



**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

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

No. prev. doc. : 10369/11 SOC 416 JAI 337 MI 269
No. Cion prop. : 11531/08 SOC 411 JAI 368 MI 246

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.

At the time, a large majority of delegations 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 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 maintained general reservations, questioning the need for the Commission's proposal, which they see 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, CY and PL maintaining linguistic scrutiny reservations. The Commission has meanwhile affirmed its original proposal at this stage and has 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 HUNGARIAN PRESIDENCY

The EPSCO Council having been informed of the progress achieved under the Belgian Presidency on 6 December 2010³, the Working Party on Social Questions has continued its examination of the proposal under the Hungarian Presidency,⁴ undertaking an in-depth analysis of the provisions concerning *reasonable accommodation for persons with disabilities*.

The Working Party examined a questionnaire⁵ focusing on national legislation and seeking ways to clarify the wording of the draft Directive.

Based on the discussion and written replies received, the Presidency prepared a set of drafting suggestions⁶ aiming, in particular, to clarify the meaning of reasonable accommodation to the effect that it is reactive in nature and can include adjusting the conditions in which a service is provided, adapting the provider's usual policies and procedures, and providing specific assistance (Recitals 20a and 20aa).

² See doc. A6-0149/2009. Kathalijne Maria Buitenweg (Group of the Greens / European Free Alliance) served as Rapporteur. The new EP Rapporteur is Raúl Romeva I Rueda (ES, Group of the Greens / European Free Alliance).

³ See 16335/10.

⁴ The Working Party on Social Questions discussed the proposal on 25 March and 17 May.

⁵ 7297/11.

⁶ 9412/11.

In its drafting suggestions, the Presidency also sought to spell out clearly the purpose of reasonable accommodation, as well as the caveat that it should not impose a disproportionate or undue burden (Article 4a).

The Presidency also made an attempt to fine-tune the criteria for determining whether measures that are necessary for providing reasonable accommodation would impose a disproportionate burden, by adding or clarifying certain elements in Article 4b and Recital 20b, including the following:

- the nature of the organisation or enterprise;
- the estimated benefit of reasonable accommodation provided, and the discriminatory impact of *not* providing it;
- the frequency and duration of use of the relevant goods or services (or the length of the relationship between a service provider and a client, for example, in the context of housing); and
- the safety and practicability of the measures in question.

Many delegations welcomed the Presidency's drafting suggestions as moving in the right direction, further discussion being, however, required on the above aspects of reasonable accommodation, as well as on the following:

- the interrelationship between the definition of reasonable accommodation and the scope of the Directive;

- the appropriate limits of the obligation to provide reasonable accommodation, including in the context of housing; and
- the interplay between the provisions contained in the proposed Directive and more specific sectoral rules laid down at the EU level or in national law.

III. OUTSTANDING ISSUES NOT DISCUSSED UNDER THE HUNGARIAN PRESIDENCY

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

- the division of competences, the overall scope and subsidiarity;
- the disability provisions in general;
- the implementation calendar;
- legal certainty in the Directive as a whole; and
- other issues⁷.

IV. CONCLUSION

While significant progress has been made under the Hungarian Presidency in the attempt to clarify the provisions concerning *reasonable accommodation for persons with disabilities*, there is a clear need for extensive further work on the proposal. The Committee is invited to take note of this Report and to forward it to the EPSCO Council on 17 June 2011.

⁷ Delegations' positions are set out in more detail in docs. 11900/10, 13972/10 + COR 1, 16005/10 and 10369/1/11 REV 1.