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*****I**

REPORT

on the proposal for a Directive of the European Parliament and of the Council 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 (COM(2000) 334 – C5-0369/2000 – 2000/0142(COD))

Committee on Women's Rights and Equal Opportunities

Rapporteur: Heidi Anneli Hautala

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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PROCEDURAL PAGE

By letter of 11 July 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 141 (3) of the EC Treaty, the proposal for a Directive of the European Parliament and of the Council 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 (COM(2000) 334 – 2000/0142(COD)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred this proposal to the Committee on Women's Rights and Equal Opportunities as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs for their opinions (C5-0369/2000).

The Committee on Women's Rights and Equal Opportunities had appointed Heidi Anneli Hautala rapporteur at its meeting of 20 June 2000.

It considered the Commission proposal and draft report at its meetings of 27 February 2001, 19 March 2001, 27 March 2001, 10 April 2001, 2 May 2001 and 14 May 2001.

At the latter meeting it adopted the draft legislative resolution by 25 votes to 3.

The following were present for the vote: Maj Britt Theorin, chairperson; Marianne Eriksson, Anne E.M. Van Lanckerand Jillian Evans, vice-chairpersons; Heidi Anneli Hautala, rapporteur; María Antonia Avilés Perea, Geneviève Fraisse, Fiorella Ghilardotti, Marie-Hélène Gillig (for Joke Swiebel), Koldo Gorostiaga Atxalandabaso, Lissy Gröner, Mary Honeyball, María Izquierdo Rojo (for María Rodríguez Ramos), Anna Karamanou, Christa Klač, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Hanja Maij-Weggen (for Thomas Mann), Maria Martens, Ria G.H.C. Oomen-Ruijten (for Amalia Sartori), Elena Ornella Paciotti, Christa Prets, Miet Smet, Patsy Sörensen, María Sornosa Martínez (for Elena Valenciano Martínez-Orozco), Margie Sudre, Helena Torres Marques and Sabine Zissener.

The opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs are attached. At its meeting of 27 February 2001 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs rejected its draft opinion.

The report was tabled on 16 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Directive of the European Parliament and of the Council 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 (COM(2000) 334 – C5-0369/2000 – 2000/0142(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1

ARTICLE 1, PARAGRAPH -1 (new)

Title (Directive 76/207/EEC)

-1 The title is amended as follows:

“Proposal for a Directive of 9 February 1976 of the European Parliament and of the Council on the implementation of the principle of equality of women and men in employment, occupation and vocational training, amending Council Directive 76/207/EEC”

(Replace ‘gender equality’ with ‘equality of women and men’ throughout the text.)

Justification

The title should demonstrate that the scope of the Directive matches that of Article 141(3) EC Treaty, i.e. it covers all ‘matters of employment and occupation’, irrespective of the legal nature of the relationship under which a person is employed or occupied. Replacing the term ‘equal treatment’ by the term ‘equality’ will bring the title into harmony with the new paragraph 1a in Article 1 and other Community instruments (see in particular European Social Agenda, adopted by the Nice European Council in December 2000).

Amendment 2

RECITAL -1 A (new)

¹ OJ C 337, 28.11.2000, p. 204.

(-1a) Equality of women and men is a fundamental principle and a fundamental right, under Articles 2 and 3(2) of the EC Treaty and the case-law of the Court of Justice. These Treaty provisions proclaim equality of women and men as a ‘task’ and an ‘aim’ of the Community and impose the positive obligation to ‘promote’ it in all its activities. Article 141, and in particular paragraph 3, addresses specifically ‘equal treatment and equal opportunities of men and women in matters of employment and occupation’.

Justification

This recital sets out the framework within which the Directive is situated, by referring to the ECJ case-law, (see in particular Case 149/77 Defrenne III [1978] ECR 1365, paras 26, 27; Case C-270/97 Sievers [2000] ECR I-933, paras 56, 57; Case C-50/96 Schröder [2000] ECR I-774, paras 56, 57) and the new Treaty provisions, by which equality of women and men has been strengthened. The Nice European Council has specified in more details this positive obligation.

Amendment 3 RECITAL -1 B (new)

(- 1b) Discrimination and inequalities affect mostly women and are often multiple. This Directive should therefore guarantee the application of the principle of equality of women and men by means which are at least as effective as those provided by Council Directive 2000/43/EC¹ and Council Directive 2000/78/EC,² as well as by Community legislation and case-law of the Court of Justice on the free movement of persons.

¹ OJ L 180, 19.7.2000, p.22.

² OJ L 303, 2.12.2000, p.16.

(‘Discrimination’ replaces ‘gender discrimination’ throughout the text.)

Justification

Equality of women and men has, since 1997, been one of the four pillars of the Guidelines for Member States' employment policies, which were reaffirmed by the Council Decisions of 13 March 2000 and 27-28 November 2000. Particular attention should be drawn to the fact that Article 3(2) of the EC Treaty requires the elimination of 'inequalities', a concept which is wider and different from the concept of 'discrimination'.

Amendment 4 RECITAL -3 A (new)

(- 3a) With a view to ensuring the effective implementation of the principle of equality of women and men in areas other than employment, occupation and vocational training, the Commission should consider proposing, before the end of 2003, a Directive based on Article 13 of the EC Treaty.

Justification

A directive in areas other than employment and occupation, based on Article 13 of the Treaty, has been announced by the Community Institutions.

Amendment 5 RECITAL 3

(3) In its Resolution of 29 May 1990 on the protection of the dignity of women and men at work, the Council affirmed that sexual harassment in the workplace may, in certain circumstances, be contrary to the principle of ***equal treatment*** within the meaning of Council Directive 76/207/EEC. ***A statement to that effect should be included in the Directive itself, sexual harassment usually affects the individual's work performance and/or creates an intimidating, hostile or offensive environment.***

(3) In its Resolution of 29 May 1990 on the protection of the dignity of women and men at work, the Council affirmed that sexual harassment in the workplace may, in certain circumstances, be contrary to the principle of ***equality of women and men*** within the meaning of Council Directive 76/207/EEC. ***To this end it must be emphasised that sexual harassment occurs not only in the workplace, but also in the context of access to employment and training, during employment and occupation, in the workplace or outside. The concept must be***

defined as a specific form of the general phenomenon of harassment.

Justification

Self-explanatory.

Amendment 6
RECITAL 3 B (new)

(3b) The Member States should take measures obliging those responsible under national law for access to, training, employment or occupation, and the conditions relating thereto, to introduce measures to prevent sexual harassment, which may include a system of confidential counsellors at the working place.

Justification

This recital is added for evident reasons. A system of confidential counsellors would be a useful tool in efforts to prevent sexual harassment.

Amendment 7
RECITAL 4

(4) Directive 76/207/EEC does not define the concept of indirect discrimination. It is thus appropriate to insert such a definition consistent with that of Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, as amended by Directive 98/52/EC.

(4) The definition of direct discrimination is necessary in view of the segregation of women and men in the labour market and the concentration of women in low-paid and low-status jobs for which they are often overqualified.

According to the case-law of the Court of Justice, in C-394/96 Brown, C-342/93 Gillespie and C-279/93 Finanzamt Köln-Altstadt v Schumacker, direct discrimination involves the application of different rules to a comparable situation or the application of the same rule to different situations.

Directive 76/207/EEC does not define the concept of indirect discrimination. It is thus appropriate to insert such a definition consistent with that of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with the rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means, including on the basis of statistical evidence.

Justification

This recital is added for evident reasons.

Amendment 8 RECITAL 5

(5) The scope of the ***occupation*** activities that Member States ***seek to*** exclude from the scope of Directive 76/207/EEC should be restricted. ***The extent to which some activities may not be excluded should be specified in accordance with the case-law of the Court of Justice of the European Communities.***

(5) The scope of the ***occupational*** activities that Member States ***may*** exclude from the scope of Directive 76/207/EEC should be restricted ***to those which necessitate the employment of a person of one sex by reason of the nature of the particular occupational activities concerned, provided that the objective sought is legitimate, and subject to the principle of proportionality as laid down by the case law of the Court of Justice.***

Justification:

As it emerges from the ECJ case law, the unclear wording of Art. 2(2) of Dir. 76/207/EEC, has encouraged abuses of the possibility to derogate from the principle of equality of women and men and has contributed in perpetuating the “prejudices and stereotypes concerning the

role and capacities of women”(See *ECJ Case C-158/97 Badeck [2000] ECR I-1875, para. 21; Case C-409/95 Marschall [1997] ECR I-6363, paras 29 and 30.*). *It resulted in low rates of women’s employment, high and long-term female unemployment, segregation of women and men in the labour market and marginalisation of women, the elimination of which is a strategic social and economic goal of the Union.*

Amendment 9

RECITAL 6

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman’s biological condition during and after pregnancy. 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, aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of directives concerning ***equal treatment for men and women***. The protection of employment rights of women, in particular as regards their right to return to ***work falls within the scope of Directive 76/207/EEC. That right should be explicitly guaranteed to women who have recently given birth.***

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment of protecting a woman’s biological condition during and after pregnancy. ***It has moreover consistently ruled that any unfavourable treatment of women related to pregnancy or maternity constitutes direct sex discrimination.*** 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, aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of directives concerning ***equality of women and men.***

The Court of Justice has recognised the protection of employment rights of women, in particular as regards their right to return to the same job, with the same working conditions, as well as to profit from any improvement in working conditions to which they would be entitled during their absence. Pending a revision of Directive

92/85/EC, these rights should be explicitly guaranteed to women who have recently given birth.

Justification

According to well-established ECJ case-law (See e.g. Cases C-177/88 Dekker [1990] ECR I-3941, and C-207/98 Mahlburg [2000] ECR I-549 (access to employment); Case C-136/95 Thibault [1998] ECR I-2011 (working conditions); Cases C-421/92 Habermann-Beltermann [1994] ECR I-1657, and C-394/96 Brown [1998] ECR I-4185 (dismissal) and ECJ Case C-136/95 Thibault, op. cit.) , unfavourable treatment of women on grounds directly or indirectly related to pregnancy or maternity constitutes direct discrimination.

Amendment 10 RECITAL 6 A (new)

(6) a Reconciling family and working life has been recognised and proclaimed by the Court of Justice ¹ and by the Resolution of the Council on the balanced participation of women and men in family and working life ² as a principle of Community law. It is reflected in Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC ³. It has also been enshrined in the European Social Agenda as a fundamental objective.

Rights relating to maternity and paternity or the reconciling of family life and work should not be considered as exceptions to the principle of equality of women and men, but as a conditions and means for achieving substantive equality

Pregnancy and maternity protection should be complemented, but not replaced, by measures relating to paternity.

¹Case C-243/95 Hill [1998] ECR I- 3739, Case C-1/95 Gerster [1997] ECR I- 5253 .

² OJ C 218, 31/7/2000, p. 5.

Justification:

The reconciling of family and working life requires a specific recital, in view of its importance for the effective achievement of equality of women and men and of the Union's social and economic goals, as reaffirmed by the Nice European Council.

Amendment 11

RECITAL 7

(7) The possibility for Member States to maintain or adopt positive action ***measures*** is enshrined in Article 141(4) of the Treaty. This Treaty provision makes the existing Article 2(4) of Directive 76/207/EEC redundant. The publication of periodical reports by the Commission on the implementation of ***the possibility offered by*** Article 141(4) will help Member States to compare the way ***it is*** implemented and citizens to have a full picture of the situation existing in each Member State.

(7) The possibility for Member States to maintain or adopt positive actions ***with a view to ensuring full equality in practice of women and men in working life*** is enshrined in Article 141(4) of the Treaty. This Treaty provision makes the existing Article 2(4) of Directive 76/207/EEC redundant. ***Declaration No 28 annexed to the Treaty states that positive measures should, in the first instance, aim at improving the situation of women in working life.***

The publication of ***annual*** reports by the Commission on the implementation of Article 141(4) ***will contribute to the dissemination of good practices. Such reports will also help Member States to realise the importance and necessity of such measures*** to compare the way ***these provisions are*** implemented and citizens to have a full picture of the situation existing in each Member State¹. ***Such reports should be integrated into the annual report on the employment situation.***

¹ ***ECJ Case C-158/97 Badeck [2000] ECR I-1875.***

Justification

This text better reflects the spirit and the wording of the Amsterdam Treaty, as it recognises that positive actions must overcome de facto inequality.

The employment policy guidelines are part of the employment package. The guidelines rest on four pillars, one of which is the establishment of equal opportunities for men and women.

They form the basis of national action plans. A report on transposition is delivered annually.

Amendment 12
RECITAL 8

(8) The Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, employees enjoy such protection even after the employment relationship has ended.

(8) The Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, employees enjoy such protection even after the employment relationship has ended. ***The protection afforded to them against retaliatory measures of the employer is not limited to cases of dismissal, but covers any other retaliatory measure (victimisation), even when taken after the end of the employment relationship⁹. Furthermore, anyone supporting in any way (in judicial proceedings or on other occasions) a person who considers her/himself a victim of discrimination should also enjoy the same protection.***

⁹ ECJ Case C-185/97 *Coote* [1998] ECR I-5199.

Justification:

This recital should be complemented in the light of the ECJ case law and of experience from fighting discrimination on grounds of sex, which have also inspired Art. 9 of Dir. 2000/43/EC and Art. 11 of Dir. 2000/78/EC. The protection against any retaliatory measure, and not only against dismissal, is absolutely necessary in view of the problems which make workers, and in particular women, reluctant to claim their rights, all deplored by Community institutions.

Amendment 13
RECITAL 9

(9) ***The Court of Justice has ruled that, in order to be effective, the principle of equal treatment implies that, whenever it is breached, the compensation awarded to the employee discriminated against must be adequate in relation to the damage sustained.***

(9) ***The principle of effective judicial protection and real and effective sanctions has been established by the Court of Justice in cases involving the application of Directive 76/207/EEC. Member States should take measures which are sufficiently effective to achieve the aim of the directive and they must ensure that the***

*rights thus conferred may be effectively relied upon before the national courts*¹.

In fully embodying the ECJ case-law, the Directive should make it clear that the most effective sanctions under national law should be imposed in cases of discrimination and that adequate compensation is just one kind of sanction.

¹ *Case 222/84 Johnston (1986) ECR 1651.*

Justification

The merging of Recitals (9) and (12) into one single recital is necessary in order to make it clear that sanctions are an element of effective judicial protection (See e.g. ECJ Case 14/83 von Colson [1984] ECR 1891, See e.g. ECJ Case C-326/96 Levez [1998] ECR I-7835, para. 48). There is an increasing tendency to provide for injunctions or reparation in naturam (e.g. reinstatement or re-engagement), which are far more effective than compensation and may be combined with it. Recital (9), by referring to compensation only, may create misunderstandings and result in diminution in judicial protection.

Amendment 14 RECITAL 9 A (new)

(9a) Work related to equality of women and men should be pursued in a planned and systematic way, also at company level, where employers should be encouraged to establish annual equality plans.

Justification

It is not sufficient to pursue equality work only at government level.

Amendment 15 RECITAL 10

(10) To provide a more effective level of protection to workers who are discriminated against on grounds of sex, associations or legal entities should

(10) Persons subject to discrimination on grounds of sex ***should have adequate means of legal protection.*** Associations, ***organisations*** or ***other*** legal entities should

also be empowered to *exercise the rights of defence* on behalf or in *protection of any person who considers himself or herself wronged because the principle of equal treatment has not been applied to them.*

also be empowered to *engage in judicial, administrative or other proceedings* on behalf or in *support of individuals or groups of persons who are victims of discrimination, with their approval or consent.*

Justification:

This recital is pertinent . Groups should also benefit from such a provision, in view of the already underlined reluctance of individual victims, and in particular women, to lodge complaints or proceedings.

Amendment 16
RECITAL 12

(12) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under Directive 76/207/EEC.

Deleted

Justification:

See justification of recital (9).

Amendment 17
ARTICLE 1, PARAGRAPH -1 (new)
Article 1, paragraph 1 (Directive 76/207/EEC)

-1. In Article 1, paragraph 1 is modified as follows :

*1. In accordance with Articles 2,3(2) and 141 of the Treaty, the purpose of this Directive is to put into effect in the Member States the principle of equal opportunities and equal treatment of women and men in employment, occupation and vocational training, including working conditions , irrespective of the legal nature of the relationship under which a person is employed or occupied. **

**** Any reference in the Directive to “equal treatment” shall be replaced by a reference to “equality”.***

Justification:

The purpose should be stated explicitly.

Amendment 18
ARTICLE 1, PARAGRAPH 1 a (new)
Article 1, paragraph 2 (Directive 76/207/EEC)

1a. In Article 1, paragraph 2 is deleted.

Justification

Article 1(2) of Directive 76/207/EEC is not necessary any more.

Amendment 19
ARTICLE 1, PARAGRAPH 1
Article 1(1a)(Directive 76/207/EEC)

1. In Article 1, the following paragraph 1a is inserted:

"1a. Member States shall introduce such measures as are necessary to ***enable them*** actively ***and visibly to promote*** the objective of equality ***between men and women*** by its incorporation, in particular, into all laws, regulations, administrative provisions, policies and activities in the areas referred to in paragraph 1".

1. In Article 1, the following paragraph 1a is inserted:

"1a. Member States shall introduce such measures as are necessary to actively ***fulfil*** the objectives of equality ***of women and men*** by its incorporation, in particular, into all laws, regulations, administrative provisions, policies and activities in the areas referred to in paragraph 1".

Justification

The word ‘promote’ is a ‘variable geometry’ verb which leaves the way open to unilateral, arbitrary implementation and does not convey an obligation on the Member States to act.

Amendment 20
ARTICLE 1, PARAGRAPH 2
Article 1a (Directive 76/207/EEC)

2. The following Article 1a is inserted : **delete**

"Article 1a

"Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person."

Justification:

For sake of clarity, definitions are grouped into one article. See also amendments to recitals 3, 4 and 7.

Amendment 21
ARTICLE 1, PARAGRAPH 2 A (new)
Article 1 a (Directive 76/207/EEC)

2a. The following Article 1a is inserted :

"Article 1a"

Definitions

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

- direct discrimination: the situation where a person is treated less favourably than another is, has been or would be treated in a similar situation, on grounds of sex;***
- indirect discrimination: the situation where an apparently neutral provision, criterion or practice puts 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 and proportionate aim, and the means of achieving that aim are appropriate and necessary.

– harassment: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.”

– sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occur, which the perpetrator knows, or should know, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.

Justification

There is a need to clarify the definitions of direct and indirect discrimination, harassment and sexual harassment. Those definitions are grouped into one article. See also amendments to Recitals 4 and 3. .

Amendment 22

ARTICLE 1, PARAGRAPH 2 B (new)

Article 1 b (new) (Directive 76/207/EEC)

2b. The following Article 1b shall be inserted:

“Article 1b

Sexual harassment shall be deemed to be discrimination on the ground of sex and therefore prohibited.

Member States shall introduce measures in order that respect for the dignity of women and men is ensured in all cases by those who are responsible under national law for access to, training, employment or occupation, or the conditions relating thereto.

A person's rejection of, or submission to, such conduct shall not be used as a basis for a decision affecting that person.

Member States shall take measures obliging those responsible under national law for access to training, employment or occupation, or the conditions relating thereto, to introduce measures to prevent sexual harassment, which may include a system of confidential counsellors at the working place."

Justification

The prohibition should apply irrespective of whether a person's rejection of or submission to harassment is used as a basis for a decision which affects him/her, so as to cover situations where the harassed person has, at least for a certain time, endured the harassment in order to retain her/his job, or has resigned in order to escape harassment.

Amendment 23

ARTICLE 1, PARAGRAPH 3, -a
Article 2, paragraph 1 (Directive 76/207/EEC)

(-a) Paragraph 1 is replaced by the following:

"1. For the purposes of the following provisions, the principle of equality of women and men shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference, inter alia, to the de facto inequalities which affect the opportunities of men or women in the areas referred to in Article 1(1)."

Justification

The case-law of the Court of Justice of the European Communities on direct and indirect discrimination now suggests that discrimination is usually based originally on the de facto inequalities affecting women's opportunities.

Amendment 24

ARTICLE 1, PARAGRAPH 3 (b)

Article 2, paragraph 2 (Directive 76/207/EEC)

(b) Paragraph 2 is replaced by the following:

"2. Member States *may* provide, as regards access to employment, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned *or of the context in which they are carried out*, such a characteristic constitutes a *genuine* occupational requirement.

Derogations to the principle of *equal treatment* shall remain within the limits of what is appropriate and necessary in order to achieve the *aim* in view."

(b) Paragraph 2 is replaced by the following:

2. Any general exclusion of, or general restriction on one sex having access to any kind of professional activity or to the training required to gain access to such an activity constitutes discrimination within the meaning of this Directive.

Member States *shall* provide, as regards access to employment, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned such a characteristic constitutes a *precise and determining* occupational requirement, ***provided that the objective sought is legitimate, and the requirement is proportionate.***

Derogations to the principle of *equality* shall remain within the limits of what is appropriate and necessary in order to achieve the *objective* in view."

Justification:

The words "or of the context in which they are carried out" should be deleted as it often provokes abuses. The words "and determining" should be added as well as the phrase "provided that the objective sought is legitimate and the requirement is proportionate" (cf. Art. 4 of Dir. 2000/43/EC and Art. 4 of Dir. 2000/78/EC). Derogations should be strictly interpreted, in accordance with the ECJ case law, the more so as the fundamental character of the principle and right to equality of women and men and the positive obligation of the Community and the Member States to promote its effective realisation are stressed by Art. 2 and 3(2) EC Treaty.

Amendment 25
ARTICLE 1, PARAGRAPH 3 (c)
Article 2, subparagraph 3 a (new) (Directive 76/207/EEC)

(c) In paragraph 3, the following *subparagraph is added*:

“A woman *who has given birth* shall be entitled, after the end of her period of maternity leave, to return to her job *or to an equivalent post* with no change in her working conditions.”

(c) In paragraph 3, the following *subparagraphs are added*:

“A woman shall be entitled, after the end of her period of maternity leave, *adoption or fostering a child, or after absence directly related to, or as a consequence of, pregnancy and/or confinement*, to return to her *own* job or to an equivalent job under terms and conditions which are not less favourable to her *and to benefit from any improvement in working conditions to which she would be entitled during her absence*.

Any unfavourable treatment of a woman directly or indirectly related to pregnancy or maternity, or to reconciling family and working life, shall constitute a direct discrimination.

Justification

See Recital (6) and its justification. A similar reasoning applies to paternity too. The effective implementation of maternity and paternity rights, as well as the right of men and women to the reconciling of family and working life (see in particular Council Resolution on the balanced participation of women and men in family and working life, op. cit.), is moreover a condition for the achievement of the strategic social and economic goals of the Union, which the Nice European Council has reaffirmed. It should be made clear that measures aimed at protecting maternity, paternity or the reconciling of family and working life do not constitute discrimination.

Amendment 26
ARTICLE 1, PARAGRAPH 3 (d)
Article 2, paragraph 4 (Directive 76/207/EEC)

(d) Paragraph 4 is replaced by the following:

delete

"4. On the basis of the information provided by Member States pursuant to Article 9, the Commission will adopt and publish every three years a report establishing a comparative assessment of the positive measures adopted by the Member States pursuant to Article 141(4) of the Treaty."

Justification:

The reference to Art. 9 of the Directive must be deleted, because it refers to exceptions to the principle of equality of women and men while positive action measures are not exceptions.

Amendment 27

ARTICLE 1, PARAGRAPH 3 a (new)

Article 2 a (new) (Directive 76/207/EEC)

3a. The following new Article 2a is inserted:

“Article 2a

Positive actions

1. Positive actions shall consist of measures aiming to secure full equality in practical terms between women and men in professional activity, by providing in particular for specific advantages designed to facilitate the exercise of a profession by the under-represented sex or to counteract or compensate for disadvantages in the areas referred to in Article 1(1). Positive actions shall in the first instance aim at improving the situation for women. They shall be temporary and elapse when full equality for women and men has been achieved.

2. Member States shall submit annual reports to the Commission on the positive actions they adopt or maintain and on their implementation, on the basis of which the Commission shall adopt and publish an annual report establishing a comparative assessment of the positive measures which

are in effect in each Member State pursuant to Article 141(4) of the Treaty and in the light of Declaration No 28 annexed to the Treaty. The report shall be published in time for its conclusions to be incorporated into the annual Joint Employment Report, and in the proposals under the fourth pillar in the annual Employment Guidelines and the recommendations to Member States.”

Justification

See Recital (7). This amendment makes it clear that preferential treatment of the under-represented sex should not result in disadvantaging persons of the over-represented sex who have better qualifications, provided that the assessment is made on the basis of objective criteria unrelated to any direct or indirect discrimination (see ECJ Case C-409/95 Marschall [1997] ECR I-6363, para. 33). It should be made clear that positive actions are justified as long as the phenomenon of inequality persists, given that they are by their very nature temporary and cannot constitute discrimination.

Amendment 28, ARTICLE 2A (new)

Article 2a

1. The Member States may adopt or retain provisions which protect more effectively the principle of equality of women and men than those contained in the present directive.

2. The implementation of this directive may in no circumstances be used as a reason to lower the level of protection against discrimination already provided by the Member States in the areas governed by this directive

Justification

This is important in order to build a guarantee of the level of protection into the directive (the ‘non-regression clause’). Cf. Article 8 of Directive 2000/78/EC.

Amendment 29
ARTICLE 1, PARAGRAPH 3 A (new)
Article 3, paragraph 1 (Directive 76/207/EEC)

3a. Article 3, paragraph 1 shall be replaced by the following:

“1. Application of the principle of equality of women and men means that there shall be no direct or indirect discrimination on the grounds of sex in the public or private sectors, including public bodies, in relation to:

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

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.”

Justification

This article is meant to replace Article 3(1) of the original Directive 76/207/EEC. The scope of equality of women and men as regards access to employment, vocational training and promotion, and working conditions has been redefined by Council Directive 2000/78/EC on establishing a general framework for equality of women and men in employment and occupation. This amendment seeks to harmonise the wording of the two directives.

Amendment 30
ARTICLE 1, PARAGRAPH 3 B (new)

Article 2, paragraph 1 a (new) (Directive 76/207/EEC)

3b. The following paragraph 1 a is added:

“1a. Behaviour consisting of incitement, instructions or pressure to discriminate shall fall within the definitions of direct and indirect discrimination, irrespective of whether any specific victim of discrimination can be identified.”

Justification

Incitement or instructions to discriminate should be explicitly mentioned in the directive as conduct which prevents equality of treatment. There is a need to cover the situation where, for instance, a manager encourages his subordinate to discriminate in recruitment. The amendment's text is identical to the ones in the European Parliament's reports on the Directive on equal treatment irrespective of racial or ethnic origin and on equal treatment in employment and occupation.

Amendment 31,
ARTICLE 1, PARAGRAPH 3 C (new)
Article 3, paragraph 2, introductory phrase (Directive 76/207/EEC)

3c. In Article 3(2) the introductory phrase is amended as follows:

“2. To this end, and without prejudice to the provisions of Article 141(4) of the Treaty, Member States shall take the measures necessary to ensure that:”

Justification

This general instruction covers the following paragraphs 3(2) (a), (b), (c) and (d).

Amendment 32
ARTICLE 1, PARAGRAPH 3D (new)
Article 3(2)(b)(Directive 76/207/EEC)

3d. In Article 3(2) point (b) is replaced by the following:

“b. any provisions contrary to the principle of equality of women and men which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void.”

Justification

It is time to bring into line the existing provisions in Community law on equality for migrant workers (Regulation 1408) and equality of women and men in the workplace. The most effective approach should be adopted, which renders the contrary arrangements referred to in point (b) null and void.

Amendment 33

ARTICLE 1, PARAGRAPH 4

Article 3(2)(d)(Directive 76/207/EEC)

4. In Article 3(2), the following **paragraph** (d) is added:

“(d) any provision contrary to the principle of ***equal treatment*** concerning membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations shall be declared null and void ***or may be amended.***”

4. In Article 3(2), the following **point** (d) is added:

“(d) any provision contrary to the principle of ***equality of women and men*** concerning membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations shall be declared null and void .

. ”Positive measures’ within the meaning of Article 141(4) of the Treaty may include continuation of the activity of, or the founding of, organisations or sections of organisations whose main object is the promotion of gender equality and women’s rights and/or interests and which seek the membership of women.”

Justification

It is time to bring into line the existing provisions in Community law on equality for migrant workers (Regulation 1408) and equality of women and men in the workplace. The most effective approach should be adopted, which renders the contrary arrangements referred to in point (d) null and void. The freedom to join a trade union is a fundamental right recognised by Community law.

Amendment 34

ARTICLE 1, PARAGRAPH 4A (new)

Article 4(b)(Directive 76/207/EEC)

4a. Article 4(b) is replaced by the following:

“(b) any provisions contrary to the principle of equality of women and men which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void;

Justification

It is time to bring into line the existing provisions in Community law on equality for migrant workers (Regulation 1408) and equality of women and men in the workplace. The most effective approach should be adopted, which renders the contrary arrangements referred to in point (b) null and void.

Amendment 35

ARTICLE 1, PARAGRAPH 4B (new)

Article 5(b)(Directive 76/207/EEC)

4b. Article 5(b) is replaced by the following:

“(b) any provisions contrary to the principle of equality of women and men which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void;

Justification

It is time to bring into line the existing provisions in Community law on equality for migrant workers (Regulation 1408) and equality of women and men in the workplace. The most effective approach should be adopted, which renders the contrary arrangements referred to in point (b) null and void.

Amendment 36

ARTICLE 1, PARAGRAPH 5

Article 6, paragraph 1 (Directive 76/207/EEC)

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of ***equal treatment within the meaning of Articles 3, 4, and 5*** to pursue their claims by judicial process after possible recourse to other competent authorities, even after the employment relationship has ended.

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of ***equality of women and men*** to pursue their claims by judicial process after possible recourse to other competent authorities, even ***when the discrimination takes place*** after the employment relationship has ended.

Justification

Clarifies the text, on the basis of the Court of Justice's case-law.

Amendment 37

ARTICLE 1, PARAGRAPH 5

Article 6, paragraph 2 (Directive 76/207/EEC)

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure that ***reparation for the loss and damage sustained by a person injured as a result of discrimination contrary to Articles 3, 4 or 5*** may not be limited by an upper limit fixed a priori or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure that ***sanctions for breaches of this directive or of national provisions that are adopted pursuant to this Directive or are consistent with it. Sanctions which are real and effective, proportionate and dissuasive, shall be provided for and effectively imposed by the competent national authorities. In cases***

the lapse of time until actual payment of the capital sum awarded.

where the sanction consists in compensation, this shall be proportionate to the damage sustained and dissuasive; it may not be limited by an upper limit fixed a priori or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of the lapse of time until actual payment of the capital sum awarded.

Justification

As regards paragraph 2 of Article 6, see justification for recital (9). Cases show that administrative sanctions (fines) for breaches of the principle of equality of women and men are provided by national legislation, but very seldom imposed by the labour inspectorate. Member States should be liable for ensuring that real and effective sanctions are provided and effectively imposed.

Amendment 38

ARTICLE 1, PARAGRAPH 5 A (new)

Article 7 (Directive 76/207/EEC)

5a. Article 7 is modified as follows :

"Article 7

Member States shall introduce into their national legal systems such measures as are necessary to protect persons covered by this Directive, , including employees and trade union delegates, whatever their situation as victims or witnesses from dismissal or any other adverse treatment or adverse consequence, including the taking of judicial action against them, as a reaction to a complaint or to proceedings of any kind, aimed at enforcing compliance with the principle of equality of women and men."

Justification:

The additions to the above provisions are necessary for the reasons set out in the justification of recital (8). EMP

Amendment 39
ARTICLE 1, PARAGRAPH 6
Article 8 a (Directive 76/207/EEC)

1. Member States shall provide for an independent body for the ***promotion*** of the principle of ***equal treatment between*** women and men. This body may form part of independent, pre-existing agencies charged at national level with, in particular, the safeguard of individuals' rights.

2. Member States shall ensure that the functions of the independent bodies referred to in paragraph 1 include receiving and pursuing complaints from individuals of discrimination on grounds of sex, starting investigations or surveys concerning discrimination on grounds of sex and publishing reports on issues relating to discrimination based on sex.

1. Member States shall provide for an independent body for the ***implementation*** of the principle of ***equality of*** women and men. This body may form part of independent, pre-existing agencies charged at national level with, in particular, the safeguard of individuals' rights ***and must have available to it the funding and human resources needed to accomplish its task*** .

The powers of these bodies shall cover all areas falling within the scope of this Directive, of Council Directive 75/117/EEC, of Council Directive 86/378/EEC as amended by Directive 96/97/EC, of Council Directive 92/85/EC, of Council Directive 96/34/EC as amended by Directive 97/75/EC, and of Council Directive 97/80/EC as amended by Directive 98/52/EC.

2. Member States shall ensure that the functions of the independent bodies referred to in paragraph 1 include receiving, ***examining*** and pursuing complaints from individuals, ***groups of individuals and organisations*** of discrimination on grounds of sex, starting investigations or surveys concerning discrimination on grounds of sex and publishing reports on issues relating to discrimination based on sex.

Justification

Experience has shown that isolated victims of discrimination have only a very small chance of instituting judicial proceedings or receiving para-judicial protection; when, on the other hand, the matter can be taken up by independent organisations established to defend human rights or women's rights, the chances of the violation of the principle of equality of women and men being thoroughly investigated and punished are greater. The independent organisation referred to in the directive must have enough human and financial resources available to it to be able to carry out effectively all the tasks set out for it in the directive. Paragraph 1 of Article 8a is pertinent since only independent bodies with sufficient resources can effectively promote equality of women and men. Concerning the addition to paragraph 2 of Article 8a, see justification for Recital (10).

Amendment 40
ARTICLE 1, PARAGRAPH 6
Article 8 a, paragraph 3 (Directive 76/207/EEC)

3. Member States shall ensure that associations, organisations or other legal entities *may pursue, on behalf of the complainant with his or her approval, any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.*

3. Member States shall ensure that associations, organisations or other legal entities *which have a legitimate interest in ensuring that the provisions of this Directives are complied with*

(a) may engage either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligation under this Directive,

(b) shall be given the right to determine, in a collective action, in any judicial and/or administrative procedure, of their own motion and aside from the particular circumstances of an individual case, whether or not the principle of equality of women and men was applied.

Justification

This amendment brings Article 8a (3) into line with the European Parliament's report on the Directive on equal treatment in employment and occupation. As the principle of class action has proved very effective elsewhere, organisations and associations with a legitimate cause should be given the right to establish before the court whether or not the principle of equal treatment has been upheld.

Amendment 41
ARTICLE 1, PARAGRAPH 6
Article 8b, paragraph 2a (new)(Directive 76/207/EEC)

2a. Member States shall encourage dialogue with those non-governmental organisations which, in accordance with national practices and law, have a legitimate interest in promoting equality of

opportunity.

Justification

As well as the social partners, the NGOs must be mentioned.

Amendment 42

ARTICLE 1, PARAGRAPH 6

Article 8 b, paragraph 2 a (new) and 2 b (new)(Directive 76/207/EEC)

2 a Member States shall take all necessary measures to ensure that the employers promote equality of women and men at the work place in a planned and systematic way, including equal pay for equal work or work of equal value.

2 b To this effect, Member States shall encourage employers to prepare annual equality reports, containing statistics on proportions of women and men at different levels of the organisation and on pay differentials for equal work and for work of equal value. In case of discrepancies in these respects, employers shall be encouraged to include in the annual report measures to improve the situation.

Justification:

Gender work, to be effective, has to be carried out locally, at the very place of work. Here, it is imperative that management and labour are active. To achieve equality of women and men a prohibition of discrimination is not enough. It has to be supplemented by active measures. Such active work, to be effective, has to be planned.

Amendment 43

ARTICLE 1, PARAGRAPH 6

Article 8 c (Directive 76/207/EEC)

Member States shall lay down the rules ***or penalties applicable to infringements of the national provisions adopted pursuant to*** this Directive, and shall take all measures

Member States shall lay down the rules ***on sanctions required by*** this Directive, and shall take all measures necessary to ensure that they are ***effectively*** implemented. The

necessary to ensure that they are implemented. ***The penalties provided for must be effective, proportionate and dissuasive.*** The Member States shall notify those provisions to the Commission by 31 December **2001** at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall notify those provisions to the Commission by 31 December **2002** at the latest and shall notify it without delay of any subsequent amendment affecting them.

Justification:

This amendment seeks to adapt the wording of Art. 8c to the ECJ case law and to ensure coherence with the amended wording of Art. 6(2) of the Directive. The term “penalty” should be replaced by the term “sanction”, since it is the standard term used and clarified by the ECJ case law also used in Dir. 2000/43/EC and 2000/78/EC. The word “effectively” should be added, as it is the principle of effectiveness that underlies the requirement of judicial protection, including sanctions⁴². After the word “sanctions”, the words “required by this Directive” should be used (see Art. 6 (2) and justification of recital (9)) concerning the rules on sanctions. Besides, it is obvious that Art. 8c concerns the rules “on” sanctions and not the rules “or” sanctions (“or” must be a typing error). Cf. Art. 15 of Dir. 2000/43/EC and Art. 17 of Dir. 2000/78/EC.

⁴²See e.g. ECJ von Colson, op. cit.

Amendment 44
ARTICLE 1, PARAGRAPH 6A (new)
Article 8d (Directive 76/207/EEC)

The 6a following article is added:

‘Article 8d

Contract compliance

A Member State may take into account an undertaking's or organisation's record of compliance with national provisions implementing this Directive, including the record of compliance with national provisions of Member States other than the State in question, when awarding contracts and grants.

In public procurement tenders authorities may include demands that provide for positive action measures with a view to ensuring full equality in practice of women and men within the scope of this Directive.’

Justification

This amendment brings Article 8d (new) into line with the wording of Article 13(bb) (new) of the Directive on equal treatment in employment and occupation (A5-0264 (COM(1999)565 – C5-0068/2000 – 1999/0225(CNS)), as adopted by the European Parliament on 5 October 2000, with a reference to positive action rather than discrimination.

Amendment 45
ARTICLE 2, PARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December **2001** at the latest or shall ensure, by that date at the latest, that management and labour introduce the requisite provisions by way of agreement.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December **2002** at the latest or shall ensure, by that date at the latest, that management and labour introduce the requisite provisions by way of agreement.

Justification

It is incorrect to propose an Article 2. Instead, the old Article 9 should be replaced with the text proposed by the Commission under Article 2, and this should become the new Article 9. In addition, a reasonable date should be set.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Directive of the European Parliament and of the Council 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 (COM(2000) 334 – C5-0369/2000 – 2000/0142(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission's proposal (COM(2000) 334 – 2000/0142(COD))¹,
 - having regard to the Council directive 76/207/EEC ²,
 - having regard to Article 251(2) of the EC Treaty and Article 141 (3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0369/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Women's Rights and Equal Opportunities and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs (A5-0173/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 337, 28.11.2000, p. 204.

² OJ L 039, 14.02.1977, p. 40.

5 March 2001

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Women's Rights and Equal Opportunities

on the proposal for a directive of the European Parliament and the Council 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

(COM(2000) 334 – C5-0369/2000 – 2000/0142(COD))

Draftsman: Dominique Vlasto

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Dominique Vlasto draftsman at its meeting of 19 September 2000.

It considered the draft opinion at its meetings of 9 January 2001 and 27 February 2001.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Renato Brunetta, vice-chairman; Gordon J. Adam (for Glyn Ford), Guido Bodrato, Massimo Carraro, Giles Bryan Chichester, Cristina Gutiérrez Cortines (for Christian Foldberg Røvsing), Concepció Ferrer, Norbert Glante, Roger Helmer, Helmut Kuhne (for Hans Karlsson), Werner Langen, Rolf Linkohr, Eryl Margaret McNally, Erika Mann, Angelika Niebler, Giuseppe Nisticò (for Jaime Valdivielso de Cué), Reino Kalervo Paasilinna, Samuli Pohjamo (for Astrid Thors), John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Paul Rübig, Ilka Schröder, Konrad K. Schwaiger, Elena Valenciano Martínez-Orozco and Alejo Vidal-Quadras Roca.

SHORT JUSTIFICATION

The aim of the proposal for a directive amending Directive 76/207/EEC is to incorporate a number of modifications designed to take account of recent Treaty changes and ECJ case-law, while at the same time endeavouring to reinforce worker protection and ensure that there are legal controls over all the rights guaranteed by the directive.

Your draftsman welcomes the fact that the proposal includes, for the first time, a definition of sexual harassment. This will facilitate the objective quantification and measurement of the phenomenon. However, it is to be regretted that the proposal for a directive makes no mention of the problem of harassment on non-sexual grounds and in non-sexual fields. Nonetheless, in another proposal for a directive, based on Article 13 of the Treaty and aimed at promoting equal treatment in the field of employment and work¹, the Commission has offered a broader definition of harassment. For reasons of coherence, but also to take the necessary account of the other forms of harassment which exist, your draftsman considers that the concept of 'moral harassment' should be included under Article 1a of the present proposal.

On the subject of reintegration into the workplace after a period of maternity leave, it is not sufficient simply to entitle women to return to their job or take up an equivalent post without any alteration of their working conditions. If work and family life are to be reconciled and reintegration into the workplace is to be facilitated, Member States and undertakings must guarantee the right to part-time working for the parents of young children. The existence of such measures promoting family-friendly employment policies is at present subject to wide variations between Member States². In Sweden, for example, workers with young children may work part-time as of right. Your draftsman considers it vital that part-time working should be made no less attractive to employers than full-time working. It is also absolutely essential that childcare facilities be made more accessible, by means of financial support for creches, home help or individual childcare providers.

Your draftsman regrets the circumstance that the Commission proposal confines itself to certain minimal changes to Directive 76/207/EEC and fails to cover a number of gaps. The proposal does not take sufficient account of the new provisions introduced by the Treaty of Amsterdam (Treaty Articles 2, 3(2) and 141) which make it possible to go further. It is, above all, to be regretted that the Commission proposal does not provide for practical forms of affirmative action designed to remove gender inequalities in the workplace.

The gaps that may be identified in Directive 76/207/EEC concern access to and reintegration into the labour market, the organisation of working time and the harmonisation of certain definitions.

¹ COM(1999) 565, 25 November 1999 (OJ C 177, 27.6.2000), Article 2(3), as amended by COM(2000) 652, 12 October 2000: 'Harassment shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practices of the Member States.'

² See the Commission's report on equal opportunities for women and men in the European Union (COM(2000) 123).

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Women's Rights and Equal Opportunities, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 6

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. 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, aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women. The protection of employment rights of women, in particular as regards their right to return to work falls within the scope of Directive 76/207/EEC. That right should be explicitly guaranteed to women who *have recently given birth*.

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. 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, aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women. The protection of employment rights of women, in particular as regards their right to return to work falls within the scope of Directive 76/207/EEC. That right should be explicitly guaranteed, *on the basis of unaltered conditions*, to women who *take maternity leave*.

¹ OJ C 337, 28.11.2000, p. 204

Justification:

It is essential that women returning to work after maternity leave should not encounter any deterioration in their conditions of work.

Amendment 2
Recital 6a (new)

(6a) In order to remove inequalities and promote the reconciliation of work with family life, it is essential that Member States should encourage undertakings and public administrations to grant the parents of young children the right, where applicable, to work part-time.

Amendment 3
ARTICLE 1(2)
Article 1a (new) (Directive 76/207/EEC)

1a. Moral harassment shall be deemed to be any form of abusive conduct manifesting itself, in particular, in behaviour, words, actions, gestures or writings liable to constitute an attack on the personality, the dignity or the physical or psychological integrity of a person.

Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person.

Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person.

Justification:

In addition to sexual harassment, other forms of harassment exist which particularly affect women. Account must be taken of these other forms of harassment, which may be defined as 'moral harassment'.

Amendment 4
ARTICLE 1(3ca) (new)
Article 2(3a) (new) (Directive 76/207/EEC)

3a. Member States shall ensure that undertakings and public administrations grant the parents of young children the right, where applicable, to part-time work.

Amendment 5
ARTICLE 1(6)
Article 8a(1) (Directive 76/207/EEC)

1. Member States shall provide for an independent body for the promotion of the principle of equal treatment between women and men. This body may form part of independent, pre-existing agencies charged at national level with, in particular, the safeguard of individuals' rights.

1. Member States shall provide for an independent body for the promotion of the principle of equal treatment between women and men. This body may form part of independent, pre-existing agencies charged at national level with, in particular, the safeguard of individuals' rights.
This body shall be composed of women and men representing the various professional sectors in society.

Justification:

The independent body responsible for promoting the principle of equality must be balanced in nature and must take account of the interests of the various professional sectors.

1 March 2001

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Women's Rights and Equal Opportunities

on the proposal for a Directive of the European Parliament and of the Council 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
(COM(2000) 334 – C5-0369/2000 – 2000/0142(COD))

Draftsman: Elisa Maria Damião

PROCEDURE

The Committee on Employment and Social Affairs appointed Elisa Maria Damião draftsman at its meeting of 6 September 2000.

It considered the draft opinion at its meetings of 23 January 2001 and 27 February 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairman; Elisa Maria Damião, draftsman; Jan Andersson, Elspeth Attwooll (for Luciano Caveri), Regina Bastos, Alejandro Cercas, Luigi Cocilovo, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Anne-Karin Glase, Koldo Gorostiaga Atxalandabaso, Richard Howitt (for Ieke van den Burg), Stephen Hughes, Ioannis Koukiadis, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Tokia Saïfi, Ulla Margrethe Sandbæk (for Jean-Louis Bernié), Miet Smet and Helle Thorning-Schmidt.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Women's Rights and Equal Opportunities, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 1a (new)

It is vital, in order to achieve the equality referred to in recital 1, egalitarian participation of men and women in the labour market, to set the objective of eliminating the obstacles which stand in the way of women's employment by applying equal treatment to all aspects of employment: access, promotion, vocational training, working conditions and the reasons for the ending of the employment relationship.

Justification

These principles should be enshrined, given that the primary discrimination may reside in labour inequality or be employment-related.

Amendment 2 Recital 2a (new)

The European Council in Lisbon on 23 and 24 March 2000 established that measures to develop an active employment policy should aim at increasing overall employment rates to 70% and the number of women in employment to 60% by the year 2010,

Justification

The amendment to Directive 76/207 must be placed in the context of the current labour market. It is therefore appropriate that mention should be made of the Lisbon Summit where

¹ OJ C 337 E, 28.11.2000, p. 204

discussion centred on the new economy and where the Summit Conclusions specifically referred to women's participation in this changing labour market.

Amendment 3
Recital 2b (new)

The Employment Guidelines for 2001 stress the importance of ensuring that active labour market policies are made available for women in proportion to their share of unemployment and that efforts are made to increase the employment of women with a view to reducing the gap in unemployment rates between women and men,

Justification

With a view to placing the amended directive in the context of the European Employment Strategy, it is appropriate to mention specifically the text of the latest Employment Guidelines.

(Amendment 4)
Recital 2c (new)

Job segregation according to gender accentuates the de facto inequality of treatment between women and men since women are over-represented in sectors where pay and working conditions are generally below average; the Conclusions of the Lisbon European Council and the Employment Guidelines 2001 recognise the importance of reducing job segregation and achieving a balanced representation of women and men in all sectors and occupations,

Justification

De facto inequality of treatment between women and men is due in large measure to segregation in the labour market, not only vertically through the traditional 'glass ceiling' whereby men take up most senior posts in a given sector, but also horizontally whereby women predominate in sectors which are traditionally underpaid and poorly protected. This matter must be addressed in the context of a revision of the directive concerning equal

treatment in employment.

Amendment 5
Recital 2d (new)

Girls outperform boys in secondary education and often achieve more also in higher education, but this is not reflected in women's subsequent position on the labour market given that women's unemployment rate is higher than men's in most Member States and an increasing number of women are often obliged to take up work for which they are over-qualified,

Justification

First identified in the Commission's Employment in Europe Report 1997 and the "Key Data on Education in the EU 1997", this phenomenon has continued to develop and remains one of the least visible barriers to women's equality on the labour market.

Amendment 6
Recital 2e (new)

According to Eurostat, women's average earnings/hour stand at EUR 8.73 while men's average earnings/hour stand at EUR 10.97, in spite of existing Community legislation applying the principle of equal pay for men and women (Council Directive 75/117/EEC).

Justification

The last major Eurostat survey of equal pay, published in 1999 showed a continuing gender pay gap of 24% but did not include part-time workers or the personal services sector. The smaller European Community Household Panel showed a 24% pay gap in the private sector and 11% in the public sector, but still a lack of information on relative rates for women and men in part-time work .

Amendment 7
Recital 2f (new)

Eurostat figures comparing earnings on the basis of gender do not generally reflect the actual situations of part-time workers, the services sector and areas of the public sector where women predominate in holding the lowest-paid jobs.

Justification

The last major Eurostat survey of equal pay, published in 1999 showed a continuing gender pay gap of 24% but did not include part-time workers or the personal services sector. The smaller European Community Household Panel showed a 24% pay gap in the private sector and 11% in the public sector, but still a lack of information on relative rates for women and men in part-time work .

Amendment 8
Recital 2g (new)

To achieve consistency and equal treatment for all categories referred to in Article 13 of the EC Treaty, it is essential that Community legislation in the field of equal treatment between women and men be brought into line with the provisions of Council Directive 2000/43/EC¹ of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC² of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,

¹OJ L 180, 19.7.2000, p. 22

²OJ L 303, 2.12.2000, p. 16

Justification

It is generally accepted that there must be no hierarchy of oppression concerning the different categories of persons protected under Article 13 of the Treaty. This amendment is in line with the position of Parliament expressed in Amendment 57 to the proposed directive on equal

treatment in employment and occupation (Mann Report A5-0264/2000; Minutes plenary 5.10.00) and should relate to existing and future legislation.

Amendment 9
Recital 3a (new)

Further consideration should be given to the possibility to make action against harassment in the workplace part of the regulations and policies on individual and collective health and safety.

Justification

Since harassment is deemed to be discrimination on the grounds of sex, preventive action is needed to counter it. Consequently, a reference should also be made to the contribution that preventive measures as part of the regulations and policies on health and safety can make to ensuring that the principle of equal treatment is upheld.

Amendment 10
Recital 4

(4) Directive 76/207/EEC does not define the concept of indirect discrimination. It is thus appropriate to insert such a definition consistent with that of Council Directive **97/80/EC of 15 December 1997 [24] on the burden of proof in cases of discrimination based on sex, as amended by Directive 98/52/EC [25]**.

[24] *OJ L 14, 20.1.1998, p. 6.*

[25] *OJ L 205, 22.7.1998, p. 66.*

(4) Directive 76/207/EEC does not define the concept of indirect discrimination. It is thus appropriate to insert such a definition consistent with that of Council Directives **2000/43/EC and 2000/78/EC**.

Justification

It is generally accepted that there must be no hierarchy of oppression concerning the different categories of persons protected under Article 13 of the Treaty. This amendment will give greater legal clarity on the definition of indirect discrimination, which will now apply to all categories mentioned in Article 13 without exception.

Amendment 11
Recital 5

The scope of the occupation activities that Member States seek to exclude from the scope of Directive 76/207/EEC should be restricted. The extent to which some activities may not be excluded should be specified in accordance with the case-law of the Court of Justice of the European Communities.

The scope of the occupation activities that Member States seek to exclude from the scope of Directive 76/207/EEC should be restricted. ***These occupation activities may be excluded only on the basis of sufficiently justified reasons, on the basis of objective criteria, and the social operators must be informed.*** The extent to which some activities may not be excluded should be specified in accordance with the case-law of the Court of Justice of the European Communities.

Justification

Exclusions should not be made on the basis of anything other than purely objective criteria.

Amendment 12
Recital 6

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. 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 [26], aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. 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 [26], aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of

directives concerning equal treatment for men and women. The protection of employment rights of women, in particular as regards their right to return to work falls within the scope of Directive 76/207/EEC. **That** right should be explicitly guaranteed to women who have recently given birth.

[26] OJ L 348, 28.11.1992, p. 1.

directives concerning equal treatment for men and women. The protection of employment rights of women, in particular as regards their right to return to work falls within the scope of Directive 76/207/EEC. ***Pending a revision of Directive 92/85/EC, that*** right should be explicitly guaranteed to women who have recently given birth.

[26] OJ L 348, 28.11.1992, p. 1.

Justification

In its report on the implementation of Directive 92/85/EC (A5-0155/2000), Parliament called for a revision of the directive, given the many shortcomings in its practical implementation (paragraph 10, Minutes 6.7.00). An amendment to the directive 76/207 should not be seen as a sufficient replacement for a revision of 92/85/EC.

Amendment 13

Recital 7

The possibility for Member States to maintain or adopt positive action measures is enshrined in Article 141(4) of the Treaty. This Treaty provision makes the existing Article 2(4) of Directive 76/207/EEC redundant. The publication of periodical reports by the Commission on the implementation of the possibility offered by Article 141(4) will help Member States to compare the way it is implemented and citizens to have a full picture of the situation existing in each Member State.

The possibility for Member States to maintain or adopt positive action measures ***with the aim that these positive actions might make it possible to achieve equality between women and men,*** is enshrined in Article 141(4) of the Treaty. This Treaty provision makes the existing Article 2(4) of Directive 76/207/EEC redundant. The publication of periodical reports by the Commission on the implementation of the possibility offered by Article 141(4) will help Member States to compare the way it is implemented and citizens to have a full picture of the situation existing in each Member State.

Justification

The need for action towards equality to be speeded up and given extra impetus.

Amendment 14
Recital 11

Member States should promote social dialogue between the social partners to address different forms of discrimination based on sex in the workplace and to combat them.

Member States should promote social dialogue between the social partners to address different forms of discrimination based on sex in the workplace ***in order to create a labour and social climate favourable to their verification, identification and eradication*** and to combat them.

Justification:

Verification, identification and the final goal of eradication will provide the best tool for a cultural change which will eventually prevent such discrimination from arising.

Amendment 15
ARTICLE 1(1)
Article 1(1a) (Council Directive No 76/207/EEC)

In Article 1, the following paragraph 1a is inserted:
"1a. Member States shall introduce such measures as are necessary ***to enable them*** actively and visibly to promote the objective of equality between men and women by its incorporation, in particular, into all laws, regulations, administrative provisions, policies and activities in the areas referred to in paragraph 1".

In Article 1, the following paragraph 1a is inserted:
"1a. Member States shall introduce such measures as are necessary actively and visibly to promote the objective of equality between men and women by its incorporation, in particular, into all laws, regulations, administrative provisions, policies and activities in the areas referred to in paragraph 1".

Justification

To make this precept clearer and more imperative.

Amendment 16
ARTICLE 1(2)
Article 1 a (Council Directive No 76/207/EEC)

2. The following Article 1a is inserted
"Article 1a
"Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to **sex** takes place with the purposes or effect of **affecting** the dignity of a person and/or creating an intimidating, hostile, offensive **or disturbing** environment, **in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person.**"

2. The following Article 1a is inserted
"Article 1a
"Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to **a person's gender** takes place with the purposes or effect of **violating** the dignity of a person and/or creating an intimidating, hostile, **degrading, humiliating or** offensive environment."

Justification

The first part of the amendment ensures that "sexual harassment" concerns not only harassment of a sexual nature, but all harassment based on a person's gender. The second part brings the definition into line with the definition of harassment in Directives 2000/43/EC and 2000/78/EC concerning equal treatment for other categories mentioned in Article 13 of the Treaty. Last part of the amendment deletes unnecessary text from the Commission proposal.

Amendment 17
ARTICLE 1(3c)
Article 2(3) (Council Directive No 76/207/EEC)

(c) In paragraph 3, the following subparagraph is added:

"A woman who has given birth shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post with no change in her working conditions."

(c) In paragraph 3, the following subparagraph is added:

"A woman who has given birth shall be entitled, after the end of her period of maternity leave **or any other absence linked to maternity, illness of the mother or her child, adoption or preadoption fostering**, to return to her job or to an equivalent post with no change in her working conditions, **without suffering any discrimination for those reasons.**"

Justification

The additional wording is important to ensure, for example, that women who have to take sick leave following maternity leave due to complications linked to the pregnancy or birth or due to illness of the child are also protected by the directive. Protection should also cover absences or leave relating to events similar to actual maternity (adoption) and general non-discrimination (for example, if she would have been entitled to promotion during the period of leave or would have had an opportunity to apply for a higher post, etc.).

Amendment 18

ARTICLE 1(3d)

Article 2(4) (Council Directive No 76/207/EEC)

(d) Paragraph 4 is replaced by the following:

"4. On the basis of the information provided by Member States *pursuant to Article 9*, the Commission will adopt *and publish every three years a* report establishing a comparative assessment of *the positive* measures *adopted by the Member States pursuant to Article 141(4) of the Treaty*."

(d) Paragraph 4 is replaced by the following:

"4. *Measures providing for specific advantages with a view to ensuring full equality in practice between men and women in working life do not constitute discrimination and should in the first instance aim at improving the situation of women, are temporary and will lapse when full equality of opportunities and treatment has been achieved.*

Member States will immediately inform the Commission of existing positive measures pursuant to Article 141 (4) of the Treaty and will provide annual updates of any new measures introduced.

On the basis of the information provided by Member States, the Commission will adopt *an annual* report establishing a comparative assessment of *these* measures, *which will be published in time for its conclusions to be incorporated into the annual Joint Employment Report, and in the proposals under the 4th pillar in the annual Employment Guidelines and the recommendations to Member States.*"

Justification

It should be made clear that positive action measures are justified as long as the phenomenon

of inequality persists, given that they are by their very nature temporary and cannot constitute discrimination.

Amendment 19
ARTICLE 1(5a)(new)
Article 7 (Council Directive 76/207/EEC)

***Article 7 is replaced by the following:
'Article 7***

Protection of victims and witnesses

Member States shall introduce into their national legal systems such measures as are necessary to protect persons covered by this Directive, whatever their situation as victims or witnesses, from dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.'

Justification

This amendment intends to replace Article 7 of Directive 76/207/EC and closely follows the wording of Article 11 of Directive 2000/78/EC on equal treatment in employment and occupation and Article 9 of Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin.

Amendment 20
ARTICLE 1(6)
Article 8a(2) (Council Directive 76/207/EEC)

Member States shall ensure that the functions of the independent bodies referred to in paragraph 1 include receiving ***and*** pursuing complaints from individuals of discrimination on grounds of sex, starting investigations or surveys concerning discrimination on grounds of sex ***and*** publishing reports on issues relating to discrimination based on sex.

Member States shall ensure that the functions of the independent bodies referred to in paragraph 1 include receiving, pursuing, ***investigating and giving an opinion on*** complaints from individuals of discrimination on grounds of sex, ***providing concrete help for victims***, starting investigations or surveys concerning discrimination on grounds of sex, publishing reports on issues relating to discrimination based on sex ***and undertaking public***

awareness campaigns, so as to make good the low level of awareness of this phenomenon in the Member States, which is demonstrated by the fact that the majority of Member States have no proper legislation on this subject.

Questions concerning equal pay between women and men, as defined by Directive 75/117/EEC, shall be considered as part of working conditions and thereby fall under the remit of the independent bodies set up under this directive.

Justification

The first part of the amendment brings the functions of the independent bodies into line with that proposed by the Parliament in its amendments to the race directive (Amendment 53, Minutes 18.5.00), which should be feasible given that such bodies already exist in most Member States. The second part seeks to ensure that questions of equal pay can also be considered to be under the remit of such independent bodies, as part of a broad definition of working conditions. Account is also taken of the most recent study commissioned by the Commission in this area, 'Sexual harassment at the workplace in the European Union, 1999', conducted in the Member States between 1987 and 1997.

Amendment 21

ARTICLE 1(6)

Article 8a(3) (Council Directive No 76/207/EEC)

3. Member States shall ensure that associations, organisations or other legal entities may *pursue, on behalf of the complainant with his or her approval*, any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Member States shall ensure that associations, organisations or other legal entities may *be entitled to institute or support* any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

4. In addition, associations, organisations or other legal entities having a legitimate interest in appearing in court shall be given a right of collective action, i.e. the power to ask the court, of their own motion, to rule whether unequal treatment is present, aside from the particular circumstances of an individual case.

Justification

This amendment takes the wording of Parliament's amendment to the race directive (am. 41, Minutes 18.5.00). This allows group actions whereby an organisation can bring a case without the approval of the victim, where an individual may hesitate to initiate action in court for fear of victimisation and where, in the case of discrimination affecting a group of persons, it may not be feasible to obtain the approval of each individual affected.

Amendment 22

ARTICLE 1(6)

Article 8b(3) (new) (Council Directive No 76/207/EEC)

Member States will encourage the social partners to reach agreement on progressive improvements in working conditions and pay in sectors where one sex traditionally predominates, with a view to promoting a fair balance in all sectors of economic and professional activity.

Justification:

Research undertaken by the Dublin Foundation has shown that where collective agreements between the social partners are reached in all Member States in sectors where women predominate in poorly-protected or remunerated jobs (such as textiles, clothing), these agreements have a beneficial effect on working conditions and pay and a positive effect on the gender balance in those sectors.

Amendment 23

ARTICLE 1(6a) (new)

The following article is added:

‘Article 8d (new)

Contract compliance

A Member State may take into account an undertaking's or organisation's record of compliance with national provisions implementing this Directive, including the record of compliance with national provisions of Member States other than the State in question, when awarding contracts and grants.

In public procurement tenders authorities

may include demands that provide for positive action measures with a view to ensuring full equality in practice between men and women within the scope of this Directive.'

Justification

This amendment brings Article 8d (new) into line with the wording of Article 13(bb) (new) of the Directive on equal treatment in employment and occupation (A5-0264 (COM(1999)565 – C5-0068/2000 – 1999/0225(CNS))), as adopted by the European Parliament on 5 October 2000, with a reference to positive action rather than discrimination.