Conclusion of the UN Convention on the Rights of Persons with Disabilities

2008/0170(NLE) - 02/09/2008 - Legislative proposal

PURPOSE: to conclude, on behalf of the European Community, the UN Convention on the Rights of Persons with Disabilities.

PROPOSED ACT: Council Decision.

BACKGROUND: the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (see CNS/2008/0171) were adopted by the UN General Assembly on 13 December 2006. On the basis of negotiating directives adopted by the Council, the Commission conducted the negotiation of the Convention on behalf of the European Community, leading to this proposal for a Council Decision on the signing, on behalf of the European Community, of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Council Decision dated 27 March 2007 (ST07404/07) authorised the Community to sign the Convention on the Rights of Persons with Disabilities and issued a declaration on the Optional Protocol (Annex II of the Decision) stating that the Council of the European Union shall reconsider the question of signing the Optional Protocol to the Convention by the European Community as soon as possible. The Commission finally signed the Convention on 30 March 2007.

On 3 May 2008, the Convention and its Optional Protocol entered into force. Since the Optional Protocol has not yet been signed, its accession should be proposed. Two proposals, one for concluding the Convention, the other for acceding to the Optional Protocol, are therefore required.

CONTENT: the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Scope: the Convention applies to ‘persons with disabilities’, to be understood as those who have long-term physical, mental, intellectual or sensory impairments.

Principles: the principles of the Convention may be summarised as follows:

- respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women;
- respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

In accordance with the Convention, States Parties undertake to ensure equal treatment for and non-discrimination of persons with disabilities as well as their equality before the law and the same legal protection as able-bodied persons against all forms of discrimination.

Specific provisions have also been established to take into consideration the many forms of discrimination of which **women** and girls with disabilities are victims, as well as to take into consideration the specific rights of **children with disabilities**.

Rights: in addition to non-discrimination, the Convention defends several other rights, including the right to:

- **accessibility**: to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure that persons with disabilities have access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public (both in urban and in rural areas). These measures shall include the identification and elimination of obstacles and barriers to accessibility to buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities, workplaces and emergency services;
- **life**: the Convention reaffirms that every human being has the inherent right to life and calls on State Parties to take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Other rights set out in the Convention include the right to equal recognition before the law; access to justice; liberty and security of person; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from exploitation, violence and abuse; integrity of the person; liberty of movement and nationality; live independently and be included in the community; personal mobility; freedom of expression and opinion and access to information; education; health; participate in political and public life (including the right to vote); participate in cultural life, recreation, leisure and sport. States are also called upon to respect the privacy of persons with disabilities and to ensure **respect for home and the family** (including the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent, and the right to retain their fertility).

Lastly, States are called upon to prohibit discrimination on the basis of disability with regard to all matters concerning **all forms of employment**, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Persons with disabilities must also enjoy, on an equal basis with others, fair and favourable working conditions and a standard of life that includes adequate food, clothing and housing.

Legal basis and mixed powers of the EC and Member States: articles 13, 26, 47(2), 55, 71(1), 80(2), 89, 93, 95 and 285 in conjunction with the second sentence of the first paragraph of Article 300(2), and the first subparagraph of Article 300(3) of the Treaty establishing the European Community are chosen as the legal basis. This requires **consultation of the European Parliament**.

It is also important to note the application of the principle of subsidiarity to this text, owing to the mixed nature of the powers assigned by the UN Convention and its Optional Protocol. As both Community and Member States' powers are concerned, joint conclusion/ratification of the Convention by the Community and the Member States is required.

Lastly, note a declaration of the European Community on the competences transferred to the Community by the Member States: under the Treaty establishing the European Community, in the areas covered by the Convention, a series of powers are devolved to the Community to enable the implementation of the principles set out in the Convention. The declaration cites, in this case, the list of all Community texts applicable in this area. The only reservation of the European Community concerns Article 27.1 of the Convention regarding non-discrimination in employment. In accordance with Council Directive 2000/78

/EC on equal treatment in employment and occupation, the Member States shall be given the possibility to provide that the Directive, in so far as it relates to discrimination on the grounds of disability, shall not apply to the armed forces.