



Brussels, 20.12.2019
SWD(2019) 451 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE EVALUATION

of the

Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security

{SWD(2019) 450 final}

EXECUTIVE SUMMARY

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ('the Directive') aims at creating equal opportunities of working women and men by ensuring their equal treatment in statutory social security systems across the EU and prohibiting direct and indirect discrimination.

The Directive has been implemented in Member States through different approaches and over a period spanning 40 years. Despite these different approaches, the principle of equal treatment for men and women in matters of statutory social security is now well established in the national legislation of all Member States. At the time of its adoption and during the subsequent periods of EU enlargement, the Directive has played a key role as a driving force and catalyst to implement the principles of equal treatment and gender equality in matters of statutory social security across the EU.

The Directive prescribes minimum requirements and has been flexible enough to be adapted to the specific contexts and social security systems of the Member States. Although the Directive reflects a compromise between Member States at the time of its adoption in 1978 which stayed below the initial aim of the Commission reflected in the 1976 proposal, the evaluation confirms that the Directive is generally relevant, satisfactorily effective, still has EU added-value and is broadly fit for its purpose.

The findings of the evaluation suggest that, even if quantitative evidence is difficult to be obtained, the benefits generated by the Directive may be considered to outweigh the costs. The Directive, by ensuring equal treatment in statutory social security for women and men, in particular by prohibiting direct and indirect discrimination especially as regards marital or family status, has contributed to the gradual individualisation of citizens' social security rights. As such, the Directive has ensured economic independence to women and has generated a number of positive economic effects such as contributing to the financial sustainability of national social security systems and to reducing women's risk of poverty or social exclusion. As regards costs resulting from the Directive's application, the evaluation found that the costs entailed by the Directive have been quite marginal, especially when compared to the increase in societal well-being and financial benefits accrued.

On the other hand, the evaluation has brought to light a number of gaps and shortcomings in the scope and operation of the Directive. Despite the evolution towards increased gender equality in European society, the full implementation of the Directive remains hindered by a cultural pattern characterised by persisting stereotypes about the role of women in society, especially as regards caring activities and work patterns. Furthermore, since the introduction of the Directive, the economic and social context has evolved, and some provisions that were intended to improve women's position in society (in particular, those allowing Member States to derogate from the principle of equal treatment listed in Article 7(1) of the Directive) are

now considered to be outdated and have even proven to be counterproductive in terms of attaining equal treatment in the area of statutory social security. Finally, although the practice of invoking derogations set out in the Directive (its Article 7 (1)) is diminishing across the EU and the Court of Justice of the EU made clear that they are temporary, there are new occurrences in which some Member States newly invoke different treatment in statutory social security matters.

The evaluation therefore shows a number of aspects, which could be considered for the future so that EU intervention in social security would be more effective. The evaluators suggest that such improvements in the Directive could consist, in particular, of an enlargement of the scope of the Directive (in particular survivorship, family and social assistance benefits), to be attained by repealing exclusions and derogations, and by clarifying that once the way towards full equalisation (in particular as regards the retirement age) has been taken, backwards steps are precluded (more in Section 6). The introduction of such clarification would secure gender equality in acquired rights and prevent ever possible backlashes against gender equality. Furthermore, it is suggested to consider a codification of the relevant CJEU case law, in particular, regarding the personal and material scope of the Directive, and the explicit prohibition of the use of gender-specific actuarial factors. This would ensure better legal clarity and correct implementation of the Directive.

Monitoring and enforcing the effective implementation of equal treatment between men and women at national level is a difficult and yet crucial task to ensure full effectiveness of the Directive's provisions. Therefore, the evaluation refers to an active participation of national equality bodies in both the monitoring of the application of national legislation and the identification of potential sources of indirect discrimination to help in addressing the discrimination based on sex in matters covered by the Directive.