

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

2008/0192(COD) - 07/07/2010 - Final act

PURPOSE: to improve the social protection for self-employed workers and their spouses.

LEGISLATIVE ACT: Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

CONTENT: the Council adopted a directive strengthening the social protection of self-employed workers and of "assisting spouses", thereby aiming to strengthen the principle of equal treatment between men and women who want to establish or extend a self-employed. The adoption of the directive follows an agreement with the European Parliament at second reading.

The new directive entitles self-employed women and assisting female spouses of self-employed workers to maternity benefits for the first time and creates autonomous social protection rights for the assisting spouses of self-employed workers.

The main elements of the Directive are as follows:

Principle of equal treatment: the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

Positive action: Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship initiatives among women.

Establishment of a company: without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, the Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses, or between life partners when and in so far as recognised by national law, are not more restrictive than the conditions for the establishment of a company between other persons.

Social protection: where a system for social protection for self-employed workers exists in a Member State, that Member State shall take the necessary measures to ensure that spouses and life partners can benefit from a social protection in accordance with national law. The Member States may decide whether the social protection is implemented on a mandatory or voluntary basis.

Maternity benefits: female self-employed workers and female spouses and life partners may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood **for at least 14 weeks**. A recital states that The length of the period during which female self-employed workers and female spouses or, when and in so far as recognised by national law, female life partners of self-employed workers, are granted maternity benefits is similar to the duration of maternity leave for employees currently in place at Union level. In case the duration of maternity leave provided for employees is modified at Union level, the Commission

should report to the European Parliament and the Council assessing whether the duration of maternity benefits for female self-employed workers and female spouses and life partners should also be modified.

Temporary replacement services: female self-employed workers and female spouses and life partners have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the allowance referred to this Directive.

Defence of rights: judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, for the enforcement of the obligations under this Directive are available to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Compensation or reparation: the Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit.

Equality bodies: the Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC are also competent for the promotion, analysis, monitoring and support of equal treatment of all persons covered by this Directive without discrimination on grounds of sex.

Level of protection: the Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment between men and women than those laid down in this Directive.

Reports: Member States shall communicate all available information concerning the application of this Directive to the Commission by 5 August 2015. The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than 5 August 2016. That report should take into account any legal change concerning the duration of maternity leave for employees. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

ENTRY INTO FORCE: 04/08/2010.

IMPLEMENTATION: 5 August 2012 at the latest. Where justified by particular difficulties, the Member States may, if necessary, have an additional period of two years until 5 August 2014 in order to comply with Article 7 (Social protection), and in order to comply with Article 8 (Maternity benefits).