


# Procedure file

Basic information		
CNS - Consultation procedure Directive	1995/0117(CNS)	Procedure completed
Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)		
Subject 4.10.04 Gender equality 4.10.10 Social protection, social security		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>FEMM</b> Women's Rights	PSE <a href="#">TORRES MARQUES Helena</a>	27/06/1995
Council of the European Union	Council configuration	Meeting	Date
	Fisheries	<a href="#">1983</a>	20/12/1996
	Social Affairs	<a href="#">1974</a>	02/12/1996

Key events			
16/05/1995	Legislative proposal published	COM(1995)0186	Summary
13/10/1995	Committee referral announced in Parliament		
23/07/1996	Vote in committee		Summary
23/07/1996	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0256/1996</a>	
17/09/1996	Debate in Parliament		
18/09/1996	Decision by Parliament	T4-0460/1996	Summary
12/11/1996	Decision by Parliament	T4-0573/1996	Summary
19/11/1996	Modified legislative proposal published	COM(1996)0605	Summary
20/12/1996	Act adopted by Council after consultation of Parliament		
20/12/1996	End of procedure in Parliament		
17/02/1997	Final act published in Official Journal		

Technical information	
Procedure reference	1995/0117(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 100; Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	FEMM/4/07151

Documentation gateway					
Legislative proposal		<a href="#">COM(1995)0186</a> <a href="#">OJ C 218 23.08.1995, p. 0005</a>	16/05/1995	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES1175/1995</a> <a href="#">OJ C 018 22.01.1996, p. 0132</a>	26/10/1995	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0256/1996</a> <a href="#">OJ C 277 23.09.1996, p. 0005</a>	23/07/1996	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		T4-0460/1996 <a href="#">OJ C 320 28.10.1996, p. 0065-0082</a>	18/09/1996	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T4-0573/1996 <a href="#">OJ C 362 02.12.1996, p. 0020-0028</a>	12/11/1996	EP	Summary
Modified legislative proposal		<a href="#">COM(1996)0605</a> <a href="#">OJ C 379 14.12.1996, p. 0013</a>	19/11/1996	EC	Summary

Additional information	
European Commission	<a href="#">EUR-Lex</a>

Final act
<a href="#">Directive 1996/97</a> <a href="#">OJ L 046 17.02.1997, p. 0020</a> Summary

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

**OBJECTIVE:** to bring Directive 86/378/EEC into line with Article 119 of the Treaty as interpreted by the Court of Justice in its Barber judgment (17 May 1990), which acknowledges that all forms of occupational pension and, therefore, all forms of benefits under occupational social security schemes for employees, constitute an element of pay within the meaning of Article 119 of the TEU, which states that men and women should receive equal pay for equal work. **SUBSTANCE:** The amendments proposed by the Commission solely transpose the case law and apply to this text the Court of Justice's interpretation of Article 119. This article, which has direct application, does not authorise any derogation to the principle of equal treatment. As a result, certain provisions of Directive 86/378/EEC which contained derogations to the principle of equal treatment, particularly with regard to pensionable age and benefits for survivors, become obsolete for employees. Schemes for workers must thus guarantee the principle of equal treatment with regard to the age at which old-age or retirement pensions are granted as well as survivors' pensions and workers' contributions. Article 119 does not apply to self-employed workers, for whom Directive 86/378/EEC is therefore still valid. The amendments to the directive concern the following points in particular: - definition of occupational social security schemes: schemes which are based on the working relationship between the employee and the employer with the exception of so-called statutory schemes, and insurance contracts and private pension schemes, to which the employer is not party; - extension of the scope of the directive to include members of workers' families and those claiming under them; - consideration of the provisions contrary to the principle of equal treatment to determine those that are based on sex, either directly or indirectly, by reference to marital or family status (the directive stipulates, in particular, that workers' contributions must be equal, as should the benefits paid out by occupational schemes with the exception of defined-contribution schemes, and employers' contributions except in specific cases laid down by the directive); - the derogations provided for in Directive 86/378/EEC shall only apply to self-employed workers. ?

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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The ESC welcomed the proposed amendments, subject to the following comments. The ESC acknowledged that the text made for greater legal certainty and clarity and that it was likely to ensure that national authorities were not confused on a number of points. It also acknowledged that the proposed text would help to ensure greater fairness and would dispense with the need for numerous appeals and lawsuits. - The ESC noted that the proposal only concerned schemes for particular categories of workers (occupational schemes). It called for a clear definition of occupational schemes in relation to statutory schemes, having regard to Article 119 as interpreted by the Court. - The ESC approved the proposed amendment to Article 3 of Directive 86/378/EEC under which workers' legal successors were to be included in the scope of the new directive. It noted that it was to be obligatory for workers' contributions to be equal, whereas employers' contributions were to be the subject of negotiations between the employer and his workers. - The ESC had extremely serious reservations about Article 2 of the proposed directive, which defined the procedures for implementing the new text. It felt in particular that the provisions regarding retroactivity were cumbersome and complicated. - The ESC urged that consideration be given to equal treatment in the field of social security in all ongoing or future work on part-time work, youth unemployment, new forms of work and social protection provisions.

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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In approving several amendments to a Commission proposal to amend a 1986 directive on equal treatment for men and women in supplementary or occupational social security schemes, under the consultation procedure, the women's rights committee is anxious to see the principle of equal treatment upheld. In particular the amendments are designed to ensure that working women do not suffer. For example, one amendment recommends the introduction of a flexible retirement age and making it possible to combine a pension with a top-up from other sources. Another seeks to introduce identical arrangements for men and women and avoid different levels of contributions based on such factors as life expectancy while a third is designed to extend the scope of the directive and in particular the social benefits element to part-time and 'atypical workers'. ?

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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At the request of its rapporteur, Parliament referred back to committee the report by Mrs Helena TORRES MARQUES (PSE, P) on the amendment of the 1986 Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Previously, Parliament had adopted amendments aimed at strengthening the protection of employed women, and in particular: - more flexible pension arrangements to enable variable retirement age and the combination of retirement and working income; - if the setting of an identical age means that, for workers of a specified sex, the age must be lowered or raised, provision must be made for gradual implementation; - the same scheme for men and women so as to avoid different levels of contributions; - enlargement of the scope of the Directive to include workers employed under atypical contracts, including part-time workers, so that they can benefit from social security; - the possibility, for all persons who consider themselves injured by failure to apply the principle of equal treatment, to pursue their claims before the courts, both against the employer and against the administrator of the sectoral scheme. ?

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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In adopting the report by Mrs Helena TORRES MARQUES (PSE, P), Parliament approved the amendment of the 1986 Directive concerning equal treatment for men and women in relation to social security plus amendments adopted at the Plenary of 18 September 1996. Parliament wishes to strengthen the protection of employed women and calls, in particular, for the following: - more flexible pension arrangements to enable variable retirement age and the combination of retirement and working income; - if the setting of an identical age means that, for workers of a specified sex, the age must be lowered or raised, provision must be made for gradual implementation; - the same scheme for men and women so as to avoid different levels of contributions; - enlargement of the scope of the Directive to include workers employed under atypical contracts, including part-time workers, so that they can benefit from social security; - the possibility, for all persons who consider themselves injured by failure to apply the principle of equal treatment, to pursue their claims before the courts, both against the employer and against the administrator of the sectoral scheme. ?

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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In its modified proposal the Commission could not accept all the amendments adopted by Parliament since most went beyond the Court's case-law (especially those concerning unisex actuarial calculation for employers' contributions). However, it accepted certain amendments, relating principally to the explicit inclusion of part-time workers ('atypical work contract') in the scope of the Directive. It also accepted: - an amendment relating to periods of leave (it concerns discrimination regarding the acquisition of rights during periods of any kind of leave and not only in cases of maternity leave or leave for family reasons); - an amendment stipulating that men and women may claim a flexible

pensionable age under the same conditions; - an amendment seeking to add periods of paid leave to the periods of employment covered by the Directive. This is added in order to specify that benefits derived from periods of paid leave should be covered as well as benefits derived from periods of actual work. ?

## Equal treatment for men and women: occupational social security schemes (amend. Direct. 86/378/EEC)

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**OBJECTIVE:** The aim of the directive is to bring Directive 86/378/EEC into line with Article 119 of the Treaty as interpreted by the Court of Justice of the EC in its judgment of 17 May 1990 in the case of Barber, which recognizes that all forms of occupational pension and, therefore, all forms of benefit provided by occupational social security schemes constitute an element of pay within the meaning of Article 119 of the Treaty, which requires men and women to receive equal pay for equal work. **COMMUNITY MEASURE:** Council Directive 96/97/EC amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. **SUBSTANCE:** Under Article 119 of the Treaty, each Member State should ensure the application of the principle that men and women should receive equal pay for equal work. 'Pay' should be taken to mean the wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, from his employer in respect of his employment. Certain provisions of Directive 86/378/EEC provide for derogation from the principle of equal treatment, particularly with regard to retirement age, survivors' benefits and workers' contributions. According to the Barber judgment of 17 May 1990 (Barber v. Royal Exchange Assurance), all forms of occupational pension constitute an element of pay within the meaning of Article 119. Consequently, Directive 86/378/EEC must be amended to take account of that judgment. The aim of the amendments is to: - redefine the occupational social security schemes in question as schemes whose purpose is to supplement or replace the benefits provided by statutory social security schemes, excluding: - statutory social schemes themselves, - insurance and pension contracts taken out without any involvement of the employer, - occupational schemes financed by contributions paid by workers on a voluntary basis. The directive does not, however, preclude an employer granting to persons who have already reached the retirement age under an occupational scheme (but who have not yet reached the statutory retirement age), a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to those persons in relation to the amount paid to persons of the other sex in the same situation, until the persons benefiting from the supplement reach the statutory retirement age; - extend the scope of the directive to members of workers' families and their beneficiaries; - highlight those provisions of the directive that are contrary to the principle of equal treatment, namely those based on sex, either directly or indirectly, in particular by reference to marital or family status. Workers' contributions must, therefore, be equal, as must the contributions paid by the occupational schemes (except in the case of defined-contribution schemes, financed by capitalization), and employers' contributions (except in certain precise cases defined by the directive). Self-employed workers fall outside the scope of Article 119 of the TEU, and therefore the provisions of Directive 86/378/EEC continue to be valid for them. At the same time, the directive acknowledges that, if men and women request to benefit on the same terms from a flexible retirement age system, that is not incompatible with the directive. **DEADLINE FOR TRANSPOSITION:** 1 July 1997 **ENTRY INTO FORCE:** 9 March 1997 ?