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UEAPME position paper on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC

Introduction

The European Commission published on 3 October 2008 its 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 Directive 86/613/EEC.

The policy background to this is the Roadmap for equality between women and men from 2006, aimed at improving governance for gender equality.

I - General comments

UEAPME fully recognises the importance of equal treatment between men and women. This particular directive and the current new proposal affect women to a very large extent. The Lisbon Strategy identified the need to improve the level and quality of the participation of women in the labour market, which is also seen as a necessity by UEAPME. Female entrepreneurship currently only represents 30% in Europe and this percentage clearly merits to be increased to reflect female qualifications and talents more accurately.

UEAPME strongly regrets that the results of the impact assessment by the European Commission were not available previously when the European Social Partner consultations took place in the first half of 2008. There was no overview on the evolution and present trends of the situation of co-assisting spouses in all 27 Member States, notably in the new Member States, in order to compare the national situations and assess costs and benefits of different policy options also from an economic perspective.

Moreover UEAPME seriously questions the validity of the current impact assessment which notably presents several inaccuracies on maternity leave for self-employed and assisting spouses as for example in Austria.

Whilst it was known that in many cases assisting spouses have no legal status of their own for social security protection and often only indirect rights, the impact assessment clearly shows the

extent to which there are social security variations between and within Member States, including the role of sectors, and the extent to which there are different rights between self-employed and assisting spouses. On assisting spouses in particular the assessment demonstrates that there are some who are not provided with a minimum of social security coverage.

Although UEAPME did not see the need for a revision of directive 86/613/EEC, we still favour the proposal for a complete new simplified directive repealing directive 86/613/EEC notably because the 86/613/EEC directive was vague and at the same time too detailed covering a wide range of laws including marital, company, tax and fiscal laws, as well as touching upon different social protection and social security systems (including diverging compulsory, national, voluntary and private schemes). Furthermore, most of these laws come under the strict competence of Member States.

II - Specific comments on the articles

Article 1: Subject matter and scope

The main purpose of the directive is to apply the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, namely assisting spouses.

However it is crucial that the current directive does not prejudice the contractual freedom existing in commercial relationship as specified in directive 2004/113/EC as stipulated in Article 3.2:

“This Directive does not prejudice the individual's freedom to choose a contractual partner as long as an individual's choice of contractual partner is not based on that person's sex”.

Article 2: Definitions

It is helpful that there has been an attempt to modernise the terminology of “assisting spouses”, changing the definition and adapting it to fit the current context. The reference to “life partners” and more precisely to “business partner” rightly underlines the economic dimension. Considering assisting spouses regardless of their marital status and focusing entirely on their work contributing to the family business constitutes a real progress. However talking about assisting spouses as “co-working” spouses would further help to valorise their work.

Article 3: Principle of equal treatment

We fully support the principle of equal treatment between men and women which has been clearly spelt out when referring to the marital or family status and most importantly when starting or extending a business.

However some linguistic problems have to be tackled concerning the translation of “establishment” and “equipment” notably in the German language.

Article 4: Positive Actions

Here the proposed directive rightly recalls that formal equality does not in itself lead to equality in practice. UEAPME has already previously recommended that support measures are needed

above all in order to change the mindset and attitudes of individuals and society at large. Specific measures to be possibly taken by Member States as positive actions to overcome disadvantages encountered by women entrepreneurs should not lead to distortion of competition, notably when it is about enterprise policy and companies support.

Article 6: Social protection for assisting spouses

Considering that the impact assessment showed that there were some countries with no minimum social security coverage possibilities for assisting spouses, it is clearly justified and necessary to give the choice to assisting spouses to request the same level of protection as self-employed workers and under the same conditions including also the level of contributions. It is even more justified as generally such a decision should be the result of a joint agreement between the assisting spouse and the entrepreneur taking fully into account economic and social considerations.

Article 7: Maternity leave

The question of maternity leave protection is an important one for self-employed and assisting spouses. It goes without saying that female self-employed workers and assisting spouses should, at their request, be entitled to maternity leave protection.

However leaving the choice of maternity protection to the self-employed and the assisting spouses is essential because it perfectly respects the choice of autonomy and independence which by definition characterise the statute of the self-employed

At the same time the self employed activity is very specific. Contrary to what is foreseen for employees, in most cases self-employed cannot afford to interrupt their professional activities for such a long time as foreseen in the maternity protection for employees.

Creating an obligation for self-employed women to leave for a longer period will not be compatible with a good functioning of their business and very often will go against the viability of their enterprise. Consequently the present directive should avoid any direct reference to the maternity leave directive 92/85/EC.

Therefore UEAPME considers it inadequate to try and align the self-employed and assisting spouses maternity leave system with the one for employees.

Member States should foresee a specific system of maternity protection for self-employed in close cooperation with the professional organisations representing this category of workers.

For assisting spouses in those countries where no maternity protection exists, Member States should foresee adapted modalities for such a maternity leave protection.

Furthermore Member States should not only consider an allowance payment, but also the provision of assistance in form of a temporary replacement. For female self-employed and assisting spouses support replacement schemes are equally important as financial allowances. The directive should avoid the establishment of any priority order of these benefits. In addition the level of adequate allowance should be decided at national level taking into account the objective difference between self employed and assisting spouses.

More widely all Member States should improve accessible and affordable childcare to contribute to improving reconciliation measures for self-employed and assisting spouses in the same way it is done for other workers.

Article 10: Equality bodies

The Directive leaves open whether Member States have one or more bodies at national level promoting equal treatment. However, in practice it should really be encouraged to have one central body set-up, both in the interest of avoiding the duplication of structures and tasks and to ensure a more coordinated approach regarding cases of multiple discriminations. It is important that the equality bodies should cover the broad range of questions concerning equality, be it for the self-employed, assisting spouses or simply dependent workers.

Article 11: Dissemination of information

The need for further information and awareness-raising cannot be emphasised strongly enough. Regardless of existing and further legislative initiatives there must be more easily accessible and available information. To that aim Member States should take full advantage of the already existing networks of professional organisations representing self-employed and assisting spouses to ensure an optimal efficiency for their information efforts.

III - Additional comments

Besides the legal dimension of the directive, European Commission and Member States should undertake further actions to remove identified remaining obstacles hindering women's access to self-employment such as:

- Exchange of good practices between the Member States

It could be of great help to national decision makers in order to take the right measures supporting the development of self-employed activities. This also involves in practice how to balance these different aspects of social security systems, through e.g. better incentives and administration, securing sustainable outcomes.

- Improving access to finance, developing a spirit of entrepreneurship, creating a more entrepreneurship friendly regulatory environment, reducing red tape, promoting innovation, etc as it is clearly stated in the current Commission's proposal for a Small Business Act.

- Further exploring practical replacement measures for female self-employed and assisting spouses on maternity leave.

III - Conclusions

- 1 UEAPME takes note of the new directive proposed by the Commission, respecting the autonomy of self employed and assisting spouses for social security coverage while at the same time supporting the equal opportunity principle.
- 2 UEAPME would like to address a clear signal about the maternity leave clause. Any reference and alignment to the Directive 92/85 should be avoided while maintaining the principle for maternity leave protection for self-employed and assisting spouses.

- 3 UEAPME points out that this new European directive will only work if it is properly implemented helping to create more supportive conditions according to the national situation.
- 4 Besides the directive UEAPME is in favour of further enhancing non legislative supportive measures such as exchange of good practices and dissemination of information for self-employed female entrepreneurs and assisting spouses.
- 5 For its part the Commission should contribute to increasing the information and support awareness campaigns at European and Member State level with the goal of promoting female entrepreneurship.
- 6 More widely all Member States should improve accessibility and affordability of childcare to contribute to improving reconciliation measures.

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