

## COUNCIL

### **Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities**

(2010/C 340/08)

Recalling that Articles 3 and 4 of Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities<sup>(1)</sup>, provide for the need to agree on a Code of Conduct before the deposition of the instrument of formal confirmation on behalf of the Union,

Recalling that pursuant to the aforementioned Articles of Decision 2010/48/EC, the Code of Conduct will set out detailed arrangements for the implementation of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter 'the Convention') by the Union, including for the Commission's role as focal point for the implementation of the Convention on behalf of the Union; for the representation of the Union at meetings of the bodies created by the Convention; for the representation of the Union's position at such meetings; as well as for the close cooperation at such meetings, in particular as far as the questions of monitoring, reporting and voting arrangements are concerned,

In addition, the provisions in this Code of Conduct which deal with matters of coordination between the Council, the Member States and the Commission are to be considered as part of the coordination mechanism mentioned in Article 33.1 of the Convention,

Bearing in mind the requirement of unity of the international representation of the Union and its Member States in accordance with the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) and the case-law of the Court of Justice of the European Union also at the stage of implementation of international obligations,

THE COUNCIL, THE MEMBER STATES AND THE COMMISSION AGREE ON THE FOLLOWING CODE OF CONDUCT:

#### **NATURE AND SCOPE OF THE CODE**

1. (a) This Code of Conduct sets out the arrangements between the Council, the Member States and the Commission on cooperation on various aspects of the implementation of the Convention, adopted by the United Nations General Assembly in New York on 13 December 2006.

Without prejudice to a general duty of close cooperation, the Code will apply to preparation of and participation in meetings of the bodies created by the Convention.

- (b) The Code lays down the details of the function of focal point.

#### **DIVISION OF TASKS BASED ON COMPETENCE**

2. The Union institutions and the Member States will ensure close cooperation in the implementation of the Convention, bearing in mind the principles of sincere cooperation, subsidiarity and the need to respect the different competences of the Union institutions and the Member States as established by the Treaties, and bearing in mind that the scope and exercise of the Union's competence are, by their nature, subject to continuous development.
3. On matters falling within the competence of the Member States, the Member States will aim at elaborating coordinated positions whenever it is deemed appropriate.
4. On matters falling within the Union's exclusive competence, the Union will aim at elaborating Union positions, in particular in relation to:
  - (a) the compatibility of State aid with the internal market (Article 108 TFEU, ex Article 88 EC);
  - (b) the common custom tariff (Article 31 TFEU, ex Article 26 EC);
  - (c) its own public administration (Article 336 TFEU, ex Article 283 EC);
  - (d) any other matter to the extent that provisions of the Convention or legal instruments adopted in implementation thereof affect or alter common rules previously established by the Union in accordance with Article 3(2) of the TFEU.
5. On matters falling within shared competence and on matters where the Union coordinates, supports and/or supplements the actions of the Member States, the Union and the Member States will aim at elaborating common positions, in particular in relation to:
  - (a) legislative acts included in the Appendix to the Declaration of Competence annexed to Decision 2010/48/EC or new acts or policy measures taken within the sphere of:
    - action to combat discrimination on the ground of disability (Article 19 TFEU, ex Article 13 EC),

<sup>(1)</sup> OJ L 23, 27.1.2010, p. 35.

- free movement of goods, persons, services and capital (Articles 28-32, 34-37 TFEU, ex Articles 23-31 EC, and Articles 45-66 TFEU, ex Articles 39-60 EC),
  - agriculture (Articles 42-43 TFEU, ex Articles 36-37 EC),
  - transport by rail, road, sea and air transport (Article 91 TFEU, ex Article 71 EC and Article 100 TFEU, ex Article 80 EC),
  - taxation (Article 113 TFEU, ex Article 93 EC),
  - internal market (Articles 114-115 TFEU, ex Articles 94-95 EC),
  - equal pay for male and female workers (Article 157 TFEU, ex Article 141 EC),
  - trans-European network policy (Articles 170-172 TFEU, ex Articles 154-156 EC),
  - statistics (Articles 337-338 TFEU, ex Articles 284-285 EC);
- (b) Union legal acts or policy measures, where there is close and substantial connection with the implementation of the Convention, and taken within the sphere of:
- employment (Articles 145-150 TFEU, ex Articles 125-130 EC),
  - development of quality of education and implementation of a vocational training policy (Articles 165-166 TFEU, ex Articles 149-150 EC),
  - economic and social cohesion (Articles 174-178 TFEU, ex Articles 158-162 EC),
  - development cooperation (Articles 208-211 TFEU, ex Articles 177-181 EC), and
  - cooperation with industrialised countries (Article 212 TFEU, ex Article 181a EC).

#### ESTABLISHING OF POSITIONS

6. All positions of the Union and its Member States referred to in paragraphs 3, 4 and 5 will be duly coordinated:

- (a) In matters referred to in paragraph 3, the Presidency may convene, at its own initiative or at the request of the Commission or a Member State, coordination meetings (which may consist of an electronic coordination in urgent cases) of the Member States and the Commission within the competent Council Working Group before and during each meeting referred to in paragraph 1.

Coordinated positions will be expressed by the Presidency or if necessary by a Member State as appointed by the Presidency or by the Commission with the agreement of all Member States present.

- (b) In matters referred to in paragraph 4, coordination meetings of the Commission and the Member States within the competent Council Working Group will be convened at the Presidency's own initiative or at the request of the Commission or a Member State before and during each meeting referred to in paragraph 1, with possible reference to the Disability High Level Group in its area of competence. These coordination meetings may consist of an electronic coordination in urgent cases.

Union positions will be expressed by the Commission.

- (c) In matters referred to in paragraph 5, coordination meetings of the Commission and the Member States within the competent Council Working Group, will be convened at the Presidency's own initiative or at the request of the Commission or a Member State before and during each meeting referred to in paragraph 1, with possible reference to the Disability High Level Group in its area of competence. These coordination meetings may consist of an electronic coordination in urgent cases.

The Commission and the Member States in coordination meetings within the competent Council Working Group will decide who will deliver any statement to be made on behalf of the Union and its Member States in cases where the respective competences are inextricably linked.

Common positions will be presented by the Commission when the preponderance of the matter concerned lies within the competence of the Union, and by the Presidency or a Member State when the preponderance of the matter concerned lies within the competence of the Member States.

For the purposes of establishing positions regarding points (a), (b) and (c), the following arrangements will apply:

- (i) in Brussels, within the competent Council Working Group, as early as possible ahead of the start of the meetings referred to in paragraph 1.

On receipt of the agenda of the meetings referred to in paragraph 1, the Commission will send to the Council Secretariat for circulation to the Member States an indication of the agenda items on which it is intended that statements are made and whether these statements should be made by the Commission and/or the Presidency.

The Council Secretariat will circulate those draft statements received from the Presidency (in relation to paragraph 3) and from the Commission (in relation to paragraphs 4 and 5) for circulation to the Member States and the Commission at least one week before the coordination meeting. The Council Secretariat will ensure that the draft statements are transmitted to the competent Council Working Group promptly;

- (ii) without prejudice to local arrangements for Union coordination, on-the-spot (in New York or Geneva<sup>(1)</sup>), particularly at the beginning and, if necessary, at the end of the meetings referred to in paragraph 1, with further coordination meetings being called whenever necessary throughout the series of meetings.

In cases where no position can be reached including for reasons relating to disagreement on the repartition of competences between the Union and its Member States, the matter will be referred without undue delay to the competent Council Working Group and/or, when applicable, other Council bodies. If no agreement can be reached in these bodies, the matter will be referred to the Permanent Representatives Committee (Coreper). However, in cases where meetings of the competent working group and, when applicable, of the relevant other Council bodies cannot be convened in time, the matter will be directly referred to Coreper, which will decide on the position on the basis of the voting rules laid down in the relevant EU Treaty dealing with the subject matter under consideration;

- (iii) the 'competent Council Working Group' will be determined by the Presidency. The Presidency will also take due care to inform and liaise in good time with all Council Working Groups that have a significant interest in the matter under consideration, including the Tax Working Group where the matter includes tax elements. At the request of a Member State or the Commission, the Presidency should refer any matter being discussed under this Code to other significantly interested working groups for consideration.

#### **SPEAKING IN CASES OF AGREED COORDINATED, UNION OR COMMON POSITIONS**

7. Without prejudice to the speaking arrangements referred to in paragraph 6, a Member State or the Commission may take the floor, after due coordination to support and/or develop the coordinated position, the Union position or the common position.

<sup>(1)</sup> Or at the place where the meeting is held, if elsewhere than New York or Geneva.

#### **VOTING IN CASES OF AGREED COORDINATED, UNION OR COMMON POSITIONS**

8. (a) Subject to paragraph 6, and in accordance with Article 44.4 of the Convention, the Commission, on behalf of the Union, will exercise the Union's voting rights on the basis of Union or common positions reached in the coordination process on matters referred to in paragraph 4, and in paragraph 5 when the preponderance of the matter concerned lies within the competence of the Union. It may be agreed that in cases where the Union is not represented, the Member States will exercise their voting rights on those matters, on the basis of Union and/or common positions.
- (b) Subject to paragraph 6, and in accordance with Article 44.4 of the Convention, the Member States will exercise their voting rights on matters referred to in paragraph 3, and in paragraph 5 when the preponderance of the matter concerned lies within the competence of the Member States on the basis of coordinated or common positions reached in the coordination process.
- (c) This paragraph does not apply to the right of Member States to vote pursuant to Article 34 of the Convention.

#### **SPEAKING AND VOTING IN CASES OF NO COORDINATED, UNION OR COMMON POSITIONS**

9. Where no agreement between the Commission and the Member States is reached in accordance with paragraph 6, Member States may speak and vote on matters falling clearly within their competence on condition that the position is coherent with Union policies and in conformity with Union law. The Commission may speak and vote on matters falling clearly within the Union's competence to the extent necessary to defend the Union *acquis*.

#### **NOMINATIONS**

10. Without prejudice to the right of Member States to nominate candidates for experts in accordance with Article 34.5 of the Convention and the right to vote in accordance with Article 34.5 of the Convention, the Union may nominate a candidate on the basis of a Commission proposal to be agreed upon by consensus by the Member States within the competent Council Working Group for an expert to the Committee on the Rights of Persons with Disabilities, on behalf of the Union. This procedure shall apply also to re-nomination of Union candidates.

The Union nominee shall be a citizen of the Union, holding the nationality of one of the Member States pursuant to paragraph 1 of Article 20 of the TFEU.

**FOCAL POINT**

11. In accordance with Article 3 of Decision 2010/48/EC and Article 33.1 of the Convention:

- (a) in respect of matters falling within the Union competence referred to in paragraphs 4 and 5, and without prejudice to the respective competences of the Member States, the Commission shall be a focal point for matters related to the implementation of the Convention;
- (b) the Member States will notify to the Commission their focal points;
- (c) on receipt of a notification from the United Nations or any other State Party to the Convention, whenever the matter falls under shared competence, as referred to in paragraph 5, the Commission or a Member State's focal point will inform, as appropriate, the other focal points referred to in subparagraphs (a) and (b);
- (d) where necessary the Commission will convene, on its own initiative or at the request of a Member State's focal point, a coordination meeting with the focal points of the Member States.

**MONITORING AND REPORTING**

12. (a) Reports of the Union and its Member States will cover their respective competences referred to in paragraphs 3, 4 and 5 and shall be complementary.
- (b) In matters referred to in paragraphs 3 and 5 (where the preponderance of the matter lies within the competence of the Member States), Member States will prepare their own reports in accordance with Article 35 of the Convention.
  - (c) In respect of matters falling within the Union competence, referred to in paragraphs 4 and 5 (where the preponderance of the matter lies within the competence of the EU), the Commission will prepare

the Union report, and will agree, where necessary, with Member States on the information they shall provide to enable it to do so. The Union report shall address the matters governed by the Convention falling within the precise provisions of each act adopted by the Union that appears in the Appendix to the Declaration of Competence attached as Annex II to Decision 2010/48/EC.

- (d) In line with the duty of close cooperation, Member States and the Commission will, before submission to the Committee on the Rights of Persons with Disabilities, provide to each other, for information and on a confidential basis, reports referred to in subparagraphs (b) and (c).
  - (e) Each Member State is responsible for its own examination by the Committee on the Rights of Persons with Disabilities. The Commission, as the Union's focal point, is responsible for the Union examination. Member States may request the Commission to provide an expert to become a part of their delegations, and the Commission may request Member States to provide experts, for its delegation.
  - (f) The Commission will inform and consult Member States during the preparation of its oral presentation of the report before the Committee on the Rights of Persons with Disabilities. Similarly, Member States will inform and consult the Commission during the preparation of their national oral presentation.
13. The Commission will propose in due course an appropriate framework for one or several independent mechanisms in accordance with Article 33.2 of the Convention and on the involvement of civil society, in accordance with Article 33.3 of the Convention, taking into account all relevant Union institutions, bodies, offices or agencies.

**REVIEW OF ARRANGEMENT**

14. At the request of the Council, a Member State or the Commission, the arrangement will be reviewed, taking account of experience gained during its operation.

## ANNEX

**Policy objective for the Union and its Member States relating to the implementation of the Convention**

Without prejudice to paragraph 13 of the Code of Conduct and with a view to appropriate monitoring and reporting, the Union and its Member States will, where and to the extent necessary, strengthen and coordinate capacities at both national and Union levels to collect and analyse appropriate information including comparable statistical and research data, in compliance with legal safeguards and data protection rules.

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