

SENATE OF REPUBLIC

XIX LEGISLATION

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RESOLUTION OF THE 4TH STANDING COMMITTEE

(European Union Policies)

(Rapporteur MURELLI)

adopted at the sitting of 15 March 2023

ABOUT

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RULES RELATING TO EQUALITY BODIES IN THE FIELD OF EQUAL TREATMENT AND EQUAL OPPORTUNITIES OF WOMEN AND MEN IN MATTERS OF EMPLOYMENT AND OCCUPATION, AND REPEALING ARTICLE 20 OF DIRECTIVE 2006/54/EC AND ARTICLE 11 OF DIRECTIVE 2010/41/EU (COM(2022) 688)

AND ON THE

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE RULES RELATING TO EQUALITY BODIES FOR EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN, EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION, EQUAL TREATMENT BETWEEN WOMEN AND MEN IN MATTERS OF SOCIAL SECURITY AND IN ACCESS TO AND SUPPLY OF GOODS AND SERVICES, AND DELETING ARTICLE 13 OF DIRECTIVE 2000/43/EC AND ARTICLE 12 OF DIRECTIVE 2004/113/EC (COM(2022) 689)

pursuant to Rule 144(1a) and (6) of the Rules of Procedure

Communicated to the Presidency on 16 March 2023

The Commission,

examined the proposals for directives COM(2022) 688 and COM(2022) 689 on equal treatment and equal opportunities;

whereas the purpose of the two proposals, which are identical in substance, is to lay down binding minimum requirements for the operation of equality bodies in order to improve their effectiveness and independence, with a view to strengthening the application of the principle of equal treatment deriving, in the case of proposal COM(2022) 688, from Directives 2006/54/EC of the European Parliament and of the Council of 5 July 2006 and 2010/41/EU of the European Parliament and of the Council of 7 July 2010, based on Article

157 of the Treaty on the Functioning of the European Union (TFEU), which provides for the ordinary legislative procedure (with majority voting in the Council) and, for proposal COM(2022) 689, deriving from Council Directive 79/7/EEC of 19 December 1978, Council Directive 2000/43/EC of 29 June 2000, Council Directive 2000/78/EC of 27 November 2000 and Council Directive 2004/113/EC of 13 December 2004, based on Article 19 of the TFEU, which provides for the special legislative procedure (with unanimity voting in the Council);

Having assessed the Government's report on the two proposals, dated 21 February 2023, submitted pursuant to Article 6 of the Law of 24 December 2012, n. 234;

taking into account the elements acquired during the preliminary investigation; given that the proposals are being examined by fourteen chambers of the European Union's national parliaments, four of which have already concluded their examination and none of which have so far expressed any criticism, with the exception of the Lithuanian *Seimas regarding the* referral to an implementing act of the European Commission to draw up a list of common indicators to measure the effects arising from the directive

considers that the proposals respect the principle of subsidiarity, but that they do not fully respect the principle of proportionality, due to the following considerations:

agrees with the objective of the proposal, i.e. to ensure minimum standards in all Member States to protect equality and non-discrimination as fundamental values of the European Union under Article 2 of the Treaty on European Union through binding provisions ensuring the effective functioning of national equality bodies;

against this objective, the principle of subsidiarity is respected, since only through action by the Union is it possible to ensure that all Member States have a minimum functionality of these bodies;

However, the principle of proportionality does not seem to be respected, since the minimum functionalities established by the proposal may affect the constitutional system of judicial protection of the Member States, being an alternative procedure to the ordinary procedure (Article 9(5)), although not excluding recourse to the ordinary courts (Articles 6(3) and 7) and although not necessarily binding (Article 8(4));

It appears, in fact, disproportionate, first of all, that the Member States must provide the national bodies with autonomous powers of investigation, for the establishment of the facts, with "effective rights of access to information" (Article 8(1) and (2)). This represents a distortion with the national system, according to which investigations are ordered by the judicial authority and carried out by the judicial police, within the framework of a procedure governed by the code of reference and an overall balance between judicial and prosecuting bodies and the parties involved;

The lack of proportionality is further amplified both by the right of the Bodies to be able to act on their own initiative (Article 8(1)) and by their right to have recourse to ordinary, administrative or civil courts to enforce their decisions taken following the establishment of the facts reached through the abovementioned investigations (Article 9(2)(a)). In addition, the bodies must also be given the right to intervene in judicial proceedings, even if they are not party to those proceedings (Article 9(2)(b));

In addition to the aforementioned obligations incumbent on all Member States, the proposals also provide for certain faculties that States may decide to exercise, with a consequent possible disparity of protection between the States themselves. Thus, there may be some states that decide to make use of the option of conferring on decisions issued by the bodies the character of legally binding decisions constituting an enforceable title, without the need for a court ruling, and that these decisions may also include restorative measures and measures to prevent repetition (Article 8(4)). Furthermore, some Member States may decide to exercise the option of requiring suspects and witnesses to answer to the body and to provide it with the requested documents (Article 8(3)). In this last respect, one is reminded of the principle in force in the national legal system, according to which no one may be obliged to testify on facts from which one's own criminal liability might arise;

with regard to **t h e** obligation to give the possibility of offering the parties the 'amicable settlement' of the dispute, without prejudice to the right to have recourse to ordinary justice (Article 7), it is pointed out that this would constitute an additional alternative forum for the out-of-court settlement of disputes which, however, could not guarantee the prerogatives typical of trade union conciliations, in which the employee participates assisted by the trade union organisation of his or her choice, nor those of the civil procedural institution of mediation or assisted negotiation, managed by a person qualified to mediate and with the possibility for the party to participate with **t h e** assistance of a

lawyer registered in the relevant professional register. Moreover, the rule should in any case be without prejudice to the criminal aspects of the discrimination complained of, for which the exercise of jurisdiction lies exclusively with the State, pursuant to Article 112 of the Constitution;

the provision of the right to initiate or participate in proceedings on behalf of or in support of one or more victims, subject to the approval of the victims themselves (Article 9(2)(c)), would seem to distort the third party nature of a body that is supposed to play an independent role as mediator between the parties;

Lastly, we would like to point out the considerable financial resources required from the individual Member State, given the necessary investments to be made in terms of professionalism and training within the Bodies, in order to achieve the required degree of third party status;

On the other hand, the provisions stipulating that equality bodies must be able to receive complaints that Equality Bodies must be able to receive complaints of discrimination, orally, in writing and *online* (Article 6(2)), and that they must make a preliminary assessment in order to decide whether or not they intend to follow up the complaint (Article 6(4)); that they may initiate legal proceedings in their own name, to deal with structural and systematic discrimination in selected cases, because of their frequency or severity, or on a preliminary basis in order to achieve legal clarification (Article 9(3));

Nor do the other provisions on: independence of the Bodies (Article 3), resources to be ensured to the Bodies (Article 4), prevention and awareness-raising strategy (Article 5), access to the services of the Bodies (Article 11), cooperation with other Bodies and relevant public and private bodies (Article 12), consultation of the Bodies (Article 13), the collection and processing of equality data by the Bodies and access to them (Article 14), planning and reporting (Articles 15 and 16), the safeguarding of more favourable provisions that States may nevertheless introduce or maintain (Article 17), and the processing of personal data (Article 18); this resolution is also to be understood as an act of address pursuant to Article 7 of Law No. 234 of 2012.