

Equal treatment between men and women: self-employed workers and their spouses

2008/0192(COD) - 03/10/2008 - Legislative proposal

PURPOSE: to amend the Community legal framework concerning the application of the principle of equal treatment between women and men for self-employed workers and their spouses.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: in its report on the implementation of Directive 86/613/EEC, the Commission concluded that the practical results of the implementation of the Directive were 'not entirely satisfactory when measured against the prime objective of the Directive, which was a general improvement in the status of assisting spouses.'

In December 2007, the Council called on the Commission to 'consider the need to revise, if necessary, Council Directive 86/613/EEC in order to ensure the rights related to motherhood and fatherhood of self-employed workers and their helping spouses.'

The European Parliament has consistently called on the Commission to review the Directive, in particular to improve the situation of assisting spouses in agriculture (see [INI/2007/2117](#)).

CONTENT: this proposal will repeal Directive 86/613/EEC¹ and will be applicable as regards those aspects not covered by Directives 2006/54/EC, 2004/113/EC and 79/7/EEC, in order to implement more effectively the principle of equal treatment between women and men engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity.

The main elements of the proposal are as follows:

Purpose and scope of the Directive: the proposal sets out the purpose of the Directive, i.e. to put into effect the principle of equal treatment between men and women engaged in self-employed activities. It covers self-employed workers and assisting spouses. The Directive does not cover the matters covered by Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Definitions: the definition of 'assisting spouses' is amended: the words 'assisting' and 'or life partners' are added. The amendment aims to cover all persons recognised as 'life partners' by national law and regularly participating in the activities of the family business, irrespective of marital status. In order to remove ambiguity, 'partner' is replaced by 'business partner'. Harassment on grounds of sex and sexual harassment do not occur solely at the workplace, but also in other areas of an individual's life, including in the context of self-employed activities. Harassment based on sex consists of unfavourable treatment of a person related to their sex, though it need not be of a sexual nature. Sexual harassment consists of unwanted physical, verbal or non-verbal conduct of a sexual nature.

Principle of equal treatment: this provision prohibits any direct or indirect discrimination in relation to the establishment, equipment or extension of a business or the launching of any other form of self-employed activity. It confirms that the Member States may maintain or introduce specific measures to compensate for certain disadvantages suffered by individuals of either sex in the area covered by the

Directive. Such measures must be shown to be necessary, must be focused on overcoming a specific disadvantage and must be limited in time, being in force no longer than is necessary to deal with the problem identified.

Social protection of helping spouses: the new provision stipulates that assisting spouses must, at their request, benefit from at least an equal level of protection as self-employed workers. It does not stipulate that self-employed workers are to be covered by any specific social security system. It simply makes it an obligation for assisting spouses to be able, if they so decide, to join the same social security protection applicable to the self-employed worker.

Maternity leave: the proposal states that female self-employed workers and assisting spouses should be entitled, at their request, to maternity leave as provided for in Directive 92/85/EEC. Such maternity leave is to be paid at a rate at least equivalent to the payment received in the event of sickness, subject to any ceiling laid down by national law. If the person in question does not benefit from sickness allowance, the payment should be equivalent to any appropriate allowance established at national level.

In order to take the specificities of self-employed activities into account, the proposal gives self-employed women as far as possible the option of temporary replacement services as an alternative to the financial allowance.

Defence of rights: this proposal gives people who believe they have suffered discrimination with the possibility of pursuing their claims through administrative and/or judicial proceedings to enforce their right to equal treatment. The right to legal protection is further reinforced by the possibility of allowing organisations to exercise such rights on behalf of a victim.

Compensation and reparation: Member States are required to ensure that there is provision in national law for real and effective compensation or reparation.

National bodies for the promotion of equal treatment: the proposal requires Member States to designate national bodies for the promotion of equal treatment in the fields covered by the Directive. It lays down a number of requirements for such bodies in the Member States.