



**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

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

No. prev. doc. : 16005/10 SOC 741 JAI 928 MI 434
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 BELGIAN PRESIDENCY

The EPSCO Council having been informed of the progress achieved under the Spanish Presidency on 7 June 2010³, the Working Party on Social Questions has continued its examination of the proposal under the Belgian Presidency⁴, undertaking an in-depth analysis of the provisions on equal treatment in the areas of *financial services* and *housing*.

Financial services

The Working Party took note of an independent study produced by CIVIC Consulting⁵ and examined a questionnaire and a set of drafting suggestions prepared by the Presidency⁶. The Presidency aimed, in particular,

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 doc. 9535/10 + COR 1.

⁴ The Working Party has discussed the proposal at 4 meetings: 16 July, 21 September, 19 October and 4 November.

⁵ Study on the use of age, disability, sex, religion or belief, racial or ethnic origin and sexual orientation in financial services;

Main report: <http://ec.europa.eu/social/BlobServlet?docId=5599&langId=en>,

Country reports: <http://ec.europa.eu/social/BlobServlet?docId=5600&langId=en>,

Annexes: <http://ec.europa.eu/social/BlobServlet?docId=5601&langId=en>

⁶ See docs. 11903/10 + COR 1 and 13505/10.

- to clarify the provisions concerning proportionate differences of treatment on the grounds of age or disability in the banking and insurance sectors, including with respect to the importance of the health condition underlying a disability;
- to delineate the scope of the exception more precisely in relation to the evidence required to justify differential treatment; and
- to spell out the transparency requirements applicable to service providers regarding the reasons justifying any proportionate differences of treatment they apply.

Housing

The Working Party based its work on a questionnaire and a set of drafting suggestions prepared by the Presidency⁷. The Presidency aimed, in particular,

- to clarify the scope to the effect that the prohibition of discrimination only applied to access to goods and services, including housing, which *are available to the public and which are offered outside the context of private and family life*;
- to clarify that there was no need to distinguish between *private housing and public/social housing*, both being subject to the prohibition of discrimination, while also specifying that social housing formed part of social protection; and

⁷ See docs. 13883/10 and 15174/10.

- to elucidate the precise meaning of *reasonable accommodation* in the context of housing, seeking to balance the rights of tenants with disabilities and landlords respectively, and taking into account the fact that rental contracts tend to have a long duration.

The Working Party commended the analytical, in-depth approach taken by the Presidency, and many delegations welcomed the Presidency's drafting suggestions as moving in the right direction, further discussion being required.

III. OUTSTANDING ISSUES NOT DISCUSSED UNDER THE BELGIAN PRESIDENCY

Further discussion is needed on a number of outstanding issues⁸, 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 issues.

IV. CONCLUSION

While significant progress has been made under the Belgian Presidency in the attempt to clarify the provisions concerning *financial services* and *housing*, 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 6 December 2010.

⁸ For more information, see doc. 9535/10 + COR 1.