

15.2. Education must be provided in schools of all levels and types, with the Single Currency taught as a specific subject;

15.3. Communication strategy calls for a separate, specialist study, enlisting all available aids. However,

as it is likely to be extremely expensive, a careful assessment will be needed of the potential impact in relation to the aids available. The business sector — especially banks — will play a key role in getting the message across to consumers.

Done at Brussels, 26 October 1995.

*The President
of the Economic and Social Committee*

Carlos FERRER

Opinion on the proposal for a Council Directive amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes⁽¹⁾

(96/C 18/23)

On 4 October 1995 the Council decided to consult the Economic and Social Committee, under Article 100 of the EC Treaty, on the above-mentioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 5 October 1995. The Rapporteur was Mr Chevalier.

At its 329th Plenary Session (meeting of 26 October 1995), the Economic and Social Committee adopted the following Opinion by a majority vote, with four abstentions.

1. Introduction

1.1. The proposal relates to Article 119 of the Treaty and the Protocol signed in Maastricht by the Heads of State and Government and its aim is to bring Directive 86/378/EEC of 26 July 1986 into line with these texts and their interpretation by the Court of Justice.

1.2. In its Barber judgement of 17 May 1990 and its subsequent interpreting judgements, the Court of Justice acknowledges that all forms of occupational pension — and therefore all forms of benefit deriving from employees' occupational social security schemes — constitute an element of pay within the meaning of Article 119 of the Treaty, which provides for equal pay for men and women.

1.3. Since Article 119 is directly applicable, it does not permit any derogation from the principle of equal treatment. Consequently, the derogations in Directive

86/378/EEC concerning the age of retirement and survivors' benefits are now invalid as far as paid workers are concerned.

1.4. The Commission confirms that:

— the proposed amendments merely transpose the Court's case law interpreting Article 119 and reaffirmed by the Maastricht Protocol;

— the Directive is of a purely declaratory nature;

— the legal basis is Article 100 since the proposed amendments relate only to paid workers.

However, there are grounds for wondering whether the decisions taken by the Court of Justice in connection with the schemes which it has discussed can be transposed to all retirement schemes falling within the Directive.

⁽¹⁾ OJ No C 218, 23. 8. 1995, p. 5.

2. General considerations

2.1. The Economic and Social Committee delivered an Opinion on Directive 86/378/EEC at its Session on 14 December 1983.

2.1.1. The Opinion approved the principle of the Directive and its general provisions, underlining that 'equal treatment is an overriding principle (backed up by the Treaty), the application of which should strive to be deemed fair by all parties concerned'.⁽¹⁾

2.1.2. As a way of explaining its position, the Committee added that the 'most meaningful' interpretation of this principle concerned 'day-to-day living standards and the personal well-being of real individuals'.⁽²⁾

2.2. The Committee has felt obliged on a number of occasions and in connection with a variety of subjects to deliver Opinions on the practice of incorporating case law into legislation without adapting it.

2.2.1. It would reiterate the reservations it has already expressed in this respect even if the Court has been dealing with a directly applicable Treaty provision (Article 119) rather than Directive 86/378/EEC, which is an instrument of secondary legislation.

2.2.2. It intends to consider the application of the 'principle of equality' in the wider and more all-embracing context of the (Commission) Report on the Community Charter of the fundamental social rights of workers and on the Protocol on social policy annexed to the Treaty establishing the European Community.

2.2.3. Nevertheless the Committee acknowledges that the proposed Directive makes for greater legal certainty and clarity and that it is likely to ensure that national authorities are not confused on a number of points. All the same, there are still some ambiguities and shortcomings which will be referred to further on.

2.3. The Committee also acknowledges that the proposed text will help to ensure greater fairness and will dispense with the need for numerous appeals and lawsuits.

2.3.1. However, it notes that there is a trend towards raising the age of retirement for paid workers and bringing the conditions applicable to women into line with the less favourable conditions applicable to men. The Committee trusts that this will not become a matter of course and calls for special provisions to take account of specific circumstances in an individual's working life

(childbirth, childcare, etc.). The Committee considers that a basic tenet of legislation is that of fairness and choice for both men and women and recommends that consideration be given to making a study of the impact of family welfare legislation on social protection schemes' finances and on the state of corporate or national economies.

2.4. The Committee notes that the proposed Directive only concerns schemes for particular categories of workers (occupational schemes). It excludes schemes providing general obligatory cover (statutory schemes) and voluntary personal schemes to which the employer is not a party. The Committee would refer to the Report on the Community Charter of the fundamental social rights of workers and on the Protocol on social policy and its consideration of specific job-related situations (atypical work, part-time work, unemployment, self-employed workers, agricultural occupations, poorly defined status, etc.)⁽³⁾. It calls for a clear definition of occupational schemes in relation to statutory schemes, having regard to Article 119 as interpreted by the Court.

3. Specific comments

3.1. The Committee approves the proposed amendment to Article 3 of Directive 86/378 under which workers' legal successors are to be included in the scope of the new Directive.

3.2. It also approves the provisions laid down in Article 6(1)(i) since they seek to make contributions and benefits equal while taking account of actuarial concerns. The new text stipulates that:

- workers' contributions are to be identical regardless of the schemes;
- employers' contributions may differ:
 - if the aim is to make the benefits equal in a defined-benefit scheme (supplementary basis);
 - if the aim is to make the benefits equal in a defined-contribution scheme (compensation for the difference in benefits).

3.2.1. The Committee notes that it is to be obligatory for workers' contributions to be equal, whereas the employer's contribution is to be the subject of negotiations between the employer and his workers.

Setting the level of the employer's contribution remains problematic given that it is impossible to predict the exact lifespan of each beneficiary.

⁽¹⁾ OJ No C 35, 9. 2. 1984, point 1.3, second paragraph.

⁽²⁾ *Ibid.* point 1.2, third paragraph.

⁽³⁾ COM(95) 184 final, 24. 5. 1995 — Chapter 1.06, Protocol No 14 on social policy — Agreement on social policy Article 6(3).

3.3. The Committee has extremely serious reservations about Article 2 of the proposed Directive which defines the procedures for implementing the new text. It thinks in particular that the provisions regarding retroactivity are cumbersome and complicated. While affirming the need to correct the injustices resulting from the 1986 Directive, the Committee warns against imposing heavier burdens which are liable to have an adverse effect on employment.

3.3.1. In addition, the implementation of these measures, whose retroactivity has been limited in time by the Court, may run into obstacles caused by the administration of the schemes which may be affected as well as by the schemes' funding in some instances. The plan is to gradually align pensionable ages with reference to the periods of employment and not the dates of entitlement. In certain cases, the alignment process will therefore be completed only when the entire period of employment comes after 17 May 1990. Pending this, pensions will be split; this will have major repercussions on their administration.

3.3.2. Furthermore, the Court has considered the funding of the schemes submitted to it. It has only taken into account funded schemes in which there are actuarial links between contributions and payouts. This does not apply to schemes in which the value of the entitlement is uncertain and depends on the capital obtained by investing the contributions (profit-sharing schemes) or the accumulated assets at the time the benefits are paid out (unit-linked schemes).

3.4. The Committee urges that consideration be given to equal treatment in the field of social security in all ongoing or future work on part-time work, youth unemployment, new forms of work and social protection provisions, etc.

4. Conclusion

4.1. The Committee welcomes the proposed amendments, subject to the aforementioned comments and wishes.

4.1.1. It calls for an explanation of the Directive's 'purely declaratory' nature and for the formal exclusion of schemes the nature or funding of which does not permit a transposition of Community case law based on Article 119 as it stands at present.

4.1.2. The Committee notes that several points in the new text answer the concerns contained in its Opinion of 14 December 1983 and the criticisms or demands made since then regarding the effects of Directive 86/378.

4.1.3. Considering that the improvements brought about by the text result from the wide-ranging consultation of the social partners, the Committee requests that the ground be prepared for the application of the new Directive and, more generally, any changes in social protection by holding open discussions with the relevant occupational bodies.

Done at Brussels, 26 October 1995.

The President
of the Economic and Social Committee
Carlos FERRER
