UN Convention on the Rights of Persons with Disabilities: conclusion of the Optional Protocol

2008/0171(NLE) - 02/09/2008 - Legislative proposal

PURPOSE: to conclude, on behalf of the European Community, an Optional Protocol of 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 (see CNS/2008/0170) and this Optional Protocol 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 Optional Protocol of the Convention on the Rights of Persons with Disabilities establishes that all State Parties, including the European Community, shall recognise the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation by that State Party of the provisions of the Convention.

In this respect, the Protocol establishes a **specific procedure** for receiving possible communications from these persons and for ensuring that the State criticised for not respecting the rights of persons with disabilities can give an appropriate response.

The Protocol defines the powers and competences of the Committee in question, including the power to bring any communications submitted to it confidentially to the attention of the State Party. It can also call on the State concerned to take interim measures to avoid possible irreparable damage to the victim or victims of the alleged violation and to submit explanations clarifying the matter within six months. The State concerned may also be called upon to define measures taken to remedy the situation.

Furthermore, if the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to submit specific observations. The Committee may also be required to conduct an inquiry regarding this State, in terms of the violations highlighted, which may even include a visit to the territory of the State.

Note, however, that a State Party may, at the time of signature or ratification of the Protocol or accession thereto, **declare that it does not recognise the competence of the Committee provided for in the Protocol** with regards to inquiries, following a communication that would have been submitted to it (articles 6 and 7 of the Protocol).

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. Therefore, the Committee established by the Optional Protocol would not have any powers in this particular area.