



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Directive of the European Parliament and of the Council on the implementation of the principle of equal treatment of men and women in matters of employment and occupation (recast version)

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2004) 279 final – 2004/0084 (COD)):	21.4.2004
Date of the opinion of the European Economic and Social Committee:	15.12.2004
Date of the opinion of the European Parliament, first reading:	6.7.2005
Date of transmission of the amended proposal:	25.8.2005
Date of adoption of the common position:	13.3.2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the proposal is to contribute to legal certainty and clarity with regard to implementation of the principle of equal treatment between men and women in matters of employment and occupation, by bringing together in a single text the main provisions existing in this field, along with certain points arising from well-established case-law of the European Court of Justice.

This simplification and streamlining will make the Community legislation more accessible and readable, both for legal practitioners and for the general public, and is therefore an important step in the work on better regulation.

The proposal merges the following six existing Directives on equal treatment of men and women in the field of employment into one single coherent instrument:

- Directive 75/117 on equal pay;
- Directive 76/207, as amended by Directive 2002/73, on equal treatment as regards access to employment, vocational training and promotion, and working conditions;

- Directive 86/378, as amended by Directive 96/97, on equal treatment in occupational social security schemes;
- Directive 97/80 on the burden of proof in cases of discrimination based on sex.

The proposal is not simply a consolidation exercise. A number of substantive amendments have been introduced. These changes constitute a cautious approach to updating and modernising Community law. For example, the text incorporates some well-established case-law of the European Court of Justice with a view to clarifying key concepts of equal treatment law. Furthermore, some of the horizontal provisions contained in the most recent Directives – for example, on the burden of proof – have explicitly been made applicable to occupational social security schemes. In practice, the case-law of the Court has already extended these provisions to the principal features of occupational schemes. The main value of the proposal in that respect is thus to clarify the legal situation.

3. COMMENTS ON THE COMMON POSITION

This common position not only constitutes the current Council position, but also incorporates some of the European Parliament's amendments at first reading. It reflects inter-institutional discussions which have allowed this compromise text to be identified.

The Council's common position made numerous amendments to the Commission's proposal. The Commission is of the opinion that these modifications do not alter the objectives of the proposal.

As far as the vast majority of the European Parliament's amendments adopted at first reading are concerned, the Council's common position fully coincides with the Commission's amended proposal. In those few cases indicated below where the common position differs from the Commission's amended proposal the text now put forward by the Council is the compromise solution reached in inter-institutional discussions. This compromise text is in line with the objectives of both the original and the amended proposal and therefore acceptable to the Commission.

1. As regards several recitals newly introduced by the European Parliament and accepted by the Commission in its amended proposal relating to the need for Member States to address gender-based wage differentials and labour market segregation (recital 11), to develop and analyse statistics disaggregated by sex (recital 37) and to promote the raising of awareness of wage discrimination (recital 38), the Council incorporated the notion of the necessity to *continue* these efforts in order to avoid creating the impression that these activities are not already ongoing. The Commission can consent to this modification as well as to other slight reformulations of recitals 11 and 37.
2. In its amended proposal the Commission rejected the insertion of a new paragraph (2)(d) in Article 20 adding the exchange of data and know-how with corresponding European bodies such as the European Institute for Gender Equality to the tasks of the equality bodies to be established under that provision. This position was taken for technical reasons related to proper legislative drafting as no reference should be made to an institution that does not yet exist. These concerns were accommodated in the new text by making mention of corresponding European bodies

such as *any future* European Institute for Gender Equality. This wording can be accepted.

3. With regard to Article 21(1) on social dialogue, the Council accepted the European Parliament's amendment broadening the reference to the term "workplace" as reformulated by the Commission but refused to include new wording on research by the social partners being carried out on the basis of the development and analysis of gender-specific data. The Commission accepted that element of the Parliamentary amendment but can subscribe to the Council's reasoning that a reference to data or statistics in this particular context could unduly limit the concept of research by restricting it to quantitative aspects requiring statistical information and excluding the qualitative dimension which does not necessarily rely on such material.
4. Still in relation to the provision on social dialogue, more specifically Article 21(4) indicating that information provided by the employer on equal treatment in the undertaking is one of the means of the promotion of equal treatment in a planned and systematic way, as provided for in Article 21(3), the Council endorsed the Commission's suggestion to align the wording with the other paragraphs by stipulating that employers *shall* (instead of *should*) be encouraged to undertake such efforts. It did not accept the further proposal in the amended Commission proposal to use the term "*should*" in the second subparagraph implying a stronger exhortation to make available the specific information mentioned there and reverted to the wording "*may*" from the original proposal. It did, however, incorporate, subject to a clarifying reformulation, the proposal by the European Parliament, seconded by the Commission, to be more detailed on the issues on which to make information available. In its entirety, this compromise solution is acceptable to the Commission.
5. The Council agreed to move the obligation for Member States to submit a report containing an assessment of exceptions to the principle of equal treatment on the grounds that a characteristic related to sex constitutes a genuine and determining occupational requirement from Article 13 to Article 31, the general provision dealing with reporting obligations, as a new paragraph 3. It changed the frequency of such reporting from every four years, as suggested by the European Parliament and by the Commission in its amended proposal, to "*periodically but at least every eight years*". This can be accepted as it still represents some progress compared to the current requirement of periodical assessment without any fixed deadlines.
6. Concerning the set of interrelated deadlines for transposition of the Directive (Article 33), for the implementation reports by the Member States (Article 31) and for a review of the operation of the Directive by the Commission (Article 32), the Council took the middle ground between the different positions of the institutions. It accepted a short transposition period of two years as called for by the European Parliament and by the Commission in its amended proposal in principle, but included the possibility for Member States facing particular difficulties to extend the transposition period to three years. Uniform deadlines were established for the implementation reports and the review at four and a half years and six and a half years after entry into force of the Directive respectively.

The Council further introduced some changes unrelated to the European Parliament's amendments. These modifications are of a formal and technical nature and do not alter the substance of the proposal. They include, for example, the merger of Articles 19 and 20 of the

initial proposal into one single provision on the burden of proof in discrimination cases (Article 19) and the shortening of the headings of Chapters 1, 2 and 3 of Title II as well as Chapter 2 of Title III. To create a clearer structure, the Council converted Title IV of the Commission's proposal into Chapter 3 of Title III under the heading "*General horizontal provisions*". The Council also inserted a new recital 41 that paraphrases paragraph 34 of the Inter-institutional agreement on better law-making.

4. CONCLUSION

For the reasons set out above, the Commission considers that the common position in no way alters the aims and approach of its proposal and can therefore support it, all the more so because the common position takes due account of amendments proposed by the European Parliament at its first reading and of the amended Commission proposal. It is the result of inter-institutional discussions which have produced this compromise text.

5. COMMISSION STATEMENT

As one element of the overall compromise solution reached in inter-institutional discussions, both the Commission and the Council made separate statements at the time of adoption of the common position (see Annexes I and II).

ANNEX I

Commission statement

The Commission is committed to the promotion of parental leave as an instrument of paramount importance in order to achieve full equality between men and women in working life. It is determined to ensure that the conditions of reconciliation between work and private life are improved through the proper implementation of the parental leave Directive and the monitoring of its sufficiency and effectiveness.

Therefore the Commission intends to designate the area of reconciliation between work and private life as one of its priority objectives in the roadmap for equality between women and men which has been adopted on 1st of March 2006 (COM(2006) 92 final). In that context it is foreseen to carry out an analysis of the situation concerning all areas of reconciliation including parental leave, flexible working arrangements and care facilities with a view to developing policy responses where appropriate. The initiation of an exchange of views with the social partners will constitute an element of these activities.

ANNEX II

Council statement

The Council shares the European Parliament's commitment to improving the situation regarding reconciliation between work and private life in order to achieve equality between women and men in working life. It is therefore pleased that the European Commission plans to take up the theme of women's employment and work-life balance as the central part of its Third Annual Report to Heads of State and Government on equality between women and men, to be presented to the Spring European Council in March 2006.

In this context, the Council takes note of the importance that the European Parliament attaches to the subject of parental leave.