

# EUROPEAN PARLIAMENT

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*Committee on Employment and Social Affairs*

**2008/0192(COD)**

12.2.2009

## **OPINION**

of the Committee on Employment and Social Affairs

for the Committee on Women's Rights and Gender Equality

on the proposal for a directive of the European Parliament and of the Council  
on the application of the principle of equal treatment between men and women  
engaged in an activity in a self-employed capacity and repealing Directive  
86/613/EEC  
(COM(2008)0636 – C6-0341/2008 – 2008/0192(COD))

Rapporteur: Luigi Cocilovo

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## SHORT JUSTIFICATION

The proposal for a directive, that would replace the existing directive 86/613/EEC, was requested by the European Parliament "with a view to eliminating indirect discrimination, introducing a positive requirement of equal treatment and improving the legal status of assisting spouses. Consideration was given to the situation of spouses helping in handicrafts, trade, agriculture, fisheries and small family businesses from the gender equality perspective as well as taking into account the fact that women are in amore vulnerable position than men.<sup>1</sup>

This opinion has the aim to underline this request. Additionally, it supports the proposal of the Commission to add 'life partners' as a group which should also be covered by the Directive. As the situation in the Member States is very complex concerning legislation on life partners, it seems necessary to make clear that from a European point of view all persons who participate in the activities of self-employed workers without being an employee or business partner should benefit from the same level of rights and protection.

With respect to equality between women and men, the principle of equal treatment has to be applied not only to the establishment, equipment, or extension of a business but also to management, which includes the participation in decision making processes.

With respect to equal treatment, also the effort of the Commission is welcomed to ensure better social protection for assisting spouses and life partners. However, benefits from social protection systems should only then be on a voluntary basis if the same principle is applied to self-employed workers. If a Member State obliges self-employed workers to join a social security system, it should also be obligatory for assisting spouses and life partners.

Finally, it is suggested that Member States should be able to comply with the aims of the directive much earlier than the Commission envisages as there is already a directive in place that will only be extended in some respect.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive

#### Recital 7

*Text proposed by the Commission*

*Amendment*

(7) The Directive should apply to self-

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<sup>1</sup> EP resolution of 3 September 2008 on Equality between women and men - 2008

employed workers **and** assisting spouses, as both participate in the activities of the business.

employed workers, assisting spouses **and life partners**, as both participate in the activities of the business.

## Amendment 2

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(11) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination in relation to the establishment, equipment or extension of a business or any other form of self-employed activity.

#### *Amendment*

(11) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination in relation to the establishment, **management**, equipment or extension of a business or any other form of self-employed activity.

## Amendment 3

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) It is necessary to ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or life partners when recognised by national law.

#### *Amendment*

(12) It is necessary to ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses **or between** life partners when recognised by national law. ***For the purposes of this Directive, the terms 'marital status' and 'family business' should be interpreted in the light of the recognition accorded to life partnerships in the relevant judgments of the European Court of Justice.***

#### *Justification*

*This amendment implements the ECJ judgment of 1 April 2008 in case C-267/06 (Tadao Maruko).*

## Amendment 4

### Proposal for a directive

#### Recital 13

##### *Text proposed by the Commission*

(13) In view of their contribution to the family business, assisting spouses should be entitled, at their request, to benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers, notably on contributions. Member States should be required to take the necessary measures to make that choice possible. In any case, the level of protection of self-employed workers **and** assisting spouse can be proportional to the rate of participation in the activities of the family business.

##### *Amendment*

(13) In view of their contribution to the family business, assisting spouses **and life partners** should be entitled, at their request, to benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers, notably on contributions. Member States should be required to take the necessary measures to make that choice possible **or to include assisting spouses and life partners in their compulsory social security scheme under the same conditions applicable to for self-employed workers**. In any case, the level of protection of self-employed workers, assisting spouses **and life partners** can be proportional to the rate of participation in the activities of the family business.

## Amendment 5

### Proposal for a directive

#### Recital 14

##### *Text proposed by the Commission*

(14) The economic and physical vulnerability of pregnant self-employed workers **and** assisting spouses makes it necessary for them to be granted the right to maternity leave, part of which should be considered mandatory. Member States remain competent to establish the level of contributions and all the arrangements concerning benefits and payments, provided the minimal prescriptions of this Directive are complied with. To take into consideration the specific situation of self-employed workers **and** assisting spouses, they should be given the final choice on

##### *Amendment*

(14) The economic and physical vulnerability of pregnant self-employed workers, assisting spouses **and life partners** makes it necessary for them to be granted the right to maternity leave, part of which should be considered mandatory. Member States remain competent to establish the level of contributions and all the arrangements concerning benefits and payments, provided the minimal prescriptions of this Directive are complied with. To take into consideration the specific situation of self-employed workers, assisting spouses **and life**

whether or not benefit from maternity leave.

*partners*, they should be given the final choice on whether or not benefit from maternity leave

## Amendment 6

### Proposal for a directive Recital 15

#### *Text proposed by the Commission*

(15) In order to take the specificities of self-employed activities into account, female self-employed workers *and* assisting spouses should be able to choose, as far as possible, between a financial allowance and a temporary replacement during maternity leave.

#### *Amendment*

(15) In order to take the specificities of self-employed activities into account, female self-employed workers, assisting spouses *and life partners* should be able to choose, as far as possible, between a financial allowance and a temporary replacement during maternity leave.

## Amendment 7

### Proposal for a directive Article 1 – paragraph 2

#### *Text proposed by the Commission*

2. This Directive covers self-employed workers *and* assisting spouses.

#### *Amendment*

2. This Directive covers self-employed workers, assisting spouses *and life partners*.

## Amendment 8

### Proposal for a directive Article 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

*Member States shall ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or between life partners when recognised by national law. All companies which are jointly established by spouses or life partners when recognised by national law shall be recognised as 'family businesses'.*

*The recognition of life partnerships shall be based on the relevant judgments of the European Court of Justice.*

## **Amendment 9**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) 'assisting spouses': the spouses or, life partners of self-employed workers, when recognised by national law, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

*Amendment*

(b) ' assisting spouses **and life partners**': the spouses or life partners of self-employed workers, when recognised by national law, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

## **Amendment 10**

### **Proposal for a directive**

#### **Article 3 – paragraph 1**

*Text proposed by the Commission*

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in particular in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

*Amendment*

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in particular in relation to the establishment, **management**, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

## **Amendment 11**

### **Proposal for a directive**

#### **Article 5**

*Text proposed by the Commission*

Without prejudice to the specific

*Amendment*

Without prejudice to the specific

conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses *or* life partners, when recognised by national law, are not more restrictive than the conditions for the establishment of a company with other persons.

conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses *or between* life partners, when recognised by national law, are not more restrictive than the conditions for the establishment of a company with other persons.

## Amendment 12

### Proposal for a directive Article 6

#### *Text proposed by the Commission*

Social protection for assisting spouses

6. Member States shall take the necessary measures to ensure that assisting spouses can, *at their* request, benefit from at least an equal level of protection as self-employed workers under the same conditions applicable to self-employed workers.

#### *Amendment*

Social protection for assisting spouses *and life partners*

6. Member States shall take the necessary measures to ensure that assisting spouses *and life partners* can benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers. *If this extension of benefits is not mandatory under the legislation of a particular Member State, it shall be granted upon a request made by an assisting spouse or life partner.*

#### *Justification*

*In social systems that do not leave it to the discretion of the self-employed worker to contribute to a social security scheme, this should be compulsory also for assisting spouses and life partners; if self-employed workers have a choice, assisting spouses and life partners as well.*

## Amendment 13

### Proposal for a directive Article 7 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure that female self-

#### *Amendment*

1. Member States shall take the necessary measures to ensure that female self-



employed workers **and** assisting spouses can, at their request, be entitled to the same period of maternity leave as provided for in Directive 92/85/EEC.

employed workers, assisting spouses **and life partners** can, at their request, be entitled to the same period of maternity leave as provided for in Directive 92/85/EEC.

## Amendment 14

### Proposal for a directive Article 7 – paragraph 3

#### *Text proposed by the Commission*

3. The allowance referred to in paragraph 2 shall be deemed adequate if it guarantees income at least equivalent to that which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling laid down under national legislation.

#### *Amendment*

3. The allowance referred to in paragraph 2 shall be deemed adequate if it guarantees income at least equivalent to ***the minimum wage as far as this is established under national legislation or at least equivalent to*** that which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling, laid down under national legislation ***in so far as that ceiling does not lead to any discrimination.***

## Amendment 15

### Proposal for a directive Article 7 – paragraph 4

#### *Text proposed by the Commission*

4. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses have access ***as far as possible*** to services supplying temporary replacements or to any existing national social services, as an alternative to the allowance referred to in paragraph 2.

#### *Amendment*

4. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses ***and female life partners*** have access to services supplying temporary replacements or to any existing national social services, as an alternative to the allowance referred to in paragraph 2.

## **Amendment 16**

### **Proposal for a directive**

#### **Article 13 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by [**6 years** after adoption]. The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than [**7 years** after adoption]. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

##### *Amendment*

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by [**4 years** after adoption]. The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than [**5 years** after adoption]. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

## **Amendment 17**

### **Proposal for a directive**

#### **Article 14 – paragraph 2**

##### *Text proposed by the Commission*

2. In order to take account of particular conditions, Member States may, if necessary, have an additional period of [**2 years**] to comply with Article 6.

##### *Amendment*

2. In order to take account of particular conditions, Member States may, if necessary, have an additional period of [**1 year**] to comply with Article 6.

## PROCEDURE

<b>Title</b>	Equal treatment between men and women engaged in an activity in a self-employed capacity	
<b>References</b>	COM(2008)0636 – C6-0341/2008 – 2008/0192(COD)	
<b>Committee responsible</b>	FEMM	
<b>Opinion by</b> Date announced in plenary	EMPL 21.10.2008	
<b>Drafts(wo)man</b> Date appointed	Luigi Cocilovo 4.11.2008	
<b>Discussed in committee</b>	21.1.2009	10.2.2009
<b>Date adopted</b>	11.2.2009	
<b>Result of final vote</b>	+: 40 –: 0 0: 0	
<b>Members present for the final vote</b>	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnach, Alejandro Cercas, Ole Christensen, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Stephen Hughes, Karin Jöns, Ona Juknevičienė, Jean Lambert, Bernard Lehideux, Elisabeth Lynne, Thomas Mann, Jiří Maštálka, Maria Matsouka, Elisabeth Morin, Csaba Öry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Rovana Plumb, Elisabeth Schroedter, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer	
<b>Substitute(s) present for the final vote</b>	Pierre Jonckheer, Jamila Madeira, Adrian Manole, Ria Oomen-Ruijten, Csaba Sógor, Patrizia Toia	