Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 76/207/EEC 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

(presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)
EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. On 7th June 2000 the Commission presented the proposal for a Directive of the European Parliament and The Council amending Council Directive 76/207/EEC 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. This proposal for a Directive aims to take into account the new developments of the Treaty, the case law of the Court and to ensure coherence between secondary legislation on identical issues, such as Directives based on Article 13 of the Treaty.

2. The legal base of this proposal is Article 141, paragraph 3 of the EC Treaty. The proposed modification concerns the application of the principle of equal treatment of men and women in matters of employment and occupation. According to Article 141(3) of the Treaty, the Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall 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, including the principle of equal pay for equal work or work of equal value.

3. The Economic and Social Committee has been consulted on the basis of the Article, and has given a favourable opinion on that proposal. The European Parliament, in its plenary session of May 2001 adopted several amendments to the initial text of the Commission. The Commission could accept the majority of these amendments since most of them improve the clarity and the legal certainty of the text and ensure coherence with several of the provisions found in the Directives based on Article 13.

4. Therefore, the Commission, on the basis of Article 251, paragraph 2 proposes to modify its initial proposal in order to take account of certain amendments proposed by the European Parliament in its legislative resolution.

II. COMMENTARY ON THE AMENDMENTS

RECOLTALS

5. The first amendment modifies Recital 1, setting out the framework within which the Directive is situated, by referring to the ECJ case-law, and the new Treaty provisions by which equal treatment has been strengthened.

6. The second amendment replaces the previous recital 2 and refers to Article 141(3), which is the legal base of the proposal for a Directive.

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1 COM(2000)334 Final
2 Directives 2000/48/EC and 2000/73/EC
7. The third amendment inserts a new Recital 3 which refers to the need to include a definition on direct and indirect discrimination into the proposal for a Directive, in order to ensure coherence with Directives based on Article 13.

8. The fourth amendment inserts a new Recital 3(a) clarifying the possibility of taking statistical evidence into account in cases of indirect discrimination.

9. The fifth amendment modifies previous Recital 3, making it Recital 4. This modification specifies that sexual harassment may occur in all areas covered by the scope of the present proposal for a Directive.

10. The sixth amendment inserts a new Recital 4a which alludes to the need for those responsible to take measures necessary to prevent sexual harassment.

11. The seventh amendment deletes the original recital 4

12. The eighth amendment modifies Recital 5, which specifies those occupational activities which may be excluded from the scope of this proposal for a Directive.

13. The ninth amendment modifies Recital 6 and inserts a reference to protection during pregnancy or maternity leave, and also to the findings of the Court as regards the rights of women returning to work after pregnancy or maternity leave.

14. The tenth amendment inserts a new Recital 7 concerning the reconciliation of work and family life, referring to the findings of the Court, Directive 96/34/EC on Parental Leave and the European Social Agenda, and specifies that this Directive is without prejudice to the right of certain Member States which recognise rights to paternity leave.

15. The eleventh amendment modifies original Recital 7, making it Recital 8. This modification inserts a reference to Declaration 28, as requested by the European Parliament.

16. The twelfth amendment modifies the original Recital 8, making its Recital 9, and concerns protection against retaliatory measures (victimisation).

17. The thirteenth amendment deletes the original Recital 9.

18. The fourteenth amendment inserts a new Recital 10, which refers to the necessity for Member States to ensure effective penalties in cases of discrimination, in order to achieve the aims of the Directive, as already specified in case law.

19. The fifteenth amendment inserts a new Recital 11, and refers to the need to encourage employers to establish annual equality plans.

20. The sixteenth amendment modifies the original Recital 10, making it Recital 12, and refers to the need to ensure adequate legal protection to victims sexual discrimination, including the possibility for associations, organisations or legal entities to engage or to pursue proceedings on behalf of or in support of individuals or a group of persons with their approval or consent.

ARTICLES

22. The eighteenth amendment modifies Article 1, paragraph 1, in order to specify, by using the wording of Article 141, that this Directive applies to all employment situations, irrespective to the legal nature of the relationship under which a person is employed or occupied.

23. The nineteenth amendment deletes Article 1, paragraph 2, as it is no longer relevant in light of the measures already taken by the Community in the field of social security.

24. The twentieth amendment modifies Article 1(1a), clearly stating the Member States’ commitment to promote equal treatment and to eliminate inequalities.

25. The twenty-first amendment inserts, in the first paragraph a new Article 1a which incorporates definitions on direct and indirect discrimination, harassment on the basis of sex, and sexual harassment. This is done in order to achieve coherence with Directives based on Article 13 which contain a similar listing of definitions.

26. The twenty-second amendment inserts a new Article 1b which defines "harassment" and "sexual harassment" as discrimination on the grounds of sex, and specifies that Member States should take measures to prevent harassment, including a system of counsellors at the workplace.

27. The twenty-third amendment deletes the subparagraph under Article 2(1) on indirect discrimination, since another definition is now included in new Article 1a, and modifies Article 2(2) by clarifying the situation in which a Member State may provide for a difference of treatment on the basis of sex, specifying that this should only be when the aim is legitimate and is within the confines of the principle of proportionality.

28. The twenty-fourth amendment inserts under Article 2, paragraphs 3a and 3b which refer separately to maternity and paternity leave. As far as maternity leave is concerned, it makes clear that, after such leave, women should also benefit from any improvement in working conditions to which they would be entitled during their absence.

29. The twenty-fifth amendment replaces Article 2(4), and concerns the requirement for Member States to submit reports to the Commission every two years on positive action measures, instead of every three years, as originally proposed by the Commission and instead of one year, as proposed by the European Parliament. It also makes reference to Declaration 28 as annexed to the Treaty.

30. The twenty-sixth amendment inserts Article 2a and provides the possibility for Member States to adopt measures which go beyond the protection provided by the Directive, but not the right to lower that protection.
31. The twenty-seventh amendment inserts a new Article 3, paragraph 1 defines the precise scope of this proposal for a Directive concerning employment and occupation, training and working conditions.

32. The twenty-eighth amendment inserts Article 3(1a), which prohibits incitement or pressure to discriminate on the basis of sex.

33. The twenty-ninth amendment modifies the introductory phrase of Article 3(2) to include reference to Article 141(4) on positive action measures.

34. The thirtieth amendment modifies Article 3(2b) on provisions contrary to the principle of equality of treatment which should be declared null and void by deleting the possibility of amending them.

35. The thirty-first amendment modifies Article 3(2d) to read "the principle of equality of treatment for men and women" as it is in the Treaty (Article 141(3)).

36. The thirty-second amendment replaces Articles 4(b) and 5(b) with the wording found in Article 3(2b) above.

37. The thirty-third amendment modifies Article 6(2) to include wording stating that Member States are liable for ensuring that real and effective penalties are provided and effectively imposed.

38. The thirty-fourth amendment modifies Article 7 by extending protection against victimisation not only to employees but also to trade union delegates supporting them, and to witnesses.

39. The thirty-fifth amendment modifies Article 8a. Under this article, Member States are required to provide for an independent body for the implementation of the principle of equality of treatment, the power of these bodies is covered in the areas falling within the scope of those Directives on equality of treatment now listed under this Article. It also proposes the involvement of these bodies to the procedures in case of discrimination with the consent of the victim.

40. The thirty-sixth amendment modifies Article 8b by inserting two new paragraphs 2a and 2b, which prompt Member States to ensure dialogue on this issue with NGOs, to encourage employers to take all measures necessary to promote equality and to prepare annual equality reports, on the basis of which they may be required to improve the situation.

41. The thirty-seventh amendment modifies the date of implementation of the amended Directive, making it 31st December 2002.
Amended Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of equal treatment for men and women as regards access to employment,
vocational training and promotion, and working conditions

[Text with EEA relevance]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular, Article 141(3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

(1) Article 3(2) of the Treaty imposes an obligation to aim to eliminate inequalities, and to promote equality between men and women.

(1) Equality for women and men is a fundamental principle, under Articles 2 and 3(2) of the EC Treaty and the case-law of the Court of Justice. These Treaty provisions proclaim equality between women and men as a 'task' and an 'aim' of the Community and impose a positive obligation to 'promote' it in all its activities.

(2) The principle of equal treatment between men and women is a fundamental principle of Community law as referred to in Article 141 and in particular in paragraph 3, which addresses specifically sex discrimination related to employment and occupation.

(2) Article 141 of the Treaty, and in particular paragraph 3, addresses specifically 'equal opportunities and equal treatment of men and women in matters of employment and occupation.'

¹ OJ C
² OJ C
³ OJ C
(3) Directive 76/207/EEC does not define the concepts of direct or indirect discrimination. On the basis of Article 13 of the Treaty, Council has adopted Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation which define direct and indirect discrimination. Thus it is appropriate to insert definitions consistent with these Directives in respect to sex.

(3a) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with the rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means, including on the basis of statistical evidence.

(4) In its Resolution of 29 May 1990 on the protection of the dignity of women and men at work\(^4\), the Council affirmed that sexual harassment in the workplace may in certain circumstances, be contrary to the principle of equality for men and women within the meaning of Council Directive 76/207/EEC\(^5\). A statement to that effect should be included in the Directive itself, sexual harassment usually affects the individual’s work performance and/or creates an intimidating, hostile or offensive environment. To this end it must be emphasised that sexual harassment occurs not only in the workplace, but also in the context of access to employment and training, during employment and occupation.

(4a) Measures should therefore be taken obliging those responsible under national law for access to training, employment or occupation, and the conditions relating thereto, to introduce procedures to prevent sexual harassment which may include a system of confidential counsellors at the working place.

(4) Directive 76/207/EEC does not define the concept of indirect discrimination. It is thus appropriate to insert such a definition consistent with that of Council Directive 97/80/EC of 15 December 1997\(^6\) on the burden of proof in cases of discrimination based on sex, as amended by Directive 98/52/EC\(^7\).

(5) The scope of the occupation activities that Member States seek to may exclude from the scope of Directive 76/207/EEC should be restricted. The extent to which some activities may not be excluded should be specified in accordance with the case law of the Court of Justice of the European Communities. to those which necessitate the employment of a person of one sex by reason of the nature of the particular occupational activities concerned, provided that the objective sought is legitimate, and subject to

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\(^4\) OJ C 157, 27.6.1990, p. 3

\(^5\) OJ L 39, 14.2.1976, p. 40

\(^6\) OJ L 14, 20.1.1998, p. 6

\(^7\) OJ L 205, 22.7.1998, p. 66
the principle of proportionality as laid down by the case law of the Court of Justice.

(6) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman’s biological condition during and after pregnancy. It has moreover consistently ruled that any unfavourable treatment of women related to pregnancy or maternity constitutes direct sex discrimination. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, aims to ensure the protection of the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding. The recitals of that Directive provide that the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women who are on the labour market unfavourably nor work to the detriment of Directives concerning equality of treatment for men and women. The Court of Justice has recognised the protection of employment rights of women, in particular as regards their right to return to work, falls within the scope of Directive 76/207/EEC. That right should be explicitly guaranteed to women who have recently given birth. To the same job, with the same working conditions, as well as to profit from any improvement in working conditions to which they would be entitled during their absence.

(7) Reconciling family and working life has been recognised and proclaimed by the Court of Justice. Moreover, by its Resolution on the balanced participation of women and men in family and working life, the Council has confirmed this as a principle of Community law. It is reflected in Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It has also been enshrined in the European Social Agenda as a fundamental objective. Directive 96/34/EC already recognises a right to return to work for workers who have taken parental leave; furthermore, this Directive is without prejudice to the right of any Member State that recognises a distinct concept of paternity leave under national law and/or practice to lay down national rules for workers who have exercised rights to paternity leave.

Rights relating to the reconciling of family life and work should not be considered as exceptions to the principle of equality of treatment for women and men, but as a condition and means for achieving substantive equality of treatment.

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8 OJ L 348, 28.11.1992, p.1
9 Case C-243/95 Hill [1998] ECR I-3739
10 OJ C 218, 31/7/2000, p.5
(8) The possibility for Member States to maintain or adopt positive action measures with a view to ensuring full equality in practice for women and men in working life is enshrined in Article 141(4) of the Treaty. This Treaty provision makes the existing Article 2(4) of Directive 76/207/EEC redundant.

Declaration No 28 annexed to the Treaty states that positive measures should, in the first instance, aim at improving the situation of women in working life. The publication of periodical reports by the Commission every two years on the implementation of the possibility offered by Article 141(4) will contribute to the dissemination of good practice. Such reports will help Member States to realise the importance and necessity of such measures and to compare the way these provisions are implemented. And further they will provide citizens with to have a full picture of the situation existing in each Member State.

(9) The Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, employees enjoy such protection even after the employment relationship has ended. The protection afforded to them against retaliatory measures of the employer is not limited to cases of dismissal, but covers any other retaliatory measure (victimisation) even when taken after the end of the employment relationship. Furthermore, anyone supporting in any way (in judicial proceedings or on other occasions) a person who considers her/himself a victim of discrimination should also enjoy the same protection.

(9) The Court of Justice has ruled that, in order to be effective, the principle of equal treatment implies that, whenever it is breached, the compensation awarded to the employee discriminated against must be adequate in relation to the damage sustained.

(10) The principle of effective judicial protection and real and effective penalties has been established by the Court of Justice in cases involving the application of Directive 76/207/EEC. Member States should thus take measures which are sufficiently effective to achieve the aim of the Directive and ensure that the rights thus conferred may be effectively relied upon before the national courts.

In fully embodying the Court of Justice case-law, the most effective penalties under national law should be imposed in cases of discrimination. Adequate compensation is one kind of sanction.

(11) Work related to equality of treatment for women and men should be pursued in a planned and systematic way, also at company level, where employers should be encouraged to establish annual equality plans.

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12 Case C-185/97 Coote [1998] ECR 1-5199
15 Case 222/84 Johnston (1986) ECR 1651
(12) Persons subject to discrimination on grounds of sex, should have adequate means of legal protection. To provide a more effective level of protection to workers who are discriminated against, Associations, organisations or legal entities should also be empowered to engage in judicial, administrative or other proceedings exercise the rights of defence on behalf or in support of individuals or groups of persons who are victims of discrimination, with their approval or consent.

(13) Member States should promote social dialogue between the social partners to address different forms of discrimination based on sex in the workplace and to combat them.

(14) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive 76/207/EEC.

(15) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore 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.


HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/207/EEC is hereby amended as follows:

1. In Article 1, paragraph 1 is modified as follows:

"The purpose of this Directive is to put into effect in the Member States the principle of equal opportunities and equality of treatment men and women in employment, occupation and vocational training, including working conditions irrespective of the legal nature of the relationship under which a person is employed or occupied."

2. In Article 1, paragraph 2 is deleted.

3. In Article 1, the following paragraph 1a is inserted:

"1a. The Member States shall introduce such measures as are necessary to eliminate inequalities and enable them actively and visibly promote the objective of equality between men and women by its incorporation, in particular, into all laws, regulations, administrative provisions, policies and activities in the areas referred to in paragraph 1".
4. The following Article 1a is inserted:

"Article 1a
Definitions

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

- **direct discrimination**: the situation where a person is treated less favourably than another is, has been or would be treated in a similar situation, on grounds of sex;

- **indirect discrimination**: the situation where an apparently neutral provision, criterion or practice puts 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 and proportionate aim, and the means of achieving that aim are appropriate and necessary;

- **harassment**: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment;

- **sexual harassment**: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment".

"Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person’s rejection of, or submission to, such conduct is used as a basis for a decision which affects that person."

5. The following Article 1b shall be inserted:

"Article 1b

"Harassment" or "Sexual harassment" within the meaning of Article 1a shall be deemed to be discrimination on the grounds of sex and therefore prohibited.

Member States shall take measures obliging those responsible under national law for access to training, employment or occupation, or the conditions relating thereto, to introduce measures to prevent sexual
harassment, which may include a system of confidential counsellors at
the working place.”

6. The following Article 1c shall be inserted:

"Article 1c

Behaviour consisting of incitement, instructions or pressure to
discriminate shall fall within the definitions of direct and indirect
discrimination."

7. Article 2 is amended as follows:

(a) In paragraph 1, the following subparagraph is added:

"Indirect discrimination, for the purposes of the first subparagraph, shall
exist where an apparently neutral provision, criterion or practice
disadvantages a substantially higher proportion of the members of one sex
unless that provision, criterion or practice is appropriate and necessary and
can be justified by objective factors unrelated to sex."

(a) Paragraph 2 is replaced by the following:

"2. Any general exclusion of, or general restriction on one sex having
access to any kind of professional activity or to the training required to
gain access to such an activity constitutes discrimination within the
meaning of this Directive. In the exceptional circumstance where a Member
State provides that a difference of treatment based on a characteristic related
to sex shall not constitute discrimination as regards access to employment,
such characteristic must constitute a precise and definite genuine
occupational requirement, the object sought is to be legitimate, and the
requirement is proportionate.

Derogations to the principle of equality of treatment shall remain within the
limits of what is appropriate and necessary in order to achieve the aim
objective in view.”

(b) In paragraph 3, the following subparagraph 3a is added:

"A woman who has given birth shall be entitled, after the end of her period
of maternity leave, or after absence directly related to, or as a
consequence of, pregnancy and/or confinement, to return to her own job
or to an equivalent job under terms and conditions which are not less
favourable to her and to benefit from any improvement in working
conditions to which she would be entitled during her absence. " post with
no change in her working conditions."
(c) The following subparagraph 3b is added:

"Those Member States which recognise the right to paternity leave shall take the necessary measures to protect working men against dismissal while exercising that right, and ensure that, at the end of such leave, they shall be entitled to return to their jobs or equivalent posts on terms and conditions which are no less favourable to them.

Any unfavourable treatment of a woman related to pregnancy or maternity, or of a man or a women related to reconciling family and working life, shall constitute direct discrimination."

(d) Paragraph 4 is replaced by the following:

"4. On the basis of the information provided by Member States pursuant to Article 9, the Commission will adopt and publish every three years a report establishing a comparative assessment of the positive measures adopted by the Member States pursuant to Article 141(4) of the Treaty." Member States shall submit reports to the Commission every two years on the positive actions they adopt or maintain and on their implementation, on the basis of which the Commission shall adopt and publish a report every two years establishing a comparative assessment of the positive measures which are in effect in each Member State pursuant to Article 141(4) of the Treaty and in the light of Declaration No 28 annexed to the Treaty."

8. The following Article 2a is inserted:

"Article 2a

The Member States may adopt or retain provisions which protect more effectively the principle of equality of treatment for men and women than those contained in the present Directive.

The implementation of this Directive may in no circumstances be used as a reason to lower the level of protection against discrimination already provided by the Member States in the areas governed by this Directive."

9. Article 3, paragraph 1 shall be replaced by the following:

"1. Application of the principle of equality of treatment for men and women means that there shall be no direct or indirect discrimination the grounds of sex in the public or private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or occupation, including selection criteria and recruitment conditions, whatever the 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;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

10. In Article 3(2), the introductory phrase is amended as follows:

"2. To this end, and without prejudice to the provisions of Article 141(4) of the Treaty, the Member States shall take the measures necessary to ensure that:"  

11. In Article 3(2), point (b) is replaced by the following:

"b. any provisions contrary to the principle of equality of treatment for men and women which are included in collective agreements, contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void."

12. In Article 3(2), the following point (d) is added:

"(d) any provision contrary to the principle of equality of treatment for men and women concerning membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations shall be declared null and void."

13. Article 4(b) is replaced by the following:

"(b) any provisions contrary to the principle of equality of treatment for men and women which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void."

14. Article 5(b) is replaced by the following:

"(b) any provisions contrary to the principle of equality of treatment for men and women which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be declared null and void."
15. Article 6 is replaced by the following:

"Article 6"

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equality of treatment for men and women within the meaning of Articles 3, 4, and 5 to pursue their claims by judicial process after possible recourse to other competent authorities, even after the employment relationship has ended.

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure that reparation for the loss and damage sustained by a person injured as a result of discrimination contrary to Articles 3, 4 or 5 is real and effective, proportionate and dissuasive and may not be limited by an upper limit fixed a priori or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of the lapse of time until actual payment of the capital sum awarded."

16. Article 7 is modified as follows:

"Article 7"

"Member States shall introduce into their national legal systems such measures as are necessary to protect persons covered by this Directive, including employees and trade union delegates, whether as victims or witnesses, from dismissal or any other adverse treatment or adverse consequence, including the taking of judicial action against them, as a reaction to a complaint or to proceedings of any kind, aimed at enforcing compliance with the principle of equality of treatment for men and women"

17. The following Articles 8a, 8b and 8c are inserted:

"Article 8a"

2. Member States shall ensure that the functions of the independent bodies referred to in paragraph 1 include receiving, examining and pursuing complaints, with approval from the parties concerned, from individuals, groups of individuals and organisations of discrimination on grounds of sex, starting investigations or surveys concerning discrimination on grounds of sex and publishing reports on issues relating to discrimination based on sex.

3. Member States shall ensure that associations, organisations or other legal entities may pursue, on behalf of the complainant with his or her approval, any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive which have an interest in ensuring that the provisions of this Directives 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 obligation under this Directive.

Article 8b

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, including 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 agreements, at the appropriate level, laying down anti-discrimination rules in the field of equality of treatment between women and men.

2a. Member States shall encourage dialogue with those non-governmental organisations which, in accordance with national practices and law, have a legitimate interest in promoting equality of opportunity.

Member States shall take all necessary measures to ensure that employers promote equality for women and men at the workplace in a planned and systematic way, including equal pay for equal work or work of equal value.

2b To this effect, Member States shall encourage employers to prepare annual equality reports, including statistics on proportions of women and men at different levels of the organisation. In case of discrepancies in these respects, employers shall be encouraged to include in the annual report measures to improve the situation.

Article 8c

1. Member States shall lay down the rules or penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are effectively implemented. The penalties provided for must be effective, proportionate and
dissuasive. The Member States shall notify those provisions to the Commission by 31 December 2002 at the latest and shall notify it without delay of any subsequent amendment affecting them."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest or shall ensure, by that date at the latest, that management and labour introduce the requisite provisions by way of agreement.

Member States shall take all necessary steps to enable themselves at all times to guarantee the results imposed by this Directive. They shall immediately inform the Commission thereof.

When Member States adopt those measures, 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. The Member States shall communicate to the Commission, within three years of the entry into force of this Directive, 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.

3. Without prejudice to paragraph 2, Member States shall communicate to the Commission, every three years, the texts of laws, regulations and administrative provisions of positive measures adopted pursuant to Article 141(4) of the Treaty.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament          For the Council
The President                        The President