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► **B** **DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**
of 7 July 2010

on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

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**DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT
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of 7 July 2010

**on the application of the principle of equal treatment between men
and women engaged in an activity in a self-employed capacity and
repealing Council Directive 86/613/EEC**

Article 1

Subject matter

1. This Directive lays down a framework for putting into effect in the Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 2006/54/EC and 79/7/EEC.

2. The implementation of the principle of equal treatment between men and women in the access to and supply of goods and services remains covered by Directive 2004/113/EC.

Article 2

Scope

This Directive covers:

- (a) self-employed workers, namely all persons pursuing a gainful activity for their own account, under the conditions laid down by national law;
- (b) the spouses of self-employed workers or, when and in so far as recognised by national law, the life partners of self-employed workers, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘direct discrimination’: where one person is treated less favourably on grounds of sex than another is, has been or would be, treated in a comparable situation;
- (b) ‘indirect discrimination’: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (c) ‘harassment’: where unwanted conduct related to the sex of a person occurs with the purpose, or effect, of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

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- (d) ‘sexual harassment’: where any form of unwanted verbal, non-verbal, or physical, conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

*Article 4***Principle of equal treatment**

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.
2. In the areas covered by paragraph 1, harassment and sexual harassment shall be deemed to be discrimination on grounds of sex and therefore prohibited. A person’s rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.
3. In the areas covered by paragraph 1, an instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination.

*Article 5***Positive action**

Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship initiatives among women.

*Article 6***Establishment of a company**

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, the Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses, or between life partners when and in so far as recognised by national law, are not more restrictive than the conditions for the establishment of a company between other persons.

*Article 7***Social protection**

1. Where a system for social protection for self-employed workers exists in a Member State, that Member State shall take the necessary measures to ensure that spouses and life partners referred to in Article 2 (b) can benefit from a social protection in accordance with national law.
2. The Member States may decide whether the social protection referred to in paragraph 1 is implemented on a mandatory or voluntary basis.



Article 8

Maternity benefits

1. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.
2. The Member States may decide whether the maternity allowance referred to in paragraph 1 is granted on a mandatory or voluntary basis.
3. The allowance referred to in paragraph 1 shall be deemed sufficient if it guarantees an income at least equivalent to:
 - (a) the allowance which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health and/or;
 - (b) the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law and/or;
 - (c) any other family related allowance established by national law, subject to any ceiling laid down under national law.
4. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the allowance referred to in paragraph 1 of this Article.

Article 9

Defence of rights

1. The Member States shall ensure that judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, for the enforcement of the obligations under this Directive are available to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. The Member States shall ensure that associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that this Directive is complied with may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative proceedings provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 shall be without prejudice to national rules on time limits for bringing actions relating to the principle of equal treatment.

▼B*Article 10***Compensation or reparation**

The Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit.

▼M1**▼B***Article 12***Gender mainstreaming**

The Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

*Article 13***Dissemination of information**

The Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

*Article 14***Level of protection**

The Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment between men and women than those laid down in this Directive.

The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

*Article 15***Reports**

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by 5 August 2015.

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than 5 August 2016. That report should take into account any legal change concerning the duration of maternity leave for employees. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

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2. The Commission's report shall take the viewpoints of the stakeholders into account.

*Article 16***Implementation**

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 August 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Where justified by particular difficulties, the Member States may, if necessary, have an additional period of two years until 5 August 2014 in order to comply with Article 7, and in order to comply with Article 8 as regards female spouses and life partners referred to in Article 2(b).

3. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 17***Repeal**

Directive 86/613/EEC shall be repealed, with effect from 5 August 2012.

References to the repealed Directive shall be construed as references to this Directive.

*Article 18***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 19***Addressees**

This Directive is addressed to the Member States.