

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

2004/0084(COD) - 25/08/2005 - Modified legislative proposal

Having examined in detail Parliament's amendments to the draft Directive the Commission sets out its position on which amendments it deems acceptable.

Many are accepted in their entirety, subject to some reformulations; others are accepted in part whilst eleven are rejected out right. Of the amendments accepted in part, most of the changes refer to editorial issues or cases where articles have been renamed. For example, changes to Title III, Chapter 1 allow the Directive to become more easily readable. The other amendments accepted in part or in principle refer, *inter alia*, to:

- Amendment 2, concerning the discrimination of trans-sexuals on the grounds of sex, prohibited as such by ECJ case law. Given the subtleties in defining trans-sexuality, the Commission proposes creating a separate recital that is specifically dedicated to this issue. The recital will clarify that the discrimination of transsexuals falls within the scope of this Directive.
- Regarding the question of pregnancy and maternity protection, the Commission agrees with the proposed Parliamentary amendments given that they are in line with ECJ case law.
- On the question of paternal leave and leave for the adoption of children the Commission, whilst accepting the spirit of the Parliamentary amendments, proposes to merge the two amendments and create a new recital essentially extending the same considerations to adoption leave.

Concepts rejected by the Commission include:

- Highlighting ethnic minority women as a particularly vulnerable group.
- New language on the relationship between compensation and sanctions.
- References to "full-time or part time employment" and "job titles".
- New review clauses of the parental leave Directive since this would imply a substantive change to the parental leave Directive.
- The Commission accepts the need to keep the period of transposition for the Directive to two years given the limited number of modifications that need to be transposed as a result of the recast. However, allowing for only one further year for Member States to report on the application of the Directive is not deemed suitable, in view of the limited time-frame.

The amendments rejected by the Commission are:

- The proposed amendment adding the right to parental leave in connection with the Charter of Fundamental Rights of the European Union. The Commission believes that the additional text makes reference to a matter, which is not dealt with in this Directive.
- Amendments referring to the use of sex-based actuarial factors in occupational systems of social security and with those adopted for private insurance contracts.

- An amendment that deletes references to non-verbal conduct in the definition of sexual harassment.
- The Commission deems the proposed Parliamentary amendment on the definition of “promotion at work” unacceptable. It does so on the grounds that the term has not given rise to any difficulties in the past and thus any reference to it is superfluous.
- An amendment on “positive action”. EU primary legislation makes it clear that positive measures are admissible but not mandatory. Thus, EU secondary legislation cannot impose obligations going beyond what is stated in the Treaty text. Similarly, references to childcare are not within the scope of this Directive, which is limited to employment and occupations (other than in the relatively few cases where the employer offers childcare facilities). The Commission fears that keeping this amendment could lead to confusion.
- The Commission also rejects amendments, which seek to include ‘*remedies*’ in the text of the Directive.