



Equality initiatives of the European Commission

Current reflections on EU Anti-Discrimination Law
11-12 November 2013 - Trier

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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** → 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

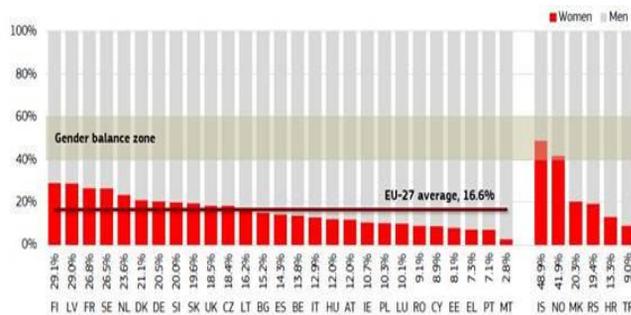
- Consent (special legislative procedure – Art. 289(2) TFEU)
- Strong support
- Supportive vote in plenary April 2009

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