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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	9634/25
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

Delegations will find a note from the Presidency with a view to the meeting of the Working Party on Social Questions on 2 October 2025.

THE WAY AHEAD FOR THE PROPOSED DIRECTIVE ON IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT (ARTICLE 19 TFEU)**Introduction**

On 2 July 2008, the Commission submitted to the Council and the European Parliament the proposal for the 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 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. In the areas outside employment, discrimination on the grounds of sex and of racial or ethnic origin is already prohibited at the EU level.

While the Council has not yet been able to reach the required unanimity on the proposal, which was tabled more than 17 years ago, the Presidency remains committed to explore possible ways ahead in the negotiations.

In the past, a large majority of delegations has welcomed the proposal in principle, many endorsing the fact that it aims to complete the existing legal framework and affirming the importance of promoting equal treatment as shared value within the EU.

Most recently, at the EPSCO Council on 19 June 2025, a vast majority of delegations has reiterated its strong support for the content and rapid adoption of the latest text¹.

Certain delegations however maintained reservations on the text. Among the explanations provided at the Council meeting, issues highlighted related to the potential financial and practical implications of the proposal. Concerns were also expressed regarding the balance between the prerogatives of Member States and the competences of the Union (principle of subsidiarity).

¹ The latest text is set out in doc. 10817/24.

At the SQWP scheduled for 2 October 2025, the Presidency intends to open the opportunity for Member States, in particular those that have not been able to support the current text, to elaborate on their analysis of and remaining concerns on the proposal.

The Presidency would like to recall that important redrafting has been undertaken over the years to address the concerns expressed throughout the negotiations, including by clarifying the legal obligations both on substance and in terms of the division of competence, and by largely limiting the potential financial impact of the draft Directive.

The Presidency would in particular like to share the following observations, pointing specifically to the reality of the compromise proposal currently on the table, compared to the situation at the time of the presentation of the Commission proposal 17 years ago:

- The starting point in the Member States is no longer the same, as national legislation, guidance and practices have all evolved significantly since the proposal was first tabled in 2008.
- The right of persons with disabilities not to be discriminated against is recognized by the United Nations Convention for the rights of Persons with Disabilities (UNCRPD), to which all EU Member States are contracting parties. The UNCRPD also requires the provision of accessibility and reasonable accommodation.
- The introduction of relevant new EU legislation since 2008 has reduced the extent of the effects of the proposed Directive. The Directive would have set minimum standards that would only apply if no other EU or national legislation, which could already exceed the obligations set out in the proposal, was applicable. In particular, the European Accessibility Act²--which transposes some of the obligations of the Member States under the UNCRPD--facilitates the implementation of accessibility in a harmonized way. In addition, uniform accessibility standards have been defined at EU level in sectoral areas, in particular in matters of transport: rail transport, bus and coach transport, air transport, and passenger rights. Rules

² Directive 2019/882/EU.

have also been set for the accessibility of websites and mobile applications of public sector bodies³.

- The extensive changes made to the proposal during the negotiations in the Council increase the space for Member States as regards transposition of the text and implementation of the relevant measures. Notably:
 - the latest compromise text contains a number of references to the principles of subsidiarity and proportionality, adding to those initially contained in the Commission proposal and emphasizing the competences of the Member States under the Treaties and that the Directive is without prejudice to certain national measures (e.g. Recitals 9, 17a, 17f and 17g; Article 3, introductory wording; Article 2, paragraph 8);
 - the description of the scope of the directive in Article 3 has been carefully crafted in order not to interfere with prerogatives of the Member States under the Treaty, particularly as regards education (Article 165 TFEU) and social protection (Article 153(4) TFEU);
 - as regards the initial Article 4 of the Commission proposal, the provision on effective non-discriminatory access has been removed from the Directive altogether; moreover, a possibility to prolong the transposition deadline for the obligation to provide reasonable accommodation has been introduced (Article 15, paragraph 2); and
 - the text also refers to certain specific needs identified by delegations throughout the negotiations, for instance relating to mitigating relevant non-economic implications that might concern Member States with decentralized social policy structures, and accommodating certain policy priorities.

In the Social Questions Working Party meeting on 2 October 2025, the Presidency also intends to share its own experiences as part of the national political decision-making and parliamentary procedures in early 2024 which enabled Denmark to support the adoption of the Directive at the May 2024 EPSCO Council. Member States that support the current text of the Directive are also encouraged to share their own analysis, in particular against the background of the changed context

³ Directive 2016/2102/EU.

since the proposal was presented, taking into account relevant new international developments, EU legislation and national legislation since 2008, or by referring to specific sectors or issues.

Questions for debate

In the light of these observations, the Presidency invites delegations to address the following questions:

- Could those Member States that cannot support the current text clarify concretely which are the remaining issues they see with the text? The Presidency is inviting delegations to be as concrete as possible, and to name the concrete issues and provisions that give rise to doubts or concerns. What would be the most effective and efficient way of resolving these remaining issues?
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