

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

2004/0084(COD) - 10/03/2006 - Council position

It should be noted that the Common Position was agreed on the basis of informal tripartite negotiations, following a series of meetings between the Presidency in office (LUX and UK), the rapporteur and shadow rapporteurs and the relevant representatives of the Commission. On 8 December 2005, the EPSCO Council reached political agreement on this text and, as part of the compromise agreement with the Parliament, both the Council and the Commission presented statements for the Council minutes relating to parental leave. In its first reading on 6 July 2005, the European Parliament adopted 93 amendments. European Parliament amendments accepted by the Council. In its common position, the Council took into account 74 amendments.

The Council considers that, as a whole, the Common Position is in line with the fundamental objectives of the Commission's amended proposal. The Council also considers that, wherever possible within the confines of the recast procedure, it has taken account of the principal objectives pursued by the European Parliament in its amendments to the original Commission proposal.

As regards several recitals newly introduced by the European Parliament and accepted by the Commission in its amended proposal relating to the need for Member States to address gender-based wage differentials and labour market segregation, to develop and analyse statistics disaggregated by sex

and to promote the raising of awareness of wage discrimination, the Council incorporated the notion of the necessity to continue these efforts in order to avoid creating the impression that these activities are not already ongoing.

In its amended proposal, the Commission rejected the insertion of a new paragraph (2)(d) in Article 20 adding the exchange of data and know-how with corresponding European bodies such as the European Institute for Gender Equality to the tasks of the equality bodies to be established under that provision. This position was taken for technical reasons related to proper legislative drafting as no reference should be made to an institution that does not yet exist. These concerns were accommodated in the new text by making mention of corresponding European bodies such as any future European Institute for Gender Equality. This wording can be accepted.

With regard to the Article on social dialogue, the Council accepted the European Parliament's amendment broadening the reference to the term "workplace" as reformulated by the Commission but refused to include new wording on research by the social partners being carried out on the basis of the development and analysis of gender-specific data.

Still in relation to the provision on social dialogue, information provided by the employer on equal treatment in the undertaking is one of the means of the promotion of equal treatment in a planned and systematic way. The Council endorsed the Commission's suggestion to align the wording with the other paragraphs by stipulating that employers shall (instead of should) be encouraged to undertake such efforts. It did not accept the further proposal in the amended Commission proposal to use the term "should" in the second subparagraph implying a stronger exhortation to make available the specific information mentioned there and reverted to the wording "may" from the original proposal. It did, however, incorporate, subject to a clarifying reformulation, the proposal by the European Parliament, seconded by the Commission, to be more detailed on the issues on which to make information available. In its entirety, this compromise solution is acceptable to the Commission.

The Council agreed to move the obligation for Member States to submit a report containing an assessment of exceptions to the principle of equal treatment on the grounds that a characteristic related to sex constitutes a genuine and determining occupational requirement from Article 13 to Article 31, the general provision dealing with reporting obligations, as a new paragraph 3. It changed the frequency of such reporting from every four years, as suggested by the European Parliament and by the Commission in its amended proposal, to "periodically but at least every eight years". This can be accepted as it still represents some progress compared to the current requirement of periodical assessment without any fixed deadlines.

Concerning the set of interrelated deadlines for transposition of the Directive (Article 33), for the implementation reports by the Member States (Article 31) and for a review of the operation of the Directive by the Commission (Article 32), the Council took the middle ground between the different positions of the institutions. It accepted a short transposition period of two years as called for by the European Parliament and by the Commission in its amended proposal in principle, but included

the possibility for Member States facing particular difficulties to extend the transposition period to three years. Uniform deadlines were established for the implementation reports and the review at four and a half years and six and a half years after entry into force of the Directive respectively.

The Council further introduced some changes unrelated to the European Parliament's amendments. These modifications are of a formal and technical nature and do not alter the substance of the proposal. They include, for example, the merger of Articles 19 and 20 of the initial proposal into one single provision on the burden of proof in discrimination cases (Article 19) and the shortening of the headings of Chapters 1, 2 and 3 of Title II as well as Chapter 2 of Title III. To create a clearer structure, the Council converted Title IV of the Commission's proposal into Chapter 3 of Title III under the heading "General horizontal provisions". The Council also inserted a new recital 41 that paraphrases paragraph 34 of the Inter-institutional agreement on better law-making.

Council statement

The Council shares the European Parliament's commitment to improving the situation regarding reconciliation between work and private life in order to achieve equality between women and men in working life. It is therefore pleased that the European Commission plans to take up the theme of women's employment and work-life balance as the central part of its Third Annual Report to Heads of State and Government on equality between women and men, to be presented to the Spring European Council in March 2006. In this context, the Council takes note of the importance that the European Parliament attaches to the subject of parental leave.