

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

2008/0192(COD) - 22/03/2010 - Commission communication on Council's position

The Commission notes that the Council's position at first reading differs substantially from the Commission's proposal and the European Parliament's opinion, primarily with regard to **social protection for assisting spouses**. Whilst the Commission and the European Parliament take the view that assisting spouses should enjoy the same level of social protection as self-employed workers themselves, the Council's position is restricted to guaranteeing their access to "social protection".

Concerning **maternity leave for self-employed workers and assisting spouses**, the Council's position is closer to the amendment adopted by the European Parliament and accepted by the Commission providing for the principle of adapting to the specific needs of the persons concerned. However, the Council's position on Article 7(3) concerning the appropriate level of maternity pay is even further away from the positions of the Commission and of the European Parliament.

The Council's position takes in the following European Parliament amendments to the proposal, which had also been accepted by the Commission:

- addition of an explicit reference to promoting women's entrepreneurship in the article on positive action;
- drafting clarification concerning the conditions applicable to the creation of a business;
- the text adopted by the Council establishes the gearing of the provision to the specific needs of self-employed workers and assisting spouses;
- the acknowledgement of the work of assisting spouses is mentioned in recital 7 of the text adopted by the Council;
- addition concerning the competence of the national equality bodies with regard to exchanging information with their European counterparts;
- new article on mainstreaming equality between men and women;
- requirement that there be "particular difficulties" in order to be eligible for the additional period for implementation of the Directive;
- addition of a new article on the nature of the "minimum requirements" in the proposal.

During the negotiations in the Council, it became clear that any attempt to approximate the level of protection granted to self-employed workers and that afforded to assisting spouses would be opposed by many Member States. The Commission therefore emphasised that, although it constituted a substantial change to its text which rendered it much less ambitious, it would go along with it so as to enable the Council to reach political agreement, which would not be possible otherwise. The Commission also took into account that, given the opposition in principle of two Member States to any legislation in this area, the Council would not be able to make a unanimous decision.

The Commission, whilst admitting that the position of the Council at first reading does not correspond, on several key points, to its proposal, nevertheless considers that the only way to allow the procedure to move forward is to **refrain from making any objections to the Council's position at first reading**.