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COM (76)650

Vol. 1976/0197

Historical Archives of the European Commission

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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlusssachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 650 final.

Brussels, 10 January 1977.

PROPOSAL FOR A DIRECTIVE

concerning the progressive implementation of the principle
of equality of treatment for men and women in matters of
social security

(submitted to the Council by the Commission)

COM(76) 650 final.

EXPLANATORY MEMORANDUM

1. In its Resolution of 21 January 1974 concerning a Social Action Programme, the Council of the European Communities expressed the political will to adopt, in a first stage covering the period 1974 to 1976, the measures necessary to attain certain objectives, including the achievement of full and better employment in the Community and the improvement of living and working conditions. Among the priority actions to be undertaken the Council listed those aimed at securing equality between men and women regarding access to employment, vocational training and promotion and working conditions. Accordingly on 9 February 1976 the Council adopted a Directive on the implementation of the principle of equal treatment for men and women in these areas.
2. Article 1 of the Directive of 9 February states that with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application.
3. In conformity with this Directive the Commission has undertaken a study of the differences in treatment between men and women in the field of social security. Numerous differences in treatment are apparent both as concerns mandatory schemes (i.e. schemes imposed by law) and occupational arrangements which in many cases operate clearly to the disadvantage of women. In other cases, however, differences in treatment have been designed to take account of differences in the social and economic position of women which though they may be of decreasing significance have already shaped the lives of most of the present population.
4. It has been considered necessary, therefore, as foreseen in the Council Directive of 9 February 1976 to elaborate a further judicial instrument so that the principle of equal treatment set out in the said Directive can be applied in this complex field. The present Directive is proposed for that purpose.
5. The present Directive flows from the Directive of 9 February 1976 which in Article 2(1) sets out the principle to be applied, that is :
"the absence of all discrimination based on sex, either directly or indirectly, in particular by reference to marital or family status".

The present Directive also applies to the same categories of persons as are covered by the parent Directive, that is the potential, present and former working population, including the self-employed, in this case with particular reference to former workers in old age, sickness, invalidity and unemployment. Arrangements for the non-employed are outside the scope of the present Directive.

6. The Directive does not set out to eliminate all differences in treatment between men and women in a single judicial instrument but rather to initiate a first phase in the implementation of the principle. Certain aspects of social security are excluded for the present (Article 6) but the Directive foresees the possibility of further judicial instruments (Article 7).
7. The term matters of social security has been defined in relation to the contingencies against which the various schemes protect the groups they serve. The contingencies set out in the present Directive are those listed and defined in Convention No 102 of the ILO (1952) and the European Code of Social Security drawn up by the Council of Europe in 1964, with the exception of widowhood, maternity and family charges. These three are not included within the present Directive as the first two are specific to women and family benefits lie more within the domain of family policy than working conditions. However this does not preclude a wider definition being employed in later judicial instruments.
8. The present Directive covers not only social security schemes laid down by law but also occupational arrangements so far as they are not already covered by Community provisions. Social assistance arrangements are also covered to the extent that they supplement or stand in lieu of social insurance payments for one of the listed contingencies, e.g. the supplementation of insurance benefits by means tested payments to meet basic living standards and payments to the long term unemployed whose insurance benefits are exhausted.

This is in recognition of the fact that the same contingencies can be covered in different ways in different countries, sometimes by contributory benefits and sometimes a mixture of contributory and non-contributory benefits. Social assistance payments in respect of contingencies other than those listed in this Directive are not covered.

9. Article 6 deals with areas where Member States are permitted to continue to operate certain differences during this phase in the application of the principle of equal treatment. These are firstly the fixing of pensionable age for old age or retirement pensions; secondly the reckoning of periods of employment for pension and other purposes (for instance in some Member States women are allowed to count a certain period of time spent outside employment following child-birth as if it had been spent in employment for the purpose of computing pension rights) and the acquisition of rights following an interruption of employment (this is to allow women re-entering employment after maternity or the care of young children to acquire title to benefits without fulfilling the usual contribution or affiliation conditions); thirdly the acquisition of benefit rights by virtue of the spouses insurance status or contribution record.
10. It is not the intention of this Directive to leave aside completely these areas where differences of treatment are for the present to be permitted. Article 6(2) provides that these differences should be kept under review and modified as necessary and the results of this experience will be taken into account in considering further Community measures.
11. Article 7 develops the timetable for the progressive implementation of the Directive. As regards mandatory schemes the major difficulties lie in the area of increases for dependants. In those Member States where benefits are increased in recognition of family responsibilities it is usually far easier for a man to claim a higher payment than it is for a woman. Changes in this field would involve a rethinking of the concept of the breadwinner or Head of the Family which is found in the social security systems of most Member States. The present Directive therefore proposes that while its provisions should be implemented in all other respects as regards mandatory schemes and social assistance arrangements within two years, a period of three years should be given for Member States to deal with increases for dependants.
12. Finally a period of four years has been allowed for the application of the Directive regarding occupational schemes. This is to give the large number of schemes which exist time to make the necessary legal and administrative changes involving, as they may, renewed consultations between the social partners.
13. Article 7 also provides for reports to be sent to the Commission at the end of each stage in the progressive implementation of the Directive, not only concerning the implementation of the Directive but also the evolution of the situation in all aspects of social security as regards differences in treatment between the sexes (including : pension age, derived rights versus autonomous rights, periods of non-employment, one parent families, etc.).

PROPOSAL FOR A DIRECTIVE

on the progressive implementation of the principle of
equal treatment of men and women in matters of social
security

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community
and in particular article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Council adopted on 9 February 1976 a Directive concerning the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;

Whereas paragraph 2 of Article 1 of the said Directive provides that as regards social security the implementation of the principle of equal treatment shall be carried out progressively and that the Council, acting on a proposal from the Commission, shall adopt the necessary provisions defining its substance, its scope and the arrangements for its application;

Has adopted this Directive

Article 1

The purpose of this Directive is to put into effect in the Member States in matters of Social Security the principle of equal treatment for men and women as set out in the Directive of the Council of 9 February 1976 concerning access to employment, vocational training and promotion and working conditions.

Article 2

1. For the purpose of this Directive the term matters of social security shall be understood to comprise the systems of protection referred to in Article 2(2) below in so far as they relate to any of the following contingencies: medical care; loss of earnings through sickness; loss of earnings through unemployment; old age; employment accident or occupational disease; invalidity.

2. This Directive shall apply in respect of all mandatory schemes, general and special which provide protection against any of the said contingencies as well as to all occupational schemes providing such protection in so far as they are not already covered by Community provisions and all social assistance arrangements in so far as they supplement or substitute for benefits in respect of any of the said contingencies.

Article 3

Application of the principle of equal treatment in matters of social security means the elimination of all discrimination whatsoever on grounds of sex as regards all obligations and benefits relating to the schemes and arrangements covered by this Directive, in particular as regards the persons covered by the scheme or arrangement, the conditions of eligibility for benefits, including contribution conditions, the type and form of benefits, the rate of payment including increases for dependants and the duration and conditions under which benefits can be received.

Article 4

With a view to ensuring the progressive implementation of the principle of equality of treatment, the Member States shall take the necessary measures to comply with this Directive:

- in a first stage as regards all mandatory social security schemes, general and special
 - and all social assistance arrangements which fall within the scope of this Directive, with the exception of increases for dependants;
- in a second stage as regards all the above schemes and arrangements in the matter of increases for dependants;
- in a third stage as regards all occupational schemes in so far as they are not already covered by Community provisions.

Article 5

At each stage in the implementation of the principle of equality of treatment the Member States shall ensure that :

- a) any laws, regulations and administrative provisions contrary to the principle of equal treatment in matters of social security shall be abolished;
- b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions in so far as they are not already covered by Community provisions shall be considered as null and void, or shall be declared null and void or shall be amended.

Article 6

1. The present Directive shall be without prejudice to the rights of Member States to exclude from its field of application
 - a) the determination of pensionable age for old age and retirement pensions;
 - b) the determination of periods of employment for pension purposes (in particular as regards the reckoning for pension purposes of periods spent outside employment by reason of pregnancy or child-birth) and the acquisition of benefit rights following interruption of employment;
 - c) the acquisition of rights to benefit by virtue of the insurance status or contribution record of a spouse.

2. Member States shall undertake a regular review of their arrangements with regard to the matters excluded from the application of this Directive under the provisions of the foregoing paragraph. Where similar provisions are included in collective agreements the Member States shall request labour and management to undertake the desired revision.

Article 7

1. Member States shall put into force the laws, regulations and administrative provisions necessary to comply with this Directive
 - within 2 years of its notification as regards the first stage of its implementation as set out in Article 4 above;
 - within 3 years of its notification as regards the second stage as set out in the said Article;
 - within 4 years of its notification as regards the third stage as set out in the said Article.

2. Member States shall communicate to the Commission the text of laws, regulations and administrative provisions which they adopt in the field covered by this Directive, including measures adopted in fulfilment of the provisions of Article 6, paragraph 2. They will also inform the Commission of the justification for any provisions they maintain by virtue of Article 6, paragraph 1 and the possibilities for revision at a later date.

3. Within one year following the expiry of each of the periods laid down in paragraph 1 Member States shall forward all necessary information to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council and to propose such further measures as may be required for the implementation of the principle of equal treatment.

Article 8

This Directive is addressed to the Member States.