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UEAPME position paper on the first stage consultation of social partners on the review of Directive 86/613/EEC (application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity)

Introduction

The European Commission published on 25 February 2008 its proposal for updating, modernising and recasting where necessary directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed activity.

It has to be seen within the context of the Roadmap for equality between women and men from 2006¹ which aims at improving governance for gender equality.

General comments

First of all UEAPME would like to voice strong concerns about the short notice given for this consultation, as well as on the tight deadline of two weeks for written comments.

UEAPME clearly recognises the importance of equal treatment between men and women and this particular directive appears to affect women to a very large extent². As part of the Lisbon Strategy the need to improve the level and quality of women's participation in the labour market is clearly supported by UEAPME. Evidently it is necessary to particularly encourage female entrepreneurship in view of the gender gap in entrepreneurial activities. With women currently representing 60% of graduates in Europe, UEAPME agrees that this untapped source of entrepreneurship needs to be better utilised.

However, it does not mean that there is a need to review this specific directive.

Specific comments:

UEAPME agrees with the fact that the directive 86/613/EEC shows certain particularities in that it does not impose any legal obligations or specific actions on Member States in its implementation. It is also atypical in scope and substance, as most directives apply only to employees, whereas this directive only concerns entrepreneurs and assisting spouses.

¹ http://ec.europa.eu/employment_social/news/2006/mar/com06092_roadmap_en.pdf

² According to a report by the European Parliament in 1997, it is assumed that a minimum of 70% of assisting spouses are female.

This specificity clearly confirms that any possible change of this directive should be considered very carefully.

UEAPME reply to the various options put forward by the EU Commission

• Status quo

- the advantages and disadvantages of maintaining unchanged the current legal framework at EU level (essentially Directive 86/613/EEC);

1 - A complex topic

The directive is very complex as it covers two different groups of persons and two different types of statutes: the self-employed entrepreneurs and co-working spouses. This involves direct rights and derived rights.³ . Assisting spouses often do not have their own rights, only indirect entitlements. This should be dealt with in two different ways.

Furthermore there are problems with the definition of self-employed. They do not form a homogeneous group and in practice there are important variations between and within Member States

Finally it should also be recognised that self-employed and employed people occupy fundamentally different economic positions notably in terms of the legal protections they have, the business risks they are exposed to, their legal obligations, etc...

Therefore UEAPME warns about applying the same rights to employees and to self-employed.

2 - Need for a better knowledge of the national situations

Especially for assisting spouses there is a great diversity in Member States with them very often being co-entrepreneurs or employees.

UEAPME strongly regrets that there is currently no overview on the evolution and present trends of the situation of co-assisting spouses in all 27 Member States, particularly concerning the new Member States. There is more widely a clear lack of quantitative and qualitative statistics for co-assisting spouses and female self-employed entrepreneurs. The last implementation report of the European Commission on the 1986 directive was in 1994 and only gives data on 12 Member States.

3 - Need to respect the subsidiarity principle

Further regulations at EU level are questionable as the directive covers a wide range of laws including marital law, company law, tax and fiscal laws, as well as different social protection and social security systems (including diverging compulsory, national, voluntary and private schemes). These all vary considerably in Member States and fall very often under the strict competence of Member States.

- the impact on small businesses and on the creation of new businesses of maintaining the existing level of social protection for assisting spouses;

³ A previous European Commission Draft Directive of 23 October 1987 (COM (87) 494 final) on Equal Treatment for Men and Women in statutory and occupational social security schemes was withdrawn in 2001. It had aimed at giving Member States the option to grant own rights as an alternative to derived rights to help individuals such as assisting spouses.

It is difficult to evaluate the exact correlation between social security benefits and starting-up a business as the situation varies among Member States.⁴ In some countries companies often prefer social security to be a choice, not an obligation. There clearly needs to be a balance for business creation and flexibility and in particular not to create overly heavy burdens in the first stage on new businesses which by definition are micro-companies.

Moreover UEAPME considers that this is an aspect where DG Enterprise and Industry should be actively involved in the discussions on fostering the business environment for female entrepreneurs, but also for assisting spouses.

- the impact of the current situation on assisting spouses, notably in cases of divorce, death of the self-employed worker or bankruptcy;

The situation of assisting spouses in the case of divorce, death of the self-employed worker or bankruptcy varies according to Member States. In countries such as Austria where assistant spouses have a clearly defined employee status there appears to be no negative consequences as they remain covered in terms of social security protection.

• **Improvement of the protection in case of maternity**

- the feasibility, advantages and disadvantages of providing to self employed women a period of maternity leave (including at least two weeks of compulsory leave);

In some Member States, e.g. Finland self-employed women already have a full right to maternity leave, but they cannot afford to take the full length because of the problems occurring by being absent from the business. This is very much a practical problem more than a legal one that should be addressed. In this case a revision of the directive would not help.

UEAPME cannot defend the prescription of compulsory leave as it very much interferes with entrepreneurial choice and independence.

- the feasibility, advantages and disadvantages of ensuring a payment or allowance equivalent to the allowance received in case of sick leave;

This is an issue that has to be decided on at Member State level, as it is directly related to the role of the state and in how far to provide support for businesses. There are some countries where there is financial support in the case of sick leave for self-employed workers. In other Member States the principle of entrepreneurial choice and independence prevails, which does not allow for these type of measures.

UEAPME considers that there is no “one size fits all solutions” and that it is for the Member States to decide since it is very much related to national social protection systems.

⁴ In the USA relatively low social security provisions for entrepreneurs suggest not to be an obstacle to business creation.

- the feasibility, advantages and disadvantages of ensuring, as an alternative to payment, a temporary replacement for the self employed women.

Again this needs to be decided at Member State level. Some countries do provide assistance in the form of a temporary replacement worker, others do not, but the decision lies once again with Member States.

• **Recognizing the contribution of assisting spouses**

- feasibility, advantages and disadvantages of recognizing the contribution of assisting spouses to the family business and ensure them the same level of social protection as the self employed;

UEAPME completely supports the idea of a full recognition of the assisting spouses contributions to the family business. This involves in particular as often the case their greater responsibility and higher economic contribution to the family business compared to “normal” employees.

However this does not necessarily mean the same level of social protection as the self employed. In practice, there are variations within Member States regarding assisting spouses. In Germany for example assisting spouses with employee status often already have a higher social protection than the self-employed person.

- the feasibility, advantages and disadvantages of extending the previous option to assisting spouses

In those Member States where assisting spouses have an employee status they usually are already covered by sound social security provisions, therefore further maternity, sick leave and temporary replacement arrangements need not be considered.

• **Providing leave to care for family members and paternity leave**

- feasibility, advantages and disadvantages of ensuring leave entitlements in certain circumstances (need to care for sick or handicapped children, for example), with a remuneration or a replacement as in option 3.2;

There is a clear cost/benefit argument here that needs to be considered. By nature entrepreneurial activities need to remain independent and based on individual decisions.

- feasibility, advantages and disadvantages of ensuring paternity leave for male self-employed workers.

Whilst fathers should be encouraged to play a greater role in the reconciliation of professional, private and family life, again the question of payment and replacement arises for that person being absent from work. Entrepreneurial autonomy must prevail.

- **Additional comments**

Before taking any decision which will have a financial impact on micro-businesses and self employed people, UEAPME calls for an in depth impact assessment. Any new possible measures at EU level should not be detrimental to economic growth and job creation.

More widely beneficial conditions for business creation should be in place and any remaining obstacles should be removed. In France for example the majority of women decide to start-up individual enterprises instead of other types of company statutes, which would entail more favourable conditions notably in the field of social but also financial protection coverage. Therefore in this case it is necessary to guarantee that all personal assets remain untouchable by creating a real independent enterprise statute adapted to the needs of establishing businesses.

- **Final comments**

UEAPME considers that there is no need for reviewing the directive.

Craft and SMEs do not need more complicated and burdensome legislation. It goes against the European objective of a better legislation and an overall simplification of European texts.

However, Member States should be called upon to ensure a better implementation of the Directive and to create more supportive conditions. This could involve offering special financial incentives for private insurance schemes which can be supported by fiscal incentives.

For its part the Commission should contribute to better information and awareness raising through specific campaigns.

Moreover an exchange of good practices between the Member States could be of great help to national decision-makers in order to take the right measures supporting the development of self employed activities, the creation of new businesses and to find the best solution for co-working spouses.

Conclusion

- The principle of subsidiarity needs to be fully respected as the directive covers a wide range of laws including marital law, company law, tax and fiscal laws, as well as different social protection laws and varying social security systems.
- Member States should be called upon to ensure a better implementation of the Directive and to create more supportive conditions.
- The Commission should contribute to better information and awareness raising in this field.
- An exchange of good practices between Member States on practical measures to take with the goal of promoting female entrepreneurship would be helpful.
- Before any amendments are decided upon an in depth cost/benefit impact analysis should be conducted by the European Commission.
- UEAPME don't see the need for a formal review of the directive as this would not be able to solve the underlying issues.

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