

EUROPEAN PARLIAMENT

Working Documents

1984-1985

7 May 1984

DOCUMENT 1-214/84

Report

drawn up on behalf of the Committee on Social Affairs
and Employment

on the proposal from the Commission of the European
Communities to the Council (COM(84) 57 final -
Doc. 1-147/84) for a directive on the principle of
equal treatment for men and women in self-employed
occupations, including agriculture, and on protection
during pregnancy and maternity

Rapporteur: Mrs J. MAIJ-WEGGEN

PE 89.716/fin.
Or De

By letter of 6 April 1984 the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal for a Council Directive on the principle of equal treatment for men and women in self-employed occupations, including agriculture, and on protection during pregnancy and maternity.

On 11 April 1984, the President of the European Parliament referred this proposal for a directive to the Committee on Social Affairs and Employment as the committee responsible and to the Committee of Inquiry into the Situation of Women in Europe for an opinion.

At its meeting of 20 March 1984 the Committee on Social Affairs and Employment appointed Mrs Maij-Weggen rapporteur.

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The committee considered the Commission's proposal at its meeting of 10 April 1984 and 26/27 April 1984.

At the latter meeting the committee decided unanimously with two abstentions to recommend to Parliament that it approve the Commission's proposal with the following amendments.

At its meeting of 26/27 April 1984 the committee then adopted unanimously with two abstentions the motion for a resolution as a whole.

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The following took part in the vote: Mr Peters, chairman; Mrs Maij-Weggen, rapporteur; Mrs von Alemann (deputizing for Mr Calvez), Mr Chanterie, Mrs Duport, Mr Eisma, Mrs Kellet-Bowman (deputizing for Mr Prag), Mr Patterson, Mrs Squarcialupi (deputizing for Mr Ceravolo) and Mr Wawrzik (deputizing for Mr Brok).

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The opinion of the Committee of Inquiry into the Situation of Women in Europe is attached.

The explanatory statement will be made orally.

The final version of the report was tabled on 2 May 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

C O N T E N T S

	<u>Page</u>
Amendments	5
Motion for a resolution	12
Opinion of the Committee of Inquiry into the Situation of Women in Europe	14

The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments to the proposal to the Council for a directive on the principle of equal treatment for men and women in self-employed occupations, including agriculture, and on protection during pregnancy and maternity and motion for a resolution, together with explanatory statement:

Proposal for a Council directive
on the principle of equal treatment
for men and women in self-employed occupations,
including agriculture, and on protection
during pregnancy and maternity
(COM(84) 57 final)

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission
of the European Communities

THE COUNCIL OF THE EUROPEAN COMMUNITIES

THE COUNCIL OF THE EUROPEAN COMMUNITIES

unchanged

having regard to the Treaty establishing the European Economic Community, and in particular Article 100 and Article 235 thereof,

unchanged

having regard to the proposal from the Commission¹,

Am. 1/PE 90.013/fin.
having regard to the resolution on the
position of women in the European Community adopted
by the European Parliament on 11 February 1981¹

having regard to the opinion of the European Parliament²,

having regard to the resolution on the situation
of women in Europe adopted by the European
Parliament on 17 January 1984²,

having regard to the opinion of the Economic and Social Committee³,

unchanged

¹ OJ No. C 50, 9.3.1981

² OJ No. C 46, 20.2.1984

¹ OJ No. C

² OJ No. C

³ OJ No. C

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission
the European Communities

unchanged

whereas, in its Resolution of 12 July 1982 on the promotion of equal opportunities for women⁴, the Council approved the general objectives of the Commission Communication concerning a new Community Action Programme on the promotion of equal opportunities for women (1982-1985) and expressed the will to implement appropriate measures to achieve them;

unchanged

whereas action 5 of the new Programme referred to above concerns the application of the principle of equal treatment to self-employed women and to women in agriculture;

unchanged

whereas the implementation of the principle of equal pay for men and women workers, as laid down in Article 119 of the Treaty, forms an integral part of the establishment and functioning of the common market;

unchanged

whereas on 10 February 1975 the Council adopted Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women⁵;

unchanged

whereas, as regards other aspects of equality of treatment between men and women, on 9 February 1976 the Council adopted 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 conditions⁶ and on 19 December 1978 Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security⁷;

AM/PE 89.716/I/Am 1

having regard to the many requests by the European Parliament for a directive on equal treatment for men and women in self-employed occupations

unchanged

whereas, as regards persons engaged in a self-employed activity and their spouses participating in this activity, the implementation of the principle of equal treatment should be pursued through the adoption of detailed provisions designed to cover the specific situation of these persons;

unchanged

whereas differences persist between the Member States in this field and that therefore it is necessary to approximate national laws with regard to the application of the principle of equal treatment;

⁴ OJ No. C 186, 21.7.1982, p. 3

⁵ OJ No. L 45, 19.2.1975, p. 19

⁶ OJ No. L 39, 14.2.1976, p. 40

⁷ OJ No. L 6, 10.1.1979, p. 24

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission of
the European Communities

unchanged

whereas in certain respects the Treaty does not confer the powers necessary for the specific actions required;

unchanged

whereas the implementation of the principle of equal treatment is without prejudice to measures concerning the protection of women during pregnancy and motherhood;

HAS ADOPTED THIS DIRECTIVE

HAS ADOPTED THIS DIRECTIVE

Article 1

Article 1

unchanged

1. The purpose of this Directive is to ensure the application in the Member States of the principle of equal treatment for men and women participating in the pursuit of a self-employed activity with regard to those aspects not covered by Council Directives 76/207/EEC and 79/7/EEC.

2. The Directive also provides for maternity protection in respect of these activities.

Am 3/PE 90.013/fin.
Article 2

Article 2

This Directive covers:

This Directive covers:

(a) self-employed persons, i.e. all persons pursuing a gainful activity for their own account whether or not in a family business, (rest unchanged)

(a) self-employed persons, i.e. all persons pursuing a gainful activity for their own account, including farmers and members of the liberal professions;

(b) unchanged

(b) their spouses, where the latter are participating to a significant extent in the activities of the self-employed worker and performing the same tasks or ancillary tasks without a partnership agreement or contract of employment.

Article 3

Article 3

unchanged

For the purposes of this Directive the principle of equal treatment implies the absence of all discrimination on grounds of sex, either directly, or indirectly by reference in particular to marital or family status.

Article 4

Article 4

unchanged

As regards the self-employed persons, Member States shall take the measures necessary to ensure that all provisions and practices are abolished which are contrary to the principle

Amendments tabled by the Committee
on Social Affairs and Employment

Article 5

Am/PE 89.716/I/Am 5

As regards the spouses referred to under article 2(b) Member States shall take the measures necessary to eliminate all obstacles, whether direct or indirect, to the formation of a company or conclusion of an agreement on cooperation by spouses.

Article 6

unchanged

Article 7

unchanged

Am/PE 89.716/I/Am 3

Am/PE 89.716/I/Am 7

Am/PE 89.716/I/Am 8

(a) receive, at their request and in the event that this right is not embodied in the related marriage contract, consideration for the work they perform; (rest deleted)

unchanged

Text proposed by the Commission of
the European Communities

of equal treatment, especially in respect of the establishment, fitting-out or expansion of a business or the launching or expansion of any other form of self-employed activity; this obligation applies in particular to the conditions for the grant of loans.

Article 5

As regards the spouses referred to under Article 2(b), Member States shall take the measures necessary to eliminate all obstacles, whether direct or indirect, to the formation of a company by spouses.

Article 6

Member States shall take the measures necessary to abolish fiscal provisions and practices which constitute direct or indirect discrimination in that they prejudice in a substantive way the status of the spouse as employee.

Article 7

To enable the spouses referred to under Article 2(b), working without a partnership agreement or contract of employment, to benefit from their participation in the activities of the self-employed worker, the Member States shall take the measures necessary to ensure that these spouses may:

- (a) receive, at their request and in the event that this right is not embodied in the related marriage contract, consideration for the work they perform, whether in cash or some other form; such consideration shall not in any year exceed the equivalent of half the annual profit realised by the self-employed worker nor shall it exceed the remuneration which would have been paid to a third party for the performance of equivalent tasks;
- (b) build up an independent entitlement as regards social security, including the right to pregnancy and maternity benefits;

Amendments tabled by the Committee
on Social Affairs and Employment

unchanged

Am 12/PE 90.013/fin.

Am/PE 89.716/I/Am 6

(d) enjoy the same rights as the self-employed worker as regards entitlement to vote and stand for office within the representative bodies and economic organizations of the sector of activity in which the self-employed worker is engaged; the statutes of these representative bodies and economic organizations must be changed accordingly; nevertheless this obligation ...
(rest unchanged)

(e) unchanged

Article 8

Am 14/PE 90.013/fin.

Member States shall take the measures necessary to ensure that women self-employed workers and the spouses of self-employed workers referred to under Article 2(b) shall, during interruptions in their occupational activity due to pregnancy or maternity and during the period following the death of their husbands, on the grounds of the training or retraining referred to under Article 7(e), of professional responsibilities or holidays, be able to call on replacement services or be entitled to appropriate benefits under a social security scheme, whether contributory or otherwise, or any other public social protection system;

Am 15/PE 90.013/fin. (new)

Member States shall take the steps necessary to ensure that self-employed workers and their spouses referred to under Article 2(b) may benefit on the same terms as other workers from existing provisions governing parental leave and leave for family reasons.

Text proposed by the Commission of
the European Communities

(c) obtain recognition for their work, for example by means of an appropriate entry in the register kept by the association or other trade body to which the self-employed worker belongs;

(d) enjoy the same rights as the self-employed worker as regards entitlement to vote and stand for office within the bodies representing the sector of activity in which the self-employed worker is engaged; nevertheless, this obligation does not apply to activities the pursuit of which is subject to the possession of a diploma or certificate attesting to the holder's vocational capacities, where the spouse lacks the requisite qualifications;

(e) obtain access, on the same conditions as the self-employed worker, to training and retraining in respect of the activities they pursue or intend to pursue in collaboration with the aforesaid worker.

Article 8

Member States shall take the measures necessary to ensure that women self-employed workers and the spouses of self-employed workers referred to under Article 2(b) shall, during interruptions in their occupational activity due to pregnancy or maternity, be able to call on replacement services or be entitled to appropriate benefits under a social security scheme, whether contributory or otherwise, or any other public social protection system.

Amendments tabled by the Commission
on Social Affairs and Employment

Article 9

unchanged

Article 10

unchanged

Article 11

unchanged

Am 17/PE 90.013/fin.

This directive shall not prevent Member States from applying more favourable provisions.

Article 12

unchanged

Article 13

unchanged

Text proposed by the Commission of
the European Communities

Article 9

Member States shall introduce into their national legal systems the measures necessary to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment in self-employed occupations to pursue their claims by judicial process after possible recourse to other competent authorities.

Article 10

Member States shall take the measures necessary to protect those persons referred to in Article 2 against penalties imposed by a trade association or other body (in particular, the exclusion or suspension of the person concerned or the imposition of restrictions on his rights within the body or association concerned) in response to any complaints or legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 11

Member States shall ensure that the measures adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the bodies representing the self-employed workers in question and of the vocational training centres.

Article 12

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by¹
2. Member States shall immediately inform the Commission of the measures taken to comply with this Directive.

Article 13

1. By at the latest², Member States shall forward all information necessary to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council.

¹ Date to be inserted: two years following the date of notification
² Date to be inserted: four years following the date of notification

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission of
the European Communities

2. By at the latest³, and every three years thereafter, Member States shall transmit reports to the Commission indicating the respective proportions of men and women in the bodies or associations representing self-employed workers and the number of spouses as referred to in Article 2(b) whose work has been given recognition.

Article 14

unchanged

Article 14

This Directive is addressed to the Member States.

³ Date to be inserted: five years following the date of notification

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the principle of equal treatment for men and women in self-employed occupations, including agriculture, and on protection during pregnancy and maternity

The European Parliament

- having regard to the proposal from the Commission to the Council (COM (84) 57 fin),
- having been consulted by the Council,
- having regard to the report of the Committee on Social Affairs and Employment and the opinion of the Committee of Inquiry into the Situation of Women in Europe (Doc. 1-214/84),
- having regard to the result of the vote on the Commission's proposal

having regard to

- a) the hearing held on 20 and 21 October 1980 in Milan by the ad hoc Committee on Women's Rights on 'Women in small and medium-sized firms and agriculture',
 - b) Parliament's resolution of 11 February 1981, on the position of women in the European Community, and in particular Articles 43 and 44 on women working in family business (Maij-Weggen report, OJ No C 50, 9 March 1981),
 - c) the report of inquiry by Mrs S Martin on the problems encountered by self-employed women, particularly in agriculture, trades and crafts (Doc 1-1229/83/C Annexes, 5 January 1984),
 - d) Parliament's resolution of 17 January 1984 on the situation of women in Europe (OJ No C 46, 20 February 1984),
1. Notes that the Parliament has already on several occasions asked for a directive on equal treatment for men and women in self-employed occupations, including agriculture, trade and crafts;

¹ Hearing of 20 and 21 October 1980 in Milan
² Maij-Weggen report, OJ No. C50, 9 March 1981
³ Doc. 1-1229/83/C Annexes of 5 January 1984
⁴ OJ No. C46, 20 February 1984

2. Welcomes, therefore, the Commission's initiative in proposing a directive on equal treatment for this category,
3. Expresses its great appreciation of the Commission's work on European legislation on the equal treatment of men and women;
4. Hopes that, in all the countries of the EEC, women in self-employed occupations, including women working in family businesses, will, thanks to this directive:
 - be spared any form of direct or indirect discrimination on grounds of sex, marital status and/or family circumstances,
 - will enjoy, legally and financially, proper professional status as a self-employed person,
 - will be given the right to a separate income, separate treatment for tax purposes and separate treatment in the social security system,
 - will be given the right to participate in all forms of education and training in the specific aspects of her business or the family business in which she is helping her husband, in order to attain the necessary professional qualifications,
 - will be given the right to full participation in the system of replacement services operating in some sectors,
 - will be given the right to full participation in the work of specific professional organisations at all levels,
 - will be given the same rights in the event of pregnancy and maternity as that usually accorded to female employees;
5. Hopes and expects that self-employed women and women working in family businesses will, thanks to this directive, be able to work on an equal footing with self-employed males;
6. Hopes that this will provide extra encouragement to small and medium-sized businesses and the agricultural sector to manage their affairs in the best way possible;
7. Feels that the replacement services could provide opportunities for creating new jobs, especially for young people and women, assisted by contributions from the European Social Fund;
8. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution in time for the next meeting of the Council.

OPINION

(Rule 101 of the Rules of Procedure)
of the Committee of Inquiry into the Situation of Women in Europe

Draftsman : Mrs S. MARTIN

On 9 April 1984, the Committee of Inquiry into the Situation of Women in Europe appointed Mrs S. MARTIN rapporteur.

At its meetings of 9 April 1984 and 26 April 1984 the committee of inquiry considered the draft opinion. On 26 April 1984 it adopted unanimously the amendments to the proposal for a directive and the conclusions.

The following took part in the vote:

Mrs CINCIARI RODANO, chairman; Mrs LENZ, vice-chairman; Mrs von ALEMANN, vice-chairman, deputizing for the draftsman; Mr EISMA, Miss HOOPER, Mrs KROUWEL-ULAM, Mrs SPAAK and Mrs SQUARCIALUPI.

MOTION FOR A RESOLUTION

on the proposal for a Council directive on the principle of equal treatment for men and women in self-employed occupations, including agriculture, and on protection during pregnancy and maternity

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (COM(84) 57 final),
 - having been consulted by the Council¹,
 - having regard to the resolution on the position of women in the European Community adopted by the European Parliament on 11 February 1981²,
 - having regard to the resolution on the situation of women in Europe adopted by the European Parliament on 17 January 1984³,
 - having regard to the result of the vote on the Commission's proposal,
 - having regard to the work of the Ad Hoc Committee on Women's Rights and of the Committee of Inquiry into the Situation of Women in Europe, and in particular, Topic No. 10 of the report of inquiry (Doc. 1-1229/83/C) on the problems encountered by self-employed women, particularly in agriculture, trade and crafts,
- A. whereas Directive 75/117/EEC on the principle of equal pay for men and women⁴ only applies to wage-earners;

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2 OJ No. C 50, 9.3.1981

3 OJ No. C 46, 20.2.1984

4 OJ No. L 45, 19.2.1975

- B. whereas Directive 76/207/EEC on equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ¹ and Directive 79/7/EEC on equal treatment for men and women in matters of social security² apply to all workers,
- C. whereas these Directives do not always take account of the particular situation of self-employed workers and their spouses who participate in self-employed occupations,
- D. having regard to the need to apply the principle of equal treatment to all professional fields by the strengthening of individual rights,
1. Welcomes the proposal for a directive on the application of the principle of equal treatment for men and women in self-employed occupations;
 2. Recalls that this meets the requests adopted by the European Parliament as long ago as 1981³;
 3. Warmly welcomes the application of the principle that each individual participating in a self-employed occupation should have personal rights in matters of social security and calls for the progressive abolition of the concept of 'derived rights' of the spouse which adversely affects the recognition of the individual as such;
 4. Welcomes, further, the extension of entitlements to pregnancy and maternity benefits to self-employed women and the spouses of self-employed workers;
 5. Takes the view that the provisions of this directive must also apply to all persons working in a family business and that family relationships with the head of the undertaking must not hinder the professional recognition of the spouse and of his or her contribution to the development of the undertaking;
 6. Emphasizes the importance of the recognition of the contribution to family assets which is constituted by the work actually done by the spouse and advocates the introduction of :

1 OJ No. L 39, 14.2.1976

2 OJ No. L 6, 10.1.1979

3 Resolution adopted on 11 February 1981 - OJ No. C 50, 9.3.1981

- the principle of the continuity of the undertaking conferring preferential rights on the surviving spouse as regards succession and settlement,
 - a deferred salary through which the spouse who had contributed to the activities of a self-employed worker would receive payment for her contribution to the work and to the development of the undertaking;
7. Urgently requests the Member States to ensure the abolition of all legal obstacles to the representation of undertakings on representative bodies and cooperatives by women and the introduction of the principle that undertakings may be represented by either of the spouses participating in the business;
 8. Calls on the Commission and the competent authorities in the Member States to launch a campaign to inform and promote awareness in self-employed workers and their spouses of the need to participate actively in bodies representing their economic sector and in cooperatives;
 9. Emphasizes the importance of 'access, on the same conditions as the self-employed worker, to training and retraining in respect of the activities they pursue or intend to pursue in collaboration with the aforesaid worker', referred to in Article 7(e) of the proposal for a directive and advocates:
 - the introduction of basic training grants, financed jointly by national and Community bodies,
 - that the acquisition of basic training should entitle the person involved to advantages in respect of further training, for example, a subsidy to cover the cost of hiring a replacement for a number of days, in order to facilitate access to such training;
 10. Welcomes the introduction of replacement services or compensatory allowances designed to enable self-employed women or the spouses of self-employed workers to take advantage of standard pregnancy and maternity leave; takes the view, nevertheless, that access to these replacement services or to compensatory allowances must not be limited solely to interruptions in their occupational activity due to pregnancy or maternity but should enable self-employed women or the spouses of self-employed workers to take leave in the period following the death of their husbands, to attend training or retraining courses, to assume professional responsibilities or to take holidays;

11. Invites the Council to adopt the directive on parental leave and leave for family reasons at the earliest possible opportunity and calls on the Member States to ensure that self-employed workers and their spouses are able to benefit from existing provisions governing parental leave and leave for family reasons;
12. Invites the Council to adopt this directive as rapidly as possible with a view to extending the scope of the principle of equal treatment to the sectors covering self-employed occupations;
13. Instructs its President to forward to the Council and to the Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.