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COUNCIL DIRECTIVE

of 24 July 1986

on the implementation of the principle of equal treatment for men and women in occupational social security schemes

(86/378/EEC)

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►**C1** Corrigendum, OJ L 283, 4.10.1986, p. 27 (86/378/EEC)

►**C2** Corrigendum, OJ L 241, 3.9.1997, p. 8 (86/378/EEC)

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COUNCIL DIRECTIVE

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on the implementation of the principle of equal treatment for men and women in occupational social security schemes

(86/378/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas the Treaty provides that each Member State shall ensure the application of the principle that men and women should receive equal pay for equal work; whereas 'pay' should be taken to mean the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly of (SIC! or) indirectly, from his employer in respect of his employment;

Whereas, although the principle of equal pay does indeed apply directly in cases where discrimination can be determined solely on the basis of the criteria of equal treatment and equal pay, there are also situations in which implementation of this principle implies the adoption of additional measures which more clearly define its scope;

Whereas Article 1 (2) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [4] provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application; whereas the Council adopted to this end 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 [5];

Whereas Article 3 (3) of Directive 79/7/EEC provides that, with a view to ensuring implementation of the principle of equal treatment in occupational schemes, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application;

Whereas the principle of equal treatment should be implemented in occupational social security schemes which provide protection against the risks specified in Article 3 (1) of Directive 79/7/EEC as well as those which provide employees with any other consideration in cash or in kind within the meaning of the Treaty;

Whereas implementation of the principle of equal treatment does not prejudice the provisions relating to the protection of women by reason of maternity,

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[1] OJ No C 134, 21. 5. 1983, p. 7.
[2] OJ No C 117, 30. 4. 1984, p. 169.
[3] OJ No C 35, 9. 2. 1984, p. 7.
[4] OJ No L 39, 14. 2. 1976, p. 40.
[5] OJ No L 6, 10. 1. 1979, p. 24.

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HAS ADOPTED THIS DIRECTIVE:

Article 1

The object of this Directive is to implement, in occupational social security schemes, the principle of equal treatment for men and women, hereinafter referred to as 'the principle of equal treatment'.

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Article 2

1. 'Occupational social security schemes' means schemes not governed by Directive 79/7/EEC whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area (SIC! an area) of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.

2. This Directive does not apply to:

(a) individual contracts for self-employed workers;

(b) schemes for self-employed workers having only one member;

(c) insurance contracts to which the employer is not a party, in the case of salaried workers;

(d) optional provisions of occupational schemes offered to participants individually to guarantee them:

— either additional benefits, or

— a choice of date on which the normal benefits for self-employed workers will start, or a choice between several benefits;

(e) occupational schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.

3. This Directive does not preclude an employer granting to persons who have already reached the retirement age for the purposes of granting a pension by virtue of an occupational scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.

Article 3

This Directive shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, to retired and disabled workers and to those claiming under them, in accordance with national law and/or practice.

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Article 4

This Directive shall apply to:

(a) occupational schemes which provide protection against the following risks:

— sickness,

— invalidity,

— old age, including early retirement,

— industrial accidents and occupational diseases,

— unemployment;

(b) occupational schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances, if such benefits are accorded to employed persons and

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thus constitute a consideration paid by the employer to the worker by reason of the latter's employment.

Article 5

1. Unter (SIC! Under) the conditions laid down in the following provisions, the principle of equal treatment implies that there shall be no discrimination on the basis of sex, either directly or indirectly, by reference in particular to marital or family status, especially as regards:

— the scope of the schemes and the conditions of access to them;

— the obligation to contribute and the calculation of contributions;

— the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

2. The principle of equal treatment shall not prejudice the provisions relating to the protection of women by reason of maternity.

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Article 6

1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, in particular by reference to marital or family status, for:

(a) determining the persons who may participate in an occupational scheme;

(b) fixing the compulsory or optional nature of participation in an occupational scheme;

(c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;

(d) laying down different rules, except as provided for in points (h) and (i), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

(e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;

(f) fixing different retirement ages;

(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;

(h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes.

In the case of funded defined-benefit schemes, certain elements (examples of which are annexed) may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;

(i) setting different levels for workers' contributions;

setting different levels for employers' contributions, except:

— in the case of defined-contribution schemes if the aim is to equalize the amount of the final benefits or to make them more nearly equal for both sexes,

— in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined,

(j) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (i), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

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2. Where the granting of benefits within the scope of this Directive is left to the discretion of the scheme's management bodies, the latter must comply with the principle of equal treatment.

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Article 7

Member States shall take all necessary steps to ensure that:

(a) provisions contrary to the principle of equal treatment in legally compulsory collective agreements, staff rules of undertakings or any other arrangements relating to occupational schemes are null and void, or may be declared null and void or amended;

(b) schemes containing such provisions may not be approved or extended by administrative measures.

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Article 8

1. Member States shall take the necessary steps to ensure that the provisions of occupational schemes for self-employed workers contrary to the principle of equal treatment are revised with effect from 1 January 1993 at the latest.

2. This Directive shall not preclude rights and obligations relating to a period of membership of an occupational scheme for self-employed workers prior to revision of that scheme from remaining subject to the provisions of the scheme in force during that period.

Article 9

As regards schemes for self-employed workers, Member States may defer compulsory application of the principle of equal treatment with regard to:

(a) determination of pensionable age for the granting of old-age or retirement pensions, and the possible implications for other benefits:

— either until the date on which such equality is achieved in statutory schemes,

— or, at the latest, until such equality is prescribed by a directive;

(b) survivors' pensions until Community law establishes the principle of equal treatment in statutory social security schemes in that regard;

(c) the application of the first subparagraph of point (i) of Article 6 (1) to take account of the different actuarial calculation factors, at the latest until 1 January 1999.

Article 9a

Where men and women may claim a flexible pensionable age under the same conditions, this shall not be deemed to be incompatible with this Directive.

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Article 10

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves injured by failure to apply the principle of equal treatment to pursue their claims before the courts, possibly after bringing the matters before other competent authorities.

Article 11

Member States shall take all the necessary steps to protect worker against dismissal where this constitutes a response on the part of the employer to a complaint made at undertaking level or to the institution

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of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 12

1. Member States shall bring into force such laws, regulations and administrative provisions as are necessary in order to comply with this Directive at the latest three years after notification thereof [1]. They shall immediately inform the Commission thereof.

2. Member States shall communicate to the Commission at the latest five years after notification of this Directive all information necessary to enable the Commission to draw up a report on the application of this Directive for submission to the Council.

Article 13

This Directive is addressed to the Member States.

[1] This Directive was notified to the Member States on 30 July 1986.

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ANNEX

Examples of elements which may be unequal, in respect of funded defined-benefit schemes, as referred to in Article 6 (h):

— conversion into a capital sum of part of a periodic pension,

— transfer of pension rights,

— a reversionary pension payable to a dependant in return for the surrender of part of a pension,

— a reduced pension where the worker opts to take early retirement.