Equality initiatives of the European Commission

Current reflections on EU Anti-Discrimination Law
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Outline

1 - Proposal to amend the Maternity Directive
2 - Proposal on an Equal Treatment Directive
3 - Proposal on Women on Boards Directive
1 - Proposal to amend the Maternity Directive

- Presented in October 2008
- Amends the current Maternity leave Directive (Directive 92/85/EEC)
- Improves the protection to pregnant workers and workers who have recently given birth by a longer leave period

Content of the proposal

- Extension of maternity leave from 14 to 18 weeks (at least 6 weeks after birth) and longer for specific cases (premature birth, disability, multiple birth, etc.)
- Dismissal duly substantiated (on the request of the worker) up to six month after end of maternity leave
- Adequate allowance: sick pay (as currently). But MS are recommended to pay full salary
- Workers may request changes to their working hours and employers are obliged to consider such requests
Enforcement

- Burden of proof
- Victimisation
- Penalties

State of play

Negotiations in the Council
- Qualified majority rule (ordinary legislative procedure - Art. 294 TFEU)
- Blocking majority in Council
- MS cannot accept EP's first reading position

European Parliament
- Strong support
- In first reading on 20 October 2010 the EP proposed to grant 20 weeks of fully paid maternity leave and a fully paid paternity leave of 2 weeks
2 - Proposal on an Equal Treatment Directive

- Presented in July 2008

- **Prohibits discrimination** on grounds of disability, age, religion & belief and sexual orientation **outside employment**:
  - Social protection (social security, healthcare)
  - Education
  - Access to goods and services, available to the public and offered outside the context of private and family life

Exceptions

- Differential treatment on ground of **age** \(\rightarrow\) if objectively justified by a legitimate aim and if means are appropriate and necessary

- Age and/or disability can be taken into account in **financial services** (insurance) if it is a key factor in determining risk
Disability issues

- Obligation to ensure **accessibility** for persons with disabilities **by anticipation**
  - Unless it imposes a disproportionate burden

- Obligation to provide **reasonable accommodation** (individually designed measures)
  - Unless it imposes a disproportionate burden

Areas not covered by the Directive

- Family law (including marital status and adoption)
- Reproductive rights
- The organisation of MS social protection systems
- The content of teaching, organisation of educational systems, including special needs education
- The status and activities of churches + secularity of the State
- Nationality
Remedies and enforcement

- Defense of rights
- Burden of proof
- Equality body

State of play

Negotiations in the Council
- Unanimity rule
- Support by majority of MS

European Parliament
- Consent (special legislative procedure – Art. 289(2) TFEU)
- Strong support
- Supportive vote in plenary April 2009
3 - Proposal on women on boards Directive

• Proposed on 14 November 2012

• Aims at improving the gender balance among non-executive directors of listed companies

• 40% target for the underrepresented sex

• By 1 January 2020 (2018 for public undertakings)

Why this proposal?
Scope

- EU companies listed on EU stock exchanges
- Except SMEs
- Privately or publicly owned
- 5000 companies involved

Non-executive directors

- Preference rule → Kick in only if 40% target not achieved
- Qualifications remain decisive
- Appointment procedure
  - Criteria: pre-established, clear, neutrally formulated and unambiguous
  - Comparative analysis of qualifications
  - Preference rule in case of equal qualification
  - Disclosure of assessment and burden of proof
Executive directors

- No pre-established objective and no procedural obligations related to appointments
- Companies have to set *individual targets (flexi quota)*

Reporting and monitoring

**Reporting by companies:**
- yearly and published on the company's website
- both on executives and non-executives
- explanation of the reasons for not reaching the objectives and measures planned

**Monitoring and reporting by Member States:**
- every two years
- information about measures taken

**Monitoring and reporting by the Commission:**
- report on the application of the Directive every two years
- assessment if need to extend the duration of the Directive
Sanctions

- effective, proportionate and dissuasive
- kick in in case of failing to implement obligations under Directive:
  - nonexecutives: non-compliance with procedural obligations (not for not reaching 40%)
  - executives: non-compliance with obligation to set individual objectives

State of play

**Negotiations in the Council**
- QMV rule
- MS are divided, some are still undecided
- Blocking minority

**European Parliament**
- Ordinary legislative procedure
- Broad cross-party support for the proposal
- The Plenary’s adoption of the first reading position is envisaged for November 2013
Thank you for your attention!

For further information:
http://ec.europa.eu/justice/discrimination/index_en.htm