



Confédération des Organisations Familiales de l'Union européenne  
Confederation of Family Organisations in the European Union

15 July 2008

Response to the European Commission's questionnaire on  
**Directive 86/613/EEC**

COFACE is a pluralistic organisation, at the heart of civil society, which aims at promoting family policy, solidarity between generations and the interests of children within the European Union.

COFACE advocates a policy of non-discrimination and of equal opportunities between persons and between family forms, and specifically supports policies aiming at equality between women and men.

COFACE has done a vast amount of work and action in the field of reconciliation between work life and family life, and regarding the role of men in families. This work is addressed to all families irrespective of the status of the parents (employees, self-employed, assisting spouses) as family policy should be holistic.

Please find below COFACE's response to the questionnaire on options for improvement of the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

## **1) Status quo**

When Directive 86/613/EEC was adopted in December 1986, COFACE deplored the little binding effect of the directive on Member States regarding recognition of the work of spouses (article 7) and protection of maternity (article 8). Indeed the Directive only compelled Member States to examine whether, and under what conditions such provisions could be introduced at national level.

This was pointed out in the Report on Directive 86/613/EEC by the Network of Legal Experts on the application of Community Law on equal treatment between men and women<sup>1</sup>. The report stressed that the wording of articles 7 and 8 is weak and the obligations of the Member States in this respect are not precise and strong enough. The Directive does not set minimum standards for entitlement to maternity leave and does not prescribe that self-employed women and assisting spouses be granted independent rights to cash benefit or to access to services supplying temporary replacements.

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<sup>1</sup> [http://ec.europa.eu/employment\\_social/gender\\_equality/legislation/report\\_draft2.pdf](http://ec.europa.eu/employment_social/gender_equality/legislation/report_draft2.pdf)

As a consequence, the practical effect of the Directive remains unclear, with important gaps remaining in national legislation regarding the social protection of assisting spouses and the protection of maternity. Besides the Directive falls short in addressing more widely the issue of reconciliation of work and family life (parental leave, paternity leave, etc.).

This assessment is in line with the implementation report carried out by the Commission in 1994<sup>2</sup> and with the Opinion of the Advisory Committee on Equal Opportunities for Women and Men published in June 2008<sup>3</sup>.

The European Parliament has on several occasions called on the European Commission to undertake a radical revision of Directive 86/613/EEC, most recently in its Resolution of 12 March 2008 on the situation of women in rural areas of the EU<sup>4</sup>.

COFACE strongly advocates for a revision of Directive 86/613/EEC, along the lines detailed below.

## **2) Improvement of the protection in case of maternity**

COFACE insists on the need to extend the benefit of maternity leave to self-employed mothers at EU level.

The length of the compulsory maternity leave enshrined in directive 92/85/EEC has as prime objective the protection of the health of the mother and the child. Self-employed mothers must benefit from the same health protection than other workers. They should be entitled to a maternity leave with a duration long enough to ensure the proper course of a normal pregnancy and physical recovery of the mother after a normal childbirth.

Beyond the period of leave aiming at the protection of the health of the mother and the child, self-employed mothers should also be entitled to a period of post-natal settling-in leave to be incorporated in the measures to reconcile family life and working life (for more details: see COFACE's position on Directive 92/85/EEC and Directive 96/34/EC, March 2008<sup>5</sup>).

Maternity leave should be covered by social protection. During the maternity leave self-employed mothers should benefit from maternity benefits at least equivalent to the allowance received in the case of sick leave. The absence of such payment would act as real disincentive for self-employed women to stop working, to the detriment of their own and their child's health.

Entitlement to maternity leave for self-employed women also implies the organisation of temporary replacement services. These services should be tailored to the diversity of activities exercised by self-employed persons. These services should be complementary to maternity benefits.

Besides, during the settling-in period, self-employed workers must have the choice between taking the leave or returning to work. This means that they must be able to find suitable replacement measures for child care.

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<sup>2</sup> [http://ec.europa.eu/employment\\_social/gender\\_equality/legislation/com1994-163\\_en.pdf](http://ec.europa.eu/employment_social/gender_equality/legislation/com1994-163_en.pdf)

<sup>3</sup> [http://ec.europa.eu/employment\\_social/gender\\_equality/docs/2008/final\\_opinion\\_11\\_06\\_en.pdf](http://ec.europa.eu/employment_social/gender_equality/docs/2008/final_opinion_11_06_en.pdf)

<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0094+0+DOC+XML+V0//EN>

<sup>5</sup> <http://coface-eu.org/en/upload/Re-COFACE-Leave-EN.pdf>

### **3) Recognizing the contribution of assisting spouses**

Assisting spouses still suffer from a lack of legal status in many Member States, which leads to specific financial and legal problems, including in the case of family breakdown. COFACE therefore urges the Commission to propose amendments of Directive 86/613/EEC putting on Member States the obligation to recognise the contribution of assisting spouses in the family business and to ensure that they benefit from the same level of social protection as the self-employed.

Regarding protection in the case of maternity, assisting spouses should be entitled to maternity leave, with a right to maternity benefit and to access temporary replacement services (see above 2)). Besides, during the settling-in period, assisting spouses should also be able to choose between taking the leave or returning to work (see above 2)).

### **4) Providing leave to care for family members and paternity leave**

Measures enabling reconciliation of family life and work life, including leave entitlements, are key to encourage a better integration of women in economic activities and to support families to fulfil their desire to have children. This holds true for all workers, whether employed, self-employed or assisting spouses. Besides the specificities of self-employed activity often put more constraints on work-life balance. Therefore any EU legislation on reconciliation measures should apply to all workers, taking into account the specific needs of self-employed workers and assisting spouses.

The current parental leave schemes should be made accessible to these categories of workers. Should a right to paternity leave, adoption leave and leave to care for dependent family members be provided for at EU level, as supported by COFACE (see COFACE's position on Directive 92/85/EEC and Directive 96/34/EC, March 2008, mentioned above), these schemes should be made available to all workers.

Leave entitlements should be accompanied with a right to financial compensation. The level of compensation should be high enough to enable workers to make use of these leave arrangements.

Self-employed workers and assisting spouses on leave must also be able to access temporary replacement services. These services should be tailored to the diversity of activities exercised by self-employed persons.

Besides, self-employed workers and assisting spouses must have the choice between taking the leave or staying at work. This means that they must be able to find suitable replacement measures for child and dependant person care, which correspond to their particular area of activity and their working patterns.

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