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9 November 1977

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## Report

drawn up on behalf of the Committee on Social Affairs, Employment and  
Education

on the proposal from the Commission of the European Communities to the  
Council (Doc. 522/76) for a directive concerning the progressive implementation  
of the principle of equality of treatment for men and women in matters of social  
security

Rapporteur: Mrs M.L. CASSANMAGNAGO CERRETI



By letter of 17 January 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security.

The President of the European Parliament referred this proposal on 27 January 1977 to the Committee on Social Affairs, Employment and Education as the committee responsible.

On 27 January 1977 the Committee on Social Affairs, Employment and Education appointed Mrs Cassanmagnago Ceretti rapporteur.

It considered the proposal at its meetings of 16 May, 22 June and 20 October 1977 and at the last meeting unanimously adopted the motion for a resolution and the explanatory statement.

Present: Mr Van der Gun, chairman; Mr Galluzzi and Mrs Dunwoody, vice-chairmen; Mrs Cassanmagnago Cerretti, rapporteur; Lady Fisher of Rednal, Mr Kavanagh, Mr Lezzi, Mr Meintz, Lord Murray of Gravesend, Mr Pistillo, Mr Schreiber and Mr Wawrzik.

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The Committee on Social Affairs, Employment and Education hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>,
- having been consulted by the Council pursuant to Article 235 of the EEC Treaty (Doc. 522/76),
- having regard to the report of the Committee on Social Affairs, Employment and Education (Doc. 355/77 ),

1. Welcomes this important initial step towards achieving the principle of equality of treatment for men and women in matters of social security which was expressly laid down in the Social Action programme and the relevant Council resolution as well as in the Council directive adopted in 1976 on equality of treatment concerning access to employment, vocational training and promotion and working conditions;
2. Appreciates in particular the fact that the scope of this proposal extends to 'all social assistance arrangements', ~~even if only~~ 'insofar as the payments concerned supplement or substitute' the social security provisions and schemes as laid down in Article 2(1);
3. Notes with satisfaction that the Community, by gradually issuing specific binding Directives, is taking a lead in the practical recognition of the general principle of equal treatment for men and women which is essential both for the personal fulfilment of each human being and for the construction of a more equitable society; however, until such time as all laws in the Member States which discriminate against women are abolished, there can be no real progress towards equality;
4. Shares the realistic view that the principle of equality of treatment must for the time being be introduced and achieved within the various national systems of social security, but at the same time urges the Commission not to lose sight of the basic aim of the long-term harmonization of these schemes and to pursue this objective whenever the opportunity arises;

<sup>1</sup> OJ No. C 34, 11.2.1977, p.3

5. Agrees further with the principle of first eliminating from the mandatory schemes and occupational arrangements the most serious discrimination which, as a rule, affects women, but stresses that the ultimate aim must always be the elimination of all discrimination;
6. Deplores the derogations from the scope of application of this proposal as regards widows and family charges or benefits which, as the Community legislation on migrant workers demonstrates, are an integral part of the concept of social security, and invites the Commission to provide the judicial instruments required to overcome this serious deficiency at an early date;
7. Considers it necessary in this context that the problems of widowhood and the reciprocity of pensions should be thoroughly reviewed on the basis of equality and resolved by granting allowances to the surviving partner, not only to the widow but also to the widower;
8. Fears that the obligation to eliminate discrimination could be seriously jeopardized by the right given to the Member States for an indefinite period to exclude from the scope of the directive a number of important aspects such as the determination of pensionable age for old age and retirement pensions and the determination of periods of employment for pension purposes, particularly as regards the reckoning of periods spent outside employment for reasons of pregnancy or childbirth;
9. Calls on the Commission to submit new proposals with regard to the sectors excluded so as to ensure that such discrimination is ended once and for all, and insists further, especially as regards the sectors mentioned above, that future regulations should be based on the following principles:
  - (a) the determination of pensionable age should be the same for men and women and apart from this, in recognition of the family duties generally incumbent upon them, there should be the possibility of earlier retirement for women at their own request,
  - (b) periods spent outside work for reasons of pregnancy or childbirth or for caring for young children should be considered as reckonable periods for pension purposes;
10. Considers that, given the obvious complexity of the measures required to achieve the progressive elimination of discrimination, a system of multi-annual stages can be considered a necessary evil, but at the same time calls urgently on the Member States to respect the deadlines laid down which are in any case fairly generous;

11. Stresses that effective equality of treatment in the field of social security depends entirely on the practical and complete implementation of the same principle in the matter of salaries and access to employment, vocational training and promotion and other working conditions;
12. Emphasizes the need for the Member States as far as possible to take uniform and simultaneous action in eliminating discrimination since the costs of such action must be borne by all the Member States under similar conditions so as not to create or aggravate any imbalance between the various national socio-economic systems;
13. Requests the Commission to incorporate the following amendments in its proposal, pursuant to the second paragraph of Article 149 of the EEC Treaty.

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

Preamble, recitals and Articles 1-6 unchanged

Article 7

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.

1. unchanged

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.

2. unchanged

<sup>1</sup> For complete text see OJ No. C 34, 11.2.1977, p. 3



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.

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 the European Parliament, and to propose such further measures as may be required for the implementation of the principle of equal treatment.

Article 7(a) (new)

Member States shall introduce into their respective national legislations the necessary regulations so that all persons who consider themselves wronged by the failure to apply to them the principle of equal treatment as laid down in the present directive may pursue their claims by judicial process, after possible recourse to other competent authorities.

Article 8 unchanged

EXPLANATORY STATEMENTI. - INTRODUCTION

1. The Commission proposal on equality of treatment for men and women in matters of social security must first be welcomed because it is an important initial step in implementing the provisions of the Council resolution of 21/1/1974 on a Social Action programme<sup>1</sup>, and in particular it implements the provision of Article 1, paragraph 2 of the Council directive of 9 February 1976 on the equality of treatment concerning access to employment, vocational training and promotion, and working conditions<sup>2</sup>.

2. Satisfaction should also be expressed that this present step gives the Community a leading position in the field of equal treatment: for the first time, an organization of States has laid down specific binding rules for applying this principle in the field of social security; furthermore, it is a move towards meeting the objectives set out in the recent white paper by the European Trade Union Confederation on 'Women at Work'.

3. It should also be emphasized that this proposal is the final act - although far from comprehensive in view of the exceptions provided for - in a series of regulations stemming from the Directive of 10 February 1975 relating to pay<sup>3</sup>, and that of 9 February 1976 mentioned above, which reflects, at least at the fundamental legal level, the evolution of woman's condition in a move towards a fuller implementation of the principle of equality of treatment for men and women, which is essential both for the personal fulfilment of each human being and for the construction of a more equitable society.

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<sup>1</sup> Cf OJ No. C 13, 12.2.1974

<sup>2</sup> Cf OJ No. L 39, 14.2.1976

<sup>3</sup> Cf OJ No. L 45, 19.2.1975

4. It must also be made clear that this directive does not aim at harmonization of the systems of social security in the Member States (as might be hoped but which would perhaps be unrealistic in the present situation) but aims simply to introduce the principle of equality of treatment in these systems, which will thus continue to keep their own particular features: basically, each system will be amended only to the extent needed to incorporate within its own structure the principle in question.

II. - PURPOSE OF THE DIRECTIVE (Article 1)

5. Considering the individual articles in turn and Article 1 in particular, one cannot but concur with the purpose of the directive (namely the actual implementation of equal treatment) and in particular with the concept of 'equality of treatment', which in accordance with the Directive of 9 February 1976 means 'the absence of all discrimination based on sex, either directly or indirectly, in particular by reference to marital or family status'.<sup>1</sup>

III. - SCOPE IN RELATION TO PERSONS

6. It must be pointed out that the directive's scope in relation to persons, namely the categories of persons benefiting from the directive, is not explicitly set out but only mentioned in point 5(II) of the explanatory memorandum, which refers to the scope of the Directive of 9 February 1976 from which the present directive derives.

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<sup>1</sup> See Art. 2 (1) of the Directive in question

7. Indeed its scope could be deduced from that of the subject-matter; for, as a general rule and unless otherwise stated, having regard in particular to its objectives, the proposed directive should be applied indiscriminately to all categories of persons covered by social security provisions and schemes as the expression is understood in paragraphs 1 and 2 of Article 2.

8. With reference to the large and fairly exhaustive list of categories contained in the second part of point 5 of the explanatory memorandum already quoted, the explanation offered by the Commission enables us to clarify as follows two phrases which are used somewhat loosely.

9. The phrase 'potential active population', which comes within the scope of this directive, is to be applied to young people seeking employment.

10. 'Non-employed workers', who are excluded from its scope, is to be applied to home-based workers who, because of their very important function, should now be recognized as having the opportunity of making an independent claim to social security.

11. Finally, it can be said that Article 5 helps to define the scope in relation to persons, since it can be inferred therefrom that the categories referred to in the directive are both dependent and self-employed workers and, in the case of the former, persons employed by both private and public undertakings.

IV. - SCOPE IN RELATION TO SUBJECT-MATTER (Article 2)

12. Article 2 which constitutes the central point of the whole Directive raises particular problems which call for clarification.

13. First and foremost it defines the scope as regards subject-matter, namely 'matters of social security' from two angles: that of the social security schemes under consideration and that of the arrangements governing such schemes.

(A) Social security contingencies - Exceptions

14. In the first instance, paragraph 1 of the article under consideration includes in the term social security: 'medical care; loss of earnings through sickness; loss of earnings through unemployment; old age; employment accident or occupational diseases; invalidity.'

15. As point 7 of the explanatory memorandum admits, when compared with the provisions of Convention No. 102 of the ILO (1952) and the European Code of Social Security drawn up by the Council of Europe in 1964, the above-mentioned list excludes widowhood, maternity and family charges.

16. This gives rise to the following comments:

- (a) The exceptions of widowhood and maternity must obviously refer us back to what seems to be the Commission's guiding principle in this matter, namely the aim of safeguarding measures favourable to women;
- (b) This principle is fully justified in every aspect of the protection of motherhood including pregnancy, childbirth and their consequences as well as the resulting suspension of pay: the dignity and social consequence of motherhood, besides the obvious recognition of the exclusively female character of such a function makes this 'discrimination' in favour of women essential;

- (c) Given the prevailing socio-economic situation, whereby it is still often the husband's income which constitutes the major source of support for the family and therefore the wife, one can accept that the exclusion of widowhood from the directive's scope is linked to the principle enunciated - and endorsed - above, that of safeguarding measures favourable to women. Nevertheless, the evolution of habits and attitudes, the increasing tendency of women to work outside the home, access to all types of employment even the highest paid under those conditions of equality of treatment which is the aim of both this directive and of the two which preceded it, ~~make it an~~ **absolutely** urgent necessity for a systematic approach to be made to the question of benefits to the surviving partner, which could be resolved by providing such benefits no longer solely to the widow but also to the widower, on the basis of principles of reciprocity and equality.
- (d) The idea that family charges or benefits should be excluded is then surprising and difficult to comprehend, and just as inconsistent is the reason given, also in point 7 of the explanatory memorandum, according to which these allowances are supposed to fall within the scope of family policy.

Examination of the same international instruments to which the Commission claims to have referred (Convention No. 102 of the ILO (1952) and the European Code of Social Security drawn up by the Council of Europe) reveals that family benefits are an integral part of the concept of social security and thus removes all foundation for this statement. However, remaining in the Community context, even more decisive is the fact that family benefits are included in the areas of social security by Article 4 (to be precise letter h, paragraph 1) of Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community<sup>1</sup>.

Rather, the Commission in Brussels is to be criticized for not simply having taken as the basis for its proposal the fundamental concept of social security from the Regulation quoted - even though in this instance it referred solely to mandatory schemes - and for not even having adopted the terminology used in the said Regulation to indicate the same contingencies of social protection. All this gives rise to concern, not so much for lexical considerations as because, in the event of legal interpretation being needed, sharp controversy might arise among jurists and, at worse, different viewpoints might be taken depending on whether migrant workers or equality of treatment for men and women was concerned.

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<sup>1</sup> OJ No. L 149 of 5.7.1971

(B) Social security schemes - social assistance arrangements

17. As has already been pointed out, Article 2(2) defines the scope of the Directive as regards subject-matter from the angle of social security schemes and it is most gratifying that its scope is extended to cover both general and special schemes based on a law (i.e. the mandatory schemes) and schemes which have no legal basis whatsoever (i.e. 'occupational' schemes).

18. With regard to the latter, however, the phrase 'in so far as they are not already covered by Community provisions' which recurs both in Article 4 (third indentation) and Article 5(b) is rather puzzling.

19. The apparent inference is that there are occupational schemes of social security in which, at least partially, the principle of equality of treatment is already in partial operation or at least mandatory on the basis of the directives of 1975 and 1976 mentioned above.

20. Finally, to end this analysis of Article 2, it is particularly satisfying to note in the last part of paragraph 2 the extension of the scope of the directive to include 'all social assistance arrangements' if only 'insofar as they supplement or substitute for benefits in respect of' the contingencies of social security laid down in paragraph 1.

21. This provision is all the more valuable in that it reflects not only the evolution of the concept of 'social security' but also the attitude shown by the Court of Justice in several rulings, whereby it has encouraged, for example, through a broad interpretation of Community social security systems for migrant workers, the recognition of benefits for these workers in line with the minimum pension rates for elderly people in need.

V. - ELIMINATION OF DISCRIMINATION - DEROGATION (Articles 3 and 6)

22. Basically, Article 3 provides for the elimination of all discrimination on grounds of sex in respect of the obligations and benefits laid down in legislation governing individual schemes and contingencies of social security: from the conditions of eligibility for benefits to the duration and conditions under which benefits can be paid.

23. Judgement on this provision, which could in principle be favourable, cannot but be strongly influenced in a negative sense by what is provided in Article 6.

24. This provision sets out in paragraph 1 a series of derogations which effectively give individual States the right to exclude from the scope of the Directive under consideration:

- (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 of periods spent outside employment for reasons of pregnancy or childbirth) 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.



25. One does not need to go deeply into the matter in order to realize the extreme seriousness of such exclusions: for instance, it is sufficient to note on the one hand the important effect that the determination of pensionable age and periods of employment for pension purposes have on the size of old age pensions, especially in contributory schemes and, on the other hand, the fact that the measures concerned are generally to the disadvantage of women, in order to reach the conclusion that Article 6 seriously compromises the effectiveness not only of Article 3 but of the whole directive.

26. Moreover, paragraph 2 of Article 6, which alludes in general terms to a review of the provisions in the areas excluded, certainly does not help matters, but rather encourages a pessimistic assessment.

27. Firstly, no compulsory time-limit is laid down for undertaking such reviews, and secondly, the principles on which they should be based are not even touched upon except by implication in point 9 of the explanatory memorandum, principles which, to give a rough guide, might include the following:

- (a) the determination of pensionable age should be the same for men and women, with the possibility of earlier retirement for women at their request;
- (b) periods spent outside work for reasons of pregnancy or childbirth or caring for young children should be counted as reckonable periods for pension purposes.

#### VI. - PRINCIPLE OF PROGRESSIVE IMPLEMENTATION : Stages and timetable

##### INCREASES FOR DEPENDENTS

(Articles 4 and 7)

28. Articles 4 and 7, paragraph 1 set out the measures for the progressive implementation of the principle of equality of treatment in three distinct stages of two, three and four years respectively, to run from the publication of the directive.

29. During these stages the principle would be implemented progressively, being extended first to the mandatory schemes, then to increases for dependents, and finally to occupational schemes.

30. In the first instance one should note the importance accorded (in the second indentation of Article 4) to a certain idea, that of increases for dependants, the definition of which is uncertain though touched on in passing in Article 3.

31. For, if point 11 of the explanatory memorandum seems on the one hand to exclude - as might at first glance be supposed - the identification of such increases with benefits or family allowances, it in no way defines their main characteristics or nature: the Commission has said that this involves special allowances such as exist in the system of social security operative in the United Kingdom which are additional to family allowances in the field of benefits provided in the case of unemployment, invalidity, sickness or old age pensions.

32. Secondly, it must be noted with regret that a very lengthy deadline has been set for the Member States to bring their own regulations into line with this directive; however, given the complex nature of the measures to be taken, the lengthy deadlines may be accepted as a necessary evil on condition that they are considered absolute.

33. In this context, so that the European Parliament may be informed directly of any deficiency or delay which might occur in the Member States, it is essential that the Commission's report on compliance with each stage (cf. Article 7(3)) should also be forwarded to the Parliament.

#### VII. - OBLIGATIONS OF MEMBER STATES (Article 5)

34. Article 5, in listing the obligations of the Member States in the implementation of the principle of equality of treatment through the abolition or amendment of regulations and administrative provisions contrary to it, does not present any particular problems and in essence reproduces the arrangements of the corresponding provisions which appear in different contexts but have the same end in view in the Directives of 10 February 1975 ('equal payment' : Articles 3 and 4) and 9 February 1976 ('equality of access to employment, vocational training etc.' : Articles 3, 4 and 5).

#### VIII. - DEFICIENCIES

35. A general comparison with the texts of the abovementioned directives prompts an observation of considerable importance.

36. For, in contrast with the contents of those directives, the proposal under consideration makes no reference at all to the following points:

- (a) the opportunity for all persons who consider themselves wronged by failure to apply to them the principle of equal treatment to pursue their claims by judicial process, after possible recourse to other competent authorities (see Article 2 of the Directive of 1975 and Article 6 of that of 1976);

- (b) protection against dismissal as a reaction to an action within the undertaking (union) or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (see Article 5 of the Directive of 1975 and Article 7 of that of 1976);
- (c) the publication by all appropriate means, for example at their place of employment, of the provisions of the directive and those already in force in the countries concerned (see Article 7 of the Directive of 1975 and Article 8 of that of 1976).

37. The extreme seriousness of such deficiencies, and of the first one in particular, is so obvious that, also for reasons of brevity, it is not considered necessary to dwell on the strongly negative reaction they provoke.

38. Since, furthermore, it is unthinkable that the Commission intended to create in this sphere a category of atypical rights, insofar as they are not defended and in fact are indefensible, one can only imagine that the Commission considers valid, as general rules, the corresponding provisions (namely, Articles 6, 7 and 8 of the 1976 Directive) from which the present directive directly derives not only 'ratione materiae', but also by virtue of what is stated in its recitals.

39. Even if one accepts this, it is still considered essential for the present directive to be amended by inserting a provision which confirms explicitly the possibility of pursuing a claim to equality of treatment, by judicial process where necessary, so that at least on this important point, there can be no doubt whatsoever.

#### IX. - CONCLUSIONS

40. In formulating conclusions, one must first reiterate the appreciation for the initiative in and of itself and for the praise-worthy attempt by the Commission to tackle the problem of applying equal treatment to such a difficult and complex area as that of social security, where legislation varies so widely between Member States.

41. However, one cannot ignore a basic reality, to which in fact attention has been drawn throughout the present analysis.

42. Basically it seems evident from the foregoing remarks that the Commission, starting out with undoubtedly laudable intentions, has gradually come up against a series of difficulties which have prevented it from translating those initial intentions into regulations suited to achieve the desired ends.

43. The failure simply to take over the concept of social security as adopted by the regulation on migrant workers, the exceptions in Article 2, the derogations and exclusions in Article 6, the stages and the timetable provided for in Articles 4 and 7, and finally, the serious legislative defects discovered confirm the above assertion, and even give rise to serious misgivings about the real possibility of implementing, at least within a reasonable period of time, the principle of equality in the area concerned.

44. It needs little imagination to realize that all the difficulties stem from two difficult and serious problems:

- (a) the existence of a considerable number of practices discriminating against women and, closely related,
- (b) the financial consequences of introducing equality in the field of social security: in essence, the costs involved in eliminating these discriminatory practices.

45. In this context, it is to be deplored that not all the Member States have forwarded to the Commission the data relating to these problems as requested: this could have formed the basis for a realistic assessment of the difficulties involved in the application of this proposal for a directive.

46. On the other hand, it must be noted with satisfaction that according to the Commission's communication, the social partners and the family organizations consulted have expressed a generally favourable opinion on these regulations.

47. In conclusion the following two points should be emphasized:

- (a) the application of the principle of equal treatment in matters of social security will truly achieve the objective of eliminating discrimination against women only if the provisions of the two directives frequently referred to above in matters of pay, conditions of employment and career opportunities are given full effect in the laws, in customs and in popular attitudes; for it should be remembered that social security benefits depend on the contributions paid, and that these in turn depend on pay and thus on the type of level of activity or occupation pursued;
- (b) in general present legislation in these matters discriminates against women. However, the situation varies greatly from one country to another, as well as within the individual national schemes: for instance some States (France, Italy and the United Kingdom) have already adopted or are in process of adopting rather more enlightened regulations on the application of the principle of equal treatment.

It is therefore essential that all Member States should base their legislation on the highest possible degree of acceptance of this principle, for the following reasons in particular:

- first of all, it corresponds to a just claim which, unanimously recognized, can no longer be disregarded;
- secondly, the implementation of equality of treatment, as has already been acknowledged, entails considerable expense; this must therefore be borne by all Member States under similar conditions, for one thing so as not to distort the conditions of competition between the various socio-economic systems.

