scope, certain delegations being opposed to the inclusion of social protection and education within the scope;
- various aspects of the disability provisions, including their consistency with the UNCRPD;
- further aspects of the division of competences and subsidiarity; and
- legal certainty in the Directive as a whole.

Further details of delegations' positions are set out in 12891/14, 14862/14 and 15612/14.

IV. POSSIBLE WAYS FORWARD

The Presidency noted that several years had already passed since the proposal was adopted by the Commission and that extensive discussions and redrafting exercises in the Working Party had not led to the desired breakthrough. Inviting an open and serious discussion on possible ways forward, the Presidency noted, moreover, that the proposed Directive was seen as a priority by the new Commission. While stressing that reaching unanimous agreement on the file was the preferred outcome, the Presidency also believed, in the light of the long-standing impasse in the Council, that it was now necessary to explore all possible solutions, including the option of establishing enhanced cooperation between a group of willing Member States in the area covered by the proposal.⁵

A number of delegations felt that enhanced cooperation was not the right way forward, citing, in particular, the importance of ensuring consistency in the protection of basic rights and possible negative implications for the functioning of the internal market. Recalling that equal treatment was one of the objectives of the European Union, as defined in the Treaties, the Commission also urged the need to seek unanimous agreement on the Directive.

Pointing to the evolution of their national systems as well as the changes introduced into the text during the long negotiations that have taken place, some delegations called for a new impact assessment to be produced by the Commission, underlining the need for information on the financial implications of the disability provisions contained in the draft Directive. However, other delegations and the Commission questioned the need for a new impact assessment at European Union level at this stage – since there are already two Impact Assessment studies on the proposal: one made by the Commission to accompany the original proposal and the other prepared by the European Parliament and presented in February 2014.

⁵ See 15166/14.

V. CONCLUSION

Clear progress has been made under the Italian Presidency, particularly on the provisions concerning accessibility and reasonable accommodation for persons with disabilities, and on the provisions relating to periodic reporting and monitoring of progress. It is encouraging to note that the discussions on possible ways forward have confirmed broad support for the development of minimum standards in this field at the EU level. However, there is still a need for further work before the required unanimity can be reached on the draft Directive.
