



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 18 May 2009**

**8840/09**

---

---

**Interinstitutional File:  
2008/0192 (COD)**

---

---

**CODEC 552  
SOC 259**

**NOTE**

---

from: General Secretariat  
to: Permanent Representatives Committee/Council  
Subject: Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC - Outcome of the European Parliament's first reading (Strasbourg, 4 to 7 May 2009)

---

**I. INTRODUCTION**

The Rapporteur, Mrs Astrid LULLING (EPP/ED - LU), presented a report on behalf of the Committee on Women's Rights and Gender Equality consisting of 28 amendments (amendments 1-28). In addition, the ALDE political group tabled 17 amendments (amendments 29-45), the PES and the Greens/EFA political group tabled one amendment (amendment 46).

**II. DEBATE**

The debate, which was held on 6 May 2009, was a joint debate which covered the following two dossiers:

- Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC [**Rapporteur: Mrs Astrid LULLING (EPP/ED - LU)**];
- Proposal for a directive of the European Parliament and of the Council amending Council 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 [**Rapporteur: Ms Edite ESTRELA (PES – PT)**] (*see also doc. 9302/09*);

Mrs Astrid LULLING (EPP/ED - LU) opened the debate and

- welcomed the proposal of the Commission, that will replace the 1986 Directive, but expressed disappointment that this new proposal does not go far enough regarding one key point, namely social security protection for assisting spouses. Experience shows that the right of assisting spouses to become members of social insurance schemes, as opposed to an obligatory membership, is not sufficient and the large majority does not join;
- noted that the existing rule on the recognition of the work of assisting spouses should be kept;
- argued in favour of the definitions used in the Commission proposal which are legally grounded and acceptable to everybody;
- noted that it would be a major improvement if the setting-up of a company between spouses or recognised partners would not be prohibited in any Member State.

Ms Edite ESTRELA (PES – PT)

- noted that the objectives of the proposal are to improve the working conditions for women and to encourage the return to work after having given birth and to ensure better reconciliation of professional, private and family life and to increase the birth rate in Europe;
- welcomed the rules on the dispensation from night work and overtime;
- stressed the importance of maternity leave lasting 20 weeks. It should include compulsory fully paid maternity leave of at least six weeks after childbirth;
- asked for a period of two weeks for fathers to take leave. The participation of fathers is essential in the life of a young family.

Commissioner SPIDLA

- confirmed that the intention of the Commission is to improve the participation of women in working life and to encourage them to have children;
- noted that the current proposal is not the right place to treat the question of self-employed and assisting spouses. He saw a possibility that the Commission would adopt a new legislative proposal before the summer regarding this group;
- rejected the idea of a right for "paternity leave" at this stage;
- agreed with the Parliament's proposal to have a 20-week period of maternity leave with full payment;
- did not agree with the proposal of certain mandatory rules for breastfeeding women after 20 weeks. He suggested leaving this question under responsibility of Member States;
- regarding the Lulling report, stressed that most amendments of the European Parliament can be supported by the Commission;
- rejected the proposal for mandatory membership of assisting spouses in the social insurance scheme. He preferred the voluntary solution, in particular taking account of the current economic situation. He would not like family companies to be exposed to higher costs.

Speaking on behalf of the EPP/ED political group, Ms Maria PETRE (EPP/ED – RO)

- stressed the importance of the family as the cornerstone of society
- stated her support for the extension to 20 weeks maternity leave, taking into account that the WHO recommends 24 weeks to recover from giving birth;

Speaking on behalf of the PES political group, Ms Lissy GRÖNER (PES – DE)

- stressed the importance of the reconciliation of family and professional life;
- spoke in favour of extending the maternity leave by two weeks leave for fathers;
- stressed that both Directives must give the same rights to same-sex couples;
- noted that membership of the social insurance schemes should be made mandatory.

Speaking on behalf of the ALDE political group, Ms Claire GIBAULT (ALDE – FR)

- expressed broad support for the report of Ms Estrela;
- regarding the length of maternity leave, stressed the importance of this question for the women's chances of returning to work. If the maternity leave is too long, it will be very difficult for women to come back to work under the same conditions as before giving birth. Therefore, she supported the 18-week period proposed by the Commission.
- spoke in favour of allowing fathers to take leave, on a voluntary, rather than a mandatory basis.

Speaking on behalf of the UEN political group, Ms Eva TOMASZEWSKA (UEN – PL)

- noted that the proposals offer steps in the right direction, but do not go far enough;
- stressed the importance of the principle of subsidiarity: it should be left to Member States to find the best solution.

Speaking on behalf of the Greens/EFA political group, Mr Raül ROMEVA i RUEDA  
(Greens/EFA- ES)

- spoke in favour of extending the maternity leave to 24 weeks at European level;
- stressed that there is a shared responsibility for the family between men and women.

Speaking on behalf of the EUL/NGL political group, Ms Vera FLASAROVA (EUL/NGL - CZ)

- spoke in favour of making it obligatory for assisting spouses to join the social insurance scheme.

### **III. VOTE**

When it voted on 6 May 2009, the plenary adopted 30 amendments (amendments 1-16, 18-19, 21-28, 36, 39-40, 46) to the Commission's proposal.

The text of the European Parliament's legislative resolution and the amendments adopted are annexed to this note.

---

**Equal treatment between men and women engaged in a self-employed capacity \*\*\*I**

**European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC (COM(2008)0636 – C6-0341/2008 – 2008/0192(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0636),
  - having regard to Article 251(2) and Article 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0341/2008),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Women's Rights and Gender Equality and the opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs (A6-0258/2009),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and the Commission.

**Amendment 1**  
**Recital 4**

*Text proposed by the Commission*

(4) The European Parliament has consistently called on the Commission to review the Directive 86/613/EEC, in particular to improve the situation of assisting spouses in agriculture.

*Amendment*

(4) The European Parliament has consistently called on the Commission to review the Directive 86/613/EEC, in particular ***so as to boost maternity protection for self-employed women and*** improve the situation of assisting spouses in agriculture, ***craft occupations, commerce, small and medium-sized enterprises (SMEs) and the liberal professions.***

**Amendment 2**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) The European Parliament proposed, in its resolution of 21 February 1997 on the situation of the assisting spouses of the self-employed<sup>1</sup>, the mandatory registration of assisting spouses so that they cease to be invisible workers, and an obligation on Member States to make it possible for assisting spouses to be members of sickness and invalidity insurance schemes and pension schemes for self-employed workers.***

---

<sup>1</sup> OJ C 85, 17.3.1997, p. 186.

**Amendment 3**  
**Recital 7 b (new)**

*Text proposed by the Commission*

*Amendment*

***(7b) Assisting spouses should be given a clearly defined professional status and their rights should be established.***

**Amendment 4**  
**Recital 10**

*Text proposed by the Commission*

*Amendment*

(10) Member States may, under Article 141(4) of the Treaty, maintain or adopt measures providing for specific advantages, in order to make it easier for the under-represented sex to engage in self-employed activities or to prevent or compensate for disadvantages in their professional careers. In principle, ***the*** measures aimed at achieving equality in practice should not be seen as in breach of the legal principle of equal treatment between women and men.

(10) Member States may, under Article 141(4) of the Treaty, maintain or adopt measures providing for specific advantages, in order to make it easier for the under-represented sex to engage in self-employed activities or to prevent or compensate for disadvantages in their professional careers. In principle, ***affirmative action*** measures aimed at achieving equality in practice should not be seen as in breach of the legal principle of equal treatment between women and men.

**Amendment 5**  
**Recital 11**

*Text proposed by the Commission*

(11) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination in relation to the establishment, equipment or extension of a business or any other form of self-employed activity.

*Amendment*

(11) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination in relation to the establishment, **management**, equipment or extension of a business or any other form of self-employed activity.

**Amendment 6**  
**Recital 12**

*Text proposed by the Commission*

(12) It is necessary to ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or life partners when recognised by national law.

*Amendment*

(12) It is necessary to ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or **between** life partners when recognised by national law. ***For the purposes of this Directive, the terms 'marital status' and 'family business' should be interpreted in the light of the recognition accorded to life partnerships in the relevant judgments of the Court of Justice of the European Communities.***

**Amendment 7**  
**Recital 13**

*Text proposed by the Commission*

(13) In view of their contribution to the family business, assisting spouses should be entitled, **at their request**, to benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers, **notably on contributions**. Member States should be required to take the necessary measures to make that choice possible. In any case, the level of

*Amendment*

(13) In view of their contribution to the family business, assisting spouses should be entitled to benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers. Member States should be required to take the necessary measures to make that choice possible. In any case, the level of protection of assisting *spouses* **should** be

protection of *self-employed workers and assisting spouse can* be proportional to the *rate of participation* in the activities of the family business.

proportional to the *degree to which they participate* in the activities of the *self-employed worker within the* family business.

#### Amendment 8 Recital 16

##### *Text proposed by the Commission*

(16) Enhancing the efficiency and effectiveness of welfare systems, notably via improved incentives, better administration and evaluation and the prioritisation of spending programmes, has become crucial to ensure the long-term financial sustainability of European social models. *When devising the measures needed to implement this Directive, Member States should pay special attention to improving and securing the quality and long-term sustainability of their social protection systems.*

##### *Amendment*

(16) Enhancing the efficiency and effectiveness of welfare systems, notably via improved incentives, better administration and evaluation and the prioritisation of spending programmes, has become crucial to ensure the long-term financial sustainability of European social models.

#### Amendment 9 Recital 18

##### *Text proposed by the Commission*

(18) Protection from discrimination based on sex should be strengthened by the existence of a body *or bodies* in each Member State with competence to analyse the problems involved, to study possible solutions and to provide practical assistance to the victims. *The body or bodies may be the same as those with responsibility at national level for the defence of human rights or the safeguarding of individuals' rights, or the implementation of the principle of equal treatment. In exercising their powers and fulfilling their responsibilities under this Directive, these bodies should operate in a manner consistent with the United Nations Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights.*

##### *Amendment*

(18) Protection *of self-employed workers and assisting spouses* from discrimination based on sex should be strengthened by the existence of a body in each Member State with competence to analyse the problems involved, to study possible solutions and to provide practical assistance to the victims.

**Amendment 10**  
**Article 2 – paragraph 1 - point a**

*Text proposed by the Commission*

(a) 'self-employed workers': all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including *farmers and members* of the liberal professions;

*Amendment*

(a) 'self-employed workers': all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including *the areas of agriculture, the liberal professions, craft occupations, commerce and SMEs*;

**Amendment 36**  
**Article 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 2a*

*Companies - marital or family status*

*Member States shall ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or between life partners when recognised by national law. All companies which are jointly established by spouses or life partners when recognised by national law shall be recognised as a 'family business'. The recognition of life partnership shall be based on the relevant judgments of the Court of Justice of the European Communities.*

**Amendment 11**  
**Article 3 – paragraph 1**

*Text proposed by the Commission*

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in particular in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of

*Amendment*

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in particular in relation to the establishment, *management*, equipment or extension of a business or the launching or extension of

self-employed activity.

any other form of self-employed activity.

## Amendment 12

### Article 4

#### *Text proposed by the Commission*

With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex.

#### *Amendment*

With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex ***aimed at, for instance, promoting entrepreneurship among women.***

## Amendments 13 and 39

### Article 5

#### *Text proposed by the Commission*

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses or life partners, when recognised by national law, are not more restrictive than the conditions for the establishment of a company with other persons.

#### *Amendment*

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses or ***between*** life partners, when recognised by national law, are not more restrictive than the conditions for the establishment of a company with other persons.

## Amendments 14 and 40

### Article 6

#### *Text proposed by the Commission*

Social protection for assisting spouses

Member States shall take the necessary measures to ensure that assisting spouses ***can, at their request,*** benefit from at least an equal level of protection as self-employed workers under the same

#### *Amendment*

Social protection for assisting spouses ***and life partners***

Member States shall take the necessary measures to ensure that assisting spouses ***and life partners*** can benefit from at least an equal level of protection as self-employed workers under the same

conditions applicable to self-employed workers.

conditions applicable to self-employed workers. *If this extension of benefits is not mandatory under the legislation of a particular Member State, it shall be granted upon a request made by an assisting spouse or life partner.*

*Those measures shall ensure that assisting spouses become members in their own right of the social insurance schemes in place for self-employed workers and covering sickness, invalidity and old age, provided they contribute to those schemes on the same basis as self-employed workers and even if their contributions have to be calculated on a flat-rate basis.*

*The insurance contributions of assisting spouses shall be tax-deductible as operating expenditure, on terms similar to those applying to the remuneration actually paid to the spouse, subject to the double condition that the services have been correctly provided and that the remuneration is that which is normal for such services.*

#### Amendment 15 Article 7 – paragraph 1

##### *Text proposed by the Commission*

Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses can, ***at their request***, be entitled to the same period of maternity leave ***as provided for*** in Directive 92/85/EEC.

##### *Amendment*

Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses can be entitled to ***a*** period of maternity leave ***adapted to their specific needs. The maternity leave should be of duration of their choice provided that the total length does not exceed that specified*** in Directive 92/85/EEC.

#### Amendment 16 Article 7 – paragraph 3

##### *Text proposed by the Commission*

3. The allowance referred to in paragraph 2 shall be deemed adequate if it guarantees

##### *Amendment*

3. The allowance referred to in paragraph 2 shall be deemed adequate if it guarantees

income at least equivalent to that which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling laid down under national legislation.

income at least equivalent to that which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling laid down under national legislation ***in so far as that ceiling does not lead to any discrimination.***

**Amendment 46**  
**Article 7 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses have access ***as far as possible*** to services supplying temporary replacements or to any existing national social services, ***as an alternative*** to the allowance referred to in paragraph 2.

4. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses have access to services supplying temporary replacements or to any existing national social services, ***in addition*** to the allowance referred to in paragraph 2.

**Amendment 18**  
**Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 7a***

***Recognition of the work of assisting spouses***

***Member States shall undertake to examine under what conditions recognition of the work of assisting spouses may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition.***

**Amendment 19**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that judicial or administrative proceedings, including,

1. Member States shall ensure that ***effective*** judicial or administrative proceedings,

where Member States consider it appropriate, conciliation procedures, are available for the enforcement of the obligations under this Directive *are available* to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

including, where Member States consider it appropriate, conciliation procedures, are available for the enforcement of the obligations under this Directive to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

#### **Amendment 21**

##### **Article 10 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Member States shall ensure that the tasks of the **bodies** referred to in paragraph 1 include:

2. Member States shall ensure that the tasks of the **body** referred to in paragraph 1 include:

#### **Amendment 22**

##### **Article 10 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) exchanging, at the appropriate level, the information available with the equivalent European bodies, such as the European Institute for Gender Equality.***

#### **Amendment 23**

##### **Article 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 10a***

***Gender mainstreaming***

***Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.***

**Amendment 24**  
**Article 11**

*Text proposed by the Commission*

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

*Amendment*

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means, ***including the Internet***, to the attention of the persons concerned throughout their territory.

**Amendment 25**  
**Article 13 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by ***[6 years after adoption]***.

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than ***[7 years after adoption]***. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

*Amendment*

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by ***[four years after adoption]***.

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than ***[five years after adoption]***. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

**Amendment 26**  
**Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 13a***

***Review***

***No later than four years after the date referred to in Article 14(1), the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.***

**Amendment 27**  
**Article 14 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. ***In order to take account of particular conditions***, Member States may, if necessary, have an additional period of ***[2 years]*** to comply with ***Article 6***.

2. ***If justified by particular difficulties***, Member States may, if necessary, have an additional period of ***[one year]*** to comply with ***this Directive***.

**Amendment 28**  
**Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 14a***

***Minimum requirements***

***Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.***

\*\*\*\*\*