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## **REPORT**

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From:	Presidency
To:	Permanent Representations Committee (Part 1) / Council
No. prev. doc.:	9481/17
No. Cion doc.:	11531/08 SOC 411 JAI 368 MI 246 - COM(2008) 426 final
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

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### **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 legislation<sup>1</sup> 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.

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<sup>1</sup> In particular, Council Directives 2000/43/EC, 2000/78/EC and 2004/113/EC.

A large majority of delegations has 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 delegations continue to question the inclusion of social protection and education within the scope.

Certain 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.

Two delegations have maintained a general reservation on the proposal as such.

For the time being, all delegations have maintained scrutiny reservations on the text. CZ, DK, MT and UK have maintained parliamentary scrutiny reservations. The Commission has affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

The European Parliament adopted its Opinion on 2 April 2009<sup>2</sup> under the Consultation Procedure. 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.

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

## II. THE COUNCIL'S WORK UNDER THE BULGARIAN PRESIDENCY

### 1) Examination of the proposal

The Working Party on Social Questions continued its examination of the proposal, based on a set of Presidency drafting suggestions focusing on multiple discrimination and equality data.

#### a - Multiple discrimination

The Presidency sought to clarify further the concept, specifying that it can occur when the situation would not give rise to discrimination if the grounds were taken separately. In its drafting suggestions, the Presidency also specified that multiple discrimination can occur on the basis of any combination of the grounds listed in Article 3-a(new), and could include a combination of sex and racial or ethnic origin. These grounds are recognized in Directive 2004/113/EC and Directive 2000/43/EC.

#### b - Data on equal treatment

The Presidency streamlined the text in the recital and added a reference to data based on human rights indicators, explaining in the Social Questions Working Party that this would allow the inclusion of data collected within the United Nations bodies.

### 2) Discussion on possible ways forward

In view of the approaching 10th anniversary of the presentation of the proposal, the Presidency gave delegations the opportunity for a debate on potential ways to overcome the persisting deadlock in the Council discussions, based on a steering note (6733/18). Delegations were invited to reflect in particular on *the aim, the scope and the economic impact* of the proposed Directive.

Delegations broadly welcomed the initiative of the Presidency and almost all of them reaffirmed their support for the aim of the proposed Directive. Delegations also pointed at a number of outstanding issues, such as subsidiarity and the division of competences, legal clarity and consistency with other legal acts, the budgetary implications and costs, and the implementation. These discussions allowed the Presidency to take stock of the positions in the Council, and will feed into future work on the file.

A detailed report of the discussions on the way forward is available in document 6722/18.

### **III. CONCLUSION**

Despite the broad support for the objectives of the proposed Directive, technical work and further political discussions are needed before the required unanimity can be reached in the Council.

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