



**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

from : The Presidency
to : Permanent Representatives Committee (Part I) / Council (EPSCO)

No. prev. doc. : 9254/09 SOC 290 CODEC 645
No. Cion prop. : 13981/08 SOC 574 CODEC 1284 - COM(2008) 636 final

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**
- Progress Report

I. INTRODUCTION

On 3 October 2008, the Commission adopted a 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. The proposal is part of a package of initiatives on the reconciliation of work, family and private life, the other items being a proposal to revise the Directive on the safety

and health at work of pregnant workers and workers who have recently given birth or are breastfeeding¹, a Report on the implementation of the Barcelona objectives on childcare² and a Communication on work-life balance³.

Most delegations have broadly welcomed the aims of the proposal. However, certain delegations have voiced doubts regarding *the need for new legislation in this sector* and with regard to *the cost implications*.

All delegations have maintained general scrutiny reservations on the proposal at this stage. CZ, DK, MT, PL and UK have maintained parliamentary scrutiny reservations. EL, IT, LT and HU have maintained linguistic scrutiny reservations.

II. THE COMMISSION'S PROPOSAL

The proposal aims to improve the social protection of self-employed workers, with a view to removing disincentives to female entrepreneurship. It also seeks to improve the social protection of "assisting spouses", who often work in the self-employed sector without enjoying the corresponding rights. The main features of the proposal are as follows:

- the definition of "assisting spouses" has been modified, so as to cover *life partners* (i.e. unmarried couples) when recognised by national law;
- under the provisions set out Article 7, *female self-employed workers and assisting spouses* would, *at their request*, be entitled to the same period of maternity leave as employees (cf. Directive 92/85/EC);

¹ 14520/08.

² See doc. 13978/08.

³ See doc. 13977/08.

- under the provisions set out in Article 6, *assisting spouses* could, *at their request*, benefit from at least the same level of social protection as self-employed workers.

III. THE COUNCIL'S WORK UNDER THE CZECH PRESIDENCY

The Working Party on Social Questions continued its examination of the proposal on 13 February, 29 April and 5 May 2009, on the basis of an Opinion from the Council Legal Service⁴, and a questionnaire⁵ and a set of drafting suggestions⁶ tabled by the Presidency.

The Legal Basis

In its Opinion, the Council Legal Service endorsed the legal basis proposed by the Commission (Article 141(3) of the EC Treaty). However, further discussion will nevertheless be needed on the legal basis, as a large number of delegations questioned, or were unable to accept, the proposed legal basis on the grounds that the proposal was not directly related to gender equality and impinged upon matters of national competence (in particular, *social security*).

Presidency Drafting Suggestions

The Presidency's drafting suggestions aimed, in particular,

- to clarify the definition of "assisting spouses" (Article 2) as well as the provisions on their social protection (Article 6) in the light of *the division of competences* between the European Community and its Member States in respect of social protection for self-employed workers and their assisting spouses or life partners;

⁴ Doc. 5697/09.

⁵ Doc. 6248/09.

⁶ Doc. 8466/09.

- to reformulate the provisions in respect of *maternity leave* (or *benefits*) for self-employed workers and their assisting spouses, so as to accommodate the varying practices in different Member States, and to clarify the provisions in respect of *temporary replacements* to the effect that no new replacement services need be created by Member States that do not currently offer them (Articles 6 and 7);
- to clarify the scope of the draft Directive, so as to ensure that it was without prejudice to national legislation in respect of marital status (Article 3); and
- to clarify the provisions, including *the anti-regression clause*, with a view to specifying that the Member States may introduce or maintain more favourable provisions, including obligatory social protection schemes for self-employed workers and their assisting spouses (Article 12).

Outstanding Issues

While some progress has been made in the Working Party, there is a clear need for further discussion on a number of issues, including the following:

- the concept of "*assisting spouses*", including the major question as to whether the provisions would give rise to a new category of entitlement to *social security*, thereby impinging upon the Member States' competence for *social security* (see also "Legal Basis" above), and the level of protection to be accorded to *life partners*;
- the most appropriate means of providing *maternity leave* (or *benefits*) to persons working in the self-employed sector, given that in some Member States, maternity benefits are not conditional upon the interruption of activities;
- the proposed *optionality* of the social protection provided to self-employed workers and their assisting spouses in relation to existing *obligatory* regimes in certain Member States;

- the need to define *the scope* of the Directive as clearly as possible; and
- the issue of *replacement services*.

Further details of delegations' positions can be found in docs 6613/09 and 9254/09⁷.

IV. THE WORK OF THE EUROPEAN PARLIAMENT

The European Parliament adopted its Opinion⁸ in first reading under the codecision procedure on 6 May 2009.

V. CONCLUSION

The Working Party on Social Questions will continue its examination of the proposal and begin its examination of the European Parliament's amendments in due course.

⁷ To be distributed in due course.

⁸ See doc. 8840/09.