

**POSITION (EU) No 8/2010 OF THE COUNCIL AT FIRST READING**

**with a view to the adoption of 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**

**Adopted by the Council on 8 March 2010**

(2010/C 123 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

(1) Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood <sup>(3)</sup> ensures application in Member States of the principle of equal treatment as between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such activity. As far as self-employed workers and spouses of self-employed workers are concerned, Directive 86/613/EEC has not been very effective and its scope should be reconsidered, as discrimination based on sex and harassment also occur in areas outside salaried work. In the interest of clarity, Directive 86/613/EEC should be replaced by this Directive.

(2) In its Communication of 1 March 2006 entitled 'Roadmap for equality between women and men', the Commission announced that in order to improve governance of gender equality, it would review the existing EU gender equality legislation not included in the 2005 recast exercise with a view to updating, modernising and recasting where necessary. Directive 86/613/EEC was not included in the recasting exercise.

(3) In its conclusions of 5 and 6 December 2007 on 'Balanced roles of women and men for jobs, growth and social cohesion', the Council called on the Commission to consider the need to revise, if necessary, Directive 86/613/EEC in order to safeguard the rights related to motherhood and fatherhood of self-employed workers and their helping spouses.

(4) The European Parliament has consistently called on the Commission to review Directive 86/613/EEC, in particular so as to boost maternity protection for self-employed women and to improve the situation of spouses of self-employed workers in agriculture.

(5) In its Communication of 2 July 2008 entitled 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe', the Commission has affirmed the need to take action on the gender gap in entrepreneurship as well as to improve the reconciliation of private and professional life.

(6) There are already a number of existing legal instruments for the implementation of the principle of equal treatment which cover self-employment activities, in particular Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security <sup>(4)</sup> and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) <sup>(5)</sup>. This Directive should therefore not apply to the areas already covered by other directives.

(7) This Directive is without prejudice to the powers of the Member States to organise their social protection systems. The exclusive competence of the Member States with regard to the organisation of their social protection systems includes inter alia decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits, the level of contributions and the conditions for access.

<sup>(1)</sup> OJ C 228, 22.9.2009, p. 107.

<sup>(2)</sup> Position of the European Parliament of ... (not yet published in the Official Journal) and Council Decision of ...

<sup>(3)</sup> OJ L 359, 19.12.1986, p. 56.

<sup>(4)</sup> OJ L 6, 10.1.1979, p. 24.

<sup>(5)</sup> OJ L 204, 26.7.2006, p. 23.

- (8) This Directive should apply to self-employed workers and to their spouses or, when and insofar as recognised by national law, their life partners, where they, under the conditions laid down by national law, habitually participate in the activities of the business. In order to improve the situation for these spouses and, when and insofar as recognised by national law the life partners, of self-employed workers, their work should be recognised.
- (9) This Directive should not apply to matters covered by other Directives implementing the principle of equal treatment between men and women, notably Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services <sup>(1)</sup>. Inter alia, Article 5 of Directive 2004/113/EC on insurance and related financial services remains applicable.
- (10) To prevent discrimination based on sex, this Directive should apply to both direct and indirect discrimination. Harassment and sexual harassment should be considered discrimination and therefore prohibited.
- (11) This Directive should be without prejudice to the rights and obligations deriving from marital or family status as defined in national law.
- (12) The principle of equal treatment should cover the relationships between the self-employed worker and third parties within the remit of this Directive, but not relationships between the self-employed worker and his or her spouse or life partner.
- (13) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination on grounds of sex, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.
- (14) Member States may, under Article 157(4) of the Treaty on the Functioning of the European Union, 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, measures such as positive action aimed at achieving gender equality in practice should not be seen as being in breach of the legal principle of equal treatment between men and women.
- (15) It is necessary to ensure that the conditions for setting up a company between spouses or, when and insofar as recognised by national law, life partners, are not more restrictive than the conditions for setting up a company between other persons.
- (16) In view of their participation in the activities of the family business, spouses or, when and insofar as recognised by national law the life partners, of self-employed workers who have access to a system for social protection, should also be entitled to benefit from social protection. Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it is up to Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis. Member States may provide that this social protection may be proportional to the participation in the activities of the self-employed worker and/or the level of contribution. Without prejudice to this Directive, Member States may maintain national provisions limiting access to specific social protection schemes, or to a certain level of protection, including special funding conditions, to certain groups of self-employed workers or professions, provided that access to a general scheme is available.
- (17) The economic and physical vulnerability of pregnant self-employed workers and pregnant spouses and, when and insofar as recognised by national law pregnant life partners, of self-employed workers, makes it necessary for them to be granted the right to maternity benefits. The Member States remain competent to organise such benefits, including establishing the level of contributions and all the arrangements concerning benefits and payments, provided the minimum requirements of this Directive are complied with. In particular, they may determine in which period before and/or after confinement the right to maternity benefits is granted. Furthermore, the economic situation of the person or family in question may be taken into account when establishing contributions and/or benefits.
- (18) In order to take the specificities of self-employed activities into account, female self-employed workers and female spouses or, when and insofar as recognised by national law female life partners, of self-employed workers, should be given access, as far as possible, to any existing services supplying temporary replacement enabling interruptions in their occupational activity owing to pregnancy or motherhood, or to any existing national social services. Access to those services can be an alternative to or a part of the maternity allowance.
- (19) Enhancing the efficiency and effectiveness of welfare systems, notably through improved incentives, better administration and evaluation, and the prioritisation of spending programmes, has become crucial for the long-term financial sustainability of European social models. When devising the measures needed to implement this Directive, the Member States should pay special attention to improving and securing the quality and long-term sustainability of their social protection systems.

<sup>(1)</sup> OJ L 373, 21.12.2004, p. 37.

- (20) Persons who have been subject to discrimination based on sex should have adequate means of legal protection. To provide more effective protection, associations, organisations and other legal entities should be empowered to engage in proceedings, as Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (21) Protection of self-employed workers and spouses of self-employed workers and, when and insofar as recognised by national law the life partners, of self-employed workers, 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.
- (22) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions.
- (23) Since the objective of the action to be taken, namely to ensure a common high level of protection from discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Subject matter

1. This Directive lays down a framework for putting into effect in the Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 2006/54/EC and 79/7/EEC.
2. The implementation of the principle of equal treatment between men and women in the access to and supply of goods and services remains covered by Directive 2004/113/EC.

#### Article 2

##### Scope

This Directive covers:

- (a) self-employed workers, namely all persons pursuing a gainful activity for their own account, under the conditions laid down by national law;
- (b) the spouses of self-employed workers or, when and insofar as recognised by national law, the life partners of self-employed workers, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

#### Article 3

##### Definitions

1. For the purposes of this Directive, the following definitions shall apply:

- (a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be, treated in a comparable situation;
- (b) 'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose, or effect, of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) 'sexual harassment': where any form of unwanted verbal, non-verbal, or physical, conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

#### Article 4

##### Principle of equal treatment

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

2. In the areas covered by paragraph 1, harassment and sexual harassment shall be deemed to be discrimination on grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.

3. In the areas covered by paragraph 1, an instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination.

#### Article 5

##### Positive action

Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship among women.

#### Article 6

##### Establishment of a company

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, the 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 and insofar as recognised by national law, are not more restrictive than the conditions for the establishment of a company between other persons.

#### Article 7

##### Social protection

1. Where a system for social protection for self-employed workers exists in a Member State, that Member State shall take the necessary measures to ensure that spouses and life partners referred to in Article 2(b) can benefit from a social protection in accordance with national law.

2. The Member States may decide whether the social protection referred to in paragraph 1 is implemented on a mandatory or voluntary basis. Accordingly, they may provide that this social protection is granted only upon the request of spouses and life partners referred to in Article 2(b).

#### Article 8

##### Maternity benefits

1. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 may, in accordance with national law, be granted an adequate maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

2. The Member States may decide whether the maternity allowance referred to in paragraph 1 is granted on a mandatory or voluntary basis. Accordingly, they may provide that this allowance is granted only upon request of female self-employed workers and female spouses and life partners referred to in Article 2.

3. The allowance referred to in paragraph 1 shall be deemed adequate if it guarantees an income at least equivalent to:

- (a) the allowance which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health and/or
- (b) the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law and/or
- (c) any other family related allowance established by national law, subject to any ceiling laid down under national law.

4. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 have access as far as possible to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the allowance referred to in paragraph 1 of this Article.

#### Article 9

##### Defence of rights

1. The Member States shall ensure that judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, 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.

2. The Member States shall ensure that associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that this Directive is complied with may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative proceedings provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 shall be without prejudice to national rules on time limits for bringing actions relating to the principle of equal treatment.

*Article 10***Compensation or reparation**

The Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit.

*Article 11***Equality bodies**

1. The Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. Such bodies may form part of agencies entrusted at national level with the defence of human rights or the safeguard of individuals' rights, or the implementation of the principle of equal treatment.

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

- (a) providing independent assistance to victims of discrimination in pursuing their complaints of discrimination, without prejudice to the rights of victims and of associations, organisations and other legal entities referred to in Article 9(2);
- (b) conducting independent surveys on discrimination;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) exchanging, at the appropriate level, the information available with the corresponding European bodies, such as the European Institute for Gender Equality.

*Article 12***Gender mainstreaming**

The 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.

*Article 13***Dissemination of information**

The 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.

*Article 14***Level of protection**

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

The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

*Article 15***Reports**

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by ... (\*).

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than ... (\*\*). Where appropriate, that report shall be accompanied by proposals for amending this Directive.

2. The Commission's report shall take the viewpoints of the stakeholders into account.

*Article 16***Implementation**

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*\*\*) at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Where justified by particular difficulties, the Member States may, if necessary, have an additional period of two years until ... (\*\*\*\*) in order to comply with Article 7, and in order to comply with Article 8 as regards female spouses and life partners referred to in Article 2(b).

3. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

(\*) Six years after the entry into force of this Directive.

(\*\*) Seven years after the entry into force of this Directive.

(\*\*\*) Two years after the entry into force of this Directive.

(\*\*\*\*) Four years after the entry into force of this Directive.



*Article 17***Repeal**

Directive 86/613/EEC shall be repealed, with effect from ... (\*).

References to the repealed Directive shall be construed as references to this Directive.

*Article 18***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 19***Addressees**

This Directive is addressed to the Member States.

Done at ...

*For the European Parliament*

*The President*

...

*For the Council*

*The President*

...

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(\*) Two years after the entry into force of this Directive.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

On 6 October 2008, the Commission submitted 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 <sup>(1)</sup>.

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 breastfeeding, a Report on the implementation of the Barcelona objectives on childcare and a Communication on work-life balance.

Acting in accordance with the ordinary procedure, the European Parliament delivered its position in first reading on 6 May 2009 <sup>(2)</sup>.

The Economic and Social Committee delivered its Opinion on 24 March 2009 <sup>(3)</sup>.

The Commission did not submit any formal amended proposal as a follow-up to the Parliament's opinion in first reading.

On 30 November 2009, the Council reached a political agreement by qualified majority on a Position in first reading.

In accordance with Article 294(5) TFEU, the Council adopted its position in first reading by qualified majority on 8 March 2010.

### II. OBJECTIVES

The objective of the proposal is to change the Community legal framework concerning the application of the principle of equal treatment between women and men for self-employed workers and their spouses.

It aims at improving 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 regularly with the self-employed worker 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, and insofar as, recognised by national law;
- under the provisions set out in 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/EEC);
- 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.

<sup>(1)</sup> Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19.12.1986, p. 56).

<sup>(2)</sup> Not yet published in the Official Journal.

<sup>(3)</sup> OJ C 228, 22.9.2009, p. 107.

Once adopted, the Directive will repeal Directive 86/613/EEC <sup>(1)</sup> and will be applicable as regards those aspects not covered by Directives 2006/54/EC, 2004/113/EC and 79/7/EEC, in order to implement more effectively the principle of equal treatment between women and men engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity.

### III. ANALYSIS OF THE COUNCIL POSITION IN FIRST READING

#### 1. General observations:

##### *a) Commission's position on the European Parliament's amendments*

The European Parliament adopted 30 amendments (amendments 1-16, 18-19, 21-28, 36, 39, 40, 46) to the Commission's proposal. The Commission indicated in the course of the debate in plenary session that it could accept 15 of these amendments in whole, in part or after being reworded (amendments 1, 2, 3, 4, 7, 9, 12, 13, 15, 18, 21, 22, 23, 27, 28). The other amendments (amendments 5, 6, 8, 10, 11, 14, 16, 19, 24, 25, 26, 36, 39, 40, 46) were, however, not acceptable to the Commission.

#### 2. Council position in first reading

The Council could accept 10 of the European Parliament's amendments either in whole, in part or after being reworded, namely:

- Amendment No 4 (recital No 10: reference to affirmative action): The Council however felt that the terms 'affirmative action' should be replaced with 'positive action' in line with Article 3 of Directive 2006/54/EC (recital No 14 of its position in first reading);
- Amendment No 9 (recital No 18: clarification of the text to refer to self-employed workers and assisting spouses): the Council also further added a reference to life partners of self-employed workers (when and insofar as recognised by national law) in recital No 21 of its position in first reading;
- Amendment No 12 (Article 4: addition of a reference to the need of promoting entrepreneurship among women): the Council agreed with Parliament that it would be advisable to introduce a reference to the setting-up of businesses by women, taking into account the huge gender gap in entrepreneurship (Article 5 of the Council position in first reading);
- Amendment Nos 13 and 39 (Article 5: addition of the term 'between' before 'life partners'): The Council agreed with Parliament that this addition would make it clearer that the conditions for the establishment of businesses should be the same irrespective of the civil status (Article 6 of the Council position in first reading);
- Amendment No 18 (new Article 7a regarding the recognition of the work of assisting spouses): the Council incorporated the substance of this amendment in recital No 8 in its position in first reading;
- Amendment No 22 (Article 10(2) new point (ca)): the Council felt that the term 'equivalent' should be replaced with 'corresponding' (Article 11(2)(d) of the Council position in first reading);
- Amendment No 23 (insertion of a new provision (new Article 10a) concerning gender mainstreaming): the Council considered that this new provision would clearly constitute an improvement with regard to the existing Directive (Article 12 of the Council position in first reading);

<sup>(1)</sup> Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19.12.1986, p. 56).



- Amendment No 27 (Article 14(2)): The Council could agree with the first part of the amendment which introduces an element of conditionality ('if justified by particular difficulties ...') but considered that reducing the additional period to one year was not acceptable. It was also not in favour of extending the additional period to cover all provisions of the Directive (Article 16(2) of the Council position in first reading);
- Amendment No 28 (Article 14a new: minimum requirements. The Council incorporated the substance of this amendment in recital No 22 in its position in first reading).

However, the Council did not deem it advisable to take up amendments:

- No 1 (recital No 4: reference to the need to improve the situation of assisting spouses in craft occupations, commerce, small and medium-sized enterprises and the liberal professions): the Council did not consider it necessary to explicitly refer to these sectors (recital No 4 of its position in first reading);
- No 2 (new recital 4a): the Council did not consider it appropriate to introduce a mandatory registration system for assisting spouses. Furthermore, recital No 16 of the Council position in first reading states that assisting spouses or life partners of self-employed workers who have access to a system of social protection, should also be entitled to benefit from social protection. Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it is up to Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis);
- No 3 (New recital 7b): the Council did not consider it appropriate to introduce an obligation to provide for a clearly defined status for assisting spouses and to establish their rights;
- No 5 (recital No 11): the Council did not consider it appropriate to modify the current wording of the current Directive 86/613/EEC (recital No 13 of the Council position in first reading);
- No 6 (recital No 12): the Council considered this amendment unnecessary as it is of settled case-law that, when exercising their national competences, the Member States have to conform with Community law as interpreted by the Court of Justice;
- No 7 (recital No 13): the Council did not think it appropriate to provide that the level of protection of assisting spouses should be proportional to the degree to which they participate in the activities of the self-employed worker within the family business. It considered that it should be up to Member States to organise this social protection in accordance with national law and, in particular, to decide that this social protection can be proportional to the participation in the activities of the self-employed worker and/or the level of contribution (recital No 16 in the Council position in first reading);
- No 8 (recital No 16): the Council could not accept this amendment as it felt that the reference to the quality and long-term sustainability of social protection systems should be maintained (recital No 19 of the Council position in first reading);
- No 10 (Article 2(1)(a)): the Council considered it appropriate to delete this definition and to move it in a new Article (Article 2 of the Council position in first reading) regarding the scope of the Directive. In addition, the Council did not consider it appropriate to refer to such sectors as agriculture, the liberal professions, craft occupations and SMEs as it felt that there was no good reason to amend the text of the definition as set out in the existing Directive;

- Amendment 11 (Article 3(1)): The Council did not consider it necessary to add the management of a business to the situations where the principle of non discrimination should apply as it did not see any good reason to change the existing provision under Directive 86/613/EEC (Article 4(1) of the Council position in first reading);
- Amendments Nos 14 and 40 (Article 6): While the Council could agree to add a reference to life partners, it was, nonetheless, not in a position to accept the conditions set out in the amendment with regard to social protection as it considered that it should be up to the Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis (as further explained in recital No 16 of the Council position in first reading);
- Amendment No 15 (Article 7(1) concerning the duration of maternity leave): the Council considered that the Directive should not provide for tailor-made periods of maternity leave subject to personal choice, as they would interfere with existing and future national legislation, but for an adequate maternity allowance enabling interruptions in occupational activity owing to pregnancy (Article 8(1) of the Council position in first reading);
- Amendment No 16 (Article 7(3)): the Council considered that any such provision would be unclear and would lead to legal insecurity as it has to be known what could be the grounds for discrimination (Article 8(3) of the Council position in first reading);
- Amendment No 19 (Article 8(1): addition of the term 'effective'. The Council considered that the text should be aligned on the existing provisions in Directives 2006/54/EC and 2004/113/EC (Article 9(1) of the Council position in first reading);
- Amendment No 21 (Article 10(2): reference to the body referred to in paragraph 1): the Council was of the view that the formulation used in the Commission proposal ('bodies') should be used; in order to make it clear that the bodies referred to in Article 10(2) should be the same as those responsible for Directives 2004/113/EC and 2006/54/EC (Article 11(2) of the Council position in first reading);
- Amendment No 24 (Article 11: reference to Internet as a means of dissemination of information). The Council did not see any value in changing the text of the Commission proposal which is the same as the existing provisions in Directives 2006/54/EC and 2004/113/EC (Article 13 of the Council position in first reading);
- Amendment No 25 (Article 13(1)): deadlines for the communication of information on the application of the Directive and for the Commission's report on the Directive): The Council was not in favour of reducing the deadlines as set out in the Commission proposal (Article 15 of the Council position in first reading);
- Amendment No 26 (Article 13 (new): review of the Directive): The Council did not consider it necessary to provide for a review clause;
- Amendment No 36 (Article 2a (new): prohibition of any discrimination based on marital or family status): The Council did not consider it appropriate to take this amendment into account for the same reasons as those relating to amendment No 6;
- Amendment No 46 (Article 7(4): provision regarding access to national social services in addition to the maternity allowance): the Council was not in favour of this amendment as it considered that Member States should be able to provide that access to those social services is an alternative or a part of the maternity allowance (Article 8(4) of the Council position in first reading).

The Commission has accepted the Council position in first reading.

### 3. Specific comments

*Social protection (Article 7 and recital No 16 of the Council position in first reading)*

The Council concurs with Parliament on the principle that, in view of their participation in the activities of the family business, spouses or, when and insofar as recognised by national law, the life partners, of self-employed workers who have access to a system for social protection, should also be entitled to benefit from social protection.

In the Council's view, the Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it should be up to the Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis and should be granted only upon request of assisting spouses and life partners.

The Member States should have the possibility to provide that this social protection can be proportional to the participation in the activities of the self-employed worker and/or the level of contribution.

Without prejudice to the provisions of this Directive, they should also be able to maintain national provisions limiting the access to specific social protection schemes, or to a certain level of protection, including special funding conditions, to certain groups of self-employed workers or professions, provided that access to a general scheme is available.

*Maternity benefits and temporary replacement services (Article 8, recitals Nos 17 and 18 in the Council position in first reading)*

In view of their economic and physical vulnerability, the Council shares Parliament's views on the need to give pregnant self-employed workers and pregnant spouses, or life partners, of self-employed workers, a maternity leave of a long enough duration to ensure the proper course of a normal pregnancy and physical recovery of the mother after a normal childbirth.

However, in view of their status as self-employed workers, the Council did not consider appropriate to provide that female self-employed workers and, by analogy, female assisting spouses or life partners of self-employed workers, should be entitled, at their request, to the same period of maternity leave as provided for in Directive 92/85/EEC. This Directive only applies to employees who are subject to different provisions as compared with self-employed women.

For this reason, the Council felt that it would be more appropriate to provide that female self-employed workers and female spouses and life partners, should, in accordance with national law, be granted an adequate maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

The Member States should remain competent to organise such benefits, including establishing the level of contributions and all the arrangements concerning benefits and payments, provided the minimal prescriptions of the Directive are complied with. In particular, they should be able to determine in which period before and/or after confinement the right to maternity benefits is granted. They should also determine if the economic situation of the person or family in question should be taken into account when establishing contributions and/or benefits.

Furthermore, in order to take the specificities of self-employed activities into account, the Council considered that female self-employed workers and female spouses or, when and insofar as recognised by national law, the life partners of self-employed workers, should be given access, as far as possible to any existing services supplying temporary replacement enabling interruptions in their occupational activity owing to pregnancy or motherhood or to any existing national social services. Access to these services could be an alternative or a part of the maternity allowance.

#### IV. CONCLUSION

The Council considers that its position in first reading on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity represents a balanced and realistic solution to the issues covered by the Commission proposal, given the need, in particular, of not interfering with the 'organisation of the Member States' social security schemes or their financing.

In its view, the provisions laid down in this position should help tackling the obstacles to women's access to self-employment therefore making it easier to combine self-employed activities and family responsibilities.

The Council looks forward to a constructive discussion with the European Parliament with a view to reaching final agreement on this important Directive.

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