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NOTE

From:	Presidency
To:	Permanent Representatives Committee/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>- Progress report</i>

I. INTRODUCTION

On 2 July 2008, the Commission submitted to the Council and the European Parliament 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 Union legislation¹ 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.

¹ In particular, Council Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

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 (TFEU) (special legislative procedure); thus, unanimity in the Council is required, following the consent of the European Parliament.

The European Parliament adopted its Opinion on 2 April 2009² under the Consultation Procedure. The Council will have to request the European Parliament's consent on the final text.

Although the proposal has been under discussion for more than 17 years, and almost every Presidency has placed the file on the agenda of the Council, it has so far not been possible to reach an agreement. The most recent Progress Report³ was submitted to the EPSCO Council on 19 June 2025.

While a very large majority of delegations has long supported the Directive, endorsing the fact that it aims to complete the existing legal framework by addressing all four grounds of discrimination through a horizontal approach, certain others have expressed concerns and requested clarifications relating to the perceived lack of legal certainty, the division of competences and compliance with the principle of subsidiarity, and the impact of the proposal, in particular in terms of potential financial implications.

Important redrafting has been undertaken over the years to address the concerns expressed, including by clarifying the legal obligations, both on substance and in terms of the division of competences, and by substantially limiting the potential financial impact of the draft Directive.

² See doc. A6-0149/2009. Alice Kuhnke (SE/Greens/European Free Alliance) is currently the Rapporteur for the Parliament.

³ 9573/25

It is recalled that, over the past year, a large majority of Member States has clearly and repeatedly expressed the view at the ministerial level that an agreement on this longstanding proposal is opportune, timely and necessary.⁴

The Commission has supported the search for a compromise, while maintaining a scrutiny reservation on any changes to its original proposal at this stage.

In its 2025 work programme, published on 11 February 2025, the Commission announced its intention to withdraw the proposal for an Equal Treatment Directive. However, the proposal was ultimately maintained and did not appear on the list of withdrawals published on 6 October 2025.⁵

II. THE COUNCIL’S WORK UNDER THE DANISH PRESIDENCY

Under the Danish Presidency, further efforts were pursued to achieve unanimity on the proposal. The Social Questions Working Party discussed the file in two meetings.⁶ In parallel, the Presidency engaged in bilateral contacts with delegations that still have outstanding concerns, with a view to identifying the remaining issues and exploring possible solutions.

At the Social Questions Working Party meeting on 2 October 2025, a representative of the OECD (Organisation for Economic Co-operation and Development) presented its report “Combating Discrimination in the European Union,⁷” noting that discrimination was more prevalent in areas not yet covered by EU legislation, which supports the case for extending protection beyond employment. The report also highlights the economic and social costs of discrimination, suggesting that the benefits of a horizontal equality directive would outweigh the costs.

⁴ EPSCO Council meetings on 7 May 2024, 20 June 2024, 2 December 2024 and 19 June 2025.

⁵ OJ C/2025/5423, 6.10.2025, p. 1-4, ELI: <http://data.europa.eu/eli/C/2025/5423/oj>.

⁶ 2 and 30 October 2025.

⁷ [Combating Discrimination in the European Union | OECD](#)

The Working Party then discussed the proposal based on a Presidency steering note.⁸ The Member States that had been unable to support the latest text⁹ were invited to specify their remaining concerns, with the aim of finding the most effective and efficient solutions. The vast majority of Member States reaffirmed their support for the Directive, and several shared their own analyses of its cost implications, which were found to be low or insignificant compared with its benefits.

Building on this background and further bilateral exchanges, the Presidency identified a set of outstanding issues that, according to Member States with remaining concerns, still needed to be addressed. These were discussed in the Social Questions Working Party on 30 October on the basis of a steering note,¹⁰ as follows:

i) Scope

Concerns have been raised by one delegation about the scope of the Directive in relation to social protection and education, particularly the need to respect national competences in these sensitive areas. It has also been suggested by this delegation that the provision setting out permissible differences of treatment in Article 2(5a) be extended so that it applies to all grounds of discrimination covered by the Directive, rather than only to age.

Against this background, the Presidency invited Member States with remaining concerns to specify the changes relating to social protection and education that would be needed in order to allow them to support the Directive, while those supporting an extension of Article 2(5a) to all grounds of discrimination were asked to provide practical examples and explain the political and legal rationale for allowing differences of treatment on the grounds of sexual orientation, religion or belief, and disability.

⁸ 12823/25

⁹ The latest version of the text is set out in 10817/24.

¹⁰ 14287/25

While delegations were generally willing to show flexibility and consider new proposals, several expressed reservations about further narrowing the scope and requested concrete proposals and justifications, particularly on a possible extension of the provision contained in Article 2(5a). Some also stressed the importance of preserving the Directive's overall ambition. By contrast, one delegation called for the removal of social protection and education from the Directive's scope and for the extension of the provision in Article 2(5a) to cover all grounds of discrimination, not just age. Another delegation raised concerns about the legal clarity of the provisions concerning education.

ii) Implementation

As regards implementation, questions have been raised about the financial impact of the Directive, including especially the cost of providing reasonable accommodation for persons with disabilities.

Against this background, the Presidency invited Member States to indicate what kind of support would facilitate their national cost-benefit assessments of the obligation to provide reasonable accommodation and to specify any legal terms or provisions requiring further clarification, including whether additional elements should be added to the text and, if so, which ones and in what format.

A number of Member States emphasised that obligations were already in place under the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities), and that the Directive would not create additional requirements on reasonable accommodation. One highlighted the distinction between reasonable accommodation and accessibility, noting that the absence of the latter in the compromise text significantly reduces costs. It was also suggested that the Commission could provide guidance on implementation, after the adoption of the Directive. Another Member State called for a new impact assessment. The Commission representative stressed that the Commission had carried out an impact assessment to accompany its legislative proposal and that it was not for the Commission to carry out impact assessments in relation to the Council's amendments to its proposal.

iii) Decentralised competences

Some Member States highlighted challenges in implementing the Directive in situations where competences are exercised at a regional or decentralised level, and called for solutions that respect such governance structures.

Against this background, the Presidency invited Member States concerned about the Directive's impact on decentralised policy structures to specify the policy areas giving rise to these concerns and to propose concrete solutions to address them.

Two Member States stated that they had no concerns regarding decentralised competences, despite themselves having decentralised governance structures at the national level.

III. CONCLUSION

The Presidency's aim was to reach a general approach on the proposal at the EPSCO Council on 1 December. However, during discussions in the Social Questions Working Party, three delegations maintained general reservations, which suggested that the required unanimity could still not be reached. Nevertheless, a very large majority of delegations continue to support the latest compromise text and the aim of reaching a general approach in the Council.

In the absence of additional suggestions or clarifications from Member States with outstanding concerns, the Presidency has been unable to put forward a new compromise text. Delegations' positions need to be examined in greater detail before potential solutions can be identified. It is hoped that the remaining concerns can be addressed through the constructive engagement of all delegations.

The Presidency strongly believes that, in a world where fundamental rights and equality are increasingly under pressure, the EU should lead by example. Thus, it is hoped that the support needed for Council unanimity can be secured in the near future.