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

2008/0192(COD) - 08/03/2010 - Council position

The Council adopted its position in first reading on the proposal for a directive aiming to improve the social protection of self-employed workers and assisting spouses. The United Kingdom abstained.

The European Parliament adopted 30 amendments to the Commission's proposal. The Council could accept 10 of the European Parliament's amendments either in whole, in part or after being reworded.

Social protection (Article 7 and recital No 16 of the Council position in first reading): the Council concurs with Parliament on the principle that, in view of their participation in the activities of the family business, spouses or, when and insofar as recognised by national law, the life partners, of self-employed workers who have access to a system for social protection, should also be entitled to benefit from social protection.

- The Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it should be up to the Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis and should be granted only upon request of assisting spouses and life partners.
- The Member States should have the possibility to provide that this social protection can be proportional to the participation in the activities of the self-employed worker and/or the level of contribution.
- Without prejudice to the provisions of this Directive, they should also be able to maintain national provisions limiting the access to specific social protection schemes, or to a certain level of protection, including special funding conditions, to certain groups of self-employed workers or professions, provided that access to a general scheme is available.

Maternity benefits and temporary replacement services (Article 8, recitals Nos 17 and 18 in the Council position in first reading): the Council shares Parliament's views on the need to give pregnant self-employed workers and pregnant spouses, or life partners, of self-employed workers, a maternity leave of a long enough duration to ensure the proper course of a normal pregnancy and physical recovery of the mother after a normal childbirth.

- However, in view of their status as self-employed workers, the Council did not consider appropriate to provide that female self-employed workers and, by analogy, female assisting spouses or life partners of self-employed workers, should be entitled, at their request, to the same period of maternity leave as provided for in Directive 92/85/EEC. This Directive only applies to employees who are subject to different provisions as compared with self-employed women. For this reason, the Council felt that it would be more appropriate to provide that female self-employed workers and female spouses and life partners, should, in accordance with national law, be granted an adequate maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

- The Member States should remain competent to organise such benefits, including establishing the level of contributions and all the arrangements concerning benefits and payments, provided the minimal prescriptions of the Directive are complied with. In particular, they should be able to

determine in which period before and/or after confinement the right to maternity benefits is granted. They should also determine if the economic situation of the person or family in question should be taken into account when establishing contributions and/or benefits.

- Furthermore, in order to take the specificities of self-employed activities into account, the Council considered that female self-employed workers and female spouses or, when and insofar as recognised by national law, the life partners of self-employed workers, should be given access, as far as possible to any existing services supplying temporary replacement enabling interruptions in their occupational activity owing to pregnancy or motherhood or to any existing national social services. Access to these services could be an alternative or a part of the maternity allowance.