(English version)

Question for written answer E-001935/26
to the Commission
Anthony Smith (The Left)
(11 May 2026)

Subject: Limiting daily subsistence allowances for people in post-retirement employment and upholding the EU principle of non-discrimination

Under French law, people in post-retirement employment who are on sick leave are entitled to a maximum of 60 days' subsistence allowance over their entire working life. However, these employees continue to make contributions at the same rate as other workers, who are entitled to compensation of up to 365 days, renewable annually.

This arrangement, which was introduced under the Social Security Financing Act for 2020, affects hundreds of thousands of people in France. It has led to the introduction of a separate compensation scheme for a category of workers defined primarily by their age and retirement status, even though they are working under the same conditions as other employees.

Article 21 of the Charter of Fundamental Rights of the European Union prohibits any discrimination, including on the basis of age.

In view of this:

1. Does the Commission consider this arrangement to be compatible with the EU principle of non-discrimination on the basis of age?

2. Does it take the view that, by continuing to apply this specific limitation to people in post-retirement employment, the French Government could be in breach of EU law? Does it intend to engage in dialogue with the French authorities on this matter?

Submitted: 11.5.2026

Answer given by Ms Lahbib on behalf of the European Commission
(9 September 2026)

Council Employment Equality Directive 2000/78/EC ([1]) prohibits discrimination based on age in employment and occupation. However, this directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

Accordingly, the situation described in the Honourable Member's question appears to fall outside the scope of the directive. Moreover, the Court of Justice of the European Union clarified that the scope of the directive may not be extended beyond the listed grounds ([2]).

As the differential treatment raised by the Honourable Member focuses on retirement status rather than age, this would not constitute direct discrimination based on age.

As regards indirect discrimination based on age, under the directive, Member States may provide that differences of treatment based on age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim (including legitimate employment policy, labour market and vocational training objectives), and if the means of achieving that aim are appropriate and necessary.

The Charter of Fundamental Rights of the European Union applies to Member States only when implementing EU law ([3]), which does not appear to be the case here.

The Commission considers that the Employment Equality Directive has been correctly transposed in French national legislation. The Commission monitors the implementation of the directive, and published a report on its application in July 2026 ([4]).

([1]) https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng.
([2]) See, for example: judgment of 11 July 2006, *Chacón Navas*, C-13/05, ECLI:EU:C:2006:456. In particular, the grounds of discrimination do not include the professional category (see judgment of 8 October 2020, *Universitatea 'Lucian Blaga' Sibiu and Others*, C-644/19, ECLI:EU:C:2020:810) nor the nature of the employment relationship (see judgment of 17 March 2017, *Milkova*, C-406/15, ECLI:EU:C:2017:198).
([3]) Charter of Fundamental Rights of the European Union, Article 51(1). The Court of Justice of the European Union confirmed that, so far as actions of the Member States are concerned, the provisions of the Charter are addressed to the Member States only when they are implementing EU law (see e.g. judgment of 5 February 2015, C-117/14, *Nisttahuz Poclava*, ECLI:EU:C:2015:60.
([4]) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2026%3A364%3AFIN&qid=1783943219660.

The design and management of social protection systems, including national pension schemes, remains the responsibility and competence of the Member States ([5]).

([5]) Article 153(4) of the Treaty of Functioning of the European Union.