3. Article 8 is replaced by the following:

'*Article 8*

1. Where recourse is had to the procedure defined in this paragraph, the following provisions shall apply:

The representative of the Commission shall submit to the Committee a draft of the measures to be taken.

The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event the Commission may defer application of the measures which it has decided for a period of not more that one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the period referred to in the previous subparagraph.

2. Where recourse is had to the procedure defined in this paragraph, the following provisions shall apply:

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.'

4. The second paragraph of Article 14 is deleted.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Proposal for a Council Directive completing the implementation of the principle of equal treatment for men and women in statutory and occupational social security schemes

COM(87) 494 final

(Submitted by the Commission to the Council on 27 October 1987)

(87/C 309/11)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 3 (2) of 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 [1] states that the Directive does not apply to the provisions concerning survivors' benefits or to those concerning family benefits; whereas Article 7 (1) specifies that the Directive is without prejudice to the right of Member States to exclude from its scope a number of specified provisions;

Whereas Article 4 of 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 [2] limits the number of risks covered in respect of self-employed persons; whereas Article 9 of that Directive provides that Member States may defer its application as regards determination of pensionable age and survivors' pensions;

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[1] OJ No L 6, 10. 1. 1979, p. 24.

[2] OJ No L 225, 12. 8. 1986, p. 40.

Whereas on 24 July 1986 the Council adopted a resolution on the promotion of equal opportunities for women [1] wherein it in particular gives its support to the main lines of the Commission Communication concerning a new medium-term programme promoting equal opportunities for women 1986 to 1990 [2]; whereas this programme in particular envisages the proposal of a new legal instrument to supplement existing provisions in areas not covered by current legislation with a view to the gradual individualization of entitlements;

Whereas by its Resolution of 22 December 1986 [3] on an action programme on employment growth the Council reiterated at paragraph II (2) (f) its wish to bring about an increase in the equality of access to, and of opportunity within, the labour market for women, especially through implementation of the Community medium-term programme 1986 to 1990;

Whereas Article 9 (a) and (b) of Directive 86/378/EEC envisages the adoption of a subsequent Directive to terminate the derogations authorized therein;

Whereas it is appropriate to implement the principle of equal treatment in areas where application of Directives 79/7/EEC and 86/378/EEC is or may be excluded or deferred, in order to achieve total elimination of discrimination on grounds of sex in respect of social security; whereas arrangements for this purpose should be laid down;

Whereas implementation of the principle of equal treatment as regards social security should not prejudice the provisions relating to the protection of women by reason of maternity;

Whereas equal treatment of male and female workers constitutes one of the Community's objectives, necessitating in particular the achievement of equality as regards the conditions of coverage by statutory and occupational social security schemes whilst maintaining the improvement of such conditions;

Whereas it is appropriate to select from the means available to achieve this aim those which particularly tend to promote the individualization of entitlements;

Whereas achievement of this aim should be accompanied by transitional measures designed to protect certain categories of holders of existing entitlements;

Whereas there are broad overlapping areas in statutory and occupational schemes; whereas Directives 79/7/EEC and 86/378/EEC take account of this; whereas as a consequence it is appropriate to take simultaneous action in respect of both these areas by means of a single legislative act,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The aim of this Directive is to complete, in the areas specified in Article 3, the implementation of the principle of equal treatment for men and women in matters of social security as defined in Article 4 of Directive 79/7/EEC and Article 5 (1) of Directive 86/378/EEC, hereinafter referred to as 'the principle of equal treatment'.

2. This Directive shall be without prejudice to the provisions relating to the protection of women by reason of maternity.

Article 2

This Directive shall apply to:

(a) the working population (including self-employed persons, workers whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment);

(b) retired workers;

(c) disabled workers;

(d) members of the family, survivors and other persons dependent on those referred to under (a), (b) and (c), these categories of persons to be defined by the Member States' national legislation.

Article 3

Under the conditions laid down by this Directive, the principle of equal treatment shall be extended to:

(a) the provisions of statutory schemes concerning survivors' benefits and family benefits;

(b) the corresponding provisions of occupational schemes (including those concerning the family benefits of occupational schemes for self-employed workers);

(c) the areas in which implementation of the principle of equal treatment may be excluded or deferred pursuant to:

(i) Article 7 (1) (a) to (d) of Directive 79/7/EEC,

or

(ii) Article 9 (a) of Directive 86/378/EEC;

(d) the provisions concerning social assistance, where they are intended to supplement the benefits referred to under (a) or (c) (i) or to replace them.

(1) OJ No C 203, 12. 8. 1986, p. 2.
(2) European Community Bulletin Supplement 3/86.
(3) OJ No C 340, 31. 12. 1986, p. 2.

I. Survivors' benefits

SURVIVING SPOUSE'S BENEFITS

Article 4

The principle of equal treatment means, as regards surviving spouse's benefits, that there shall be no discrimination on grounds of sex and to this end:

(a) either the recognition on the same terms for widowers of entitlement to the pensions and other benefits provided for widows;

(b) or the replacement of widows' benefits by the creation or extension of a system of individual rights open to all surviving spouses regardless of sex.

ORPHANS' BENEFITS

Article 5

The principle of equal treatment means with regard to orphans' benefits that there shall be no discrimination on the grounds of the sex of:

(a) the deceased parent,

or

(b) the orphan.

OTHER SURVIVORS' BENEFITS

Article 6

The principle of equal treatment means with regard to other survivors' benefits that there shall be no discrimination on the grounds of the sex of:

(a) the deceased person,

or

(b) the survivor.

II. Family benefits

CHILD BENEFIT AND BIRTH OR ADOPTION GRANT

Article 7

1. The principle of equal treatment means that there shall be no discrimination on grounds of sex with regard to:

(a) child benefit,

and

(b) benefits introduced to assist parents to assume their parental responsibilities.

2. The principle of equal treatment thus completed in this area shall apply both to natural parents and other persons responsible for a child and thus meeting the conditions (other than those which are incompatible with this principle) laid down for the grant of benefits referred to in paragraph 1.

3. Unless there is statutory provision for parents to share entitlement, benefits shall be paid without discrimination to one or other parent.

Accordingly:

— where parents are living together, benefits shall be paid to the mother only if the parents have not exercised their option of specifying which of them shall receive the benefits,

— in case of divorce or separation, benefits shall be paid to the parent who is actually taking care of the child.

BENEFITS FOR DEPENDENT ADULTS

Article 8

The principle of equal treatment means with regard to benefits for dependent adults that there shall be no discrimination on the grounds of the sex of:

(a) the dependent adult;

(b) the person caring for the dependent adult.

III. Extension of the principle of equal treatment to areas where its implementation might be excluded or deferred under Article 7 (1) (a) to (d) of Directive 79/7/EEC and Article 9 (a) of Directive 86/378/EEC

RETIREMENT AGE

Article 9

1. Without prejudice to the transitional provisions in paragraph 2 and in Article 10, when a pensionable age is determined for the purpose of granting old age and retirement pensions it shall be identical for both sexes.

2. If fixing an identical pensionable age leads to a reduction or increase in that age for workers of a given sex, provision shall be made for gradual implementation and for temporary safeguards for workers having reached the specified age, enabling them if they so wish to claim their pension at the age previously prescribed.

3. In the case of schemes which do not specify the pensionable age, the principle of equal treatment shall be deemed to have been complied with where:

(a) within specified limits, the choice of age is left to the beneficiaries who meet the prescribed conditions, which must be identical for both sexes;

or

(b) the entitlement to the pension or other benefit depends solely on the completion of a given number of contribution years, which is identical for both sexes.

Article 10

1. There shall be no discrimination as regards the advantages in respect of old age pension schemes granted to persons who have brought up children, or as regards the acquisition of benefit entitlements following periods of interruption of employment due to the bringing-up of children, provided that such persons have actually interrupted their employment for that purpose.

2. The granting of old age or invalidity benefit entitlements by virtue of the derived entitlements of a spouse, or the granting of increases in long-term benefits in respect of invalidity, old age, accidents at work and occupational disease for a dependent spouse shall be authorized solely in the case of those spouses who on the date when this Directive comes into effect have not constituted their own personal entitlements to these benefits.

GENERAL AND FINAL PROVISIONS

Article 11

This Directive shall be without prejudice to the right of Member States to replace a system of derived rights granting, to the insured person's spouse, entitlement to social security benefits, as referred to in Directives 79/7/EEC and 86/378/EEC and this Directive, by reasons of his or her legal links with the insured person with a system establishing personal entitlements, granted to all beneficiaries individually, to the following benefits:

— in case of sickness, health service care,

— in old age, entitlement to a full pension,

— in the event of the death of a spouse, entitlement of the survivor to financial assistance for reasons of health or social situation in the years preceding the age at which the survivor is entitled to an old age pension, as well as temporary benefits in the case of early death leaving the surviving spouse with a dependent child or children.

Article 12

Without prejudice to the application of Articles 9 (2) and 10 (2) of this Directive, Directives 79/7/EEC and 86/378/EEC shall take effect within the fields covered by this Directive on the date set for the implementation of the latter, subject to the following amendments:

(a) in Directive 79/7/EEC:

(i) Article 3 (2) is deleted;

(ii) in Article 7 (1) paragraphs (a) to (d) are deleted;

(b) in Article 9 of Directive 86/378/EEC, paragraphs (a) and (b) are deleted.

Article 13

1. Articles 5 and 6 of Directive 79/7/EEC and Articles 7, 10 and 11 of Directive 86/378/EEC shall apply to the matters covered by this Directive.

2. With respect to application of the principle of equal treatment to benefits of the surviving spouse or the pensionable age, the Directive may not be relied upon in respect of applications submitted before the date of its implementation.

Article 14

1. Subject to Articles 8 and 9 (c) of Directive 86/378/EEC, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within three years of its notification. They shall immediately inform the Commission thereof.

2. Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 15

Within four years ot the date of notification of this Directive, Member States shall forward all necessary information to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 16

This Directive is addressed to the Member States.