

Brussels, 2 December 2014

Dear Mr Juncker,

In your mission letter to Commissioner-designate Frans Timmermans, you have instructed him *“to discuss, within the first three months of the mandate, with the European Parliament and the Council, the list of pending legislative proposals and to determine whether to pursue them or not, in accordance with the principle of ‘political discontinuity’.”*

One of those pending proposals is the Commission Proposal for a **Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426)**. This proposal was adopted by the Commission in July 2008 and has since then been discussed in the European Parliament and the Council. Given the requirement for unanimity and the opposition of several Member States, it seems unlikely that this proposal will be adopted.

Many citizens – and especially the members of the signing organisations – are worried about the way in which this proposal, if adopted, would limit their fundamental civil rights, in particular the freedom of contract. Others believe it is a superfluous piece of legislation that might seriously harm the competitiveness of EU enterprises. Others again are worried about the vague and stretchable language in the proposal, which, if adopted, might subsequently lend itself to unpredictable (and perhaps undesirable) interpretations. For example, while everyone understands an approach according to which equal situations must be treated equally, it is much less clear what is meant by "comparable" situations. Would this not lead to an extremely wide margin of appreciation for the judges and public authorities tasked with the enforcement of the proposed Directive? Could this not lead to an obligation to treat equally situations that are in fact not equal?

With particular regard to the freedom of contract, we would point out that the conclusion of contracts is, besides mere communication, one of the most important forms of social interaction. While it is generally accepted that the State is obliged to treat all citizens equally, the same does not apply to individual citizens who must be left free to live according to their own choices and preferences.

Legislation that restricts the freedom of contract of ordinary citizens must be shown to be “necessary in a democratic society” (cf. Art. 8 of the ECHR). We are not convinced that any such necessity has been demonstrated, given that EU Member States have for a long time lived – and continue living – without such laws.

In addition, it is not clear why it should be necessary to adopt this Directive at EU level. Member States wishing to adopt such legislation can do so domestically, which would also allow them to correct it if it is found to produce undesirable effects. The proposed Directive, by contrast, could be modified or abrogated only through a unanimous vote in Council. This seems hardly appropriate for a legal act whose practical impact is so difficult to predict.

The negotiations in the Council have not been advancing substantially over the last five years, several countries are blocking the entire directive. The main concern seems to be that the entire anti-discrimination approach is problematic and too invasive into the private life and economic activity of citizens.

We, the undersigned, are convinced that there are more suitable and less freedom-limiting instruments to address injustices and inequalities. We therefore call on you to drop the draft directive in accordance with the principle of “political discontinuity.”

Yours sincerely,

**Contact on behalf of the signatories:** European Dignity Watch, Mrs. Sophia Kuby, Executive Director

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Sì alla famiglia (Yes to the Family), Italy  
National Association of Large Families, Hungary  
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