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

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On the basis of a progress report, the Presidency briefed the Council on the state of play in the discussions on the draft directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Under the Swedish Presidency, the preparatory bodies of the Council have advanced the discussion to some extent by improving the clarity of the disability provisions, the scope and the respective competences of the EU and its member states.

However, further extensive work still needs to be done on numerous issues in order to guarantee legal certainty and to ensure that all newly introduced obligations and their possible cost implications are fully understood. This concerns in particular the accessibility of buildings and infrastructure. In order to meet concerns expressed, the Swedish Presidency has suggested a nuanced implementation timetable under which existing infrastructure and buildings would be given longer than new ones.

The main outstanding issues are as follows:

Division of competences, scope and subsidiarity (Article 3): further discussion is needed on the scope, including with a view to establishing the intended reach of the disability provisions (see below) and to demarcating the division of competences between the Member States and the European Community even more precisely than hitherto6. In particular, more work is needed to elucidate the delicate distinction between access to fields such as education, healthcare and social protection, and the organisation of such fields, the latter being an area of national competence.

The disability provisions (Articles 4, 4a and 4b): further discussion will be needed on the following issues:

- the scope of the provisions and the concrete obligations to be created, including with respect to the physical environment (or "the built environment"); new and existing buildings, facilities and infrastructure; different types of building and housing; transport; and the design and manufacture of goods;
- the method for assessing what constitutes a disproportionate burden, and the notion of a denial of reasonable accommodation.
- the financial, administrative and practical implications of the provisions and their scope, particularly regarding SMEs and the self-employed; and
- the exact interrelationship between the draft Directive and more detailed sectoral standards or specifications on the accessibility of particular goods and services, including public transport.

Legal certainty in the Directive as a whole: in underlining the importance of legal certainty, delegations have expressed the wish to avoid further cases having to be brought before the European Court of Justice (ECJ).

They have consequently stressed the need for the clearest possible wording throughout, including in the definitions of key terms, and have underlined the importance of ensuring consistency with existing legislation.

Other issues: a large number of other questions will also require further discussion, including the following:

- the legal basis, including the cross-border dimension that underlies the Community competences in the fields listed in the scope;
- the concepts of harassment, discrimination by association and discrimination based on assumptions;
- legitimate differences of treatment on the grounds of age (especially in respect of minors), and on the grounds of disability as well as age in the provision of financial services (including banking and insurance);
- the need to find the right balance between protection against discrimination and rights in the private sphere (including freedom of speech and religion); and
- the issue of gender mainstreaming.