

Letter dated:
9 October 2008

From:
The States-General of the Netherlands

To:
Margot Wallström

**Subject: Subsidiarity test for the Proposal for a Council Directive on
implementing the principle of equal treatment between persons
irrespective of religion or belief, disability, age or sexual orientation
(COM(2008)426)**

Ref.: 1419116u

Both Chambers of the States-General of the Kingdom of the Netherlands have, in accordance with established procedure, tested the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426) against the principles of subsidiarity and proportionality, pursuant to Article 5 of the EC Treaty and Protocol 30 to the Amsterdam Treaty on the application of the principles of subsidiarity and proportionality.

Both Chambers take the view that the EC Treaty forms a sufficient legal basis for the measures outlined in the proposal for a Directive. As far as compliance with the principles of subsidiarity and proportionality are concerned, both Chambers take the view that this question cannot be answered until the European Commission and the Netherlands Government clarify the scope of the proposed measures and the practical, legal and financial implications. This is examined in more depth in the explanatory note enclosed with this letter.

The two Chambers of the States-General are therefore not yet convinced that the proposal for a Directive complies with the subsidiarity and proportionality principles and look forward to receiving further clarification from the European Commission and a response from the Netherlands Government.

Yours sincerely,

[signed]

Yvonne E.M.A. Timmerman-Buck
President of the Upper House
of the States-General

[signed]

Gerdi A. Verbeet
President of the Lower House
of the States-General

Encl.:

c.c.: Copies of this letter were sent to the Presidents of the Council of the European Union and of the European Parliament, the Netherlands Government and the COSAC secretariat.

Subsidiarity test for the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426)

Both Chambers of the States-General of the Kingdom of the Netherlands have, in accordance with established procedure, tested the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426) against the principles of subsidiarity and proportionality, pursuant to Article 5 of the EC Treaty and Protocol 30 to the Amsterdam Treaty on the application of the principles of subsidiarity and proportionality. The results are outlined below:

Legal basis

Both Chambers of the States-General take the view that the legal basis proposed by the European Commission is appropriate in the light of the objective pursued. The European Commission is empowered under Article 13(1) of the EC Treaty to make the proposal.

Subsidiarity and proportionality

The subsidiarity principle states that European action must have added value compared to action by the Member States. It also implies that exclusive action by Member States (either acting alone or together with other Member States) cannot achieve the intended objective. In other words, there is a need for European action. The principle of proportionality states that the measure proposed must not go further than is strictly necessary.

This proposal from the European Commission, the explanatory memorandum and the associated impact assessment raise doubts in both Chambers of the States-General about the added value, scope and impact of the proposed measures. So far, the Chambers are not convinced that the proposed measures meet the requirements of subsidiarity and proportionality.

In order to answer both questions (about the subsidiarity and about the proportionality of the proposed measures) properly, both Chambers consider it vital that the Commission and the Netherlands Government create greater clarity about the scope of the proposal and the practical, legal and financial implications.

In the light of this, both Chambers of the States-General require further clarification of the scope of the proposed Directive (in particular the proposed Article 3 and Article 2(6) to (8)). These articles state, inter alia, that this Directive shall not prejudice national legislation on marital status, family status, reproductive rights and the content and structure of (special needs) education, nor shall it affect the status and activities of churches and other organisations based on religion or belief. Both Chambers of the States-General would like clarification about how these exemptions – if they come into force – would relate to (existing) national legislation in these areas and whether they (could) lead to any restriction (and to what extent) of the primary authority of the Member States in these policy areas, pursuant to the European Treaties.

Both Chambers of the States-General also take the view that the explanatory memorandum and the impact assessment provide insufficient clarity about the practical, legal and financial implications of the proposal. For example, does the principle of equal treatment for disabled people in the proposal oblige Member States to take further-

reaching practical measures than they already have to under their national rules? We are also unsure about the exact material implications in the area of social security. For instance, will people acquire rights which they currently do not have under existing national law? The impact on education is also unclear, notwithstanding the limitations of the scope of the proposed Directive for this policy area. Moreover, both Chambers of the States-General need more clarity about the consequences of a(n additional) ban on age discrimination, as proposed.

Conclusion

Both Chambers of the States-General take the view that the EC Treaty forms a sufficient legal basis for the measures outlined in the proposal for a Directive. Concerning the issue of whether the principles of subsidiarity and proportionality are met, both Chambers take the view that these questions cannot be answered until the European Commission and the Netherlands Government clarify the scope of the proposed measures and the practical, legal and financial implications of the proposal.

The two Chambers of the States-General are therefore not yet convinced that the proposal for a Directive complies with the subsidiarity and proportionality principles and look forward to receiving further clarification from the European Commission and the response of the Netherlands Government.