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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council at first reading with a view to adopting the proposal for a
directive of the European Parliament and of the Council on the application of the
principle of equal treatment between men and women engaged in an activity in a self-
employed capacity and repealing Council Directive 86/613/EEC**

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1. BACKGROUND

On 3 October 2008, the Commission adopted the proposal for a directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (COM(2008) 636).

The proposal was forwarded to the European Parliament and the Council on 3 October 2008.

The European Economic and Social Committee adopted an opinion on 24 March 2009.

The European Parliament adopted its opinion on 6 May 2009 at first reading.

During the plenary debate, the Commission adopted a position on the proposed amendments. The Commission did not adopt an amended formal proposal as a result of the European Parliament's opinion.

The Council adopted its position in first reading by qualified majority on 8 March 2010.

2. PURPOSE OF THE COMMISSION PROPOSAL

The aim of the proposal is to amend the Community legal framework concerning the application of the principle of equal treatment between women and men to self-employed workers and their spouses.

It introduces substantial amendments to the existing Directive, which dates from 1986. Firstly, it extends the concept of 'spouse' to include life partners, where they are recognised under national law. Secondly, the proposal provides that spouses who assist self-employed workers as part of their contribution to a family business must, if they so request, be entitled to the same level of social protection as self-employed workers themselves. Lastly, the proposal provides that self-employed female workers and assisting spouses should be granted, at their request, maternity leave of the same duration as that provided for in the Directive on the protection of pregnant workers (14 weeks), remunerated, in principle, at a level equivalent to sick pay.

3. COMMENTS ON THE COUNCIL'S POSITION AT FIRST READING

3.1. General remarks in brief

The Commission notes that the Council's position at first reading differs substantially from the Commission's proposal and the European Parliament's opinion, primarily with regard to social protection for assisting spouses. Whilst the Commission and the European Parliament take the view that assisting spouses should enjoy the same level of social protection as self-employed workers themselves, the Council's position is restricted to guaranteeing their access to "social protection".

Concerning maternity leave for self-employed workers and assisting spouses, the Council's position is closer to the amendment adopted by the European Parliament and accepted by the Commission providing for the principle of adapting to the specific needs of the persons concerned. However, the Council's position on Article 7(3) concerning the appropriate level of maternity pay is even further away from the positions of the Commission and of the European Parliament.

3.2. Decision taken regarding the European Parliament's amendments (first reading)

3.2.1. Amendments incorporated into the amended proposal and the Council's position (first reading)

The Council's position takes in the following European Parliament amendments to the proposal, which had also been accepted by the Commission:

- amendment 12: addition of an explicit reference to promoting women's entrepreneurship in the article on positive action;
- amendment 13: drafting clarification concerning the conditions applicable to the creation of a business;
- amendment 15: the text adopted by the Council establishes the gearing of the provision to the specific needs of self-employed workers and assisting spouses;
- amendment 18: the acknowledgement of the work of assisting spouses is mentioned in recital 7 of the text adopted by the Council;
- amendment 22: addition concerning the competence of the national equality bodies with regard to exchanging information with their European counterparts;
- amendment 23: new article on mainstreaming equality between men and women;
- amendment 27: requirement that there be "particular difficulties" in order to be eligible for the additional period for implementation of the Directive;
- amendment 28: addition of a new article on the nature of the "minimum requirements" in the proposal.

3.2.2. Amendments incorporated into the amended proposal but not included in the Council's position (first reading)

- amendments 21 and 22 on the equality body: the Commission had accepted these amendments in principle. However, the Council wanted to align the text of this standard

provision with the most recent text concerning equality between men and women (the recast Directive¹). The Commission accepted this principle.

3.3. New provisions introduced by the Council, and the Commission's position

Two parts of the Council's position (first reading) deserve special attention, as they differ substantially from the Commission's proposal and the European Parliament's opinion. These are Articles 6 and 7(3) of the text of the Council's position, concerning, respectively, social protection for assisting spouses and maternity pay for self-employed workers and assisting spouses.

The Commission has defended its position regarding Article 6, the aim of which is to give assisting spouses the same level of social protection as self-employed workers. Given that assisting spouses usually help with the work of the family business, any other approach would not be sufficient to achieve the objective of equality between women (who make up the vast majority of assisting spouses) and men (who make up the majority – 2/3 – of self-employed workers).

During the negotiations in the Council, it became clear that any attempt to approximate the level of protection granted to self-employed workers and that afforded to assisting spouses would be opposed by many Member States. The Commission therefore emphasised that, although it constituted a substantial change to its text which rendered it much less ambitious, it would go along with it so as to enable the Council to reach political agreement, which would not be possible otherwise. The Commission took the view that the text adopted by the Council was a great improvement on the current situation, for both self-employed workers and their assisting spouses. For self-employed workers and assisting spouses, the new provisions on maternity pay establish, for the first time at EU level, an entitlement to an allowance for leave from work for at least 14 weeks. With regard to the specific issue of assisting spouses and life partners, the provisions adopted by the Council will entitle them to social protection in their own name, regardless of the type of system and any entitlement to 'derived' social protection (through of the self-employed worker).

The Commission also took into account that, given the opposition in principle of two Member States to any legislation in this area, the Council would not be able to make a unanimous decision.

At the meeting of the Council of the European Union on 30 November 2009, the Presidency amended its compromise proposal to incorporate a proposal to let Member States choose the level of maternity pay. Here, too, the Commission did not object so as to not obstruct the Council's political agreement.

4. CONCLUSION

In the light of the above, the Commission, whilst admitting that the position of the Council at first reading does not correspond, on several key points, to its proposal, nevertheless considers that the only way to allow the procedure to move forward is to refrain from making any objections to the Council's position at first reading.

¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L204, 26.7.2006, p. 23).