

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

2008/0192(COD)

30.3.2009

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 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: Lidia Joanna Geringer de Oedenberg

SHORT JUSTIFICATION

The rapporteur supports the Commission proposal for a directive 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.

The role of assisting spouse is often unfairly perceived as a normal, unpaid task.

The purpose of Council Directive 86/613/EEC of 11 December 1986 is to apply the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and to protect self-employed women during pregnancy and motherhood.

Directive 86/613/EEC has not attained its goal, which was to give assisting spouses, who really are invisible workers, a clearly defined professional status and to establish their minimum rights and safeguards.

Directive 86/613/EEC covers two different categories of people:

1. 'self-employed workers', i.e. all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including farmers and members of the liberal professions;
2. their spouses who are not employees or business partners, who 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.

In December 2007 the Council asked the Commission to 'consider the need to revise, if necessary, Council Directive 86/613/EEC in order to ensure the rights related to motherhood and fatherhood of self-employed workers and their helping spouses'.

In March 2008 the European Parliament called on the Commission to re-examine the Directive so as to improve the situation of assisting spouses in agriculture.

The Commission therefore asked independent legal experts to draft an impact assessment report to check whether the modifications to the Directive might improve the application of the principle of equal treatment between women and men and increase the participation of women in self-employed activities.

The report came to the conclusion that non-binding measures should be maintained. It also concluded that the option that best met the objectives was a proposal for a directive amending Directive 86/613/EEC. This should include the following:

- providing for a possibility of a period of maternity leave for self-employed women of a maximum of 14 weeks, including 2 mandatory weeks,
- the right of assisting spouses to be covered by the same social protection provisions as those of their self-employed partners,
- giving national equality bodies competence in the area covered by the directive.

The purpose of this proposal for a directive, the legal basis of which is Article 141 of the EC Treaty, is to repeal Directive 86/613/EEC; it concerns aspects not covered by Directives 2006/54/EC, 2004/113/EC and 79/7/EEC.

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 into its report:

Amendment 1

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The role of assisting spouse is often unfairly perceived as a normal, unpaid task.

Amendment 2

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Assisting spouses should be given a clearly defined professional status and their rights should be established.

Amendment 3

Proposal for a directive Recital 12

Text proposed by the Commission

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 life partners when recognised by national law.

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

Justification

The concept of 'discrimination based on family status' is arguable and could affect the field of family law, which is the sole responsibility of the Member States.

Amendment 4

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': spouses, not being employees or business partners, ***who*** habitually ***participate***, under the conditions laid down by national law, in the activities of the self-employed worker and perform the same tasks or ancillary tasks;

Justification

The amendment affects the field of family law, which is the sole responsibility of the Member States. In order to respect the principle of subsidiarity and the competences of the Member States it must be left to the latter to decide whether or not to place married couples and life partners on the same footing in this context.

Amendment 5

Proposal for a directive

Article 5

Text proposed by the Commission

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.

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 are not more restrictive than the conditions for the establishment of a company with other persons.

Justification

The amendment affects the field of family law, which is the sole responsibility of the Member States. In order to respect the principle of subsidiarity and the competences of the Member States it must be left to the latter to decide whether or not to place married couples and life partners on the same footing in this context.

Amendment 6

Proposal for a directive Article 6

Text proposed by the Commission

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

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, ***including the level of social security contributions, which should be the result of a joint agreement between the assisting spouse and the entrepreneur, taking economic and social considerations fully into account.***

Amendment 7

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that judicial or administrative *proceedings*, including, where Member States consider it appropriate, conciliation procedures, are available for the enforcement of the obligations under this Directive *are available* to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Amendment

1. Member States shall ensure that ***effective*** judicial or administrative *procedures*, including, where Member States consider it appropriate, conciliation procedures, are available for the enforcement of the obligations under this Directive to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Amendment 8

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a directive Article 10 – paragraph 2 – point b

Text proposed by the Commission

(b) conducting independent surveys on discrimination;

Amendment

(b) conducting independent surveys on **economic and social** discrimination;

Amendment 10

Proposal for a directive Article 11

Text proposed by the Commission

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

Amendment

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means, **including the Internet**, to the attention of the persons concerned throughout their territory.

PROCEDURE

Title	Equal treatment between men and women engaged in an activity in a self-employed capacity
References	COM(2008)0636 – C6-0341/2008 – 2008/0192(COD)
Committee responsible	FEMM
Opinion by Date announced in plenary	JURI 21.10.2008
Rapporteur Date appointed	Lidia Joanna Geringer de Oedenberg 3.11.2008
Discussed in committee	19.1.2009 11.2.2009
Date adopted	30.3.2009
Result of final vote	+: 12 -: 0 0: 0
Members present for the final vote	Bert Doorn, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Manuel Medina Ortega, Aloyzas Sakalas, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Jean-Paul Gauzès