



**ETUC position paper
on the second stage consultation of social partners
on the review of Directive 86/613/EEC 1986
on the application of the principle of equal treatment between
men and women engaged in a self employed activity,
including in agriculture, and on the protection of self-employed
women during pregnancy and motherhood**

Brussels, 7 July 2008

Introduction

On 7th March 2008 the ETUC took part in the seminar organised by the European Commission (EC) to explore together with the social partner organisations on the possible direction of a review of Directive 86/613/EEC.

Subsequently, the ETUC submitted its written comments to the EC on 15th April 2008.

The document outlining the EC second stage consultation on the revision of Directive 86/613/EEC was addressed at the ETUC on 30th April 2008. Following this, ETUC members were consulted and given four weeks to send their contributions in writing.

The present position paper is based on the ETUC members' organisations comments received as well on the remarks stated in the ETUC first position paper.

1. NEED FOR ACTION AT COMMUNITY LEVEL

The ETUC is of the opinion that there is an urgent need to update Directive 86/613 and that this revision should be carried out at Community level.

This Directive, whose objectives have failed to be successfully achieved, is an important instrument to setting up a more inclusive European labour market for women and men.

In ETUC's view, the revision of Directive 86/613 will positively contribute to the harmonisation of the different levels of protection of self-employed workers engaged in a gainful activity, including in agriculture. The revision should in particular take into consideration the economic and social challenges to which self-employed and assisting spouses/ life-partners are confronted nowadays. These include, but are not limited to: the demographic change affecting Europe; the increasing feminisation of the labour force; the need to ensure long term-sustainable social security systems while promoting European citizens well-being and high quality welfare protection; the existence of non standard employment relationships and non-standard working arrangements.

The ETUC considers that the revision of Directive 86/613 will be in line with the objectives that the EC stated in its Roadmap for equality between women and men in order to improve equality and reduce discrimination. It will also complement the recasting exercise of other EU Directives in the field of equality and non-discrimination.

2. MAIN AREAS OF DIRECTIVE 86/613 IN WHICH IMPROVEMENTS ARE NEEDED

A. Improving work-life balance of both self-employed women and assisting spouses/life-partners

Women remain the principle carers for the family and yet remain the invisible unpaid and unrecognised workforce. The extent of caring is somewhat difficult to quantify, however. As life expectancy increases many women now find that they are in the 'sandwich generation', having responsibilities for both children and parents. Measures to improve the reconciliation of family and private life for self-employed workers would indeed have a positive impact on women's decisions to become self-employed or to engage more fully in public life.

Given the different systems in place in Europe, the number of self-employed women or assisting spouses/life-partners that are engaged in an economic activity are extremely difficult to establish. It is also generally recognised that the current provisions of the Directive has not helped in encouraging Member States to avail of more reliable figures and statistics. A number of weaknesses in this respect were highlighted by the Commission report issued in 1994 which are still valid, and may have been exacerbated by the enlargement of the European Union.

The ETUC believes that an improved and modernised text of this directive, tackling the needs of both self-employed workers and their assisting spouses/life-partners, will have a positive impact in making these professions more attractive to women and consequently increasing their participation in the labour market, with a view of reaching the Lisbon targets by 2010.

Opportunity-based choice for entrepreneurship accompanied with a holistic approach to social security provisions will affect positively the quality of working conditions of those who decide to become self-employed or assisting spouses/life-partners.

The ETUC is concerned about the growing number of people who, due to lack of opportunities in formal employment, may decide to become self-employed but are often faced with the fact that their working and life conditions deteriorate considerably, and that they have no or very limited access to adequate social protection entitlements.

The Directive should be improved in the following areas:

a) maternity protection for self employed workers and assisting spouses/partners

In ETUC's opinion, maternity protection for self-employed women and assisting spouses/life-partners should be tackled at two different but interlinked levels. First, and with specific regard to **self-employed workers themselves**: they should be entitled to compulsory protection (as is already foreseen in different Member States). Secondly, **their assisting spouses/life-partners should be automatically covered as well**.

This will not only have a positive impact on reducing the feminisation of poverty in old age, but will also tackle the problem of invisible and undeclared work carried out by a large number of this kind of workers in a broad range of economic sectors throughout Europe.

In order to fully achieve gender balance and protect self-employed women and assisting spouses/partners giving birth, it is fundamental that social protection rights guarantee **adequate income replacement during maternity leave**. A number of Member States already provide for this. In addition, the length of leave and other rights attached to maternity leave should be similar to the provisions of the Directive 92/85/EEC.

b) other forms of leave

Self-employed female workers (and their life partners, if possible) should also be entitled to take up other forms of leave (ie parental leave; adoption leave; leave for emergency reasons; etc.) and receive sufficient financial income replacement. This should also include leave to care for **dependant family members**. The ETUC recalls in this respect its positions on the Commission's consultations on the reconciliation of work, family and private life.

Furthermore, the ETUC also wants to emphasise that it is important for workers engaged in self-employed activity or their assisting partners to also have the right to take adequate and paid **paternity leave**.

c) recognition of different family patterns

The ETUC underlines that the modernisation of the provisions of Directive 86/613 should address the changing patterns of families in Europe and offer protection entitlements, no matter what is the family situation of the self-employed worker. This means that assisting life-partners of the same sex should be given the same status as marital partners.

d) individual and equal social security and pension rights

It is also important that new and modern social protection rights are set as individual and not derived rights. A change in the social security pensions and tax system should take into account the particular needs of women and men with family responsibilities in a life course approach.

The ETUC has already on several occasions argued in favour of introducing 'unisex' actuarial tables to be used for occupational pension schemes based on defined contributions, to prevent any discrimination between women and men. This should also apply to pension schemes for self employed workers.

B. Recognising the work of assisting spouses and family-life partners

The invisible and hidden position of assisting spouses in a self-employed activity, in agriculture and other sectors, often because they are informally engaged in family businesses, has been rightly recognised as a common element of concern by different actors. As indicated in its first stage position, the ETUC calls for the introduction of a system of compulsory registration for assisting spouses or life-partners involved in an economic activity. Where existing, these systems have enabled a better understanding of the needs of this category of workers and the adoption of tailor-made policies.

The work of assisting spouses/life partners should also be recognised as an important element for business sustainability. Therefore they should be provided with training opportunities and skills development in order to positively contribute to the performance and viability of small businesses but also to the improvement of working conditions.

C. Benefits and costs

Pursuing the objective of gender equality for self-employed men and women and assisting spouses/partners demands for measures benefiting them that will imply costs. Those costs, and especially those that regard the contributions to the social security system to be paid by self-employed workers themselves vary considerably from one Member State to another. Because of the principle of subsidiarity it is first of all the task of Member States to pay attention to the balance between costs and benefits of the measures they take.

However, the ETUC wants to recall the dangers of non-coverage and non-protection of certain groups of workers and the discrimination, inequality and segmentation on the labour market that are a consequence of that. The obligatory character of social protection and social security systems, which guarantee solidarity and the redistribution between contributors, is also an instrument to ensure a better redistribution of the burden of potential costs. It is for the Member States to develop different modalities, appropriate for their systems, to guarantee the viability of family enterprises. The ETUC could imagine the gradual and step-wise introduction of such measures as a method to ensure that costs and benefits are balanced.

Conclusion

The ETUC urges the Commission to develop proposals laying down more precise and binding legal obligations, and to avoid vague 'programmatic' provisions as used in the current version of the Directive, especially with regard to social security provisions and the protection of self-employed workers and assisting spouses during maternity leave and with regard to reconciliation of work-family life.

Additional instruments should also be developed as a matter of urgency, such as investing in the availability, quality and affordability of child care structures and facilities in the rural areas, where self-employed workers and assisting spouses are engaged in the agriculture sector.

The ETUC shares a number of concerns that the EC lists in its second-stage consultation paper, and believes that a lack of further action at EU level will reinforce the existing patterns of discrimination and inequality that women face who are engaged in a self employed activity or who are assisting spouses/life-partners of self employed workers.

The ETUC therefore encourages the Commission to quickly proceed on the basis of this second stage consultation round, and to come up as soon as possible with adequate proposals including legislative proposals to deal with the issues mentioned in this position (which should be read in conjunction with our position in the first stage of the consultation).
