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## **Horizontal Equal Treatment Directive (Fifth Directive) – The state of play**

Ladies and Gentlemen, Frau Lüders, colleagues of the German Federal Anti-discrimination Agency and our distinguished NGO partners and stakeholders from Germany and from all over Europe.

It is an honour to be here with you today in Berlin to discuss the state of play and possible ways forward to facilitate the adoption of the so-called Horizontal Directive. As Executive Director of *Equinet - the European Network of Equality Bodies*, I am pleased to co-host this Information and discussion session and wish to congratulate the Federal Anti-discrimination Agency for organising it. Allow me also to express my special gratitude to Niklas Hofmann for kindly translating my speech into German. I am delighted for this opportunity to address you in this language, reminding me of the fantastic study year I spent in Berlin quite some time back.

A few words about the organisation I represent: you might know that Equinet is the European Network of 42 national equality bodies from 32 European countries (including all 28 European Union Member States). We are proud to count the German Federal Anti-discrimination Agency among our Members, and much value your key support and engagement in the sharing of expertise and building capacity through exchange with peers in other countries from the very early days of the Network. Equinet works toward a vision of a more equal Europe and promotes equality through supporting and enabling the work of national equality bodies. We support equality bodies to be independent and effective as valuable catalysts for more equal societies, including through the effective application of national equality legislation and facilitating access to rights to all citizens.

Let me then turn to the state of play concerning the proposed so-called EU Horizontal Directive. In fact, we will celebrate the legislative proposal's 7<sup>th</sup> birthday on 7 July, so in less than two weeks... Let's pause and remember: if the proposal was a person, she would go to school. However, in many EU Member States she would have no effective protection against being discriminated or harassed in school due to her sexual orientation, religion, or disability.

Clearly, the EU can and must do better than this. At the moment still, EU equal treatment legislation provides different levels of protection for the different grounds of discrimination.

Back to the harsh realities! The legal basis of the proposal is Article 19 of the Treaty on the Functioning of the European Union, providing the EU Council with legislative powers to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Due to this legal basis, the legislative procedure is the 'Consent procedure' meaning that the European Parliament plays a limited role: it may accept or reject and veto a proposal but cannot amend it. The European Parliament already adopted a resolution supporting the directive in 2009 when its role was even more limited under the 'Consultation procedure', with the Parliament holding the right to give an opinion and suggest non-binding amendments but no veto power. In practice, the current Consent procedure means that once the Council has decided on the proposal, the Parliament will either adopt or reject it.

To complicate the situation even further, the voting in Council has to be unanimous with the text being approved unanimously by all 28 EU Member States. This is a hurdle that seemed so difficult to jump for all Council presidencies since 2008 that they have chosen not to put the proposal to vote.

There is also some good news, though.

Let's start with the European Parliament (EP), where the current Rapporteur for the Parliament is Ulrike Lunacek, an Austrian Member and Vice-President of the European Parliament (from the Group of the Greens). Ms. Lunacek is also the President of the EP LGBT Intergroup, and she is a strong supporter and ally of equality in general and this Directive in particular. In the European Parliament, the Directive has received constant support starting with the 2009 resolution I mentioned before. We do not expect any bad surprises or blockages relating the Horizontal Directive from this direction.

Over to the European Commission then. Jean-Claude Juncker, the President of the new Commission that started its mandate in 2014 listed unblocking the Horizontal Antidiscrimination Directive among his priorities. In his words: *'Discrimination must have no place in our Union, whether on the basis of nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or with regard to people belonging to a minority. I will therefore maintain the proposal for a directive in this field and seek to convince national governments to give up their current resistance in the Council'*. President Juncker in his mission letter to Věra Jourová, European Commissioner in charge of Justice, Consumers and Gender Equality requested her to ensure that discrimination is fought and gender equality is

promoted, including by exploring how to unblock negotiations on the Commission proposal for the Horizontal Anti-Discrimination Directive.

It is in the EU Council – the place of direct representation and decision-making by EU Member States governments - that the Directive is facing difficulties and a stalemate since 2008. Successive national Presidencies helped to keep the proposal alive and secured some progress on numerous technical questions. While earlier a number of countries, such as, for example, Malta or the Czech Republic, had reservations against the proposal, over time they have gradually changed their position and are now generally supportive of the Directive. The only remaining block is Germany, expressing various concerns but more importantly maintaining a general reservation against the Directive.

To list just some of the specific concerns, Germany is questioning the existence of an adequate legal basis, and has taken the view that the proposal violates the principle of subsidiarity and legal certainty. It has also expressed concerns regarding the impact assessments made and emphasised the burden that the Directive could impose on businesses (especially Small and Medium-sized Enterprises). The key financial concerns relate to the implications of the provisions for accessibility and reasonable accommodation for persons with disabilities despite the fact that the proposed implementation deadlines have been extended, thereby lessening the burden on duty-bearers.

Due to the difficulties, during 2014 the idea of using the enhanced cooperation procedure was floated. This procedure is and should be, even according to the EU Treaties, a measure of last resort. It allows a minimum of 9 EU member states to cooperate and adopt binding acts together. In the case of the Horizontal Directive, however, such enhanced cooperation would probably reinforce a “two-speed Europe” and the current patchwork of anti-discrimination legislation across the EU. I think we should consider it the right solution that in the last meeting of Ministers on Social Affairs in December 2014 Member States decided not to use this procedure.

Another idea to facilitate its adoption could be to limit the ambition of the Directive, for example by excluding social protection and education from its scope, or by removing the ground of disability that seems to trigger the most problems and opposition due to the assumed associated costs. It is encouraging and I think the right answer that Member States in the same meeting came out quite strongly in favour of adopting the Directive with a complete scope and covering all four grounds of discrimination.

To sum up, seven years after the proposal was first introduced, the EU Horizontal Directive is widely and strongly supported by European and national civil society (and we welcomed the joint Statement issued just last week by our colleagues from European NGOs Networks), by the European Commission and the European Parliament as well as by 27 EU Member States.

While the task of adopting the Directive still seems difficult, it is encouraging that the discussions and negotiations started with a new dynamic and optimism in 2014.

It is Equinet's firm position expressed in numerous reports and publications that the extension of EU equal treatment legislation with the adoption of the Directive is long overdue and highly necessary. It is needed to guarantee protection against discrimination outside the field of employment to all in and across the EU and to challenge a hierarchy of discrimination grounds.

It is somewhat puzzling that Germany should oppose the adoption of the Directive even though it is among the many Member States that went beyond the requirements of the EU Equal Treatment Directives. This opposition also means that, when they travel around Europe, German citizens may be deprived of protection against certain forms of discrimination that they enjoy in the territory of Germany. I am certain that you could all bring examples of such cases from your own experience. Equality bodies and civil society need to work together to ensure that such cases are reported and that persons discriminated have access to appropriate remedies. Collecting and addressing these cases would also significantly help to better showcase the numerous real-life problems stemming from the lack of a comprehensive EU equal treatment legal framework.

I admit and note that the proposal for the Directive is not perfect and the latest version of the text discussed in the Council does contain some important limitations and the level of protection seems in some instances to have been weakened compared to the original proposal. Nonetheless, it is clear that adopting this new legislation as soon as possible is necessary and will increase effective protection against discrimination across Europe. A European Union, where we should all expect to be able to live, work, study and move freely within, with our diversity and enjoying same levels of rights and opportunities.

So we look forward to supporting together this Europe of justice, values and rights... and to explore with you all how we can help ensure the necessary support for this Directive by ALL 28 EU countries.

Congratulations again to FADA for initiating and hosting this important exchange and meeting, and thank you for your attention!