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UEAPME position paper on the second stage consultation of social partners on the review of Directive 86/613/EEC on the application of 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

Introduction

The European Commission published on 25 February 2008 its proposal for updating, modernising and recasting where necessary directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed activity.

It has to be seen within the context of the Roadmap for equality between women and men from 2006¹ which aims at improving governance for gender equality.

I - General comments

UEAPME fully recognises the importance of equal treatment between men and women. This particular directive appears to affect women to a very large extent². As part of the Lisbon Strategy the need to improve the level and quality of women's participation in the labour market was identified. Evidently it is necessary to particularly encourage female entrepreneurship in view of the gender gap in entrepreneurial activities. With women currently representing 60% of graduates in Europe, UEAPME agrees that this untapped source of entrepreneurship needs to be better utilised.

The directive 86/613/EEC shows certain particularities in scope and substance, as most directives apply only to employees, whereas this directive only concerns entrepreneurs and assisting spouses.

These two highly heterogeneous groups cover different categories of persons and two different types of statutes: the self-employed entrepreneurs with direct rights and co-working spouses with derived rights.³. Therefore they need to be considered separately.

Assisting spouses often do not have their own rights to strengthen their position, only indirect entitlements. At the same time there are significant differences between Member States particularly for assisting spouses where they can be classified as co-entrepreneurs or

¹ http://ec.europa.eu/employment_social/news/2006/mar/com06092_roadmap_en.pdf

² According to a report by the European Parliament in 1997, it is assumed that a minimum of 70% of assisting spouses are female.

³ A previous European Commission Draft Directive of 23 October 1987 (COM (87) 494 final) on Equal Treatment for Men and Women in statutory and occupational social security schemes was withdrawn in 2001. It had aimed at giving Member States the option to grant own rights as an alternative to derived rights to help individuals such as assisting spouses.

employees. UEAPME regrets that there is currently no overview on the evolution and present trends of the situation of co-assisting spouses in all 27 Member States, notably in the 12 new Member States. This is a crucial point where efforts to provide more data should be increased in order to compare the national situations.

II - Specific comments

(i) Do you consider that there is a need for further action concerning the Directive 86/613/EEC? If you consider action to be necessary, should such action be undertaken at Community level?

There are clearly incomplete quantitative and qualitative data to effectively discuss the implementation level of the directive and make recommendations for both groups of persons covering all 27 EU Member States. The last report of the European Commission on the 1986 directive was in 1994 and only gives data on 12 Member States.

However, overall there appears to be scope for improvement at national level to support the self-employed and assisting spouses in entrepreneurship that could easily take place without a revision of the Directive. The current legal framework in place does not need to be modified in order to trigger changes at national level for both self employed and assisting spouses.

Moreover, the directive mainly deals with subjects which are of strict competence of Member States such as marital law, company law, tax and fiscal laws, as well as different social protection and social security systems. For all of them the principle of subsidiarity must be respected.

(ii) What are the main areas in which improvements could be needed, taking into consideration in particular:

1) improving protection in case of maternity for both self-employed women and assisting spouses;

For the self-employed UEAPME cannot defend the prescription of compulsory leave as it very much interferes with entrepreneurial choice and independence.

In the case of maternity leave some countries provide assistance in the form of a temporary replacement worker, others do not, but the decision lies once again with Member States.

There clearly are practical problems for self-employed women, e.g. in Finland self-employed women already have a full right to maternity leave, but they cannot afford to take the full length because of the problems occurring by being absent from the business. In this particular case a formal revision of the directive would not help.

We have taken note of the EIM study on business creation⁴ which suggests a positive influence of social security on “opportunity-based entrepreneurship” when the differences between the social security position of entrepreneurs and alternative types of employment are very small. In the case of women, it can be assumed that the existence or absence of protection in case of maternity, for example, would be a factor to consider. This is an aspect which would need to be discussed at Member State level, taking national specificities into account.

⁴ EIM Good practices on social protection of new entrepreneurs and assisting partners and the impact on business creation (March 2007)

Regarding assisting spouses, this group of persons has in some Member States better maternity protection than the self-employed. Again this is an issue which needs to be decided nationally taking into account the wide range of laws affected.

2) extending social protection to assisting spouses;

As mentioned regarding assisting spouses, this category of persons has better social protection than the self-employed in some Member States. Again this is an issue which needs to be decided nationally considering the wide range of laws affected. Minimum social security coverage should be provided.

3) recognize the work of assisting spouses;

UEAPME completely supports the idea of a full recognition of the contributions by assisting spouses to the family business. This involves in particular as often the case their greater responsibility and higher economic contribution to the family business compared to “normal” employees.

4) provide leave to care for family members;

For the self-employed again the issue of entrepreneurial autonomy must prevail. Regarding assisting spouses, it has to be seen within the context of already existing leaves and supportive measures in individual Member States.

But once again UEAPME would like to stress that all these topics which are important topics should be tackled at national level without any need for revising the current existing directive.

(iii) How can the best balance be struck between the costs and benefits of measures aiming at improving the application of the principle of equal treatment between women and men, for self-employed workers and assisting spouses? In particular, do you consider that increased protection of self-employed women and assisting spouses would impact negatively on the contributions paid by self-employed to the social security schemes and therefore on the viability of family businesses?

Again this needs to be seen in the context of Member States depending on the respective national security system.

The role of the European Commission on this specific case should be to identify best practices and solutions and to organise exchanges between Member States on this subject.

As effectively outlined in the second consultation paper, the European Commission’s task should be to “*assist the national and regional authorities within the current Framework of the Directive to address those areas where the needs of female entrepreneurs are still insufficiently met*”⁵.

III - Additional comments

Any new possible measures at EU level should not be detrimental to economic growth and job creation. More widely beneficial conditions for business creation should be in place and any remaining obstacles should be removed.

UEAPME would like to call on Member States to ensure a better implementation of the current Directive and to create more supportive conditions.

⁵ Second Consultation of the ESP on the review of the directive 86/613/EEC

This could involve:

For both self employed and assisting spouses:

- offering special incentives for social security insurance schemes, such as fiscal incentives.

For assisting spouses :

- supportive measures could include providing them with a clear statute and ensuring registration to be decided at national level and generally enhancing the recognition of their work.
- Ensuring that minimum social security coverage is in place for all assisting spouses.
- Enhancing the position of assisting spouses by referring to them as “co-exploiting” spouses or “co-working” spouses instead of giving them an “assistant” status. This would help to clarify their contribution.
- Other recognition measures could include increased representation of the company in professional bodies.
- Many other good examples could be widely spread such as better access to continuous training provided by local authorities in order to reflect their responsibility and high economic contribution to the family business.

The European Commission should strongly contribute to better promote a full implementation of the Directive instead of aiming at its revision with specific information and awareness raising measures dedicated to national public authorities and decision makers.

Exchange of good practices between the Member States could be of great help to national decision-makers in order to take the right measures supporting the development of self employed activities, the creation of new businesses and to find the best solution for assisting spouses as it was done during the previous years concerning the development of entrepreneurship according to the 10 recommendations of the Charter for small enterprises.

Conclusion

- UEAPME is in favour of enhancing supportive measures for self-employed female entrepreneurs and assisting spouses at national level.
- However it can easily take place within the current legal framework. Therefore UEAPME is against a revision as this would not be able to solve the underlying issues at stake.
- Supportive measures could include a clearer definition of the status of assisting spouses and a registration scheme to obtain more information on their specific situation.
- In view of developing female entrepreneurship the European Commission should call upon the Member States to ensure a better implementation of the content of the Directive.
- The Commission should provide national public authorities and decision makers with better information and specific awareness measures.
- The European Commission ought to share the results of the current in-depth impact assessment which it is conducting. Cost/benefit factors need to be taken into account and the Commission should contribute to the EU’s efforts of simplification and better legislation notably for SMEs.
- More widely all Member States should improve accessibility and affordability of childcare for self-employed entrepreneurs and assisting spouses.
- However if the European Commission goes for a revision of the directive, an in depth impact assessment should be carried out with a specific focus on micro-companies. Moreover simplification and better legislation should be strongly respected when proposing any changes as this is one of the main current and future ambitions of the European Union.

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