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*Committee on Legal Affairs*

**2004/0084(COD)**

31.3.2005

## **OPINION**

of the Committee on Legal Affairs

for the Committee on Women's Rights and Gender Equality

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

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PA\_Leg

## **SHORT JUSTIFICATION**

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

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

### **Draftsman's position**

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

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

Your draftsman supports the principal innovations proposed by the Commission:

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

### **Recasting**

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

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

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

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

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

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

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

## **Conclusions**

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

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

## **AMENDMENTS**

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

Amendment 1  
Recital 1

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have been substantially amended. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Since further amendments are to be made to these Directives, they *should be* recast in the interests of clarity and in order to bring together in a single text the main provisions existing in this field as well as certain developments arising out of the *caselaw* of the Court of Justice of the European Communities.

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes have been substantially amended. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Since further amendments are to be made to these Directives, they *are* recast in the interests of clarity and in order to bring together in a single text the main provisions existing in this field as well as certain developments arising out of the *case-law* of the Court of Justice of the European Communities

Amendment 2  
Recital 6

(6) Harassment *related to the sex of a person* and sexual harassment are contrary to the principle of equal treatment between

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and

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

men and women and should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training,

should therefore be deemed to constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training,

#### *Justification*

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

#### Amendment 3 Recital 7

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

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

#### *Justification*

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

#### Amendment 4 Recital 8

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

(8) The principle of equal pay for equal work or work of equal value as ***firmly established*** by Article 141 of the Treaty ***and developed by the settled case-law of the Court of Justice*** constitutes an important aspect of the principle of equal treatment between men and women, ***and an essential and indispensable part of the acquis communautaire concerning sex***

***discrimination.*** It is therefore appropriate to make further provisions for its implementation.

*Justification*

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

Amendment 5  
Recital 8 a (new)

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

*Justification*

*See amendment to recital 8.*

Amendment 6  
Recital 13 a (new)

***(13a) In the case of funded defined-benefit schemes, certain elements, such as conversion into a capital sum of part of a periodic pension, transfer of pension rights, a reversionary pension payable to a dependant in return for the surrender of part of a pension or a reduced pension where the worker opts to take earlier retirement, may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented.***

*Justification*

*Further clarification of recital 13 and Article 8, point 1 (h) providing some examples, which*

*could be helpful for the application of the proposed Directive.*

Amendment 7  
Recital 14 a (new)

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

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

*Justification*

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

Amendment 8  
Recital 15 a (new)

***(15a) This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests. Measures***



***within the meaning of Article 141(4) of the Treaty may include membership or the continuation of the activity of organisations or unions whose main objective is the promotion, in practice, of the principle of equal treatment between women and men.***

*Justification*

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

Amendment 9  
Recital 15 b (new)

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

*Justification*

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

Amendment 10  
Recital 19 a (new)

***(19a) In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life<sup>1</sup>, Member States were encouraged to consider examining the scope for their respective legal systems to grant working men an individual and non-transferable right to paternity leave, while maintaining***

*their rights relating to employment. In this context, it is important to stress that it is for the Member States to determine whether or not to grant such a right and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.*

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

*Justification*

*See Article 16 of the proposal.*

Amendment 11

Recital 19 b (new)

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

*Justification*

*See Article 16 of the proposal.*

Amendment 12

Recital 22

(22) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice held, provision should therefore be made to ensure that the burden of proof shifts back to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent body to investigate the

(22) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice held, provision should therefore be made to ensure that the burden of proof shifts back to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent ***national*** body to investigate

facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

Amendment 13  
Recital 24

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

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

*Justification*

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

Amendment 14  
Recital 25

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

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

***Directive is the refusal to take his job application into consideration.***

*Justification*

*Consistency with Article 18 of the proposal.*

Amendment 15  
Article 1, Title (new)

***Purpose***

Amendment 16  
Article 1, point (a)

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

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

*Justification*

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

Amendment 17  
Article 1, point (b)

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

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

*Justification*

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

Amendment 18  
Article 1, point (c)

(c) *occupational social security schemes.*

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

*Justification*

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

Amendment 19  
Article 2, Title (new)

***Definitions***

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

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

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

*Justification*

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

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

(d) sexual harassment: where any form of unwanted verbal, ***non-verbal or*** physical

(d) sexual harassment: where any form of unwanted verbal, physical ***or other*** conduct

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

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

*Justification*

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

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

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

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

*Justification*

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

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

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

*Justification*

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

Amendment 24  
Article 3, Title (new)

***Scope of application***

Amendment 25  
Article 3, paragraph 1

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

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

***Justification***

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

Amendment 26  
Article 4, Title (new)

***Prohibition of discrimination***

Amendment 27  
Article 4, first paragraph

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

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

Amendment 28  
Article 5, Title (new)

***Prohibition of discrimination***

Amendment 29  
Article 6, Title (new)

***Material scope***

Amendment 30  
Article 7, Title (new)

***Exclusions from material scope***

Amendment 31  
Article 8, Title (new)

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

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

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

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

***Justification***

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

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

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

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



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

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

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

*Justification*

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

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

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

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

*Justification*

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

Amendment 35  
Article 9, Title (new)

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

Amendment 36  
Article 10, Title (new)

*Self-employed workers, deferral clause*

Amendment 37  
Article 11, Title (new)

*Retroactive effect*

Amendment 38  
Article 12, Title (new)

*Flexible pensionable age*

Amendment 39  
Article 13, Title (new)

*Prohibition of discrimination*

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

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

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

Amendment 41  
Article 14, Title (new)

*Positive action*

Amendment 42  
Article 14

Member States may maintain or adopt

Member States may maintain or adopt

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

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

*Justification*

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

Amendment 43  
Article 15, Title (new)

***Return from maternity leave***

Amendment 44  
Article 15, paragraph 1

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

*Justification*

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

Amendment 45  
Article 15, paragraph 2

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

2. A woman on maternity leave shall be entitled, after the end of her period of maternity leave, ***or after an absence directly related to or following an adoption or parental leave,*** to return to her job or to an equivalent post on terms and conditions

conditions to which she would have been entitled during her absence.

which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

### *Justification*

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

### Amendment 46 Article 16, Title (new)

### ***Paternity and adoption leave***

### Amendment 47 Chapter I, Title

### ***Defence of rights***

### ***Remedies and enforcement***

### Amendment 48 Article 17, Title (new)

### ***Defence of rights***

### Amendment 49 Article 17, paragraph 1

1. Member States shall ensure that, ***after possible recourse to other competent authorities***, judicial and/or administrative procedures, including where they deem it

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation, ***mediation and***

appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

**arbitration** procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

### *Justification*

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

### Amendment 50 Article 18, title (new)

### ***Compensation or reparation***

### Amendment 51 Article 18

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

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

application into consideration.

### *Justification*

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

Amendment 52  
Article 19, Title (new)

### ***Burden of proof***

Amendment 53  
Article 20, Title (new)

### ***Application***

Amendment 54  
Article 21, Title (new)

### ***Equality bodies***

Amendment 55  
Article 22, Title (new)

### ***Social dialogue***

Amendment 56  
Article 22, paragraph 1

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

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

*Justification*

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

Amendment 57  
Article 22, paragraph 3

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

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

*Justification*

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

Amendment 58  
Article 23, Title (new)

***Dialogue with non-governmental***

*organisations*

Amendment 59  
Article 24, Title (new)

*Compliance*

Amendment 60  
Article 24 , point (b)

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

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

Amendment 61  
Article 24, point (c)

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

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

Amendment 62  
Article 25, Title (new)



## ***Victimisation***

Amendment 63  
Article 26, Title (new)

## ***Sanctions***

Amendment 64  
Article 27, Title (new)

## ***Prevention of discrimination***

Amendment 65  
Article 27

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

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

## ***Justification***

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

Amendment 66  
Article 27, paragraph 1 a (new)

***Employers and those responsible for access to vocational training shall also be encouraged to take the measures referred***

*to in the first paragraph as part of their duties.*

Amendment 67  
Article 28, Title (new)

***Minimum requirements***

Amendment 68  
Article 28

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

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

***2. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.***

*Justification*

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

Amendment 69  
Article 29, Title (new)

***Gender mainstreaming***

Amendment 70  
Article 30

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

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

Amendment 71  
Article 31, Title (new)

***Reports***

Amendment 72  
Article 31, paragraph 2

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

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

***Justification***

*The measures taken by the Member States to implement this directive should be included in the national employment plans submitted each year to the Commission. This will make it*

*possible to bring together in a single text all national measures on employment, including those on equal treatment for men and women.*

Amendment 73  
Article 32, Title (new)

***Review***

Amendment 74  
Article 33, Title (new)

***Implementation***

Amendment 75  
Article 34, Title (new)

***Repeal***

Amendment 76  
Article 35, Title (new)

***Entry into force***

Amendment 77  
Article 36, Title (new)

***Addressees***

## PROCEDURE

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