

**OPTIONS PAPER ON THE SIMPLIFICATION AND IMPROVEMENT OF LEGISLATION
ON EQUAL TREATMENT BETWEEN WOMEN AND MEN**

UNICE REPLY

1. UNICE has noted the Options Paper of the European Commission entitled "Simplification and improvement of legislation in the area of equal treatment between men and women".
2. UNICE is strongly committed to promoting gender equality on the labour market. It welcomes the organisation of a preliminary debate on this important subject. However, it underlines that such a consultation cannot be considered as a proper consultation of the social partners.
3. European employers share the Commission's analysis that the existing Directives in the field of gender equality provide a strong legislative environment to promote equal treatment between men and women. They also appreciate the Commission's concern about legal clarity and welcome the aim of simplification. However, they are not in favour of further modifications to existing legislation.
4. The Commission sets out three possible approaches in the envisaged exercise:
 - consolidation, which consists in bringing together the provisions of a basic act with all its subsequent amendments in a single in a non-legally-binding text without any possibilities to change anything in the texts;
 - codification, which consists in establishing a single authoritative text bringing together the basic act and its subsequent amendments with a possibility to delete obsolete or overlapping provisions, harmonise terminology and definitions and correct errors as long as it does not change existing law;
 - recasting, which consists in producing a new legal act, incorporating various acts and their amendments with new changes to the existing law.
5. As the Commission seeks both a simplification and an improvement of existing gender equality legislation, it envisages three options
 - Option 1 would consist in a codification exercise putting together in two separate legal acts the Directives relating to the access to employment, vocational training and promoting living and working conditions on the one hand, and the Directives on equal treatment in occupational social securities schemes on the other hand. It would also imply a modification of the Directive 97/80/EC on the burden of proof, to harmonise the definition of indirect discrimination with the text contained in Directive 2002/73/EC.

- Option 2 would consist in a recasting exercise putting together Directives implementing the principle of equal pay (75/117/EEC and 86/378/EEC as modified by 96/97/EC) and introducing new changes based on ECJ jurisprudence, the Directives on equal treatment relating to access employment, vocational training and promoting, and working conditions (76/207/EEC as amended by 2002/73/EC), Directives on occupational social security schemes (86/378/EEC as amended by 96/97/EC) and the Directive on the burden of proof (97/80/EC to harmonise the definition of indirect discrimination with the text contained in Directive 2002/73/EC).
 - Option 3 would consist in a recasting exercise encompassing employment conditions aspects of Directive 92/85/EEC on maternity leave in addition to the texts concerned by option two.
6. The description of the pros and cons of these three options indicates that the Commission is leaning towards a recasting of legislation based on article 141 of the Treaty (option 2), leaving out directives with a different legal basis (i.e. 92/85/EEC on maternity leave, 96/34/EC implementing the social partners agreement on parental leave, and 86/613 on gender equality for self employed and assisting spouses and 79/7/EC) on equal treatment in statutory social security schemes).
7. UNICE considers the existing legislation on equal treatment between men and women provides a sufficiently strong legal framework to promote gender equality. It sees no need for further changes. On the contrary, changing existing legal provisions would be counterproductive at a time where current Member States are still implementing the latest amendment to directive 76/207 into national legislation. It would also put an unnecessary burden on acceding countries in which attention should focus on effectively implementing the existing legal acquis. European employers are therefore opposed to options 2 and 3.
8. However, seeing clear merits in simplifying and improving the readability of existing texts, UNICE could support option 1 provided that
- the resulting text does not go beyond a genuine codification and does not bring changes to existing law,
 - the directive on the burden of proof is not included in this exercise as this text is of a more general application than the amended texts to be codified.
- Failing that, consolidation would be the only acceptable solution to produce rapidly a user-friendly version of existing gender equality legislation.
9. In reply to the Commission's invitation to suggest other options, UNICE would also suggest that in addition to consolidating or codifying existing texts, the Commission could publish a brochure with information on obligations and rights stemming from European legislation and case law.
10. Finally, should the Commission opt for a solution implying modifications to directives based on article 141 covering areas which are of the competences of social partners, UNICE would insist for a proper consultation of the social partners as it does not accept the Commission's view that the two-stage consultation of the social partners foreseen in the social chapter of the Treaty does not apply to texts based on article 141 of the Treaty.
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