

# Equal treatment: implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

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The Council took note of a progress report on the Equal Treatment Directive aimed at outlawing discrimination on the grounds of religion or belief, disability, age or sexual orientation also in areas outside the labour market.

The Commission's 2008 proposal complementing existing EC 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; social advantages; education; and access to goods and services, including housing.

**Work carried out from 2008 to the Cypriot Presidency:** between 2008 and 2012, a large majority of delegations 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 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 maintained **general reservations**, questioning the need for the Commission's proposal, which they see as infringing on national competence for certain issues and as **conflicting with the principles of subsidiarity and proportionality**. Certain other 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.

**Under the Cypriot Presidency**, progress has been made in the attempt to clarify the scope of the Directive, in particular as regards access to social protection and to education.

**Access to Social Protection:** the Presidency sought to clarify the scope with regard to social protection by specifying, in particular, that the Directive would apply to "access to social protection" and that it prohibited discrimination "in the access to benefits and services as determined by Member States" (Recital 17a and Article 3(1)(a)). A majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction. However, certain others questioned the advisability of reducing the scope by referring to "access", preferring to align the text with Directive 2000/43/EC. Certain delegations also called for the text and its practical implications to be clarified, including with respect to the issue of age discrimination, and for legal certainty to be improved. **Some delegations continued to call for "social protection" to be removed from the scope.**

**Access to Education:** the Presidency sought to clarify the scope by specifying, in particular, that the Directive would apply to "access to education," the organisation of education systems and the content of teaching and educational activities falling within the exclusive competence of the Member States. A

majority of delegations as well as the Commission representative broadly welcomed this approach as a step in the right direction. However, certain others would, ideally, have preferred to align the text with Directive 2000/43/EC, where the term "access" is not included. Others also saw a need to clarify the text, including with respect to the issue of age discrimination. Certain delegations continued to call for "education" to be removed from the scope.

### **Outstanding issues**

- the overall scope of the Directive, the division of competences and the issue of subsidiarity;
- the disability provisions, including accessibility and reasonable accommodation for persons with disabilities;
- the implementation calendar;
- the need to ensure legal certainty;
- the overall impact of the proposal, including on SMEs.

**As regards disabilities:** many delegations acknowledge the importance of the proposal, in particular with regard to the rights of persons with disabilities. A number of delegations, however, question the need for this instrument, which they see as encroaching on national competence, or have other concerns, notably as regards legal certainty and the practical, financial and legal impact of the proposal.

**In conclusion,** while significant progress has been made under the Cypriot Presidency in the attempt to clarify the scope, particularly as regards access to social protection and access to education, there is a clear need for extensive further work on the proposal.

**Two delegations suggested that work on this proposal should be abandoned because no solution seemed to be in sight after several years of discussions.** Some other delegations, however, stressed that work should continue, in the interest of strengthening anti-discrimination legislation.

For the time being, all delegations have maintained general scrutiny reservations on the proposal. CZ, DK, FR, MT and UK have maintained parliamentary scrutiny reservations.

The Commission has meanwhile affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

**The European Parliament** adopted its Opinion under the Consultation Procedure on 2 April 2009. 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**.