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NOTE

From:	Presidency
To:	Delegations
Subject:	AOB for the meeting of the EPSCO Council on 2 December 2024 Equal treatment and intersectional discrimination <i>- Information from the Presidency</i>

Delegations will find attached information from the Presidency concerning the outcome of the consultation concerning intersectional discrimination.

EQUAL TREATMENT AND INTERSECTIONAL DISCRIMINATION**Presidency questionnaire on intersectional discrimination**

Pending a breakthrough in the longstanding negotiations on the proposal for a horizontal Equal Treatment Directive, the Hungarian Presidency sought to examine the issue of intersectional discrimination in depth, by inviting Member States to respond to a detailed questionnaire.

The Presidency is convinced that intersectional discrimination is a major problem of social injustice and inequality in the European Union and that failure to adequately address the interrelated nature of the different forms of discrimination may lead to a situation where the legal framework does not provide adequate protection for the most vulnerable groups in society.

The Presidency questionnaire was therefore designed to gain a better understanding of the problem of intersectional discrimination and of Member States' responses, regulatory approaches, and good practices, in the hope that mutual learning might help Member States in their efforts to tackle this very important and technically complex form of discrimination more effectively in the future. The outcome of the consultation is summed up below.

Question 1. How does your Member State currently deal with cases of intersectional discrimination: are such cases of discrimination taken into account in national legislation, courts, equality bodies and policy measures? Does your national legislation distinguish between types of multiple discrimination, such as sequential, additive and intersectional discrimination?

The replies showed that intersectional discrimination is treated very differently in the Member States. Their national legal systems can be divided into three major groups: some Member States have legislation that recognises intersectional discrimination; others do not have legislation, but in practice the national human rights body or authority is able to deal with such cases, while there are also Member States – and these are currently in the majority – that do not explicitly recognise intersectional discrimination. The Presidency concludes that this serious and very complex form of discrimination continues to require increased attention and further dedicated joint work and concerted collective thinking.

It is encouraging to note that a number of Member States indicated in their replies that they were planning to review their current national legislation in this area and to consider the development of national provisions on intersectional discrimination, which may be completely missing.

Question 2. Does your Member State have constitutional provisions on multiple or intersectional discrimination?

The vast majority of Member States do not currently have a constitutional provision on intersectional discrimination, but several Member States indicated in their replies that they would consider the possibility of introducing such a provision in the future, given the importance of the issue.

Question 3(a). Which body or authority in your Member State has the power and the duty to act in cases where a person is discriminated against on the basis of one or more protected characteristics?

The answers to this question indicate that in all Member States an independent authority, typically the Ombudsman, acts in cases of discrimination.

Question 3(b). When investigating such cases, is the competent body or authority obliged to examine whether the discrimination is intersectional?

According to the answers given by Member States, there is no legal obligation for the competent body to examine the intersectionality of discrimination, but the majority of Member States stressed in their replies that the competent body conducts its proceedings on a case-by-case basis, taking into account all the circumstances.

Question 4. Would you share your good practices on intersectional discrimination with other Member States?

Many Member States have valuable knowledge and good practices which they have shared in response to question 4. It is hoped that this exercise will facilitate progress in the fight against intersectional discrimination across the EU.

Question 5. Do the laws of your Member State consider as a qualifying/aggravating circumstance a breach of the requirement of equal treatment in the case of intersectional discrimination?

With the exception of a few Member States, where the offence of discrimination is already treated more severely if it is committed in the context of intersectional discrimination, few Member States' national laws currently provide for qualifying or aggravating circumstances for the offence of intersectional discrimination.
