

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

FINAL  
**A6-0176/2005**

2.6.2005

**\*\*\*I**

## **REPORT**

on the proposal for a directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (COM(2004)0279 – C6-0037/2004 – 2004/0084(COD))

Committee on Women's Rights and Gender Equality

Rapporteur: Angelika Niebler

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation  
(COM(2004)0279 – C6-0037/2004 – 2004/0084(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0279)<sup>1</sup>,
  - having regard to Article 251(2) and Article 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0037/2004),
  - 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 opinion of the Committee on Employment and Social Affairs and the opinion of the Committee on Legal Affairs (A6-0176/2005) ,
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 Commission.

Text proposed by the Commission

Amendments by Parliament

### Amendment 1 Recital 1

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have

<sup>1</sup> OJ C ... / Not yet published in OJ.

been substantially amended. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Since further amendments are to be made to these Directives, they *should be* recast in the interests of clarity and in order to bring together in a single text the main provisions existing in this field as well as certain developments arising out of the *caselaw* of the Court of Justice of the European Communities.

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Amendment 2  
Recital 2

(2) **Equal treatment** between men and women is a fundamental principle of Community law which according to Article 2 and 3(2) of the Treaty the Community must promote in all its activities.

(2) **Equality** between men and women is a fundamental principle of Community law which according to Article 2 and 3(2) of the Treaty the Community *and the case-law of the Court of Justice the Community must promote in all its activities. These Treaty provisions proclaim equality between men and women as a “task” and an “aim” of the Community and impose on it a positive obligation to promote it in all its activities”. Equal treatment includes equality for those undergoing gender reassignment.*

*Justification*

*The fundamental principle is not a principle of “equal treatment”, but of “equality” between men and women (Articles 2 and 3(2) TEC, Article 23 of the Charter of Fundamental Rights, Recital 4 of Directive 2004/113). The sentence: “These Treaty provisions proclaim equality between men and women as a “task” and an “aim” of the Community”, which is included in Recital 4 of the Preamble to Directive 2002/73, should not be deleted, because it expresses the nature and fundamental importance of gender equality, as proclaimed by the Treaty. This is why it is included in Recital 5 of Directive 2004/113.*

*This provision is required to ensure that the decisions of the European Court of Justice which*

*state that the rights of transpeople should be protected. See also new Article 2 (2) (c) new. Case C-13/94 P v S and Cornwall County Council [1996] ECR I-2143 and Case C-117/01 K.B. v National Health Service Pensions Agency and Secretary of State [7 January 2004]*

#### Amendment 3

##### Recital 4

(4) Articles 21 and 23 of the Charter of Fundamental Rights of the European Union also prohibit any discrimination on grounds of sex and enshrine the right to equal treatment between men and women in all areas, including employment, work **and** pay

(4) Articles 21 and 23 of the Charter of Fundamental Rights of the European Union also prohibit any discrimination on grounds of sex and enshrine the right to equal treatment between men and women in all areas, including employment, work, pay **and appropriate parental leave as an individual right of each parent.**

##### *Justification*

*This is in accordance with the parental leave Directive (96/34/EC), which provides for parental leave as an individual right of each parent.*

#### Amendment 4

##### Recital 6

(6) Harassment **related to the sex of a person** and sexual harassment are contrary to the principle of equal treatment between men and women and **should therefore be deemed to** constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training.

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training **and advancement. These forms of discrimination should therefore be prohibited. If they persist they should be subject to dissuasive and proportionate sanctions in the courts.**

##### *Justification*

*This amendment refers to Articles 13, 137 and 141 of the EC Treaty and the case law of the Court of Justice under which the elimination of sexual discrimination is a fundamental right.*

Amendment 5  
Recital 7

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace, in accordance with national legislation and practice.

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex, ***including discrimination against the particularly vulnerable group of ethnic minority women*** and, in particular, to take preventive measures against harassment and sexual harassment in the workplace ***and in access to employment and vocational training*** in accordance with national legislation and practice.

*Justification*

*Women from ethnic minorities are often discriminated against twice, because of their gender and because of their origin. This group should not be forgotten when addressing the issue of equal treatment of men and women.*

Amendment 6  
Recital 8

(8) The principle of equal pay for equal work or work of equal value as ***laid down*** by Article 141 of the Treaty constitutes an important aspect of the principle of equal treatment between men and women. It is therefore appropriate to make further provisions for its implementation.

(8) The principle of equal pay for equal work or work of equal value as ***firmly established*** by Article 141 of the Treaty ***and developed by the settled case-law of the Court of Justice*** constitutes an important aspect of the principle of equal treatment between men and women, ***and an essential and indispensable part of the acquis communautaire concerning sex discrimination***. It is therefore appropriate to make further provisions for its implementation.

*Justification*

*This amendment takes into account the wording of recital 16 of Directive 2002/73/EC.*

Amendment 7  
Recital 8 a (new)



***(8a) The principle of equal pay for men and women is already firmly established by Article 141 of the Treaty and is consistently upheld by the case-law of the Court of Justice. The principle constitutes an essential and indispensable part of the *acquis communautaire* and of Court of Justice case-law concerning sex discrimination.***

*Justification*

*This amendment serves to clarify the current legal situation by referring once again to primary Community law and Court of Justice case-law.*

Amendment 8  
Recital 8 b (new)

***(8b) In accordance with the settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.***

*Justification*

*See amendment to recital 8.*

Amendment 9  
Recital 9

***(9) It is well-established that the principle of equal pay is not limited to situations in which men and women work for the same employer. According to the judgments of the Court of Justice in Case C-320/00: *A.G. Lawrence and Others v Regent Office Care Ltd, Commercial Catering Group and Mitie Secure Services Ltd*<sup>1</sup> and Case C-256/01: *Debra Allonby v****

***(9) The Court of Justice has established that in certain circumstances the principle of equal pay is not limited to situations in which men and women work for the same employer.***

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<sup>1</sup> [2002] ECR I-7325.

***Accrington & Rossendale College,  
Education Lecturing Services and The  
Secretary of State for Education and  
Employment<sup>1</sup>, there must nevertheless be  
a single source to which any differences  
identified in pay conditions can be  
attributed since otherwise there is no body  
which is responsible for any inequality  
and which could restore equal treatment.***

*Justification*

*This recital, together with Article 4 of the Commission proposal, refers back to the Court of Justice judgments cited in the original text, which concerned very specific circumstances that cannot be generalised. In addition, the recital goes beyond the negative ruling of the underlying decisions. Also, the Court of Justice had regarded the criterion of 'not attributable to a single source' as grounds for excluding the applicability of the equal pay requirement.*

Amendment 10  
Recital 9 a (new)

***(9a) The Member States, in collaboration with the social partners, should address the problem of the continuing gender-based wage differentials and marked gender segregation on the labour market by means of flexible working time arrangements which enable both men and women to combine family and work commitments more successfully; this includes appropriate parental leave arrangements which can be taken up by either parent.***

*Justification*

*The requirement of equality for women and men entails changes which apply to both men and women. It is therefore essential that the Member States, in collaboration with the social partners, should ensure that both men and women participate in the establishment of new strategies to make equality of the sexes a reality.*

Amendment 11  
Recital 13 a (new)

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<sup>1</sup> Judgment of 13.1.2004.

***(13a) In the case of defined-contribution schemes funded by capital accumulation, unequal levels of benefit may be set in certain circumstances such as conversion into a capital sum of part of a periodic pension, transfer of pension rights, a reversionary pension payable to a dependant in return for the surrender of part of a pension, or a reduced pension where the worker opts to take early retirement, where the unequal nature of the payments is attributable to actuarial calculation factors which differ according to sex.***

*Justification*

*In the interests of clarifying Article 8(1)(h) of the present proposal for a directive, the aspects hitherto contained in the Annex to Directive 96/97/EC should not, for reasons of legal safety, be removed entirely, but instead should be set out separately at least in the recitals, if nowhere else.*

Amendment 12  
Recital 13 b (new)

***(13b) Member States should ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated.***

*Justification*

*It is important that in accordance with Directive 2004/13 MS should procure accurate data relevant to the use of sex as a determining actuarial factor.*

Amendment 13  
Recital 13 c (new)

***(13c) All information communicated by the Member States to the Commission in accordance with Article 31 should include accurate data relevant to the use of sex as a determining actuarial factor which should be compiled, published and regularly***

**updated.**

*Justification*

*SEE AM NEW RECITAL 13A.*

Amendment 14  
Recital 14 a (new)

***(14a) The Court of Justice has consistently held that the Barber Protocol<sup>1</sup> does not affect the right to join an occupational pension scheme and that the limitation of the effects in time of the judgment of the Court of Justice in Case C-262/88 Barber v Guardian Royal Exchange Assurance Group does not apply to the right to join an occupational pension scheme; the Court has also ruled that the national rules relating to time-limits for bringing actions under national law may be relied on against workers who assert their right to join an occupational pension scheme, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice; the Court has also pointed out that the fact that a worker can claim retroactively to join an occupational pension scheme does not allow the worker to avoid paying the contributions relating to the period of membership concerned.***

***(<sup>1</sup>) Protocol No 17 concerning Article 141 of the Treaty establishing the European Communities (1992).***

*Justification*

*Further clarification of recital 14 and the reference to Barber case-law.*

Amendment 15  
Recital 15 a (new)

***(15a) This Directive does not prejudice freedom of association, including the right***

*to establish unions with others and to join unions to defend one's interests. Measures within the meaning of Article 141(4) of the Treaty may include membership or the continuation of the activity of organisations or unions whose main objective is the promotion, in practice, of the principle of equal treatment between women and men.*

*Justification*

*Incorporation of recital 7 of Directive 2002/73/EC seems to be appropriate in the text of the current proposal.*

Amendment 16  
Recital 15 b (new)

*(15b) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of one sex. Such measures permit organisations of persons of one sex where their main objective is the promotion of the special needs of those persons and the promotion of equality between women and men.*

*Justification*

*Incorporation of recital 15 of Directive 2002/73/EC seems to be appropriate in the text of the current proposal.*

Amendment 17  
Recital 16

(16) In accordance with Article 141(4) of the Treaty, the principle of equal treatment does not prevent Member States from maintaining or adopting measures providing for specific advantages, in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in

(16) In accordance with Article 141(4) of the Treaty, ***with a view to ensuring full equality in practice between men and women in working conditions***, the principle of equal treatment does not prevent Member States from maintaining or adopting measures providing for specific advantages, in order to make it easier for the under-represented sex to pursue a vocational

professional careers

activity or to prevent or compensate for disadvantages in professional careers. ***Given the current situation and bearing in mind Declaration No 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life.***

#### *Justification*

*The first part of the first sentence of Article 141 (4) TEC (“with a view to ensuring full equality in practice between men and women in working conditions”), which shows the character of positive measures as means to achieve substantive gender equality, is missing and it should be added. The reference to Declaration No 28 annexed to the Amsterdam Treaty, which stipulates that “Member States should, in the first instance, aim at improving the situation of women” should not be deleted, since de facto inequalities affect mostly women and there is a pressing need to remedy, in the first instance, these inequalities, by positive action.*

#### Amendment 18

##### Recital 18

(18) The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman’s biological condition during pregnancy and maternity. This Directive is therefore without prejudice to Council Directive 92/85/EEC of 19 October 1992 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

(18) The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman’s biological condition during pregnancy and maternity, ***as well maternity protection measures as a means to achieve substantive gender equality.*** This Directive is therefore without prejudice to Council Directives : 92/85/EEC of 19 October 1992 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 ***and 96/34/ECC of 3 June 1996 on the framework agreement on parental leave.***

#### *Justification*

*These references are very important for the correct interpretation of the provisions relating to maternity protection and the reconciling of family and work, and moreover, for the future of Europe, since measures for maternity protection and the reconciling of family and working life are indispensable for achieving the Union’s strategic social and economic goals (Lisbon strategy) and facing the Union’s demographic problems which endanger not only its future,*

*but its very survival.*

Amendment 19  
Recital 19

(19) For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post and to suffer no detriment in their terms and conditions as a result of taking such leave.

(19) For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post and to suffer no detriment in their terms and conditions as a result of taking such leave ***as well as to benefit from any improvement in working conditions to which they should be entitled during their absence.***

Or. en

*Justification*

*This specific right reflects very important ECJ case law, in particular Case C-136/95, Thibault [1998] ECR, I-2011 and it makes part of the "acquis communautaire"*

Amendment 20  
Recital 19 a (new)

***(19a) In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life<sup>1</sup>, Member States were encouraged to consider examining the scope for their respective legal systems to grant working men an individual and non-transferable right to paternity leave, while maintaining their rights relating to employment. In this context, it is important to stress that it is for the Member States to determine whether or not to grant such a right and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.***

***(<sup>1</sup>) OJ C 218, 31.7.2000, p. 5.***

*Justification*

*See Article 16 of the proposal.*

Amendment 21  
Recital 19 b (new)

***(19b) Similar conditions apply to the grant by Member States to women and men of an individual and non-transferable right to adoption leave, while maintaining their rights relating to employment. In this context, it is important to stress that it is for the Member States to determine whether or not to grant such a right and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.***

*Justification*

*See Article 16 of the proposal.*

Amendment 22  
Recital 22

(22) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts back to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

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Amendment 23  
Recital 24

(24) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended.

(24) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended. ***An employee defending or giving evidence on behalf of a person protected under this Directive should be entitled to the same protection.***

*Justification*

*It is very important the requirement to protect colleagues of the victim of discrimination, who support him/her as witnesses or otherwise, who are also often victims of victimisation. This sentence was included in Directive 2002/73, as it was proved by experience and research that a serious reason of the reluctance of women to have recourse to courts or even to competent administrative authorities is the lack of evidence. Indeed, the colleagues of the victim of discrimination are as much afraid of victimisation as the victim herself, and thus they avoid appearing in court or before other authorities as witnesses.*

Amendment 24  
Recital 25

(25) It has been clearly established by the Court of Justice that, in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation.

(25) It has been clearly established by the Court of Justice that, in order to be effective, the principle of equal treatment implies that ***if the sanction provided by national law is compensation***, the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, ***except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his /her job application into consideration.***

*Justification*

*The purpose of this amendment is to bring the text of the recital into line with the wording of the corresponding article (Article 18) of the proposed Directive.*

Amendment 25  
Recital 28 a (new)

***(28a) For the sake of a better understanding of the different treatment of men and women in matters of work and employment, comparable gender specific data and statistics should be developed, analysed and made available at the appropriate levels.***

*Justification*

*Existing data are not always sufficient.*

Amendment 26  
Recital 28 b (new)

***(28b) Equal treatment of men and women in matters of work and employment cannot be restricted to legislative measures. Instead, the European Union and the Member States must be called upon to promote more vigorously the process of raising awareness of the question of wage discrimination and of changing attitudes, involving all the parties concerned at public and private level to the greatest possible extent. The dialogue between the social partners can play an important role in this process.***

*Justification*

*Discrimination begins in the mind. National and European awareness-raising campaigns can therefore help promote a change of attitude in the everyday world of work. At the same time, however, other interested groups, such as the social partners, should be obliged to take part in the fight against discrimination.*

Amendment 27  
Article 1, title (new)

## ***Purpose***

Amendment 28  
Article 2, title (new)

## ***Definitions***

Amendment 29  
Article 2, paragraph 1, point (d)

(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 ;

(d) sexual harassment: where any form of unwanted 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

## ***Justification***

*There is no difference between physical and non-verbal conduct.*

Amendment 30  
Article 2, paragraph 1 (f a) (new)

***(fa) ‘professional promotion’: the advancement of rank or responsibility, including the conditions on which this is advertised or awarded;***

## ***Justification***

*It is essential to provide a definition of promotion in order that the concept cannot be abused to avoid equal opportunities requirements.*

Amendment 31  
Article 2, paragraph 2, point (b a) (new)

***(ba) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.***

*Justification*

*Any less favourable treatment of a woman who is pregnant or on maternity leave must also be deemed discriminatory.*

*Furthermore, as maternity leave has not been defined, it is necessary to insert a reference to Directive 92/85/EEC.*

Amendment 32

Article 2, paragraph 2, point (b b) (new)

***(bb) less favourable treatment on the grounds of gender reassignment***

*Justification*

*This provision is required to ensure that the decisions of the European Court of Justice which state that the rights of transpeople should be protected. See also amended Recital 2. Case C-13/94 P v S and Cornwall County council [1996] ECR I-2143 and Case C-117/01 K.B. v National Health Service Pensions Agency and Secretary of State [7 January 2004]*

Amendment 33

Article 3, title (new)

***Scope***

Amendment 34

Article 3, paragraph 1

***This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, and to retired and disabled workers , and to those claiming under them, in accordance with national law and/or practice.*** ***deleted***

*Justification*

*This provision comes originally from Directive 96/97/EC, which deals with the implementation of the principle of equal treatment for men and women in occupational social*

security schemes. For reasons of consistency, therefore, this provision should also be included in the second title of the recast Directive, which covers occupational social security schemes. The amendment concerning Article 5 a (new) sees to this.

Amendment 35  
Article 3 a, title (new)

***Positive action***

Amendment 36  
Article 3 a (new)

***Article 3a***

***Member States shall maintain and adopt measures within the meaning of Article 141(4) of the Treaty, such as measures to promote the provision of childcare and care for other dependent persons, with a view to ensuring full equality in practice between men and women in working life, such as providing for affordable childcare, and particularly as regards access to employment, vocational training and promotion, and working conditions.***

***Justification***

*Currently this appears as Article 14 under Title II, Specific Provisions, Chapter 3, The principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. This should be a general provision under Title I, so should be a new Article 4 after the current Article 3.*

*It is important to encourage Member States to implement positive action measures, and therefore there should be highlighted as a general provision, as it is in the Gender Directive 2004/113 and in the Race Directive. This will increase the consistency and clarity of the new Directive.*

*The provision of childcare is of increasing importance in ensuring genuine equality of opportunity. It is extremely important to specify those cases in which the principle of equal treatment must be applied.*

Amendment 37  
Article 4, title (new)

***Prohibition of discrimination***

Amendment 38  
Article 4

For the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration **attributable to a single source** shall be eliminated.

For the same work or for work to which equal value is attributed, **direct and indirect** discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

*Justification*

*This recital, together with Article 4 of the Commission proposal, refers back to two Court of Justice judgments ( Lawrence, Case C-320/00, and Allonby, Case C-256/01) which concerned very specific circumstances that cannot be generalised. In addition, the wording goes beyond the negative ruling of the underlying decisions. Also, the Court of Justice had regarded the criterion of 'not attributable to a single source' as grounds for excluding the applicability of the equal pay requirement.*

Amendment 39  
Article 5, title (new)

***Prohibition of discrimination***

Amendment 40  
Article 5 a (new)

***Article 5a***

***This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.***

*Justification*

*See former Amendment 10.*

Amendment 41  
Article 6, title (new)

## ***Material scope***

Amendment 42  
Article 7, title (new)

### ***Exclusions from material scope***

Amendment 43  
Article 8, title (new)

### ***Examples of sex-based discrimination***

Amendment 44  
Article 8, point 1

***1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, for:***

***1. Opposed to the principle of equal treatment are provisions that are directly or indirectly based on sex and cause the following:***

Amendment 45  
Article 8, point (d)

(d) laying down different rules, except as provided for in points (h), ***(i)*** and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

(d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

### ***Justification***

*Point (i) is mentioned as an exception to the principle of equal treatment. This is an error, resulting from the fact that in Directive 96/97/EC point (i) consisted of two parts: (1) the current point (i) 'setting different levels for workers' contributions;' (2) the current point (j) 'setting different levels for employers' contributions, except: ...'. In the current proposal, the Commission has separated the two points.*

Amendment 46  
Article 8, paragraph 1, point (h)

(h) ***setting*** different levels of benefit, ***except***

(h) ***Provision of*** different levels of benefits

*in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;*

Amendment 47  
Article 8, point (k)

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h), **(i)** and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

*Justification*

*Point (i) is mentioned as an exception to the principle of equal treatment. This is an error, resulting from the fact that in Directive 96/97/EC point (i) consisted of two parts:*

*(1) the current point (i) 'setting different levels for workers' contributions;'*

*(2) the current point (j) 'setting different levels for employers' contributions, except: ...'.*

*In the current proposal, the Commission has separated the two points.*

Amendment 48  
Article 9, title (new)

*Self-employed workers, revision clause*

Amendment 49  
Article 10, title (new)

*Self-employed workers, deferral clause*

Amendment 50



Article 11, title (new)

***Retroactive effect***

Amendment 51  
Article 12, title (new)

***Flexible pensionable age***

Amendment 52  
Article 13, title (new)

***Prohibition of discrimination***

Amendment 53  
Article 13, paragraph 1, point (a)

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria, ***assessment of qualifications***, recruitment conditions ***and appointment to a post at any level***, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

***Justification***

*Equal treatment in the field of employment requires, inter alia, that women are selected and appointed to available posts for which they are qualified and not overqualified. The ability of women to develop their knowledge and skills as much as possible in their professional lives is an important aspect of the principle of equal opportunities in the field of employment.*

Amendment 54  
Article 13, paragraph 1, point (c)

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive;

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive ***and Article 141 of the Treaty***;

Amendment 55  
Article 13, paragraph 3

***3. Member States shall periodically assess the occupational activities referred to in***

***deleted***

***paragraph 2 in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment.***

Or. en

*Justification*

*This provision is included in Article 13, as paragraph 3. However, this is a final provision of Directive 76/207 and it belongs to the final provisions of the Recast Directive, as a third paragraph of Article 31.*

Amendment 56  
Article 14

***Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.*** ***deleted***

*Justification*

*It is important to encourage Member States to implement positive action measures, and therefore there should be highlighted as a general provision, as it is in the Gender Directive 2004/113 and in the Race Directive. This will increase consistency and clarity of the new Directive.*

*Currently this appears as Article 14 under Title II, Specific Provisions, Chapter 3, The principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. This should be a general provision under Title I, so should be a new Article 4 after the current Article 3. Therefore the text should be deleted from Article 14 and introduced as new Article after Article 3 under Title I, see relevant amendment.*

Amendment 57  
Article 15, title (new)

***Return from maternity leave***

Amendment 58

Article 16, title (new)

***Paternity and adoption leave***

Amendment 59  
Title III, Chapter I, Title

***Defence of rights***

***Remedies and enforcement***

Amendment 60  
Article 17, title (new)

***Defence of rights***

Amendment 61  
Article 17, paragraph 1

1. Member States shall ensure that, ***after possible recourse to other competent authorities***, judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by 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.

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation, ***mediation and arbitration*** procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by 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.

***Justification***

*Many Member States have more than one administrative procedure available to citizens in the case of disputes concerning unequal treatment affecting work and employment.*

Amendment 62  
Article 18, title (new)

***Compensation or reparation***

Amendment 63  
Article 18

Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex in a way which is dissuasive and proportionate to the damage suffered. **Such compensation or reparation** may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

Member States shall introduce into their national legal systems, **in the event of breaches of the obligations under this Directive**, such measures as are necessary to ensure real and effective **remedies as** compensation or reparation, as the Member States so determine, for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered and may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

#### *Justification*

Amendment 64  
Article 19, title (new)

#### *Burden of proof*

Amendment 65  
Article 20, title (new)

#### *Application*

Amendment 66  
Article 21, title (new)

#### *Equality bodies*

Amendment 67  
Article 21 paragraph 2 point (c a) (new)

**(ca) exchanging data and know-how with corresponding European bodies such as the European Institute for Gender Equality.**

*Justification*

*In addition to researching the internal situation, the competent national bodies should contact European bodies to make known their methods and research findings and to improve their work by familiarising themselves with the methods and practices used by the European bodies.*

Amendment 68  
Article 22, title (new)

***Social dialogue***

Amendment 69  
Article 22, paragraph 1

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, ***and vocational training and access to employment and vocational advancement as well as by monitoring*** collective agreements, codes of conduct, research or exchange of experiences and good practices.

*Justification*

*Inequalities may occur not only at the workplace but also in access to employment and to vocational training and advancement; the monitoring of working practices must therefore cover all these areas.*

Amendment 70  
Article 22, paragraph 1

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of

conduct, research or exchange of experiences and good practices.

conduct, research ***based on development and analyses of comparable gender-specific data***, or exchange of experiences and good practices.

*Justification*

*Existing data are not always sufficient.*

Amendment 71

Article 22, paragraph 2

2. Where consistent with national traditions and practice, Member States shall ***encourage*** the social partners, without prejudice to their autonomy, ***to*** promote equality between women and men and ***to*** conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

2. Where consistent with national traditions and practice, Member States shall ***ensure that*** the social partners, without prejudice to their autonomy, promote equality between women and men, ***promote flexible working arrangements with the aim of facilitating the reconciliation of work and private life*** and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

*Justification*

*Women's many family commitments often work as a disincentive to their access to the job market or to full-time employment. Member States should also promote dialogue at the level of the social partners on the subject of opportunities for women to combine private and professional commitments so that access to the job market is feasible for them.*

Amendment 72

Article 22, paragraph 3

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women ***in the workplace*** in a planned and systematic way.

3. Member States shall, in accordance with national law, collective agreements or practice, ensure that employers promote equal treatment for women and men in a planned and systematic way ***in vocational training, access to and promotion at work and working conditions. Member States shall also conduct awareness campaigns for employers and, more generally, for the public on matters relating to equal***

***opportunities in the field of employment  
and occupation***

*Justification*

Amendment 73  
Article 22, paragraph 4

4. To this end, employers ***should*** be ***encouraged*** to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.

Such information ***may*** include ***statistics on proportions of men and women at different levels of the organisation*** and possible measures to improve the situation in cooperation with employees' representatives.

4. To this end, employers ***shall*** be ***required*** to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.

Such information ***shall*** include ***a report on the assignment of women and men to the various duties and an overview of the classification of the duties of women and men, their pay and pay differentials*** and possible measures to improve the situation in cooperation with employees' representatives.

Amendment 74  
Article 23, title (new)

***Dialogue with non-governmental  
organisations***

Amendment 75  
Article 24, title (new)

***Compliance***

Amendment 76  
Article 24, point (b)

(b) provisions contrary to the principle of equal treatment in contracts or collective agreements, wage scales, wage agreements, staff rules of undertakings, internal rules of undertakings or rules governing the

(b) provisions contrary to the principle of equal treatment in ***individual or collective full-time or part-time employment*** contracts or collective agreements, wage scales, wage agreements, ***job titles***, staff rules of

independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be, *or may be* declared, null and void or are amended;

undertakings, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be declared null and void or are amended;

Amendment 77  
Article 24, point (c)

(c) schemes containing such provisions may not be approved or extended by administrative measures.

(c) *occupational* schemes *and social security schemes* containing such provisions may not be approved or extended by administrative measures.

Amendment 78  
Article 25, title (new)

*Victimisation*

Amendment 79  
Article 26, title (new)

*Sanctions*

Amendment 80  
Article 27, title (new)

*Prevention of discrimination*

Amendment 81  
Article 27

Member States shall *encourage*, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace.

Member States shall *ensure*, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace.

Or. en



Amendment 82  
Article 28, title (new)

***Minimum requirements***

Amendment 83  
Article 28

Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

***1. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.***

***2. 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.***

*Justification*

*This provision is an integral part of advanced legislation, and it gives the Member States the possibility of ensuring a higher level of protection in the area of equal treatment.*

Amendment 84  
Article 28 b (new)

***Article 28b***

***1. This Directive shall be without prejudice to the provisions of Directive 96/34/EC.***

***2. Together with Member States, social partners and other stakeholders Directive 96/34 EC on the framework agreement on parental leave shall be reviewed with regard to its sufficiency and effectiveness. The review shall focus on an improvement of the situation of women and men who have difficulties in combining family and work commitments.***

Amendment 85  
Article 29, title (new)

***Gender mainstreaming***

Amendment 86  
Article 30

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means , for example at the workplace .

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means, for example at the workplace, ***and in access to employment and vocational training and advancement.***

*Justification*

*Such inequalities may occur not only at the workplace but also in access to employment and to vocational training and advancement; the monitoring of working practices must therefore cover all these areas.*

Amendment 87  
Article 31, title (new)

***Reports***

Amendment 88  
Article 31, paragraph 2 a (new)

***2a. Member States shall assess the occupational activities referred to in Article 13 par. 2, in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment, every four years. On the basis of that information, the Commission shall draw up, every four years, a report to the***

## ***European Parliament and the Council***

### *Justification*

*This provision is included in Article 13, as paragraph 3. However, this is a final provision of Directive 76/207 and it belongs to the final provisions of the Recast Directive, as a 3<sup>rd</sup> paragraph of Article 31. Furthermore, the periodical reports of the Member States and the Commission will also enable the EP to monitor the implementation of the gender equality principle which is endangered by persisting, non transparent, derogations.*

Amendment 89  
Article 32, title (new)

### ***Review***

Amendment 90  
Article 33, title (new)

### ***Implementation***

Amendment 91  
Article 34, title (new)

### ***Repeal***

Amendment 92  
Article 35, title (new)

### ***Entry into force***

Amendment 93  
Article 36, title (new)

### ***Addressees***

## **EXPLANATORY STATEMENT**

### ***I. Purpose of the Commission proposal***

The aim of this Commission proposal is to modernise and simplify Community law in the area of equal treatment of men and women in matters of employment and occupation, in order to give greater clarity and legal certainty. To this end the Commission brings together a

number of existing Community provisions in one legal text. These are the directives on the application of the principle of equal pay, equal treatment for men and women in occupational social security schemes, equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions, and the burden of proof in cases of discrimination based on sex (Directive 75/117/EEC; Directive 76/207/EEC; Directive 2002/73/EC; Directive 86/378/EEC; Directive 96/97/EC; Directive 97/80/EC; Directive 98/52/EC). In addition, the Commission has incorporated the extensive case-law of the European Court of Justice in the proposed legislation.

## ***II. Further development of equality law***

The Commission proposal does not restrict itself simply to consolidating Community legislation in the area of equal treatment of men and women in matters of employment and occupation. Instead, certain provisions, for example horizontal legal protection provisions which were hitherto only applicable in certain specific areas, will, as a result of the recast version, apply to all areas covered by this proposal.

## ***III. Content of the directive***

The proposal is divided into five titles. In the first title the underlying objectives of the directive are set out and concepts are given uniform definitions. This applies in particular to concepts such as ‘direct’ and ‘indirect’ discrimination, and ‘harassment based on sex’ and ‘sexual harassment’.

The second title summarises the principle of equal pay once again, taking account of European Court of Justice case-law. In addition, the existing provisions on the principle of equal treatment in occupational social security schemes are restated, taking account of the most recent case-law.

The third title contains a number of horizontal provisions aimed at improving legal protection for victims of discrimination. These include the possibility of legal recourse in cases of failure to apply the equal treatment principle, including class action for certain organisations, the possibility of claiming damages in the event of discrimination, and reversal of the burden of proof as soon as there are grounds to assume discrimination. These horizontal provisions are rounded off with the establishment of bodies to promote equal treatment and measures designed to encourage the social dialogue between the social partners. These provisions, many of which had already been introduced by Directive 2002/73, are now to be applied in all the areas covered by the Commission proposal.

The fourth and fifth titles contain provisions for the implementation of the directive and the corresponding final provisions.

## ***IV. Equal treatment, the current position***

The principle of equal pay for men and women who are doing work of equal value has already been enshrined in primary legislation for decades in the form of Treaty Article 141. The Court

of Justice has developed this essential principle of Community law in innumerable landmark judgments, thus giving decisive impetus to the fight against discrimination in the Member States.

However, despite this legal situation, wage differentials between men and women in the European Union have remained shockingly high in recent years, although the rate of women's participation in the labour market has risen. This is demonstrated by the statistics in the Commission reports on equality of women and men for 2004<sup>1</sup> and 2005<sup>2</sup>. According to these, the average gender-specific wage differential in the European Union is still 16%. The discrepancy is higher in the private than in the public sector. In comparison with their male colleagues, women with a lower level of education and older women still have a lower participation quota in the work force. In addition, there are differences in the career paths and wage structures of women and men. This is often directly linked to the possibility of combining family life and employment. The same conclusions are reached by the report on equal pay for work of equal value drawn up by the Committee on Women's Rights and Equal Opportunities more than four years ago.<sup>3</sup> Despite all the efforts, which have been accompanied by numerous national and European laws, these statistics have hardly changed at all in the past few years.

#### *V. Comments and criticisms*

The rapporteur approves and supports the Commission's primary aim of making existing legislation simpler and clearer with the proposed directive. She is convinced that the progress in Community law represented by the recast directive will bring benefits for the women concerned.

However, your rapporteur would point out that, in a way analogous to the situation in the Member States, existing Community legislation notwithstanding, the inequalities in the treatment of men and women have clearly not so far been effectively eliminated. The legal conditions are there on paper, although the deadline for implementation for certain legal acts, such as Directive 2002/73/EC, which introduces a series of changes for the better, has not yet elapsed, so that their results are still not apparent.

Your rapporteur would also like to point out that the directive does not restrict itself in all its sections to pure consolidation. Instead, under to the directive the scope of the horizontal provisions is to be broadened to include areas such as occupational social security schemes. This would mean considerable progress in Community law, the consequences of which cannot be definitively assessed. In these cases we must carry out a detailed examination in order to ascertain whether the Commission proposal can be complied with in its entirety.

The rapporteur suggests that the Member States continue consistently in their transposition of Community law, at the same time following new paths in combating discrimination. Discrimination begins in the mind. National and European information campaigns can be used to change attitudes in the everyday world of work.

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<sup>1</sup> COM (2004) 115 final, 19.2.2004.

<sup>2</sup> COM (2005) 44 final, 14.2.2005.

<sup>3</sup> EP No.: A5-0275/2001; resolution of 20 September 2001.

At the same time efforts must be made to introduce the obligation for other involved parties, such as the social partners, to make even more intensive efforts to combat discrimination. It is essential for the Member States and the social partners to address the problem of the gender-specific wage differential, which remains high, and the continuing sharp segregation of the sexes on the labour market. The social partners can play a decisive role in this by encouraging flexible working arrangements which allow both women and men to combine family and employment more successfully.

In order to discover the reasons for the wage differential between men and women, detailed analysis is needed. Sorting and analysing existing data and gender-specific statistics could help with this process. Finally, the Member States could also make an important contribution to uncovering the reasons through an exchange of best practice.

1.4.2005

## **OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS**

for the Committee on Legal Affairs

on the proposal for a European Parliament and Council directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation  
(COM(2004)0279 – C6-0037/2004 – 2004/0084(COD))

Draftswoman: Marie Panayotopoulos-Cassiotou

### **SHORT JUSTIFICATION**

#### **Background**

The proposal for a directive brings together the directives implementing the principle of equal pay for men and women (including equal treatment under occupational social security schemes) and the directives dealing with equal treatment with regard to access to employment and training and vocational training, working conditions and the burden of proof, including in particular:

- Directive 75/117/EEC (equal pay)
- Directive 76/207/EEC (implementation of the principle of equal treatment for men and women as regards access to employment and training and vocational training, promotion and working conditions, as amended by Directive 2002/73/EEC);
- Directive 86/378/EEC (implementation of the principle of equal treatment for men and women in occupational social security schemes, as amended by Directive 96/97/EC);
- Directive 97/80/EC (burden of proof in cases of discrimination based on sex);

The aims of this proposal for a 'recasting' directive are:

- to simplify and codify Community legislation on equal treatment for men and women;
- to improve clarity and legal certainty by proposing a single coherent text, in the spirit of the overall effort to make the European Union more open and accessible to European citizens, and
- to reflect the Court of Justice's case law in the area of equal treatment.

#### **I. The proposal**

The need to make full use of the production potential of Europe's labour force is a vital precondition if the strategic objectives set in Lisbon are to be achieved. Promoting women's participation in the labour market and efforts to abolish disparities between men and women are the key to success.

Despite the increase in women's employment rates, the gap between men and women in the labour market remains wide (17.2 points)<sup>1</sup>. Women with low levels of education and older women continue to show lower employment rates.

The gap between women's and men's pay remains 16% on average in the EU and has hardly changed in recent years. Differences in labour-market participation, differences in career and salary structures, and sex segregation - women are employed essentially in jobs traditionally considered as less worthwhile - are the main reasons for this gap.

Achieving the objectives set at the Lisbon Summit of 60% participation by women in the labour market by 2010 will do nothing to contribute to equal opportunities for men and women if a high percentage of women are working in poorly paid and undervalued jobs.

It is therefore necessary to reassess some of the basic criteria for achieving equal treatment of men and women in education and the world of work.

## **II. The Proposal**

The principle of equal pay for men and women performing equal work is laid down in Article 141 of the Treaty. The Court of Justice has interpreted this principle as meaning 'equal pay for work of equal value' and it is precisely this idea which is taken up in the recasting of the directives.

Job evaluation by means of a 'job classification system', as put forward by the current proposal and based on objective and non-sexist criteria, including guarantees against all forms of discrimination, will be an important tool for achieving a transparent labour market. Growth in employment depends directly on the possibility of reconciling work and family life (see the 2003 Commission report). Accordingly, this directive needs to provide protection on the one hand for men and women wishing to have or having young children or dependants requiring special care and, on the other, take account of the specific conditions experienced by women during and after pregnancy, so that there is no discrimination against such persons, whose situations make them more vulnerable in the harsh reality of the world of work.

Efforts are needed to improve the effectiveness of the measures taken by the Member States to ensure improved application of the principles of equal pay and equal treatment, so that anyone who has suffered harm following the violation of these principles can ensure that his or her rights are enforced and recognised under a judicial procedure provided for by the Member State.

Your draftswoman is in favour of regular controls and assessment of the effectiveness of the measures taken under the present directive, in the form of the requirement that the Member States present data on equal treatment for men and women with regard to access to employment, training and promotion, as well as working conditions, in the reports on statistics and labour market trends at national and European level.

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<sup>1</sup> Commission Report on Equality between Women and Men, 2004 (COM(2004)115).



## AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Draft legislative resolution

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

#### Amendment 1 Recital 6

(6) Harassment *related to the sex of a person* and sexual harassment are contrary to the principle of equal treatment between men and women and should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training.

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training.

#### Amendment 2 Recital 7

In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace, in accordance with national legislation and practice.

In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace *and with regard to access to employment and vocational training*, in accordance with national legislation and practice.

#### *Justification*

*Harassment and sexual harassment do not occur only at the workplace but also with regard to access to employment and vocational training.*

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<sup>1</sup> OJ C ... /Not yet published in OJ.

Amendment 3  
Recital 8

(8) The principle of equal pay for equal work or work of equal value as laid down by Article 141 of the Treaty constitutes an important aspect of the principle of equal treatment between men and women. It is therefore appropriate to make further provision for its implementation.

(8) The principle of equal pay for equal work or work of equal value as laid down by Article 141 of the Treaty, **and subsequently developed by the consistent jurisprudence of the Court of the European Communities**, constitutes an important aspect of the principle of equal treatment between men and women, **and an important and inalienable part of the Community acquis regarding sex discrimination**. It is therefore appropriate to make further provision for its implementation.

Amendment 4  
Recital 24

(24) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended.

(24) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended. **The same protection should be enjoyed by a worker who is being defended or testifies in favour of a person who is protected by virtue of this Directive.**

Amendment 5  
Title I, Article 1

The purpose of this Directive is to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

**(a) access to employment, including**

The purpose of this Directive is to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

**(a) working conditions, including pay;**

***promotion, and to vocational training;***

***(b) working conditions, including pay;***

***(c) occupational social security schemes.***

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.

***(b) occupational social security schemes;***

***(c) access to employment, including promotion, and to vocational training;***

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.

#### *Justification*

*The order in which these topics are listed needs to be changed to bring it into line with the order used in the chapters in Title II, which should be maintained.*

#### Amendment 6

##### Title 1, Article 2, paragraph 1(b)

(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;

(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;

***- less favourable treatment of a woman owing to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.***

#### Amendment 7

##### Article 2, paragraph 1, point (c)

(c) harassment: where an unwanted conduct ***related to the sex of a person*** occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment ;

(c) harassment: where an unwanted conduct occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

*Justification*

*Harassment is not related to the sex of a person.*

Amendment 8

Article 2, paragraph 1, point (d)

(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 ;

(d) sexual harassment: where any form of unwanted 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

*Justification*

*There is no difference between physical and non-verbal conduct.*

Amendment 9

Article 2, paragraph 1, point (e)

(e) pay: the ordinary ***basic or minimum*** wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment from his employer;

(e) pay: the ordinary wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment from his employer;

*Justification*

*The text should refer to all salaries not just basic or minimum.*

Amendment 10

Title 1, Article 2, paragraph 1, (f a) (new)

***(fa) 'professional promotion': the advancement of rank or responsibility, including the conditions on which this is advertised or awarded;***

*Justification*

*It is essential to provide a definition of promotion in order that the concept cannot be abused*

*to avoid equal opportunities requirements.*

Amendment 11  
Title I, Article 2, paragraph 2, point (c) (new)

***(c) any less favourable treatment of a woman related to pregnancy, maternity leave or adoption.***

*Justification*

*In the interests of clarity and readability the various situations constituting discrimination, as defined by Directive 2002/73/EC amending Directive 92/85/EC, should be grouped together in a single article. Reference should also be made to adoption, which is covered by Directive 96/34/EC.*

Amendment 12  
Title 1, Article 3, paragraph 1

1. This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, ***paternity, parental leave or leave for family reasons***, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

*Justification*

*The directive should provide protection for both men and women in their role as parents.*

Amendment 13  
Title II, Chapter 1, Article 4

For the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration ***attributable to a single source*** shall be eliminated.

For the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

Amendment 14  
Title II, Chapter 2, Article 8, point (d)

(d) laying down different rules, except as provided for in points (h), **(i)** and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

(d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

*Justification*

*Point (i) is mentioned as an exception to the principle of equal treatment. This is an error, resulting from the fact that in Directive 96/97/EC point (i) consisted of two parts:*

*(1) the current point (i) 'setting different levels for workers' contributions;'*

*(2) the current point (j) 'setting different levels for employers' contributions, except: ...'.*

*In the current proposal, the Commission has separated the two points.*

Amendment 15  
Title II, Chapter 2, Article 8, point (g)

(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;

(g) suspending the retention or acquisition of rights during periods of maternity, **parental or adoption leave**, or leave for family reasons which are granted by law or agreement and are paid by the employer;

*Justification*

*Maternity leave is different from parental leave, which is defined as leave granted to men and women workers on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to eight years to be defined by Member States and/or management and labour (clause 2, paragraph 1, of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC).*

Amendment 16  
Title II, Chapter 2, Article 8, point (k)

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h), **(i)** and (j), as regards the guarantee or retention of entitlement to

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits

deferred benefits when a worker leaves a scheme.

when a worker leaves a scheme.

*Justification*

*Point (i) is mentioned as an exception to the principle of equal treatment. This is an error, resulting from the fact that in Directive 96/97/EC point (i) consisted of two parts:*

*(1) the current point (i) 'setting different levels for workers' contributions;'*

*(2) the current point (j) 'setting different levels for employers' contributions, except: ...'.*

*In the current proposal, the Commission has separated the two points.*

Amendment 17

Title II, Article 13, paragraph 1(c)

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive;

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive **and Article 141 of the Treaty**;

Amendment 18

Title II, Article 14

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women, in working life.

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty, **such as measures to promote the provision of childcare and care for other dependent persons**, with a view to ensuring full equality in practice between men and women in working life, **particularly as regards access to employment, vocational training and promotion, and working conditions.**

*Justification*

*The provision of childcare is of increasing importance in ensuring genuine equality of opportunity. It is extremely important to specify those cases in which the principle of equal treatment must be applied.*

Amendment 19

Title II, Chapter 3, Article 15, paragraph 1

**1. Less favourable treatment of a woman related to pregnancy or maternity leave**

**deleted**

*shall constitute discrimination within the meaning of this Directive.*

Amendment 20  
Title II, Chapter 3, Article 15, paragraph 2

2. A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, ***or after an absence directly related or subsequent to an adoption or a period of parental leave***, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

*Justification*

*The previous paragraph 1 has been moved to Title I, General Provisions, Article 2, paragraph 2, point (c)(new), so as to bring together all discrimination situations under a single article.*

*Full effect must be given to the right to maternity leave and paternity leave by providing effective protection against discrimination for parents who make use of the rights granted to them under national law. Men and women should enjoy the same protection when returning to work after a period of leave to care for young children. This amendment reproduces a European Parliament amendment to Article 2, point 7 of Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

Amendment 21  
Title III, Chapter 3, Article 18

Member States shall introduce into their national legal systems such measures as are necessary to ensure ***real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the***

Member States shall introduce into their national legal systems such measures as are necessary to ensure ***effective, proportionate and dissuasive sanctions in the event of failure to comply with the obligations of this directive. Any compensation or reparation for the loss and damage sustained by a person injured as a result of treatment contrary to this directive shall be real, effective and proportionate to the***



*fixing of a prior upper limit*, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

*damage suffered and may not be restricted by the fixing of a prior ceiling*, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

#### *Justification*

*This amendment is needed to bring the article into line with the remarks appearing in point 3 of the explanatory memorandum, THE MEASURES LAID DOWN IN THE PROPOSAL FOR A DIRECTIVE, under the heading 'the principle innovations of the current proposal' - 'extension of the case law on sanctions/penalties to all areas covered by the present proposal - in line with the changes made by Directive 2002/73/EC - (see Articles 18 and 26 of current proposal)' and with the remarks appearing under Title IV: IMPLEMENTATION - '[This title] requires Member States to provide a system of effective, proportionate and dissuasive sanctions to be applied in case of infringement of rights granted under this directive in order to guarantee full practical effect (effet utile) of this directive. Member States are also required to notify the Commission of the provisions adopted in this area'.*

#### Amendment 22

##### Title III, Article 22, paragraph 1

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of *workplace practices*, collective agreements, codes of conduct, research or exchange of experiences and good practices.

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of *practices at the workplace, in vocational training, access to and promotion at work and monitoring* collective agreements, codes of conduct, research or exchange of experiences and good practices.

#### Amendment 23

##### Title III, Article 22, paragraph 3

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women *in the workplace* in a planned and systematic way.

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way *in vocational training, access to and promotion at work*

*and working conditions.*

Amendment 24  
Title IV, Article 24, point (b)

(b) provisions contrary to the principle of equal treatment in contracts or collective agreements, wage scales, wage agreements, staff rules of undertakings, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be, *or may be* declared, null and void or are amended;

(b) provisions contrary to the principle of equal treatment in *individual or collective full-time or part-time employment* contracts or collective agreements, wage scales, wage agreements, *job titles*, staff rules of undertakings, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be declared null and void or are amended;

Amendment 25  
Title IV, Article 27, paragraph 1

Member States shall *encourage*, in accordance with national law, collective agreements or practice, *employers and those responsible for access to vocational training to take* measures to prevent all forms of *discrimination on grounds of sex*, in particular *harassment and* sexual harassment at the workplace.

*1.* Member States shall *ensure that*, in accordance with national law, collective agreements or practice, measures *are taken* to prevent all forms of *harassment*, in particular sexual harassment *during vocational training and as regards access to employment and promotion, and* at the workplace.

Amendment 26  
Title IV, Article 27, paragraph 2 (new)

*2. Employers and those responsible for access to vocational training shall also be encouraged to take the measures referred to in paragraph 1, as part of their obligations.*

Amendment 27  
Title IV, Article 28

Implementation of this Directive shall under

*1.* Implementation of this Directive shall

no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

***2. The Member States may introduce or maintain provisions on the protection of the principles of equal opportunity and equal treatment for men and women more favourable than those laid down in this directive.***

#### *Justification*

*Member States should be able to adopt more favourable laws on equal treatment, if they so desire, to ensure that the level of protection is as high as possible.*

#### Amendment 28 Title IV, Article 30

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means, for example at the workplace.

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means, for example at the workplace ***and with regard to access to employment and vocational training and promotion.***

#### Amendment 29 Title V, Article 31

1. By ..... at the latest, the Member States shall communicate to the Commission, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

1. By ..... at the latest, the Member States shall communicate to the Commission, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, **every four years**, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish **every four years** a report establishing a comparative assessment of any measures in the light of Declaration N° 28 annexed to the Final Act of the Treaty of Amsterdam.

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, **every two years**, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish **every two years** a report establishing a comparative assessment of any measures in the light of Declaration N° 28 annexed to the Final Act of the Treaty of Amsterdam.

#### *Justification*

*The measures adopted by the Member States to implement this directive must be detailed in the national employment action plans submitted annually to the European Commission. That will make it possible to bring together in a single text all national measures on employment including equal treatment for men and women.*

## PROCEDURE

<b>Title</b>	Proposal for a European Parliament and Council directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
<b>References</b>	COM(2004)0279 – C6-0037/2004 – 2004/0084(COD)
<b>Committee responsible</b>	FEMM
<b>Committee asked for its opinion</b> Date announced in plenary	EMPL 15.9.2004
<b>Enhanced cooperation</b>	No
<b>Drafts(wo)man</b> Date appointed	Marie Panayotopoulos-Cassiotou 16.12.2004
<b>Discussed in committee</b>	31.1.2005    16.3.2005    31.3.2005
<b>Date amendments adopted</b>	31.3.2005
<b>Result of final vote</b>	for:                    25 against:              1 abstentions:        1
<b>Members present for the final vote</b>	Jan Andersson, Emine Bozkurt, Philip Bushill-Matthews, Milan Cabrnoch, Mogens N.J. Camre, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Harald Ettl, Ilda Figueiredo, Stephen Hughes, Karin Jöns, Raymond Langendries, Elizabeth Lynne, Thomas Mann, Ana Mato Adrover, Maria Matsouka, Ria Oomen-Ruijten, Csaba Öry, Marie Panayotopoulos-Cassiotou, Jacek Protasiewicz, José Albino Silva Peneda, Jean Spautz, Gabriele Zimmer
<b>Substitutes present for the final vote</b>	Mihael Brejc, Elisabeth Schroedter, Marc Tarabella, Anja Weisgerber
<b>Substitutes under Rule 178(2) present for the final vote</b>	

31.3.2005

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Women's Rights and Gender Equality

on the proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation  
(COM(2004)0279 – C6-0037/2004 – 2004/0084(COD))

Draftswoman: Katalin Lévai

### **SHORT JUSTIFICATION**

#### **Aim and substance of the proposal**

The objective of the Commission's proposal is to simplify, modernise and improve the Community legislation in the area of equal treatment and equal opportunities for men and women by recasting in a single text provisions of seven directives and the case law of the ECJ.

#### **Draftsman's position**

Your draftsman considers that the hitherto fragmented legislation on the equal opportunities and equal treatment of men and women in matters of employment and occupation should be replaced by a new, modern, single, integrated and more transparent one. For this reason, your draftsman welcomes the Commission proposal. This proposal seeks to guarantee the application of the principles of equal opportunities and equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. The principles of equal treatment and equal opportunities for women and men form an important part of the European social and economic policy.

Clarification and simplification of the Community legislation on equality between men and women in the field of employment and occupation will help to increase legal certainty and clarity and will bring the legislation up to date. It will also increase the effectiveness of measures taken by the Member States with a view to ensure the efficient application of the principles of equal pay and equal treatment so that any person injured as a result of gender discrimination may assert his or her rights.

Your draftsman supports the principal innovations proposed by the Commission:

- integration of the settled case law of the ECJ, in particular relating to equal treatment in occupational social security schemes,
- implementation of the guarantees contained in Directive 2002/73/EC, in particular relating to occupational schemes,
- extension of provisions on the burden of proof to all the fields covered by this proposal.

## **Recasting**

The principle of equal treatment has developed from an isolated provision on equal pay in the Treaty of Rome to a very important and far reaching acquis in the area of equality. The Treaty of Amsterdam increased significantly the EU's ability to take action in the area of equal treatment and equal opportunities between men and women by providing the European legislator with specific legal bases and recognising equality between men and women as a fundamental principle and one of the objectives and tasks of the Community.

The above developments has led in turn to a significant development of secondary legislation. Further, the case law of the European Court of Justice on equality between men and women contributed to further development and clarification of the principles of equal treatment and equal opportunities for men and women.

It has, however, become apparent that, for the sake of transparency and ease of use, secondary legislation on equality between men and women in the field of employment, needs to be updated and simplified. This should take account of EU enlargement, the age of certain directives (some are twenty years old), ECJ case law and the adoption of other similar EU legislation (art. 13 directives).

Following consultations with interested parties, the Commission proposed a recast Directive as the most suitable instrument to attain the above objectives.

Your draftsman agrees with the Commission that a recast Directive can help to:

- provide a single coherent text on the basis of the current Directives,
- reflect the ECJ settled case law, thus contributing to legal certainty and clarity,
- reflect the application of horizontal provisions of Directive 2002/73/EC and the reversal of the burden of proof in cases of discrimination on grounds of sex to equal pay and occupational social security schemes,
- accelerate the implementation of the principle of equal treatment.

Your draftsman hopes, that recasting the existing Directives into one text will help to ensure that the principle of equality between men and women in the field of employment and occupational matters is uniformly and effectively applied.

## **Conclusions**

The proposal is highly significant in terms of equal opportunities for women and men. It integrates the principle of equal pay for equal work or for work of equal value in labour law as well as clarifies further the rule on the reversed burden of proof in cases related to discrimination. It provides an essential framework for legal guarantees of equal opportunities for women and men.

The prohibition of sexual harassment in the workplace should also be regarded as an important part of the body of law aimed at preventing and solving different forms of violence against women. However, further legislative measures should be taken in order to promote the equal opportunities of women.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by Commission<sup>1</sup>

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Amendments by Parliament

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### Amendment 1

#### Recital 1

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have been substantially amended. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Since further amendments are to be made to

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have been substantially amended. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Since further amendments are to be made to

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<sup>1</sup> OJ C ... /Not yet published in OJ.



these Directives, they *should be* recast in the interests of clarity and in order to bring together in a single text the main provisions existing in this field as well as certain developments arising out of the *caselaw* of the Court of Justice of the European Communities.

these Directives, they *are* recast in the interests of clarity and in order to bring together in a single text the main provisions existing in this field as well as certain developments arising out of the *case-law* of the Court of Justice of the European Communities.

Amendment 2  
Recital 6

(6) Harassment *related to the sex of a person* and sexual harassment are contrary to the principle of equal treatment between men and women and should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training.

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training.

*Justification*

*Harassment is not related to the sex of a person.*

Amendment 3  
Recital 7

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace, in accordance with national legislation and practice.

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace **and in the context of access to employment and vocational training**, in accordance with national legislation and practice.

*Justification*

*Harassment and sexual harassment occur not only in the workplace but also in the context of access to employment and vocational training.*

Amendment 4  
Recital 8

(8) The principle of equal pay for equal work or work of equal value as ***laid down*** by Article 141 of the Treaty constitutes an important aspect of the principle of equal treatment between men and women. It is therefore appropriate to make further provisions for its implementation.

(8) The principle of equal pay for equal work or work of equal value as ***firmly established*** by Article 141 of the Treaty ***and developed by the settled case-law of the Court of Justice*** constitutes an important aspect of the principle of equal treatment between men and women, ***and an essential and indispensable part of the acquis communautaire concerning sex discrimination***. It is therefore appropriate to make further provisions for its implementation.

*Justification*

*This amendment takes into account the wording of recital 16 of Directive 2002/73/EC.*

Amendment 5  
Recital 8 a (new)

***(8a) In accordance with the settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.***

*Justification*

*See amendment to recital 8.*

Amendment 6  
Recital 13 a (new)

***(13a) In the case of funded defined-benefit schemes, certain elements, such as conversion into a capital sum of part of a periodic pension, transfer of pension rights, a reversionary pension payable to a***

*dependant in return for the surrender of part of a pension or a reduced pension where the worker opts to take earlier retirement, may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented.*

#### *Justification*

*Further clarification of recital 13 and Article 8, point 1 (h) providing some examples, which could be helpful for the application of the proposed Directive.*

#### Amendment 7

##### Recital 14 a (new)

*(14a) The Court of Justice has consistently held that the Barber Protocol<sup>1</sup> does not affect the right to join an occupational pension scheme and that the limitation of the effects in time of the judgment of the Court of Justice in Case C-262/88 Barber v Guardian Royal Exchange Assurance Group does not apply to the right to join an occupational pension scheme; the Court has also ruled that the national rules relating to time-limits for bringing actions under national law may be relied on against workers who assert their right to join an occupational pension scheme, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice; the Court has also pointed out that the fact that a worker can claim retroactively to join an occupational pension scheme does not allow the worker to avoid paying the contributions relating to the period of membership concerned.*

*(<sup>1</sup>) Protocol No 17 concerning Article 141 of the Treaty establishing the European Communities (1992).*

*Justification*

*Further clarification of recital 14 and the reference to Barber case-law.*

Amendment 8  
Recital 15 a (new)

***(15a) This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests. Measures within the meaning of Article 141(4) of the Treaty may include membership or the continuation of the activity of organisations or unions whose main objective is the promotion, in practice, of the principle of equal treatment between women and men.***

*Justification*

*Incorporation of recital 7 of Directive 2002/73/EC seems to be appropriate in the text of the current proposal.*

Amendment 9  
Recital 15 b (new)

***(15b) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of one sex. Such measures permit organisations of persons of one sex where their main objective is the promotion of the special needs of those persons and the promotion of equality between women and men.***

*Justification*

*Incorporation of recital 15 of Directive 2002/73/EC seems to be appropriate in the text of the current proposal.*

Amendment 10

Recital 19 a (new)

***(19a) In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life<sup>1</sup>, Member States were encouraged to consider examining the scope for their respective legal systems to grant working men an individual and non-transferable right to paternity leave, while maintaining their rights relating to employment. In this context, it is important to stress that it is for the Member States to determine whether or not to grant such a right and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.***

***(1) OJ C 218, 31.7.2000, p. 5.***

*Justification*

*See Article 16 of the proposal.*

Amendment 11  
Recital 19 b (new)

***(19b) Similar conditions apply to the grant by Member States to women and men of an individual and non-transferable right to adoption leave, while maintaining their rights relating to employment. In this context, it is important to stress that it is for the Member States to determine whether or not to grant such a right and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.***

*Justification*

*See Article 16 of the proposal.*

Amendment 12

## Recital 22

(22) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts back to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

(22) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts back to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent **national** body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

## Amendment 13 Recital 24

~~(24)~~ Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended.

~~(24)~~ Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended. ***An employee defending or giving evidence on behalf of a person protected under this Directive should be entitled to the same protection.***

### *Justification*

*The right to protection of an employee defending or giving evidence is already mentioned in Directive 2002/73/EC (see recital 17). It should be clear that such employee could enjoy the same protection also under this Directive.*

## Amendment 14 Recital 25

(25) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for **any** breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation.

(25) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for **its** breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, **except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.**

*Justification*

*Consistency with Article 18 of the proposal.*

Amendment 15  
Article 1, Title (new)

***Purpose***

Amendment 16  
Article 1, paragraph 2, point (a)

(a) ***access to employment***, including ***promotion, and to vocational training***;

(a) ***working conditions***, including ***pay***;

*Justification*

*The points under this article need to be switched around to bring them into line with the order of the chapters in Title II.*

Amendment 17  
Article 1, paragraph 2, point (b)

(b) ***working conditions, including pay***;

(b) ***occupational social security schemes***;

*Justification*

*The points under this article need to be switched around to bring them into line with the order of the chapters in Title II.*

Amendment 18  
Article 1, paragraph 2, point (c)

(c) *occupational social security schemes.* (c) *access to employment, including promotion, and to vocational training.*

*Justification*

*The points under this article need to be switched around to bring them into line with the order of the chapters in Title II.*

Amendment 19  
Article 2, Title (new)

***Definitions***

Amendment 20  
Article 2, paragraph 1, point (c)

(c) harassment: where an unwanted conduct ***related to the sex of a person*** occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(c) harassment: where an unwanted conduct occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

*Justification*

*See justification to Amendment 1 (Recital 6).*

Amendment 21  
Article 2, paragraph 1, point (d)

(d) sexual harassment: where any form of unwanted verbal, ***non-verbal or*** physical conduct of a sexual nature occurs, with the

(d) sexual harassment: where any form of unwanted verbal, physical ***or other*** conduct of a sexual nature occurs, with the purpose



purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

*Justification*

*There is no difference between physical and non-verbal conduct.*

Amendment 22  
Article 2, paragraph 1, point (e)

(e) pay: the ordinary **basic or minimum** wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment from his employer;

(e) pay: the ordinary wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment from his employer;

*Justification*

*All wages should be included, not just basic or minimum wages.*

Amendment 23  
Article 2, paragraph 2, point (b a) (new)

***(ba) less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.***

*Justification*

*According to the settled case-law of the Court of Justice, less favourable treatment of pregnant women or women on maternity leave should also be considered as discrimination. This has already been recognised in Directive 2002/73/EC. For reasons of clarity and consistency, this provision should be included in Article 2 of the proposal instead of Article 15.*

Amendment 24  
Article 3, Title (new)

***Scope***

Amendment 25  
Article 3, paragraph 1

1. This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

1. This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, **paternity leave, parental leave**, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

*Justification*

*The directive should protect all working parents, both men and women.*

Amendment 26  
Article 4, Title (new)

***Prohibition of discrimination***

Amendment 27  
Article 4, paragraph 1

For the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration **attributable to a single source** shall be eliminated.

For the same work or for work to which equal value is attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

Amendment 28  
Article 5, Title (new)

***Prohibition of discrimination***

Amendment 29  
Article 6, Title (new)

## *Material scope*

Amendment 30  
Article 7, Title (new)

### *Exclusions from material scope*

Amendment 31  
Article 8, Title (new)

### *Examples of sex-based discrimination*

Amendment 32  
Article 8, paragraph 1, point (d)

(d) laying down different rules, except as provided for in points (h), **(i)** and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

(d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

### *Justification*

*Point (i) is referred to as an exception to the principle of equal treatment. This is a mistake deriving from the fact that in Directive 96/97/EC point (i) consists of two parts:*

*(1) The present point (i) 'setting different levels for workers' contributions,'*

*(2) The present point (j) 'setting different levels for employers' contributions, except: (...)'*

*In its current proposal, the Commission has separated the two points.*

Amendment 33  
Article 8, paragraph 1, point (g)

(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted

(g) suspending the retention or acquisition of rights during periods of maternity leave, ***adoption leave, parental leave*** or leave for

by law or agreement and are paid by the employer;

family reasons which are granted by law or agreement and are paid by the employer;

*Justification*

*It would be appropriate to use the notion of parental leave based on Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETEUC, rather than paternity leave. The concept of paternity leave is narrower than parental leave and is not provided for in all Member States.*

Amendment 34  
Article 8, paragraph 1, point (k)

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h), **(i)** and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

*Justification*

*See justification to Amendment 8 (Article 8, paragraph 1, point (d)).*

Amendment 35  
Article 9, Title (new)

***Self-employed workers, revision clause***

Amendment 36  
Article 10, Title (new)

***Self-employed workers, deferral clause***

Amendment 37  
Article 11, Title (new)

***Retroactive effect***

Amendment 38

Article 12, Title (new)

***Flexible pensionable age***

Amendment 39  
Article 13, Title (new)

***Prohibition of discrimination***

Amendment 40  
Article 13, paragraph 1, point (c)

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive;

(c) employment and working conditions, including dismissals, as well as pay as provided for in this Directive ***and in Article 141 of the Treaty;***

Amendment 41  
Article 14, Title (new)

***Positive action***

Amendment 42  
Article 14

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women, in working life.

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women, in working life, ***and also as regards access to employment, vocational training and promotion, and in matters relating to working conditions.***

***Justification***

*It is very important to define clearly those cases in which the principle of equal treatment should apply.*

Amendment 43  
Article 15, Title (new)

***Return from maternity leave***

Amendment 44  
Article 15, paragraph 1

***1. Less favourable treatment of a woman related to pregnancy or maternity leave shall constitute discrimination within the meaning of this Directive.*** ***deleted***

*Justification*

*See amendment to Article 2, point 2(c).*

Amendment 45  
Article 15, paragraph 2

2. A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

2. A woman on maternity leave shall be entitled, after the end of her period of maternity leave, ***or after an absence directly related to or following an adoption or parental leave,*** to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

*Justification*

*Maternity and paternity rights must be fully enforced by providing effective protection from discrimination affecting parents who make use of the rights they enjoy under national law. Women and men should enjoy equal protection as regards the right to return to work after a period of leave to care for young children. This amendment is the same as a European Parliament amendment to Article 2, paragraph 7, of Directive 2002/73/EC amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

Amendment 46

Article 16, Title (new)

***Paternity and adoption leave***

Amendment 47

Title III, Chapter I, Title

***Defence of rights***

***Remedies and enforcement***

Amendment 48

Article 17, Title (new)

***Defence of rights***

Amendment 49

Article 17, paragraph 1

1. Member States shall ensure that, ***after possible recourse to other competent authorities***, judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by 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.

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation, ***mediation and arbitration*** procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by 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.

***Justification***

*Many Member States have more than one administrative procedure available to citizens in the case of disputes concerning unequal treatment affecting work and employment.*

Amendment 50

Article 18, Title (new)

***Compensation or reparation***

Amendment 51  
Article 18

Member States shall introduce into their national legal systems such measures as are necessary to ensure ***real and effective compensation or reparation as the Member States so determine for the loss and damage*** sustained by a person injured as a result of discrimination on grounds of ***sex in a way which is dissuasive*** and proportionate to the damage suffered. ***Such compensation or reparation*** may not be restricted by ***the fixing of*** a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

Member States shall introduce into their national legal systems such measures as are necessary to ensure ***effective, proportionate and dissuasive sanctions in the event of breaches of the obligations under this Directive***. ***Any compensation or reparation for damage*** sustained by a person injured as a result of discrimination on grounds of ***treatment contrary to this Directive shall be real, effective*** and proportionate to the damage suffered ***by the person and*** may not be restricted by a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his job application into consideration.

*Justification*

*This amendment is intended to bring the article into line with Section 3 of the explanatory memorandum to the proposal: 'THE MEASURES LAID DOWN IN THE PROPOSAL FOR A DIRECTIVE', which, under the heading 'The principal innovations of the current proposal are the following', refers to 'extension of the case law on sanctions/penalties to all areas covered by the present proposal - in line with the changes made by Directive 2002/73/EC - (see Articles 18 and 26 of current proposal), and with Title IV of the explanatory memorandum - 'IMPLEMENTATION', which states that: 'It requires Member States to provide a system of effective, proportionate and dissuasive sanctions to be applied in case of infringement of rights granted under this directive in order to guarantee full practical effect (effet utile) of this directive. Member States are also required to notify the Commission of the provisions adopted in this area'.*

Amendment 52  
Article 19, Title (new)

***Burden of proof***

Amendment 53  
Article 20, Title (new)



## *Application*

Amendment 54  
Article 21, Title (new)

## *Equality bodies*

Amendment 55  
Article 22, Title (new)

## *Social dialogue*

Amendment 56  
Article 22, paragraph 1

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices ***as regards vocational training, access to employment and promotion, and the monitoring of*** collective agreements, codes of conduct, research or exchange of experiences and good practices.

## *Justification*

*See justification to Amendment 10 (Article 14).*

Amendment 57  
Article 22, paragraph 3

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women ***in the workplace*** in a planned and systematic way.

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way, ***as regards vocational training, access to employment***

*and promotion and working conditions.*

*Justification*

*See justification to Amendment 10 (Article 14).*

Amendment 58  
Article 23, Title (new)

***Dialogue with non-governmental  
organisations***

Amendment 59  
Article 24, Title (new)

***Compliance***

Amendment 60  
Article 24 , point (b)

(b) provisions contrary to the principle of equal treatment in contracts or collective agreements, wage scales, wage agreements, staff rules of undertakings, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be, or may be declared, null ***and void*** or are amended.

(b) provisions contrary to the principle of equal treatment in ***individual or collective contracts for full-time or part-time employment*** or collective agreements, wage scales, wage agreements, staff rules of undertakings, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, individual contracts of employment or any other arrangements shall be, or may be declared, null or are amended.

Amendment 61  
Article 24, point (c)

(c) schemes containing such provisions may not be approved or extended by administrative measures.

(c) ***occupational*** schemes ***and social security schemes*** containing such provisions may not be approved or extended by

administrative measures.

Amendment 62  
Article 25, Title (new)

***Victimisation***

Amendment 63  
Article 26, Title (new)

***Sanctions***

Amendment 64  
Article 27, Title (new)

***Prevention of discrimination***

Amendment 65  
Article 27

Member States shall ***encourage***, in accordance with national law, collective agreements or practice, ***employers and those responsible for access to vocational training to take measures*** to prevent all forms of discrimination ***on grounds of sex***, in particular ***harassment and*** sexual harassment at the workplace.

Member States shall, in accordance with national law, collective agreements or practice, ***ensure that measures are taken*** to prevent all forms of discrimination, in particular sexual harassment, ***in connection with vocational training and promotion, access to employment and*** at the workplace.

***Justification***

*The Member States must not only provide encouragement but must also ensure that measures are taken to prevent all forms of harassment, particularly sexual harassment, phenomena which do not occur solely at the workplace but also in connection with access to employment and vocational training.*

Amendment 66  
Article 27, paragraph 1 a (new)

***Employers and those responsible for access to vocational training shall also be encouraged to take the measures referred to in the first paragraph as part of their duties.***

Amendment 67  
Article 28, Title (new)

***Minimum requirements***

Amendment 68  
Article 28

Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

***1.*** Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

***2. 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.***

*Justification*

*This provision is an integral part of advanced legislation, and it gives the Member States the possibility of ensuring a higher level of protection in the area of equal treatment.*

Amendment 69  
Article 29, Title (new)

***Gender mainstreaming***

Amendment 70  
Article 30

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means, for example at the workplace.

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all appropriate means, for example at the workplace, ***and in the context of professional training, promotion and access to employment.***

Amendment 71  
Article 31, Title (new)

***Reports***

Amendment 72  
Article 31, paragraph 2

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, every ***four*** years, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish every ***four*** years a report establishing a comparative assessment of any measures in the light of Declaration No 28 annexed to the Final Act of the Treaty of Amsterdam.

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, every ***two*** years, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish every ***two*** years a report establishing a comparative assessment of any measures in the light of Declaration No 28 annexed to the Final Act of the Treaty of Amsterdam.

*Justification*

*The measures taken by the Member States to implement this directive should be included in the national employment plans submitted each year to the Commission. This will make it possible to bring together in a single text all national measures on employment, including those on equal treatment for men and women.*

Amendment 73  
Article 32, Title (new)

*Review*

Amendment 74  
Article 33, Title (new)

*Implementation*

Amendment 75  
Article 34, Title (new)

*Repeal*

Amendment 76  
Article 35, Title (new)

*Entry into force*

Amendment 77  
Article 36, Title (new)

*Addressees*

## PROCEDURE

<b>Title</b>	Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
<b>References</b>	COM(2004)0279 – C6-0037/2004 – 2004/0084(COD)
<b>Committee responsible</b>	FEMM
<b>Committee asked for its opinion</b> Date announced in plenary	JURI 15.9.2004
<b>Enhanced cooperation</b>	No
<b>Drafts(wo)man</b> Date appointed	Katalin Lévai 26.10.2004
<b>Discussed in committee</b>	2.2.2005      7.3.2005      31.3.2005
<b>Date amendments adopted</b>	31.3.2005
<b>Result of final vote</b>	for:                      22 against:                0 abstentions:           0
<b>Members present for the final vote</b>	Maria Berger, Bert Doorn, Klaus-Heiner Lehne, Katalin Lévai, Antonio Masip Hidalgo, Hans-Peter Mayer, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Andrzej Jan Szejna, Jaroslav Zvěřina, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Janelly Fourtou, Jean-Paul Gauzès, Kurt Lechner, Evelin Lichtenberger, Marie Panayotopoulos-Cassiotou, Michel Rocard, Ingo Schmitt, József Szájer
<b>Substitutes under Rule 178(2) present for the final vote</b>	Elisabeth Jeggle





## PROCEDURE

<b>Title</b>	Proposal for a directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation		
<b>References</b>	COM(2004)0279 – C6-0037/2004 – 2004/0084(COD)		
<b>Legal basis</b>	Articles 251(2) and 141 (3) EC		
<b>Basis in Rules of Procedure</b>	Rule 51		
<b>Date submitted to Parliament</b>	15.9.2004		
<b>Committee responsible</b> Date announced in plenary	FEMM 15.9.2004		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 15.9.2004	JURI 15.9.2004	
<b>Not delivering opinion(s)</b> Date of decision			
<b>Enhanced cooperation</b> Date announced in plenary			
<b>Rapporteur(s)</b> Date appointed	Angelika Niebler 22.9.2004		
<b>Previous rapporteur(s)</b>			
<b>Simplified procedure</b> Date of decision			
<b>Legal basis disputed</b> Date of JURI opinion			
<b>Financial endowment amended</b> Date of BUDG opinion			
<b>European Economic and Social Committee consulted</b> Date of decision in plenary			
<b>Committee of the Regions consulted</b> Date of decision in plenary			
<b>Discussed in committee</b>	16.3.200 5	26.4.200 5	26.5.200 5
<b>Date adopted</b>	26.5.2005		
<b>Result of final vote</b>	for:	9	
	against:	1	
	abstentions:	22	

<b>Members present for the final vote</b>	Emine Bozkurt, Hiltrud Breyer, Maria Carlshamre, Věra Flasarová, Lissy Gröner, Zita Gurmai, Anneli Jäätteenmäki, Lívia Járóka, Piia-Noora Kauppi, Rodi Kratsa-Tsagaropoulou, Pia Elda Locatelli, Astrid Lulling, Angelika Niebler, Siiri Oviir, Doris Pack, Marie Panayotopoulos-Cassiotou, Christa Prets, Marie-Line Reynaud, Amalia Sartori, Eva-Britt Svensson, Britta Thomsen, Anna Záborská	
<b>Substitutes present for the final vote</b>	Véronique De Keyser, Mary Honeyball, Karin Jöns, Zuzana Roithová, Feleknaš Uca	
<b>Substitutes under Rule 178(2) present for the final vote</b>	Luis Manuel Capoulas Santos, Alejandro Cercas, Albert Deß, Zita Pleštinská, José Javier Pomés Ruiz, Andreas Schwab	
<b>Date tabled – A6</b>	2.6.2005	A6-0176/2005
<b>Comments</b>	...	