

COUNCIL

COUNCIL DIRECTIVE

of 11 December 1986

on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood

(86/613/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, in its resolution of 12 July 1982 on the promotion of equal opportunities for women ⁽⁴⁾, 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 to 1985) and expressed the will to implement appropriate measures to achieve them;

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

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;

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 women ⁽⁵⁾;

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 conditions ⁽⁶⁾ 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 security ⁽⁷⁾;

Whereas, as regards persons engaged in a self-employed capacity, in an activity in which their spouses are also engaged, 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;

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

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

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:

SECTION I

Aims and scope

Article 1

The purpose of this Directive is to ensure, in accordance with the following provisions, application in the Member States of the principle of equal treatment as between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 76/207/EEC and 79/7/EEC.

⁽¹⁾ OJ No C 113, 27. 4. 1984, p. 4.

⁽²⁾ OJ No C 172, 2. 7. 1984, p. 90.

⁽³⁾ OJ No C 343, 24. 12. 1984, p. 1.

⁽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. 1975, p. 40.

⁽⁷⁾ OJ No L 6, 10. 1. 1979, p. 24.

Article 2

This Directive covers :

- (a) self-employed workers, i.e. all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including farmers and members of the liberal professions ;
- (b) their spouses, not being employees or partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

Article 3

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.

SECTION II

Equal treatment between self-employed male and female workers — position of the spouses without professional status of self-employed workers — protection of self-employed workers or wives of self-employed workers during pregnancy and motherhood

Article 4

As regards self-employed persons, Member States shall take the measures necessary to ensure the elimination of all provisions which are contrary to the principle of equal treatment as defined in Directive 76/207/EEC, especially in respect of the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity including financial facilities.

Article 5

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the formation of a company between spouses are not more restrictive than the conditions for the formation of a company between unmarried persons.

Article 6

Where a contributory social security system for self-employed workers exists in a Member State, that Member State shall take the necessary measures to enable the spouses referred to in Article 2 (b) who are not protected under the self-employed worker's social security scheme to join a contributory social security scheme voluntarily.

Article 7

Member States shall undertake to examine under what conditions recognition of the work of the spouses referred to in Article 2 (b) may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition.

Article 8

Member States shall undertake to examine whether, and under what conditions, female self-employed workers and the wives of self-employed workers may, during interruptions in their occupational activity owing to pregnancy or motherhood,

- have access to services supplying temporary replacements or existing national social services, or
- be entitled to cash benefits under a social security scheme or under any other public social protection system.

SECTION III

General and final provisions*Article 9*

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

Article 10

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 bodies representing self-employed workers and vocational training centres.

Article 11

The Council shall review this Directive, on a proposal from the Commission, before 1 July 1993.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 1989.

However, if a Member State which, in order to comply with Article 5 of this Directive, has to amend its legislation on matrimonial rights and obligations, the date on which such Member State must comply with Article 5 shall be 30 June 1991.

2. Member States shall immediately inform the Commission of the measures taken to comply with this Directive.

Article 13

Member States shall forward to the Commission, not later than 30 June 1991, all the information necessary to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 11 December 1986.

For the Council

The President

A. CLARKE
