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accompanying 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 Directive 86/613/EEC**

Summary of the Impact Assessment Report

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Disclaimer

This Summary of the Impact Assessment Report commits only the Commission's departments involved in its preparation; it has been prepared as a basis for comment and does not prejudice the final form of any decision to be taken by the Commission.

1. INTRODUCTION

In its report¹ on the implementation of Directive 86/613/EEC, the Commission concluded that the practical result of the implementation of the Directive was ‘not entirely satisfactory when measured against the prime objectives of the Directive, which was a general improvement in the status of assisting spouses’.

In its Roadmap² for equality between women and men, the Commission announced that in order to improve governance of gender equality, it would ‘review the existing EU gender equality legislation not included in the 2005 recast exercise (...) with a view to updating, modernising and recasting where necessary’. Directive 86/613/EEC was not included in the recasting exercise.

The European Parliament has consistently called on the Commission to review the Directive³, in particular to improve the situation of assisting spouses in agriculture.

2. EVIDENCE AND CONSULTATION

The Commission consulted the European social partners, the Member States, the Advisory Committee on Equal Opportunities for Women and Men (composed of representatives of Member States, European social partners and NGOs) and relevant civil society organisations.

A specific study was commissioned to provide an overview of the situation in Member States and assess the costs and benefits of different policy options. A study commissioned by DG ENTR was also extensively used in the preparation of the Impact Assessment Report.

A first draft of the impact assessment report was submitted to the Impact Assessment Board (IAB) and was analysed at the Board meeting of 9 July 2008. Given the nature of its recommendations, the IAB asked to examine and issue an opinion on a revised impact assessment report.

The second opinion of the IAB was delivered in 26 August 2008. The final version of the Impact Assessment takes into account the recommendations made by the IAB in its second opinion.

¹ Report from the Commission on the implementation of Council Directive of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood - COM(94) 163.

² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions *A Roadmap for equality between women and men* - COM(2006) 92.

³ See the report adopted by the European Parliament on 12 March 2008 on the situation of women in rural areas of the EU (2007/2117(INI), Rapporteur Christa Klass, A6-0031/2008.

3. PROBLEM DEFINITION

3.1. Self-employed

Self-employment is a significant — albeit minority — form of employment in Europe: in 2005, the self-employed represented 16% of the active population in the EU25.

In 2005, self-employed women in industry and market services in the EU as a whole accounted for **12%** of the total number of women working in these sectors, which is considerably lower than the percentage of self-employed men (**19%**). Moreover **only one-third of entrepreneurs are female**.

The reasons given by men and women for taking up self-employment also differ: women are keener to accept self-employment to avoid unemployment or to better reconcile professional and family and private life.

Directive 86/613/EEC fails to tackle those issues by not giving enforceable rights to self-employed women, in particular in the case of maternity, thus reinforcing the gender gap. The envisaged initiative, by giving self-employed women an entitlement to a period of paid maternity leave will tackle one of the obstacles identified to women's access to self-employment.

3.2. Assisting spouses

At EU level, Directive 86/613/EEC is the only text that covers ‘assisting spouses’, defined as the spouses of self-employed workers *‘not being employees or partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks’*.

Around 11% of the self-employed rely on the assistance of their spouses to manage the family business. The numbers of hours worked can be significant, with one third of assisting spouses working more than 25 hours per week. Nevertheless, in most Member States, their contribution to the family business is not recognised, as they are not covered by social security systems. In consequence, assisting spouses are totally dependent on their self-employed partner and at a high risk of poverty in the event of divorce, death of the partner or bankruptcy.

By not providing a legal status for assisting spouses or for social security protection in their own name, Directive 86/613/EEC fails to tackle this problem.

4. POLICY OPTIONS

The objectives of this initiative (mainly to increase gender equality for self-employed workers) could be addressed by several policy options. The Impact Assessment Report has identified three policy options: no new action at EU level, adoption of non-binding measures, and adoption of a new Directive. To better assess the impact of the latter option, it was divided into the following sub-options: improving protection in the event of maternity, providing leave to care for family members, giving assisting spouses a legal status and social protection in their own name and giving national equality bodies competence in this field.

5. ASSESSMENT OF THE OPTIONS

5.1. No new action at EU level

This option means that the current situation would continue to apply. It therefore implies no new costs for the Member States or the EU, since the current situation would be maintained.

The economic impact of this option would be indirect. As there would be no improvement in the situation, there would be an opportunity cost equal to the benefits of the other options. In other words, if another option involving, say, a legislative proposal would have had a positive impact in terms of increasing women's participation in self-employment, the benefits forgone as a result of choosing this 'no action' option are its opportunity cost.

In addition, in certain Member States, assisting spouses would be left with no social protection in the event of divorce or the death or bankruptcy of the self-employed partner.

5.2. Non-binding measures

A large number of non-binding initiatives have been developed at different levels while others could be in the next future. These measures have certainly yielded positive impacts. In future, permission to grant State aid to businesses set up by women could have a real impact, since access to finance has been identified as one of the obstacles to women's entrepreneurship.

Non-binding measures are already in force and can be extended independently of the current exercise. They cannot, however, provide an alternative to amending the Directive if improving the legal situation of the self-employed and assisting spouses at EU level is considered necessary.

Better enforcement of the provisions of the Directive would be ineffective in view of their largely non-binding nature.

5.3. A directive amending Directive 86/613/EEC: improving protection in the case of maternity

The assessment of the costs of this option is based on the period of maternity leave provided for in Directive 92/85/EEC⁴, i.e. 14 weeks.

In 19 Member States, self-employed women are already granted a maternity leave of 14 weeks. For those Member States, this option would not entail additional costs.

The costs for the remaining Member States are shown in the table below. It has to be noted that the fourth column of the table below shows the increase in the contributions by self-employed workers to social security assuming that the costs would be borne entirely by the self-employed, although this is not the case in practice. These are therefore the maximal costs for self-employed workers, since part of the financing comes from other sources. The real costs would be lower in practice.

⁴ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

Member State	Absolute costs	Percentage of overall social security expenditure	Maximum percentage increase in contributions
Austria	2 561 310	0.00363%	0.10%
Belgium	33 355 296	0.03721%	1.27%
Greece	35 412 300	0.073798%	0.72%
Lithuania	1 284 657	0.04691%	0.05%
France	136 366 440	0.0251877%	0.97%
Bulgaria	12 561 231	0.35760%	1.75%
Czech Republic	21 116 166	0.055016%	0.75%
Romania (farmers only)	1 387 955	0.01232%	0.26%

Source: EPEC study

5.4. A directive amending Directive 86/613/EEC: providing leave to care for family members

In 15 Member States, the self-employed are entitled to paid leave in order to care for family members, as part of either mandatory or voluntary social insurance. In most Member States, however, data on the numbers of self-employed making use of this benefit are not collected on a routine basis.

In the absence of actual data, for the calculation of the costs of this option, some assumptions were made about the numbers of self-employed who would take up this benefit (2%, 4%, and 6%), the rates of payment (80%, 100%), and the total number of days of leave per year (5). The costs differ greatly according to the assumption, from 90,409,168 € to 339,034,380 €.

5.5. A directive amending Directive 86/613/EEC: giving assisting spouses a legal status and social protection in their own name

In 19 Member States, the contribution of assisting spouses to the family business is not recognised. In some, however, an assisting spouse can join a voluntary social security scheme and hence be entitled to certain benefits. However, such provision for joining voluntary schemes does not ensure universal coverage of assisting spouses.

The costs of this policy option to Member States, estimated to be around €2.9 billion p.a. in 19 Member States, represent around 0.113% of current social security expenditure in these Member States (around €2.5 trillion in 2005, Eurostat).

In order to assess the potential costs for self-employed workers, the fourth column of the table below shows the increase in the contributions of self-employed workers to social security

assuming that the costs would be borne entirely by self-employed workers in addition to the contributions currently paid, although this is not the case in practice since part of the financing of social security comes from other sources. The real costs would therefore be lower in practice.

Member State	Absolute costs	Percentage of overall social security expenditure	Maximum percentage increase in contributions
Austria	98 098 627	0.138925%	1.4%
Bulgaria	5 230 285	0.148901%	0.3%
Czech Republic	14 186 480	0.073923%	0.3%
Estonia	163 543	0.011648%	0.1%
France	163 354 610	0.030162%	1.2%
Germany	583 506 135	0.088428%	1.9%
Greece	248 256 554	0.517357%	5.5%
Ireland	10 511 179	0.035679%	0.4%
Italy	954 518 700	0.253841%	2.3%
Latvia	7 129 385	0.442489%	0.9%
Lithuania	6 856 055	0.250331%	1.8%
Malta	n/a	n/a	n/a
Poland	404 147 461	0.842119%	2.6%
Portugal	n/a	n/a	n/a
Romania	74 614 680	0.662405%	0.7%
Slovakia	858 511	0.013339%	0.1%
Slovenia	n/a	n/a	n/a
Spain*	189 306 420	0.099997%	3.8%
United Kingdom	216 596 212	0.044711%	0.3%

* In Spain, Law 20/2007 of 11 July 2007 gives assisting spouses the same level of protection as self-employed workers. This option would therefore have no impact in view of the change in national law.

Source: EPEC study

5.6. A directive amending Directive 86/613/EEC to give competence to national equality bodies to deal with the self-employed and assisting spouses

In all Member States, one or more bodies have been set up in accordance with Directives 2000/43/EC, 2002/73/EC and 2004/113/EC. Such national bodies are responsible for providing independent assistance to victims of discrimination in pressing their complaints, conducting independent surveys, publishing independent reports and making recommendations on issues related to discrimination.

Giving the national equality bodies competence to deal with both the self-employed and assisting spouses would not impose any significant administrative burden on Member States. First, these bodies already partly cover these groups (the self-employed), and second, the limited numbers of assisting spouses compared with the total number of persons that national equality bodies may have to handle (all potential victims of discrimination based on race, all employees, all vocational trainees, all providers of goods and services, and all users of goods and services). Furthermore, the possibility to lodge complaints with national equality bodies and benefit from their assistance could very likely reduce substantially the cases of litigation coming before the national courts.

6. CONCLUSIONS

In conclusion, in order to meet the objectives as far as possible, and taking into account the cost-effectiveness of the options, the preferred option is a combination of options 5.1, 5.3, 5.5, and 5.6, i.e. continuation of the non-binding measures that are in place or envisaged, combined with a proposal for a directive amending Directive 86/613/EEC to provide for maternity leave for self-employed women, to give assisting spouses social security coverage comparable that that enjoyed by the self-employed and to give competence to the national Equality Bodies in the matters covered by the Directive.

In addition to the non-binding measures, the preferred option therefore consists of a proposal for a directive amending Directive 86/613/EEC and containing the following elements:

- the right for self-employed women to benefit from maternity leave, the length of which would be 14 weeks maximum, with 2 weeks mandatory leave;
- the right of assisting spouses to be covered by the same social security provisions applicable to self-employed workers;
- the competence of national equality bodies in the area covered by the Directive.