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OUTCOME OF PROCEEDINGS

From:	Working Party on Social Questions
On:	15 April 2016
No. prev. doc.:	7550/16 SOC 163 ANTIDISCRIM 24 JAI 246 MI 191 FREMP 54
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. INTRODUCTION

At its meeting on 15 April 2016, the Working Party on Social Questions continued its work on the above proposal. The discussion focused on the interplay between the proposed Directive and the Commission's proposal for a European Accessibility Act (EAA).¹ The Working Party also examined a set of drafting suggestions² prepared by the Presidency.

Delegations were also reminded that the Presidency had asked them to indicate by 29 April whether they could lift any of the footnotes contained in the annotated consolidated text³ of the draft Directive. A revised consolidated text will be issued at the end of the NL Presidency, which will reflect the work done during the LU and NL Presidencies and delegations' more general positions.

¹ 14799/15 + ADD 1-3.

² 7550/16.

³ 9009/2/15 REV 2.

PL maintained its general scrutiny reservation and its parliamentary scrutiny reservation. HU reaffirmed the positions it had expressed at the previous meeting.

II. SUMMARY OF THE DISCUSSION

a) The Equal Treatment Directive and the EAA

The Commission representative (Cion) recalled that the two proposals were separate instruments and that each had its own legal basis. Based on Article 19 TFEU, the proposed Equal Treatment Directive would prohibit discrimination, including, in line with existing legislation such as the Directive 2000/78/EC, by providing for accessibility and reasonable accommodation for persons with disabilities. Based on Article 114 TFEU, the proposed EAA would facilitate the trading of accessible products and services in the internal market. In other words, both proposals addressed the issue of accessibility, but in different ways: the Equal Treatment Directive would establish a general principle that would be applicable to the broad range of goods and services included within its scope, whereas the EAA would lay down detailed accessibility requirements for a closed list of specific goods and services.

Cion stressed that the provision contained in Article 4(9)⁴ was designed to ensure legal certainty in cases where the two instruments would potentially overlap. Thus Article 4 (accessibility) and Article 4a (reasonable accommodation) would "not apply where Union law provides for detailed standards or specifications on accessibility in respect of particular goods or services." The EAA would, Cion explained, constitute precisely such a Union law, and the accessibility provisions of the Equal Treatment Directive would thus not apply to the goods and services covered by the EAA. Thus, for example, e-commerce was covered by the EAA and did not fall under the Equal Treatment Directive, whereas a physical shop as such was not covered by the EAA but would be covered by the Equal Treatment Directive.

⁴ A similar provision is also found in Article 4a(4).

Cion stated that the exclusion set out in the current text of Article 4(9) and Article 4a(4) was worded in general terms--an approach that was more dynamic and future-proof than a list of cross-references to existing EU standards or specifications. Appealing for progress in the negotiations, Cion emphasised that, in the light of the clear separation of the two proposals, each could be negotiated independently, without waiting for agreement on the other. The Chair invited Cion to reflect on the wording of Article 4(9), bearing in mind the need for maximum clarity regarding the interplay between the Equal Treatment Directive and the EAA.

Responding to LV, Cion confirmed that the exclusion set out in Article 4(9) and Article 4a(4) would include relevant sector-specific standards or specifications (e.g. transport). FR, also affirming the need to give precedence to *lex specialis*, suggested returning to the wording used in the original proposal in this regard.⁵

FR informed the Working Party of its doubts regarding the concept of reasonable accommodation. FR also expressed a preference for a solution where all the accessibility provisions in the two proposals would be included in the EAA only. Should such a solution not be feasible, FR suggested that the scope of the accessibility provisions in the two instruments be made *identical*. Cion explained that this would be tantamount to deleting accessibility from the Equal Treatment Directive: if the scope of the accessibility provisions in the Equal Treatment Directive was reduced to mirror the scope of the EAA, only the EAA would apply (see Article 4(9) and Article 4a(4)).

- The case of EU standards that do not address accessibility

Recalling its earlier written contribution⁶ on the subject, IE asked whether Article 4(9) would apply in cases where the EU had competence in relation to detailed technical standards regarding particular goods or services and had already exercised that competence--but not in such a way that the detailed rules dealt with accessibility issues. IE feared that this could create legal uncertainty by, in effect, imposing an obligation on Member States to adopt their own accessibility rules in areas of EU competence.

⁵ See 11531/08, Article 4(3). " This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services."

⁶ 13511/14.

- Need for further discussion

BE made the point that the EAA addressed the needs, not just of persons with disabilities, but of a broad range of persons with functional limitations including older people. In addition, BE underlined the need to ensure consistency between the two texts, which involved defining the precise meaning of terms such as "reasonable accommodation," "accessibility" and "disproportionate burden." Cion acknowledged that there was a need for further discussion, including on the scope of the proposals under discussion, and on the notion of "a disproportionate burden," which is included in both proposals.

- Article 4(8)

BG suggested adding the words in bold: "[This Article shall apply also to the design and manufacture of goods **within the scope of this Directive**, unless this would impose a disproportionate burden.]" While welcoming attempts to clarify the text, Cion felt that the addition might not be necessary.

b) The Presidency's drafting suggestions

A number of delegations and Cion broadly welcomed the Presidency's drafting suggestions⁷ as a step in the right direction.

Recital 20b

Responding to EE and FI, the Chair explained that "the lifespan of infrastructures and objects which are used to provide a service" was wording found in Article 4b(d).

Responding to AT, the Chair explained that the Presidency had made its suggestions on the basis of concerns expressed by DK and IE, further drafting suggestions being welcome. Cion explained that the inclusion of clarifications on certain aspects of the provisions contained Article 4b in Recital 20b did not give those aspects greater priority, as the operational provisions of the act were laid down in the articles alone.

⁷ See Annex.

Article 15(3a)

FI expressed the view that the change was redundant.

CZ also preferred the previous wording of Article 15.

Article 16(1)

BE expressed the view that the reporting period provided for should be consistent with previous legislation including Directive 2000/78/EC. Cion pointed out that the Presidency had extended the period in its drafting suggestions. Cion suggested revisiting this question at the end of the negotiations.

III. CONCLUSION

The Presidency undertook to circulate a new set of drafting suggestions, including with a view to the possible need to clarify the interplay between the Equal treatment Directive and the EAA. Delegations were invited to send in any comments or suggestions in writing.

The next meeting of the Working Party is provisionally scheduled for 27 May 2016.

Recital 20b

(20b) In assessing whether measures to ensure accessibility or reasonable accommodation would impose a disproportionate burden, account should be taken of a number of factors including, inter alia, the size, resources and nature of the organisation or enterprise, as well as the estimated costs of such measures **or the (technical and/or economic) life span of infrastructures and⁸ objects which are used to provide a service. Furthermore,** a disproportionate burden could arise **in particular** where significant structural alterations would be required in order to provide access to movable or immovable property which is protected under national rules on account of its historical, cultural, artistic or architectural value.

Articles 15 and 16*Article 15*

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...[4 years after adoption]. They shall immediately inform the Commission thereof and shall communicate to the Commission the text of those provisions. [...]

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication.

The methods of making such reference shall be laid down by Member States.

2. Member States may establish that the obligation to ensure accessibility as set out in Article 4 has to be complied with by [5 years after adoption] regarding new buildings, facilities, transport services and infrastructure.

⁸ Responding to EE, Cion defended the use of "and," which was consistent with Article 4b. (Cion also pointed out that the formulation "and/or" was not optimally clear.)

- 2a. Member States may establish that the obligation to ensure accessibility as set out in Article 4 has to be complied with by [20 years after adoption] regarding existing buildings, facilities, transport services and infrastructure. Where a Member State does so it shall ensure the progressive implementation of that obligation over that period.
3. Any Member State which chooses to use the additional period set out in paragraph 2a shall communicate to the Commission by the date set out in paragraph 1 of this Article an action plan laying down the steps to be taken and the timetable for achieving the progressive implementation of that obligation.
- 3a. Member States shall inform the Commission, by the date set out in paragraph 1 of this Article, of their plans for the progressive implementation of the obligation provided for in Article 4(7).**
4. Member States shall collect data, as appropriate, and monitor and evaluate the effectiveness of relevant measures. This could be done by means of measures such as setting baselines or measurable targets or by collecting relevant qualitative or quantitative data, in line with applicable national and Union law, particularly regarding the protection of personal data.

Article 16

Report

1. Member States shall communicate to the Commission, by [**two years** after the date provided for in Article 15(1)] and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive, including information on the implementation of the action plan mentioned in Article 15(3).

2. The Commission's report shall take into account, as appropriate, the viewpoints of national equality bodies and relevant stakeholders, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.
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