

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Principle of equal pay for male and female workers for equal work or work of equal value

This Directive clarifies the scope of Art. 141 EC which is directly applicable in the Member States

- right to equal pay must also be guaranteed for civil servants
- pay should be defined in line with the ECJ jurisprudence
see. ECJ *Garland*, 12/81
- equal pay must be guaranteed for work of equal value
- any provisions contrary to equal pay are null and void, Art. 4
- protection against retaliatory dismissal, Art. 5
- duty to inform employees

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

- forbids direct and indirect discrimination
- defines the principle of equal treatment in the sense that:
"there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria for access to all jobs...."
- forbids discrimination in working conditions
- forbids discrimination in promotion and vocational training

Council *Directive 2002/73/EC* of 23 September 2002 amending Council Directive 76/207/EEC 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

- **Clear Definitions of Discrimination**
 - direct and indirect discrimination Art. 2(2)
 - harassment and sexual harassment defined as discrimination Art. 2(2)
 - instruction to discriminate Art. 2(4)
 - less favourable treatment related to pregnancy and maternity leave Art. 2 (7)
- **New shape of limited exceptions of equal treatment in Art. 2(6)**
- **Extension of equal treatment to membership of and involvement in organisations Art. 3 (1) (d)**
- **Effective judicial protection through judicial and/or administrative procedure for enforcement of obligations Art. 6 (1)**
- **Protection against Victimisation Art. 7**

Council Directive 2002/73/EC of 23 September 2002 (slide 2)

- **Member states ensure effective compensation for victims of discrimination, dissuasive and proportionate to the damage without a prior upper limit for compensation Art. 6(2)**
- **Right of associations to engage on behalf or in support of complainants pursuant to Art. 6(3)**
- **Equality body pursuant to Art. 8a with the necessary powers and the independence required for each of its functions**
- **Member States have to encourage: →social dialogue Art. 8(b)→prevention of discrimination Art. 2(5)→dialogue with NGOs Art. 8 (c).**

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

- Relates to statutory Social Security Schemes on:
 - Sickness, invalidity, old age, accidents at work and occupational diseases, unemployment
- forbids any discrimination on grounds of sex as regards
 - scope and access to scheme
 - obligation to contribute and calculation of contributions
 - calculation of benefits
- Individuals must have the right to pursue complaints using judicial procedure Art. 6
- Exception with regard to pensionable age Art. 7

Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes as amended by Directive 96/97/EC

- Relates to occupational social security schemes on
 - sickness, invalidity, old age, including early retirement, industrial accidents and occupational diseases and unemployment
- Legislation must be implemented even where there are no such schemes in force. Legislation must also cover civil servants and self-employed.
- forbids any discrimination on grounds of sex as regards
 - scope and access to scheme
 - obligation to contribute and calculation of contributions
 - calculation of benefits
- Benefits under occupational schemes are regarded as pay in the sense of Art. 141 EC (see. ECJ, C-262/88, Barber) and Prot. N°2 of the Treaty of Maastricht
- No different retirement age for men and women

Council Directive 86/613/EEC of 11 December 1986 on 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

- concerns self-employed workers
- equal access to self-employed activity and equal access to financial facilities (Art. 4)
- equal treatment for the formation of a company between spouses (Art. 5). Same conditions as for unmarried.
- possibility for spouses to join a contributory social security scheme for self-employed voluntarily (Art. 6)
- guarantee of access to judicial remedy (Art. 9)

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

- **14 weeks minimum maternity leave (Art. 8)**
- **Guarantee of an adequate payment (Art. 11):**
 - in case of maternity leave (Art. 8)→see Art. 11 sec.4
 - in case of transfer to day time work, leave or adjustment of working conditions (Art. 5,6 and 7)
- **Prohibition of dismissal (Art. 10)**
- **Time off for ante-natal examinations (Art. 9)**
- **Prohibition of exposure to specific agents and working conditions (Art. 6) and night work (Art.7)**
- **restrictions on night work (transfer or leave) (Art. 7)**
- **Is there a health and safety risk assessment (Art.4)**
- **Leave foreseen where transfer impossible (Art. 5)**

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC

Individual right to parental leave for at least 3 months for all categories of employees until a given age up to 8 years (clause 2).

– to be granted on a non-transferable basis.



father and mother may take the leave independently of one another.

- protection against dismissal
- right to return
- maintenance of acquired rights
- time off for urgent family reasons in case of sickness or accident, *force majeure* (clause 3)

Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex

- reversal of the burden of proof in cases of sex discrimination: Covers: Art. 119, Dir. 75/117, 76/207, 92/85 and 96/34
 - Plaintiff: → has to present facts from which it may be presumed that there may be direct or indirect discrimination (prima facie)
 - Respondent: → proofs that there has been no breach of the principle of equal treatment
- applies only where the court does not investigate "ex officio" (Art. 4 sec. 3)

Council Directive 2004/113/EC of 13 December 2004
implementing the principle of equal treatment between men
and women in the access to and supply of goods and
services

- **Definitions** are identical with Dir. 2002/73/EC
- **Scope**: → goods and services available to the public, offered outside private and family life (access to premises into which the public are permitted to enter; all types of housing, including rented accommodation and accommodation in hotels; services such as banking, insurance and other financial services; transport and the services of any profession or trade). → does not cover media, advertising and education, → does not apply to employment and education
- **Exception**: different treatment where proportional. Art. 4(5) Ex.: Turkish Hamam separate for men and women

Goods and services (slide 2)

- **Sex as an actuarial factor:** For insurance products premiums and benefits have in principle to be equal.
→ **Exception:** Before 21 December 2007 MS can decide to keep different premiums and benefits where their risk assessment is based on accurate statistical and actuarial data. (ex.: life insurance)
- Costs related to pregnancy and maternity do not allow differences in individual's premiums.
- provisions on remedies and enforcement, burden of proof, victimisation, dialogue with stakeholders and bodies for the promotion of equal treatment are designed in analogy with Dir. 2002/73/EC

Further Information

DG Employment and Social Affairs

Unit G: 1 equal treatment between men and women

- http://europa.eu.int/comm/employment_social/equ_opp/rights_en.html

Mc Kenna C-191/03

