

Amended proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation ⁽¹⁾

(2001/C 62 E/11)

(Text with EEA relevance)

COM(2000) 652 final — 1999/0225(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 October 2000)

⁽¹⁾ OJ C 177 E, 27.6.2000, p. 42.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 13 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,

Having regard to the opinion of the Committee of Regions,

Whereas:

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, as general principles of Community law.

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

(2) Article 13 of the Treaty establishing the European Community empowers the Council to take appropriate actions to combat discrimination based on sex, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation.

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(3) The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions⁽¹⁾. The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

(4) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(5) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, of which all Member States are signatories; whereas ILO Convention No 111 prohibits discrimination in the field of employment and occupation.

Unchanged

(6) The Community Charter of the Fundamental Social Rights of Workers the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(7) The Treaty establishing the European Community includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the Treaty establishing the European Community, as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.

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⁽¹⁾ OJ L 39, 14.2.1976, p. 40.

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- (8) The 1999 Employment Guidelines agreed by the European Council at Vienna on 11 and 12 December 1998 stress the need to foster conditions for a more active participation in the labour market by formulating a coherent set of policies aimed at combating discrimination on grounds of disability and race or ethnic origin. The European Council Conclusions of Vienna emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life
- (11) Discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the fostering of the free movement of persons.
- (12) To this end any direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community;
- (13) Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.
- (14) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (8) The 2000 Employment Guidelines agreed by the Helsinki European Council on 10 and 11 December 1999 reaffirm the need to foster a labour market conducive to social inclusion by formulating a coherent set of policies aimed at combating discrimination against groups such as the disabled. They also underline the need to pay particular attention to supporting older workers in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life, and to their personal self-realisation.
- (10) On 29 June 2000, the Council adopted Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which already in itself provides protection against such discrimination in employment and occupation.
- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community; this prohibition of discrimination also applies to third-country nationals but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry into and residence of third-country nationals and their access to employment and occupation.
- (13) Harassment should be deemed to be discrimination when an unwanted conduct related to religion or beliefs, disability, age or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
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| <p>(17) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.</p> <p>(18) The European Union in its Declaration on the status of churches and non-confessional organisations, attached to the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status which churches and religious associations or communities enjoy in the Member States under national law and that it equally respects the status of philosophical and non-confessional organisations.</p> <p>(19) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures providing for specific advantages to prevent, reduce or eliminate inequalities associated with the above-mentioned discriminatory grounds</p> <p>(20) The provisions of this Directive lay down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.</p> <p>(21) It is important to ensure that persons who have been subject to discrimination have adequate means of legal protection. Associations or legal entities must also be empowered to exercise the right of defence on behalf of any victim.</p> <p>(22) The effective implementation of the principle of equality requires adequate judicial protection in civil matters against victimisation and an adjustment of the general rules on the burden of proof.</p> | <p>(15) Reasonable adjustment should be made, i.e. effective and practical measures aimed at adapting the workplace to a person's disability, for example by modifying facilities or equipment, working patterns, the allocation of tasks or the provision of training or personal assistance.</p> <p>(16) In order to determine whether the measures in question give rise to a disproportionate burden, particular account should be taken of the financial and other costs involved, of the size and turnover of the organisation or undertaking and of the availability of public funding or any other assistance.</p> <p>(17) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational requirement.</p> <p>Unchanged</p> <p>(19) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation.</p> <p>Unchanged</p> <p>(21) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, or other legal entities should also be empowered to exercise the rights of defence on behalf of or in support of the complainant.</p> <p>(22) The effective implementation of the principle of equality requires adequate judicial protection against victimisation and an adjustment of the general rules on the burden of proof in civil and administrative matters.</p> |
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(23) Member States should provide adequate information on the provisions adopted pursuant to this Directive.

Unchanged

(24) Member States should promote social dialogue between the social partners, to address different forms of discrimination in the workplace and to combat them.

(24) Member States should promote social dialogue between the social partners, and with non-governmental organisations, to address different forms of discrimination in the workplace and to combat them.

(25) Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be declared null and void or should be amended.

(25) Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be, or should be able to be, declared null and void or amended.

(26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

Unchanged

(27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.

(28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community, the objectives of this Directive, namely the creation, within the Community, of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

Unchanged

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

*Article 1***Purpose**

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of religion or belief, disability, age or sexual orientation.

INITIAL PROPOSAL

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Article 2

Unchanged

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever between persons on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

- (a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one person is treated less favourably than another is, has been or would be treated;
- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

Harassment of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.

In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates an undue hardship.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practices of the Member States.

4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable adjustment shall be made. This means that the employer shall take measures appropriate to the needs of a given situation in order to enable such persons to have access to, participate in, or advance in employment, or to have access to training, unless this requirement creates disproportionate burden.

5. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

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Article 3

Unchanged

Material scope

This Directive shall apply with regard to:

This Directive shall apply to all persons in both the public and private sectors, including public authorities, with regard to:

- (a) conditions for access to employment, self-employment and occupation, selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

- (a) conditions for access to employment, self-employment and occupation, unpaid or voluntary work, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

Unchanged

*Article 4***Genuine occupational qualifications requirement****Genuine occupational requirement**

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational qualification.

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.

2. Notwithstanding paragraph 1, the Member States may provide that in the case of public or private organisations based on religion or belief, and for the particular occupational activities within those organisations which are directly and essentially related to religion or belief, a difference in treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or the context in which they are carried out, a person's religion or belief constitute a genuine occupational requirement. This difference of treatment may not, however, give rise to any discrimination on the other grounds referred to in Article 13 of the EC Treaty.

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Article 5

Unchanged

Justification of differences of treatment on grounds of age

Notwithstanding Article 2(2)(a), the following differences of treatment, in particular, shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a legitimate aim and are appropriate and necessary to the achievement of that aim:

Notwithstanding Article 2(2)(a), differences of treatment on grounds of age shall not constitute direct discrimination if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy and labour market, and the means to achieve it are appropriate and necessary.

These differences may include:

(a) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;

Unchanged

(b) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;

(b) the fixing of a minimum age as a condition of eligibility for retirement or invalidity benefits under occupational social security schemes, including the fixing of different ages for workers or groups or categories of worker under occupational social security schemes on grounds of physical or mental occupational requirements;

(c) the fixing of different ages for employees or groups or categories of employees for entitlement to retirement or invalidity benefits on grounds of physical or mental occupational requirements;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;

(d) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;

Deleted

(e) the establishment of requirements concerning the length of professional experience;

(f) the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.

Article 6

Unchanged

Positive action

This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.

In order to ensure full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures designed to prevent or compensate for disadvantages linked to any of the discriminatory grounds referred to in Article 1.

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Article 7

Unchanged

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. 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.

CHAPTER II

REMEDIES AND ENFORCEMENT*Article 8***Defence of rights**

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.
2. Member States shall ensure that associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive, including, where they deem it appropriate, conciliation procedures, are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.

2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time-limits for bringing actions as regards the principle of equal treatment.

Article 9

Unchanged

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

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2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures, unless otherwise provided by the Member States.

4. Paragraphs 1, 2 and 3 shall apply to any legal proceedings commenced in accordance with Article 8(2).

*Article 10***Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 11***Dissemination of information**

1. Member States shall ensure that adequate information on the provisions adopted pursuant to this Directive is provided to vocational training and educational bodies and is adequately disseminated within the workplace.

2. Member States shall ensure that competent public authorities are informed by appropriate means as regards all national measures taken pursuant to this Directive.

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

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*Article 12***Social dialogue**

1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Member States shall encourage the two sides of industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

Unchanged

1. In accordance with their national traditions and practices, Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Member States shall encourage the two sides of industry, without prejudice to their autonomy, to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

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*Article 13***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

Unchanged

CHAPTER III

FINAL PROVISIONS*Article 14***Compliance**

Member States shall take the necessary measures to ensure that:

a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

b) any provisions contrary to the principle of equal treatment which are included in collective agreements, contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are declared null and void or are amended.

b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are or may be declared null and void or amended.

*Article 15***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Unchanged

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for, which may include payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16 at the latest and shall notify it without delay of any subsequent amendment affecting them.

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*Article 16***Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

When 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.

*Article 17***Report**

Member States shall communicate to the Commission, within two years of the date mentioned in Article 16, all the information necessary to draw up a report to the European Parliament and the Council on the application of this Directive.

*Article 18***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 19***Addressees**

This Directive is addressed to the Member States.

Unchanged

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002, or may entrust the social partners, at their joint request, with the implementation of this Directive as regards the provisions falling under the scope of collective agreements. In such cases, Member States shall ensure that no later than the date on which the Directive should be transposed, the social partners introduced the necessary measures by agreement, the Member States concerned being required to take any necessary measure to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Unchanged

1. Member States shall communicate to the Commission, within two years of the date mentioned in Article 16, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take account of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of integration of equal-opportunities policy, this report shall, *inter alia*, evaluate the impact of measures on men and women. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Unchanged