Equality men-women, discrimination based on sex: burden of proof

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The Committee broadly welcomes the Commission initiative. It also shares the Commission's view that Community action is needed to uphold and enforce the principle of equal treatment. The Committee does not, however, agree with the Commission that the proposed arrangement will not impose any administrative constraints on the creation, maintenance and development of SMEs. It trusts that the Commission will take appropriate action to ensure that this fact is taken into consideration in its programmes designed to establish, maintain and promote SMEs. Although the Commission clearly states in the recitals to the draft directive that its intention in Article 4(1) is not to reverse the burden of proof, the actual wording of the directive does not wholly bear this out. The Committee proposes that, to make it easier for the principle of equal treatment to be enforced in law, a clear rule must be established that, as a matter of principle, the plaintiff continues to bear the burden of proof, but that it is enough for the plaintiff to make out a credible case for his or her claim that discrimination based on sex has taken place. This means that, unlike the situation in certain Member States, the courts need not have virtually watertight proof that sex discrimination has taken place - which in practice would make it inordinately difficult to take proceedings in these cases. Rather, there need only be overwhelming probability, in the light of all the facts of the case. In other words, sex discrimination may be deemed to have occurred where there are well-founded indications that a person has been treated improperly. This removes the plaintiff's difficulty in having to supply absolute proof of discrimination before the courts. In each case, therefore, it is up to the courts in each individual. Member State, acting in line with national provisions, to pass judgement on the claims made. The Economic and Social Committee feels this to be a balanced arrangement - particularly since it makes it easier for the plaintiff to furnish proof while at the same time clearly giving the defending employer the opportunity to demonstrate that there has been no discrimination on the grounds of sex.