

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2008/0192(COD) Procedure completed
Equal treatment between men and women: self-employed workers and their spouses	
Subject 4.10.10 Social protection, social security 4.15.08 Work, employment, wages and salaries: equal opportunities women and men, and for all	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>FEMM</b> Women's Rights and Gender Equality	PPE-DE <a href="#">LULLING Astrid</a>	19/11/2008
	Former committee responsible		
	<b>FEMM</b> Women's Rights and Gender Equality	PPE-DE <a href="#">LULLING Astrid</a>	19/11/2008
	Former committee for opinion		
	<b>EMPL</b> Employment and Social Affairs (Associated committee)	ALDE <a href="#">COCILOVO Luigi</a>	04/11/2008
	<b>ITRE</b> Industry, Research and Energy	The committee decided not to give an opinion.	
Council of the European Union	<b>JURI</b> Legal Affairs		03/11/2008
		PSE <a href="#">GERINGER DE OEDENBERG Lidia Joanna</a>	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
	Council configuration	Meeting	Date
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3024</a>	24/06/2010
	<a href="#">Employment, Social Policy, Health and Consumer Affairs</a>	<a href="#">3019</a>	07/06/2010
	<a href="#">Employment, Social Policy, Health and Consumer Affairs</a>	<a href="#">3000</a>	08/03/2010
	<a href="#">Employment, Social Policy, Health and Consumer Affairs</a>	<a href="#">2980</a>	30/11/2009
	<a href="#">Employment, Social Policy, Health and Consumer Affairs</a>	<a href="#">2947</a>	08/06/2009
European Commission	Commission DG	Commissioner	
	<a href="#">Employment, Social Affairs and Inclusion</a>	ANDOR László	

Key events			
03/10/2008	Legislative proposal published	<a href="#">COM(2008)0636</a>	Summary
21/10/2008	Committee referral announced in Parliament, 1st reading		
12/03/2009	Referral to associated committees announced in Parliament		
31/03/2009	Vote in committee, 1st reading		Summary
07/04/2009	Committee report tabled for plenary, 1st reading	<a href="#">A6-0258/2009</a>	
04/05/2009	Debate in Parliament		
06/05/2009	Results of vote in Parliament		
06/05/2009	Decision by Parliament, 1st reading	<a href="#">T6-0364/2009</a>	Summary
08/06/2009	Debate in Council	<a href="#">2947</a>	Summary
08/03/2010	Council position published	<a href="#">17279/3/2009</a>	Summary
25/03/2010	Committee referral announced in Parliament, 2nd reading		
04/05/2010	Vote in committee, 2nd reading		Summary
10/05/2010	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A7-0146/2010</a>	
17/05/2010	Debate in Parliament		
18/05/2010	Decision by Parliament, 2nd reading	<a href="#">T7-0167/2010</a>	Summary
07/06/2010	Debate in Council	<a href="#">3019</a>	Summary
24/06/2010	Act approved by Council, 2nd reading		
07/07/2010	Final act signed		
07/07/2010	End of procedure in Parliament		
15/07/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2008/0192(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 157-p3
Stage reached in procedure	Procedure completed
Committee dossier	FEMM/7/02255

Documentation gateway					
Legislative proposal		<a href="#">COM(2008)0636</a>	03/10/2008	EC	Summary

Document attached to the procedure		<a href="#">SEC(2008)2592</a>	03/10/2008	EC	
Document attached to the procedure		<a href="#">SEC(2008)2593</a>	03/10/2008	EC	
Committee draft report		<a href="#">PE418.192</a>	11/02/2009	EP	
Committee opinion	EMPL	<a href="#">PE415.010</a>	12/02/2009	EP	
Amendments tabled in committee		<a href="#">PE421.387</a>	13/03/2009	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0631/2009</a>	24/03/2009	ESC	
Committee opinion	JURI	<a href="#">PE418.396</a>	30/03/2009	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0258/2009</a>	07/04/2009	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0364/2009</a>	06/05/2009	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2009)3616</a>	07/07/2009	EC	
Council statement on its position		<a href="#">06324/2010</a>	26/02/2010	CSL	
Council position		<a href="#">17279/3/2009</a>	08/03/2010	CSL	Summary
Committee draft report		<a href="#">PE439.879</a>	17/03/2010	EP	
Commission communication on Council's position		<a href="#">COM(2010)0099</a>	22/03/2010	EC	Summary
Amendments tabled in committee		<a href="#">PE440.148</a>	09/04/2010	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A7-0146/2010</a>	10/05/2010	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T7-0167/2010</a>	18/05/2010	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2010)0347</a>	23/06/2010	EC	Summary
Draft final act		<a href="#">00018/2010/LEX</a>	07/07/2010	CSL	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Directive 2010/41](#)  
[OJ L 180 15.07.2010, p. 0001](#) Summary

## Equal treatment between men and women: self-employed workers and their spouses

**PURPOSE:** to amend the Community legal framework concerning the application of the principle of equal treatment between women and men for self-employed workers and their spouses.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** in its report on the implementation of Directive 86/613/EEC, the Commission concluded that the practical results of the implementation of the Directive were ?not entirely satisfactory when measured against the prime objective of the Directive, which was a general improvement in the status of assisting spouses.?

In December 2007, the Council called on the Commission to consider the need to revise, if necessary, Council Directive 86/613/EEC in order to ensure the rights related to motherhood and fatherhood of self-employed workers and their helping spouses.?

The European Parliament has consistently called on the Commission to review the Directive, in particular to improve the situation of assisting spouses in agriculture (see [INI/2007/2117](#)).

CONTENT: this proposal will repeal Directive 86/613/EEC and will be applicable as regards those aspects not covered by Directives 2006/54/EC, 2004/113/EC and 79/7/EEC, in order to implement more effectively the principle of equal treatment between women and men engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity.

The main elements of the proposal are as follows:

**Purpose and scope of the Directive:** the proposal sets out the purpose of the Directive, i.e. to put into effect the principle of equal treatment between men and women engaged in self-employed activities. It covers self-employed workers and assisting spouses. The Directive does not cover the matters covered by Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

**Definitions:** the definition of 'assisting spouses' is amended: the words 'assisting' and 'or life partners' are added. The amendment aims to cover all persons recognised as 'life partners' by national law and regularly participating in the activities of the family business, irrespective of marital status. In order to remove ambiguity, 'partner' is replaced by 'business partner'. Harassment on grounds of sex and sexual harassment do not occur solely at the workplace, but also in other areas of an individual's life, including in the context of self-employed activities. Harassment based on sex consists of unfavourable treatment of a person related to their sex, though it need not be of a sexual nature. Sexual harassment consists of unwanted physical, verbal or non-verbal conduct of a sexual nature.

**Principle of equal treatment:** this provision prohibits any direct or indirect discrimination in relation to the establishment, equipment or extension of a business or the launching of any other form of self-employed activity. It confirms that the Member States may maintain or introduce specific measures to compensate for certain disadvantages suffered by individuals of either sex in the area covered by the Directive. Such measures must be shown to be necessary, must be focused on overcoming a specific disadvantage and must be limited in time, being in force no longer than is necessary to deal with the problem identified.

**Social protection of helping spouses:** the new provision stipulates that assisting spouses must, at their request, benefit from at least an equal level of protection as self-employed workers. It does not stipulate that self-employed workers are to be covered by any specific social security system. It simply makes it an obligation for assisting spouses to be able, if they so decide, to join the same social security protection applicable to the self-employed worker.

**Maternity leave:** the proposal states that female self-employed workers and assisting spouses should be entitled, at their request, to maternity leave as provided for in Directive 92/85/EEC. Such maternity leave is to be paid at a rate at least equivalent to the payment received in the event of sickness, subject to any ceiling laid down by national law. If the person in question does not benefit from sickness allowance, the payment should be equivalent to any appropriate allowance established at national level.

In order to take the specificities of self-employed activities into account, the proposal gives self-employed women as far as possible the option of temporary replacement services as an alternative to the financial allowance.

**Defence of rights:** this proposal gives people who believe they have suffered discrimination with the possibility of pursuing their claims through administrative and/or judicial proceedings to enforce their right to equal treatment. The right to legal protection is further reinforced by the possibility of allowing organisations to exercise such rights on behalf of a victim.

**Compensation and reparation:** Member States are required to ensure that there is provision in national law for real and effective compensation or reparation.

**National bodies for the promotion of equal treatment:** the proposal requires Member States to designate national bodies for the promotion of equal treatment in the fields covered by the Directive. It lays down a number of requirements for such bodies in the Member States.

## Equal treatment between men and women: self-employed workers and their spouses

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The Committee on Women's Rights and Gender Equality adopted the report drawn up by Astrid LULLING (EPP-ED, LU) amending, under the first reading of codecision procedure, 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.

The main amendments are as follows:

**Definitions:** the committee states that for the purposes of this Directive, the terms 'marital status' and 'family business' should be interpreted in the light of the recognition accorded to life partnerships in the relevant judgments of the European Court of Justice. This amendment implements the ECJ judgment of 1 April 2008 in case C-267/06 (Tadao Maruko).

**Social protection for assisting spouses:** these measures shall ensure that assisting spouses become members in their own right of the social insurance schemes in place for self-employed workers and covering sickness, invalidity and old age, provided they contribute to those schemes on the same basis as self-employed workers and even if their contributions have to be calculated on a flat-rate basis. The insurance contributions of assisting spouses shall be tax-deductible as operating expenditure, on terms similar to those applying to the remuneration actually paid to the spouse, subject to the double condition that the services have been correctly provided and that the remuneration is that normally practised for such services.

The committee notes that membership of social insurance schemes should be made mandatory for assisting spouses. The experience of certain Member States has shown that where assisting spouses are offered the choice of being members or not of a social insurance scheme, they often choose not to join. Few assisting spouses are aware that, notably after divorce, they will lose all welfare benefits, especially pension rights.

**Recognition of the work of assisting spouses:** a new article states that Member States shall undertake to examine under what conditions recognition of the work of assisting spouses may be encouraged and, in the light of such examination, consider any appropriate steps for

encouraging such recognition.

The committee notes that the aim is to allow the possibility of compensation in case of divorce or separation, in cases where the assisting spouse is in a highly precarious situation after years of work for the farm or business.

Equality body: this body, which may be chosen from among those already existing for the promotion, analysis, monitoring and support of equal treatment of women and men, must also exchange, at the appropriate level, the information available with similar European bodies, such as the European Institute for Gender Equality.

In addition, a new clause on gender mainstreaming states that Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Review: no later than four years after the date of transposition, the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.

Application: if particular difficulties justify it, Member States may, if necessary, have an additional period of 1 year to comply with this directive.

Minimum requirements: a new clause stipulates that Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

## Equal treatment between men and women: self-employed workers and their spouses

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The European Parliament adopted by 550 votes to 14 with 57 abstentions a legislative resolution amending, under the first reading of codecision procedure, 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.

The main amendments are as follows:

Companies - marital or family status: a new article provides that Member States shall ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or between life partners when recognised by national law. All companies which are jointly established by spouses or life partners when recognised by national law shall be recognised as a 'family business'. The recognition of life partnership shall be based on the relevant judgments of the Court of Justice of the European Communities.

Social protection for assisting spouses and life partners: Parliament wants to make it compulsory for assisting spouses to have social security cover. Member States must enact measures to ensure that assisting spouses and life partners can benefit from at least an equal level of protection as self-employed workers under the same conditions applicable to self-employed workers. If this extension of benefits is not mandatory under the legislation of a particular Member State, it shall be granted upon a request made by an assisting spouse or life partner. Those measures shall ensure that assisting spouses become members in their own right of the social insurance schemes in place for self-employed workers and covering sickness, invalidity and old age, provided they contribute to those schemes on the same basis as self-employed workers and even if their contributions have to be calculated on a flat-rate basis. The insurance contributions of assisting spouses shall be tax-deductible as operating expenditure, on terms similar to those applying to the remuneration actually paid to the spouse, subject to the double condition that the services have been correctly provided and that the remuneration is that which is normal for such services.

Maternity leave: female self-employed workers and assisting spouses should be entitled to a period of maternity leave adapted to their specific needs. The maternity leave should be of duration of their choice provided that the total length does not exceed that specified in Directive 92/85/EEC.

Recognition of the work of assisting spouses: a new article states that Member States shall undertake to examine under what conditions recognition of the work of assisting spouses may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition.

Gender mainstreaming: a new clause provides that Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Review: no later than 4 years after the date of transposition, the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.

Application: if particular difficulties justify it, Member States may, if necessary, have an additional period of 1 year to comply with this directive.

Minimum requirements: a new clause stipulates that Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

## Equal treatment between men and women: self-employed workers and their spouses

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On the basis of a Presidency report, the ministers took stock of the progress achieved so far on a draft Directive aiming at improving the social protection of self-employed workers and of "assisting spouses". They invited the preparatory bodies to continue their work on this file.

Under the Czech Presidency, discussions in the responsible working group focused mainly on the definition of "assisting spouses", the provisions concerning maternity leave for self-employed workers and assisting spouses, the issue of temporary replacements, and the linkage between EU and national legislation, as well as the anti-regression clause.

Most delegations have broadly welcomed the aims of the proposal. However, certain delegations have voiced doubts regarding the need for new legislation in this sector and with regard to the cost implications.

All delegations have maintained general scrutiny reservations on the proposal at this stage. CZ, DK, MT, PL and UK have maintained

parliamentary scrutiny reservations. EL, IT, LT and HU have maintained linguistic scrutiny reservations.

Despite some progress, the Commission proposal needs further discussion, particularly in respect of a number of issues, including the following:

- the concept of "assisting spouses", including the major question as to whether the provisions would give rise to a new category of entitlement to social security, thereby impinging upon the Member States' competence for social security, and the level of protection to be accorded to life partners;
- the most appropriate means of providing maternity leave (or benefits) to persons working in the self-employed sector, given that in some Member States, maternity benefits are not conditional upon the interruption of activities;
- the proposed optionality of the social protection provided to self-employed workers and their assisting spouses in relation to existing obligatory regimes in certain Member States;
- the need to define the scope of the Directive as clearly as possible;
- the issue of replacement services.

The Working Party on Social Questions will continue its examination of the proposal and begin its examination of the European Parliament's amendments in due course.

Like the [proposal](#) on the extension of maternity leave, the proposal concerning assisting spouses forms part of the Commission's work-life balance package.

## Equal treatment between men and women: self-employed workers and their spouses

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The Council adopted its position in first reading on the proposal for a directive aiming to improve the social protection of self-employed workers and assisting spouses. The United Kingdom abstained.

The European Parliament adopted 30 amendments to the Commission's proposal. The Council could accept 10 of the European Parliament's amendments either in whole, in part or after being reworded.

Social protection (Article 7 and recital No 16 of the Council position in first reading): the Council concurs with Parliament on the principle that, in view of their participation in the activities of the family business, spouses or, when and insofar as recognised by national law, the life partners, of self-employed workers who have access to a system for social protection, should also be entitled to benefit from social protection.

- The Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it should be up to the Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis and should be granted only upon request of assisting spouses and life partners.
- The Member States should have the possibility to provide that this social protection can be proportional to the participation in the activities of the self-employed worker and/or the level of contribution.
- Without prejudice to the provisions of this Directive, they should also be able to maintain national provisions limiting the access to specific social protection schemes, or to a certain level of protection, including special funding conditions, to certain groups of self-employed workers or professions, provided that access to a general scheme is available.

Maternity benefits and temporary replacement services (Article 8, recitals Nos 17 and 18 in the Council position in first reading): the Council shares Parliament's views on the need to give pregnant self-employed workers and pregnant spouses, or life partners, of self-employed workers, a maternity leave of a long enough duration to ensure the proper course of a normal pregnancy and physical recovery of the mother after a normal childbirth.

- However, in view of their status as self-employed workers, the Council did not consider appropriate to provide that female self-employed workers and, by analogy, female assisting spouses or life partners of self-employed workers, should be entitled, at their request, to the same period of maternity leave as provided for in Directive 92/85/EEC. This Directive only applies to employees who are subject to different provisions as compared with self-employed women. For this reason, the Council felt that it would be more appropriate to provide that female self-employed workers and female spouses and life partners, should, in accordance with national law, be granted an adequate maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.
- The Member States should remain competent to organise such benefits, including establishing the level of contributions and all the arrangements concerning benefits and payments, provided the minimal prescriptions of the Directive are complied with. In particular, they should be able to determine in which period before and/or after confinement the right to maternity benefits is granted. They should also determine if the economic situation of the person or family in question should be taken into account when establishing contributions and/or benefits.
- Furthermore, in order to take the specificities of self-employed activities into account, the Council considered that female self-employed workers and female spouses or, when and insofar as recognised by national law, the life partners of self-employed workers, should be given access, as far as possible to any existing services supplying temporary replacement enabling interruptions in their occupational activity owing to pregnancy or motherhood or to any existing national social services. Access to these services could be an alternative or a part of the maternity allowance.

## Equal treatment between men and women: self-employed workers and their spouses

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The Commission notes that the Council's position at first reading differs substantially from the Commission's proposal and the European Parliament's opinion, primarily with regard to social protection for assisting spouses. Whilst the Commission and the European Parliament take the view that assisting spouses should enjoy the same level of social protection as self-employed workers themselves, the Council's position is restricted to guaranteeing their access to "social protection".

Concerning maternity leave for self-employed workers and assisting spouses, the Council's position is closer to the amendment adopted by

the European Parliament and accepted by the Commission providing for the principle of adapting to the specific needs of the persons concerned. However, the Council's position on Article 7(3) concerning the appropriate level of maternity pay is even further away from the positions of the Commission and of the European Parliament.

The Council's position takes in the following European Parliament amendments to the proposal, which had also been accepted by the Commission:

- addition of an explicit reference to promoting women's entrepreneurship in the article on positive action;
- drafting clarification concerning the conditions applicable to the creation of a business;
- the text adopted by the Council establishes the gearing of the provision to the specific needs of self-employed workers and assisting spouses;
- the acknowledgement of the work of assisting spouses is mentioned in recital 7 of the text adopted by the Council;
- addition concerning the competence of the national equality bodies with regard to exchanging information with their European counterparts;
- new article on mainstreaming equality between men and women;
- requirement that there be "particular difficulties" in order to be eligible for the additional period for implementation of the Directive;
- addition of a new article on the nature of the "minimum requirements" in the proposal.

During the negotiations in the Council, it became clear that any attempt to approximate the level of protection granted to self-employed workers and that afforded to assisting spouses would be opposed by many Member States. The Commission therefore emphasised that, although it constituted a substantial change to its text which rendered it much less ambitious, it would go along with it so as to enable the Council to reach political agreement, which would not be possible otherwise. The Commission also took into account that, given the opposition in principle of two Member States to any legislation in this area, the Council would not be able to make a unanimous decision.

The Commission, whilst admitting that the position of the Council at first reading does not correspond, on several key points, to its proposal, nevertheless considers that the only way to allow the procedure to move forward is to refrain from making any objections to the Council's position at first reading.

## Equal treatment between men and women: self-employed workers and their spouses

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The Committee on Women's Rights and Gender Equality adopted a recommendation for the second reading contained in the report by Astrid LULLING (EPP, LU) on the position of the Council at first reading with a view to the adoption of 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.

The Committee recommends that the Council's position in first reading should be amended as follows:

- a new recital recalling that the European Parliament has already stated its position on these matters in its [resolution](#) of 21 February 1997 on the situation of wives of independent workers;
- Members express their reservations regarding the provision that provides for the possibility of Member States to maintain national provisions limiting access to specific social protection schemes, or to a certain level of protection, including special funding conditions, to certain groups of self-employed workers or professions, provided that access to a general scheme is available. They therefore introduced an amendment to ensure that these provisions to limit access to social protection are not established;
- Members also deleted the provision according to which Member States could determine if the economic situation of the person or family in question should be taken into account when establishing contributions and/or benefits;
- an amendment stipulates that the length of the period during which female self-employed workers and female spouses or, when and in so far as recognised by national law female life partners, of self-employed workers, are granted maternity benefits is similar to the duration of maternity leave for employees currently in place at EU level. In case the duration of maternity leave provided for employees is modified at EU level, the Commission should report to the European Parliament and the Council assessing whether the duration of maternity benefits for female self-employed workers and female spouses and life partners should also be modified;
- the Committee does not accept the reference to the quality and the long-term sustainability of social protection systems, because the sustainability of these social protection systems does not figure among the objectives of the Directive;
- as far as social protection is concerned, Members deleted the provision stipulating that the Member States may provide that this social protection is granted only upon the request of spouses and life partners;
- in regard to maternity allowances, an amendment specifies that female self-employed workers and female spouses and life partners in accordance with national law, be granted a sufficient (as opposed to "an adequate") maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks. Members deleted the provision requiring the Member States could provide that this allowance is granted only upon request of female self-employed workers and female spouses and life partners;
- access to any temporary replacement services or social services existing at national level should not be restricted by a criterion that is neither clear nor identifiable;
- Members do not accept that organisations for the promotion, analysis, monitoring and support of equal treatment that monitor the correct application of the Directive should be the same as those entrusted at national level with the defence of human rights. This amendment partially reproduces the substance of Parliament's first-reading amendment which held that it is not desirable to mix the questions of human rights with gender equality issues;
- lastly, Member States should communicate to the Commission all available information concerning the application of this Directive at the latest 5 (instead of 6) years following the entry into force of the Directive. The Commission should submit a summary report at latest 6 (instead of 7) years after the Directive entry into force. This report should take into account any legal change concerning the duration of maternity leave for employees.

## Equal treatment between men and women: self-employed workers and their spouses

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The European Parliament adopted a legislative resolution on the position of the Council at second reading with a view to the adoption of 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.

The Parliament adopted its position at second reading under the ordinary legislative procedure (formerly known as the codecision procedure). The main amendments adopted at plenary are the result of a compromise reached between the European Parliament and the Council. They amended the Commission's initial proposal as follows:

**Duration of maternity benefits:** a recital stipulates that the length of the period during which female self-employed workers and female spouses or, when and in so far as recognised by national law female life partners, of self-employed workers, are granted maternity benefits is similar to the duration of maternity leave for employees currently in place at EU level. In case the duration of maternity leave provided for employees is modified at EU level, the Commission should report to the European Parliament and the Council assessing whether the duration of maternity benefits for female self-employed workers and female spouses and life partners referred to in Article 2 should also be modified.

**Positive action:** Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship initiatives among women.

**Social protection:** the text provides that where a system for social protection for self-employed workers exists in a Member State, that Member State shall take the necessary measures to ensure that spouses and life partners can benefit from a social protection in accordance with national law. The Member States may decide whether the social protection is implemented on a mandatory or voluntary basis. **Maternity benefits:** Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

**Temporary replacements:** Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the abovementioned allowance.

**Equality bodies:** Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC are also competent for the promotion, analysis, monitoring and support of equal treatment of all persons covered by this Directive without discrimination on grounds of sex.

**Reports:** Member States shall communicate, at the latest five years after the entry into force of the Directive, all available information concerning the application of this Directive to the Commission. The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than six years after the entry into force of the Directive. This report should take into account any legal change concerning the duration of maternity leave for employees. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

The text recalls that the European Parliament has already stated its position on these matters in its [resolution](#) of 21 February 1997 on the situation of wives of independent workers.

## Equal treatment between men and women: self-employed workers and their spouses

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The presidency informed the Council on the agreement between the European Parliament and the Council at second reading on the draft directive. The new piece of legislation will provide for significant improvement in terms of the social protection accorded to self-employed workers and assisting spouses of self-employed workers who often contribute to their spouse's self-employed activities without enjoying the corresponding rights. It is therefore of major help in removing barriers to female entrepreneurship and in improving the status of assisting spouses by granting them protection on their own right. In addition, female self-employed workers and assisting spouses will be granted a maternity allowance for at least 14 weeks. The directive also covers life partners when recognised by national law.

After the legal-linguistic revision of the text the Council is expected to adopt the directive, without discussion, on 24 June.

## Equal treatment between men and women: self-employed workers and their spouses

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The European Parliament made a limited number of amendments to the Council's position and their main aim is to clarify the text, rather than changing its scope. The amendments voted by Parliament have been discussed and agreed during the discussions between the two co-legislators, supported by the European Commission. The Commission accepts all the amendments voted by the European Parliament, as they are in line with the overall purpose of the proposal.

## Equal treatment between men and women: self-employed workers and their spouses

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**PURPOSE:** to improve the social protection for self-employed workers and their spouses.

**LEGISLATIVE ACT:** Directive 2010/41/EU 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 Council Directive 86/613/EEC.

**CONTENT:** the Council adopted a directive strengthening the social protection of self-employed workers and of "assisting spouses", thereby aiming to strengthen the principle of equal treatment between men and women who want to establish or extend a self-employed. The adoption of the directive follows an agreement with the European Parliament at second reading.

The new directive entitles self-employed women and assisting female spouses of self-employed workers to maternity benefits for the first time and creates autonomous social protection rights for the assisting spouses of self-employed workers.

The main elements of the Directive are as follows:

**Principle of equal treatment:** the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

**Positive action:** Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship initiatives among women.

**Establishment of a company:** without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, the Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses, or between life partners when and in so far as recognised by national law, are not more restrictive than the conditions for the establishment of a company between other persons.

**Social protection:** where a system for social protection for self-employed workers exists in a Member State, that Member State shall take the necessary measures to ensure that spouses and life partners can benefit from a social protection in accordance with national law. The Member States may decide whether the social protection is implemented on a mandatory or voluntary basis.

**Maternity benefits:** female self-employed workers and female spouses and life partners may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks. A recital states that The length of the period during which female self-employed workers and female spouses or, when and in so far as recognised by national law, female life partners of self-employed workers, are granted maternity benefits is similar to the duration of maternity leave for employees currently in place at Union level. In case the duration of maternity leave provided for employees is modified at Union level, the Commission should report to the European Parliament and the Council assessing whether the duration of maternity benefits for female self-employed workers and female spouses and life partners should also be modified.

**Temporary replacement services:** female self-employed workers and female spouses and life partners have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the allowance referred to this Directive.

**Defence of rights:** judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, for the enforcement of the obligations under this Directive are available to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

**Compensation or reparation:** the Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit.

**Equality bodies:** the Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC are also competent for the promotion, analysis, monitoring and support of equal treatment of all persons covered by this Directive without discrimination on grounds of sex.

**Level of protection:** the Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment between men and women than those laid down in this Directive.

**Reports:** Member States shall communicate all available information concerning the application of this Directive to the Commission by 5 August 2015. The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than 5 August 2016. That report should take into account any legal change concerning the duration of maternity leave for employees. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

**ENTRY INTO FORCE:** 04/08/2010.

**IMPLEMENTATION:** 5 August 2012 at the latest. Where justified by particular difficulties, the Member States may, if necessary, have an additional period of two years until 5 August 2014 in order to comply with Article 7 (Social protection), and in order to comply with Article 8 (Maternity benefits).