



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY

Director-General

Brussels,

Dear Ms Groenenboom,

Subject: Your letter dated 30 September 2016 on alleged discrimination against LGBTI staff members of the EU institutions

Thank you for your letter addressed to former Vice-President Georgieva and to Commissioner Jourova. I was asked to reply on their behalf. This letter has been the subject of careful and in-depth consideration by different services, which explains the time taken for responding.

By your letter, you express concerns vis-à-vis an alleged discrimination in relation to the reproductive rights of LGBTI staff members, and in particular with respect to (1) reimbursement rules for fertility treatments and (2) maternity and adoption leave in case of surrogacy.

1. Fertility treatments

You firstly raise the question of the reimbursement of costs for artificial insemination (AI) or In Vitro Fertilization (IVF) under the Joint Sickness Insurance Scheme (JSIS) for female couples, and consider that those costs should be reimbursed without having to demonstrate any pathology. In this respect you argue that the condition of reimbursement of AI only in case of a male infertility would clearly discriminate against lesbians since there is no male person involved. You further argue that lesbian couples should benefit from the reimbursement of IVF treatments without having to demonstrate any pathology, after a given number of failed AIs.

I understand the concerns that you raise. But, as you know, the rules of the JSIS, as defined under Article 72 of the Staff Regulations of Officials of the European Union (SR) and its implementing provisions, foresee that the scheme covers the medical expenses of its beneficiaries resulting from illness, accidents and confinement.

Should there be a fertility issue of the beneficiary/ies of the JSIS in a female couple, or any other woman with or without a male partner, the costs for AI and/or IVF treatment would be reimbursable under the conditions set out in the JSIS. Notably, the JSIS intervenes in cases of fertility problems of all its beneficiaries, irrespective of their sexual orientation. To that extent, there is no discrimination of homosexual couples.

This being said, and in addition, the Commission, as a diversity-led employer, ensures that each situation is being considered by the JSIS on its individual merits, with the aim of finding a solution whenever legally possible.

2. Male couples and maternity leave/special adoption leave in case of surrogacy

You also perceive a point of an alleged discrimination affecting male couples as regards the granting of maternity/special adoption leave in a case of surrogacy. You request in this respect to make the maternity (or equivalent) leave gender-neutral and to systematically grant male couples 20-weeks leave in three different instances that you refer to as instances of surrogacy.

As regards the maternity leave, this leave is granted to a pregnant woman in the first instance to allow her to recuperate from the physical effort of giving birth. It is also granted so as to ensure that the newly born benefits from all the advantages of closeness to the mother including for example breast-feeding and so establishes a bond to her. In case of a surrogate mother (who is not a staff member), and because of the very purpose of the maternity leave, this latter cannot be granted to any of the parents, whether biological or adoptive. However, the parents, whether biological or adoptive, can benefit from a special leave for the birth of a child for a duration of 10 days to be taken during the 14 weeks following the birth. These provisions do apply to all couples, irrespective of the sexual orientation.

As to adoption leave, and where both of the parents are adoptive parents, a 20 weeks entitlement¹ is granted, which is equivalent to the maternity leave duration. In the particular instance where one of the parents is the biological parent and where the child is adopted by the other parent, the Commission Decision on Leave states that adopting the child of a spouse/partner is not considered to be adoption within the meaning of the Staff Regulations and does not entitle the other parent to special leave for adoption. It shall be highlighted that this rule for the granting of adoption leave equally applies to all couples irrespective of their sexual orientation. A homosexual couple is neither subjected to better nor to worse conditions in comparison to a heterosexual couple in the constellation that one of the parents adopts the biological child of the other parent. The sexual orientation of the couple is not a determining factor in the analysis of the special leave request. For this reason, the applicable legal framework of the Commission does not lead to a discrimination of homosexual couples.

However, I understand that the current legal framework does in very few cases not lead to the most satisfying results. With respect to the Commission's commitment to foster diversity and inclusion amongst its staff, it shall be highlighted that work is underway to revise the Commission Decision on Leave still in the course of the current year. The revision will be the occasion to satisfactorily tackle the situation of the case at hand. As diversity and inclusion are concepts which go beyond the mere principles of non-discrimination and equal opportunities, these concepts at times also lead to a certain modification of existing rules so as to aim to the latest developments in society. Against this background, the rules concerning the special leave for adoption of a child will be critically appraised in order to create a legal framework that best addresses all situations in which one of the parents adopts the biological child of the other parent.

Sincerely yours,



Irene SOUKA

Copies: Cabinets Oettinger and Jourová

¹ 24 weeks in the case of multiple adoptions on the same date or if the child is disabled or seriously ill.