

Wednesday 24 October 2001

## TEXTS ADOPTED

**1. Equal treatment for men and women as regards access to employment \*\*\*II**

A5-0358/2001

**European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive amending Council 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 conditions (9848/1/2001 – C5-0387/2001 – 2000/0142(COD))**

(Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (9848/1/2001 – C5-0387/2001),
- having regard to its position at first reading <sup>(1)</sup> on the Commission proposal to Parliament and the Council (COM(2000) 334) <sup>(2)</sup>,
- having regard to the amended proposal (COM(2001) 321) <sup>(3)</sup>,
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Women's Rights and Equal Opportunities (A5-0358/2001),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

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Amendment 1  
RECITAL 8a (new)

**(8a) Member States should introduce into their national legal systems measures obliging those responsible for access to employment, occupation or training to take preventive measures against harassment and sexual harassment in the workplace, which may include a confidential counselling service.**

Amendment 2  
RECITAL 16

(16) The Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, employees enjoy such protection even after the employment relationship has ended.

(16) The Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, employees enjoy such protection even after the employment relationship has ended. **Anyone defending, or attesting on behalf of, a person who considers her/himself a victim of discrimination should also enjoy the same protection.**

<sup>(1)</sup> 'Texts Adopted' of 31.5.2001, Item 7.

<sup>(2)</sup> OJ C 337 E, 28.11.2000, p. 204.

<sup>(3)</sup> OJ C 270 E, 25.9.2001, p. 9.

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Amendment 3

ARTICLE 1, POINT 1, INTRODUCTION

Article 1 (Directive 76/207/EEC)

1. **In** Article 1 the following paragraph shall be inserted:

1. Article 1 **shall be amended as follows:**

(a) **Paragraph 1 shall be replaced by the following:**

**1. In accordance with Articles 2, 3(2) and 141 of the Treaty, the purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as 'the principle of equal treatment'.**

(b) **After paragraph 1** the following paragraph shall be inserted:

Amendments 4 and 5

ARTICLE 1, POINT 2, INTRODUCTION and POINT (a)

Article 2, paragraph 1 (Directive 76/207/EEC)

2. **Article 2 is amended as follows:**

1a. **The following Articles shall be inserted:**

(a) **In paragraph 1, the following subparagraphs shall be added:**

**Article 1a**

For the purposes of **the first subparagraph:**

For the purposes **of this Directive, the following definitions shall apply:**

(a) direct discrimination **shall be taken to occur** where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.

— direct discrimination: **the situation** where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.

(b) indirect discrimination **shall be taken to occur** where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

— indirect discrimination: **the situation** where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment **shall be deemed to be discrimination within the meaning of the first subparagraph when** an unwanted conduct related to the sex of a person **takes place** with the purpose or effect of violating the dignity of a person **and** of creating an intimidating, hostile, degrading, humiliating or offensive environment. Sexual harassment, **which manifests itself as unwanted** conduct of a sexual nature **expressed physically, verbally or non-verbally, constitutes a specific form of harassment.**

— harassment: **the situation where** an unwanted conduct related to the sex of a person **occurs on the occasion of access to or at the place of employment, occupation or training** with the purpose or effect of violating the dignity of a person **or** of creating an intimidating, hostile, degrading, humiliating or offensive environment.

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*A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.*

*An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination within the meaning of the first subparagraph.;*

- sexual harassment: *the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, which the perpetrator knows, or is under a legal obligation to know, to have the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.*

## Article 1b

*1. Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.*

*2. A person's rejection of, or submission to, such conduct shall not be used as a basis for a decision affecting that person.*

*3. An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination within the meaning of this Directive.*

*4. Member States shall in their national legal systems ensure that those responsible for access to employment, occupation or training, or the conditions relating thereto, introduce measures to prevent harassment and sexual harassment in the workplace.*

*2. Article 2 shall be amended as follows:*

## Amendment 6

ARTICLE 1, POINT 2, POINT (b)  
Article 2, paragraph 2 (Directive 76/207/EEC)

2. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

*2. Any general exclusion of, or restriction on, one sex having access to any kind of professional activity or to the training required to gain access to such an activity shall constitute discrimination within the meaning of this Directive.*

Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

## Amendment 7

ARTICLE 1, POINT 2, POINT (c)  
Article 2, paragraph 3 (Directive 76/207/EEC)

*A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less*

*At the end of her period of maternity leave or after an absence directly linked to or following an adoption, a woman shall be entitled to return to her job or to an equivalent*

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favourable to her and to benefit from any improvement in working conditions to which she would *be* entitled during her absence.

This Directive shall also be without prejudice to the provisions of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). It is also without prejudice to the right of Member States to recognise a distinct right to paternity leave. Those Member States which recognise such a right shall take the necessary measures to protect working men against dismissal due to exercising that right and ensure that, at the end of such leave, they shall be entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them.

ent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would *have been* entitled during her absence.

This Directive shall also be without prejudice to the provisions of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). It is also without prejudice to the right of Member States to recognise a distinct right to paternity leave. Those Member States which recognise such a right shall take the necessary measures to protect working men against dismissal due to exercising that right and ensure that, at the end of such leave, they shall be entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, **and to benefit from any improvement in working conditions to which they would have been entitled during their absence.**

***Any unequal treatment of a woman related to pregnancy or maternity shall constitute discrimination within the meaning of this Directive.***

Amendment 8

ARTICLE 1, POINT 2, POINT (d)  
Article 2, paragraph 4 (Directive 76/207/EEC)

(d) Paragraph 4 shall be **replaced by the following:**

**4.** Member States may maintain or adopt measures with in the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women.

(d) Paragraph 4 shall be **deleted.**

**2a. The following Article 2a shall be inserted:**

**Article 2a**

Member States may maintain or adopt **positive** measures *within* the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women. **Positive measures shall provide for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers.**

Amendment 9

ARTICLE 1, POINT 3  
Article 3, paragraph 2, point (b) (Directive 76/207/EEC)

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, **or may be**, declared null and void **or are amended.**

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations **shall** be declared null and void.

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## Amendment 10

## ARTICLE 1, POINT 5

Article 6, paragraph 2 (Directive 76/207/EEC)

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure **a real and effective** compensation or reparation **as the Member States so determine** for the loss and damage sustained by a person injured as a result of discrimination contrary to **Article 3, in a way which is dissuasive** and proportionate to the damage suffered.

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure **effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive**. Compensation or reparation for the loss and damage sustained by a person injured as a result of **unequal treatment** contrary to **this Directive shall be real, effective** and proportionate to the damage suffered, **and may not be restricted by the fixing of a prior upper limit**.

## Amendment 11

## ARTICLE 1, POINT 5

Article 6, paragraph 3 (Directive 76/207/EEC)

3. Member States shall ensure that associations, organisations or other legal entities which have, **in accordance with the criteria laid down by their national law**, a legitimate interest in ensuring **that** the provisions of this Directive **are complied with**, may engage, either on behalf or in support of the complainants, with **his** or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Member States shall ensure that associations, organisations or other legal entities which have a legitimate interest in ensuring **compliance** with the provisions of this Directive:

(a) may engage, either on behalf or in support of the complainant(s), with her, **his or their** approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive,

(b) **may, where national law so permits, bring a collective action, in any judicial and/or administrative procedure, on their own initiative and aside from the particular circumstances of an individual case, in order to determine whether or not the principle of equal treatment for men and women is applied.**

## Amendment 12

## ARTICLE 1, POINT 6

Article 7 (Directive 76/207/EEC)

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Member States shall introduce into their national legal systems such measures as are necessary to protect employees **and workers' representatives** against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceeding aimed at enforcing compliance with the principle of equal treatment.

## Amendment 13

## ARTICLE 1, POINT 7

Article 8a, point 1 and point 2, introduction and point (a) (Directive 76/207/EEC)

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of sex. These bodies may form part of

1. Member States shall designate a body or bodies for the promotion, **monitoring and follow-up of the principle** of equal treatment of all persons without discrimination on the

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agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 6(3), **providing independent assistance to victims of discrimination in pursuing their complaints** about discrimination;

grounds of sex. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights. **They must have the funding and human resources necessary to accomplish their task. The scope of these bodies shall cover all Community law in the field of equal treatment for men and women.**

2. Member States shall ensure that the competences of these bodies include:

- (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 6(3), **receiving, examining and pursuing complaints from individuals, groups of individuals and organisations** about discrimination;

Amendment 14

ARTICLE 1, POINT 7

Article 8b, paragraphs 2a and 2b (new) (Directive 76/207/EEC)

**2a. Member States shall take all necessary measures to ensure that employers promote equal treatment for men and women in the workplace in a planned and systematic way.**

**2b. To this end, Member States shall encourage employers to provide annually appropriate information to workers and/or their representatives about equal treatment for men and women in the undertaking. Such information shall include statistics on proportions of men and women at different levels of the organisation and possible measures to improve the situation in cooperation with workers' representatives.**

Amendment 15

ARTICLE 2, POINT 3

3. Without prejudice to paragraph 2, Member States shall communicate to the Commission, every **five** years, the texts of laws, regulations and administrative provisions of any measures adopted pursuant to Article 141(4) of the Treaty. On the basis of that information, the Commission will adopt and publish every **five** years a report establishing a comparative assessment of any **such** measures.

3. Without prejudice to paragraph 2, Member States shall communicate to the Commission, every **two** years, the texts of laws, regulations and administrative provisions of any measures adopted pursuant Article 141(4) of the Treaty, **as well as reports on these positive measures and their implementation.** On the basis of that information, the Commission will adopt and publish every **two** years a report establishing a comparative assessment of any measures **in the light of Declaration No 28 annexed to the Final Act of the Treaty of Amsterdam.**