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

1996/0196(SYN) - 03/09/1997 - Commission communication on Council's position

In its assessment of the Council's common position on the directive concerning the burden of proof in cases of discrimination based on sex, the Commission stated that it had reservations on the following two points: (1) the definition of indirect discrimination: the common position used a definition which did not take into consideration all the elements of the rulings of the European Court of Justice. The definition set out in the Commission's original proposal contained all the elements which had consistently recurred in the judgments of the Court. The Commission regarded it as difficult to accept only some of these elements, each of them being justified by the inclusion of the others. It believed that it was the way in which they tied in with each other that gave the definition its coherence. Consequently, the Commission expressed a reservation as regards the Council's definition; (2) the scope of the directive: the Council had refused to extend the scope of this directive to cover the directives applying the principle of equal treatment in connection with social security schemes. The Commission had difficulties in accepting this approach. The shifting of the burden of proof was justified, according to the rulings of the Court, where it was necessary in order not to deprive workers who had been discriminated against of the means effectively to enforce the principle of equal treatment. The Commission considered that the principle laid down by the Court was a general one which should be applied in all directives aimed at upholding the principle of equal treatment between the sexes. The Commission regretted, moreover, the fact that the Council had only taken over a small number of the amendments adopted by the European Parliament, at first reading.