

# Equal opportunities and equal treatment of men and women: employment and occupation. Recast

2004/0084(COD) - 21/04/2004 - Document attached to the procedure

## COMMISSION'S IMPACT ASSESSMENT

For further information concerning the background to this issue, please refer to the summary of the Commission's initial proposal COM(2004)0279 of 21 April 2004 concerning a Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast version).

### 1- POLICY OPTIONS AND IMPACTS

The Commission identified three possible policy options. Further possible options were discarded at an early stage.

**1.1-Option 1 -Simplification without any modernisation:** This consists of a pure codification without any substantial changes, by putting together in two separate legal acts the provisions of two basic Directives with the provisions of their later amendments. It concerns the Directives in the area of access to employment, vocational training and promotion and working conditions and the Directives in the area of equal treatment between men and women in occupational social security. Moreover, a modification of Directive 97/80/EC as amended by Directive 98/52/EC on the burden of proof could be proposed in order to align its provision on the definition of indirect discrimination with the latest definition contained in Directive 2002/73/EC.

**1.2- Option 2 - Simplification, modernisation and improvement by amalgamating and amending selected Directives into a new and single recast Directive.** This option is a recasting of equal treatment Directives by combining all the Directives implementing the principle of equal pay between men and women within the meaning of Article 141 EC and the Directives on the burden of proof. This would go beyond a merely technical exercise applying the definitions of direct and indirect discrimination as well as harassment and sexual harassment in Directive 2003/73 to all subjects covered by the new Directive.

**1.3- Option 3- Simplification modernisation and improvement by adding employment related provisions of the Maternity Directive, Directive 92/85 to policy option 3.2:** This would extend option 2 by adding some provisions of Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, which do not exclusively relate to health and safety aspects but also concern employment conditions. This new and single recast Directive would then cover all maternity related employment rights, like the prohibition of dismissal, maintenance of payment and/or entitlement to an adequate allowance, night work, maternity leave, time off for ante-natal examinations.

**1.4- Discarded options:** At an early stage, the possibility of including other Directives, such as the Parental Leave Directive and the Directive dealing with equal treatment for the self-employed and their assisting spouses, in the recasting exercise were discarded either because of the incompatibility of their legal base or their limited practical impact.

*CONCLUSION:* By providing for a more easily accessible and clearer legal text, up to date with case law and free of contradicting definitions, the Commission considers that Option 2 would contribute efficiently to the need of improving the position of women in the labour market.

## IMPACTS

Option 1, being a pure codification of existing legislation, would be no more than a technical exercise without adding anything new to the existing Community acquis. Since this would not lead to the creation of any new rights and obligations on Community level with the effect of Member States having to adapt their national legislation accordingly, there would be no socio-economic impact at all, because the legal situation at both levels would remain materially unchanged.

Legally speaking, the main consequence of Option 2 would be the extension of the new provisions of Directive 2002/73 on the newly integrated Directives on equal pay, occupational schemes and the burden of proof. Directive 2002/73/EC is to be implemented by 5 October 2005 and it is only within 3 years of that date, that the Commission will draw up a report for the European Parliament and the Council on its application and be able to evaluate its effects. There is a new expected impact under the envisaged changes in option 2 as, broadly speaking, by leaving Directive 2002/73 untouched without introducing new policies, it will only add to more clarity, but it will not pose an additional financial burden on employers.

However, even without adding new policies, this rather technical exercise as such will have some effect, simply because innovative provisions of Directive 2002/73 would also cover also Directive 75/117 on equal pay, the Directives on occupational social security and Directive 97/80 on the reversal of the burden of proof, in a more visible way than it is the case now. These innovative changes would be:

- Equality bodies, to be installed under Art. 8a of Directive 2002/73, will have more additional responsibilities with regard to occupational schemes. With regard to pay they have already competencies under Art. 3 of the Directive. The overall new impact from clarifying equality body's responsibility to equal pay and in particular to occupational schemes, would be little, first because they already have to exist under present law and also because their responsibilities do not include any hard core competencies. With regard to rights under occupational schemes however, through representative analysis and documentation, eventual inequalities might appear more clearly.

- The recommendation to set up equality plans under Art. 8b of Directive 2002/73 would be extended to occupational schemes. Given that equality plans are not compulsory under the Directive and have the quality of recommendations, their extension to occupational social security would not have an economic effect in the Member States.

- Sanctions under Art.6 of Directive 2002/73 would apply to all aspects of the right to equal pay, including discrimination in occupational pension schemes. This is no material change in law, but a clarification. Therefore, the legal consequence will be that remedies for unequal pay will get an independent basis in secondary Community law. This is, however, no new impact of the recasting but rather an impact of the already existing Directive 2002/73.

- NGOs' right to bring a complaint before the courts on behalf of employees would be extended to all equal pay related questions including occupational schemes. The recasting would allow these organisations to also cover cases of discrimination under occupational schemes. With respect to occupational schemes and pay, there would again be no new legal impact beyond the one under Directive 2002/73, because these organisations will already be in charge of rights from occupational schemes under the aspect of pay. An impact might, however, come from the fact of clarity and greater visibility of pay and rights from occupational schemes falling within the competence of supporting NGOs.

- The rules on the burden of proof would be extended to occupational schemes but in spite of legislative changes in some Member States, little or no new socio-economic impact is to be expected.

- Definitions would be harmonised.

The socio-economic impact for Option 3 would be the same as the impact described for Option 2, but it was felt that the integration of employment related maternity rights in the new recast Directive might cause some confusion, since other maternity rights will remain in a separate legislative text.

## **2- FOLLOW-UP**

The Member States will send the Commission the text of transposing provisions and a concordance table reflecting the correlation between those provisions and the Directive. In transposing acts, they will make reference to this Directive on the occasion of their official publication. Within 3 years of the entry into force of the Directive, each Member States will provide the Commission with all the necessary information to draw up a report to the European Parliament and the Council on the Directive's application.