



Brussels, 14 February 2017
(OR. en)

5428/17

**Interinstitutional File:
2008/0140 (CNS)**

LIMITE

**SOC 25
ANTIDISCRIM 2
JAI 49
MI 51
FREMP 5**

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 20 January 2017
To: Delegations

No. prev. doc.: 15603/16 SOC 808 ANTIDISCRIM 85 JAI 1094 MI 800 FREMP 204
No. Cion doc.: 11531/08 SOC 411 JAI 368 MI 246 - COM(2008) 426 final

Subject: Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

I. INTRODUCTION

At the meeting of the Working Party on Social Questions on 20 January 2017, the European Union Agency for Fundamental Rights (FRA) gave a presentation on the state of play in the area of discrimination based on sexual orientation. The Fundamental Rights policy Unit of the Commission also delivered a presentation on the implementation of the Charter of Fundamental Rights. The two presentations were followed by question and answer sessions.

The Working Party on Social Questions then continued its examination of 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". The discussion focused on a set of drafting suggestion prepared by the Presidency (doc. 15603/16).

All delegations have maintained general scrutiny reservations at this stage.

The Presidency presented a set of drafting suggestions focusing on the sexual orientation aspect of the draft Directive. A number of delegations (NL, BE, PT, DK, FR, BG, SE) expressed support for the Presidency's focus. FR, BG, EL and LU also broadly supported the Presidency proposal.

II. MAIN ITEMS DISCUSSED

The main issues addressed in the Presidency's drafting suggestions concerned *a) discrimination by association with an organisation dedicated to the promotion of the rights of persons, b) discrimination on the grounds of sex or gender identity as a compounding factor, and c) pension schemes as part of social protection schemes.*

a) Discrimination by association with an organisation dedicated to the promotion of the rights of persons (Recital 12a)

The Presidency explained that the addition in Recital 12a aimed at covering the persons who suffered discrimination because of their activism against discrimination in an organisation and not the organisation as such.

Several delegations (FI, EL, FR, BG, AT) supported the amendment while others (CZ, NL, HU) felt the need to scrutinize it further.

b) Inclusion of a recital on discrimination on the grounds of sex or gender identity as a compounding factor (Recital 12ab)

The Presidency indicated that this amendment did not aim at extending the remit of the draft Directive but to acknowledge the fact that discrimination on the grounds of religion or belief, disability, age or sexual orientation could be compounded by discrimination on the grounds of sex or gender identity.

Several delegations (CZ, BE, SE, SK), while acknowledging the purpose of the amendment, suggested referring to multiple discrimination in general terms instead of singling out a specific combination of grounds. EL suggested including this reference in Recital 13 and AT proposed to take multiple discrimination into account when imposing penalties. Some delegations (HU, DK) questioned the purpose of the amendment. Others (DK, BE) asked how the issue would be addressed in the operative part of the text.

c) Mentioning the inclusion of pension schemes in the draft Directive (Recital 17b and Article 3(1)a)

The Presidency had sought to clarify the fact that persons benefit from protection against discrimination in the area of access to social security schemes. Such discrimination can be seen as hindering the right to free movement of same-sex partners within the EU. In this context, a reference to the case *Tadao Maruko* (CJEU C-267/06), which recognized discrimination of a same-sex couple in a registered partnership on grounds of their sexual orientation, had been included in the text.

Several delegations (PT, ES, CZ, FI, HU, NL, DK, SK, LU) questioned the relevance of case C-267/06, as the judgement fell under the scope of Directive 2000/78 and was related to occupational pension schemes constituting pay whilst the present proposal already covers statutory pension schemes as part of social security.. BE preferred not to reopen the discussions on the topic of social security. LV and EL asked for clarifications as regards legal partnerships.

III. OTHER ISSUES

a) Legal benefits depending on marital status (Recital 17h)

The Presidency had adjusted this recital in order to cover cases where discrimination against same-sex couples might occur in the context of benefits linked to marital status. PT supported the deletion whereas NL, HU and SK expressed doubts.

b) Preferential charges, fees or rates (Art. 2(6)a)

The Presidency had fine-tuned the language of the provision. FI showed support.

IV. CONCLUSION

The Presidency undertook to reflect on the input received. Delegations were invited to submit any written comments by **Friday 3 February**.
