



LOBBY EUROPEEN DES FEMMES
EUROPEAN WOMEN'S LOBBY

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Shadow Directive on achieving equality of women and men outside the field of occupation and employment.

**In view of the official proposal for a European directive in this area in
June 2002**

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EXECUTIVE SUMMARY OF THE
SHADOW DIRECTIVE ON ACHIEVING EQUALITY OF WOMEN AND MEN OUTSIDE THE
FIELD OF OCCUPATION AND EMPLOYMENT

PROPOSED BY THE EUROPEAN WOMEN'S LOBBY

The European Women's Lobby (EWL) welcomes the intention of the European Commission to bring forward a new directive on equality of women and men as a very positive step towards the achievement of full equality of women and men in Europe and the realisation of women's human rights. In this context, this "*Shadow directive*" proposed by EWL is the result of a comprehensive consultation process of women's organisations across the EU (see page 19) and EWL hopes that the Commission and Member States will take this position into consideration and ensure that the text is as comprehensive and effective as possible.

EWL considers **gender equality as a prerequisite for democracy** and an issue linked to the *general good* and well being of societies, which requires not only the elimination of discrimination in law, but also the **implementation of active integrated policies in order to achieve equality in reality** (see article 1).

EWL also wants to stress that humanity is made up of women and men, that gender-based discrimination is universal and that **unequal gender relations also influence all other forms of discrimination**. All anti-discrimination measures and policies must therefore take into account the **multiple discrimination many women are facing**.

Gender inequalities in all areas must be seen in the context of a continuum; they are rooted in people's mind but also in social structures. This means that achieving equality of women and men in the reality cannot be achieved through isolated measures, but only through an integrated and comprehensive approach. For example women as a group will never have the same opportunities on the labour market or in society, as long as 1 out of 5 women experiences domestic violence or if equality in the private sphere is not achieved, with women still doing 80% of all care, community and household work.

EWL highlights the fact that **articles 2, 3 and 13 of the Treaty read in combination, define equality of women and men as an objective** of the Community and the Member States, which obliges Member States to **achieve equality in all fields covered by the Treaty** and provide a **strong legal basis** for very broad action at EU level.

EWL therefore insists that the new directive must cover all areas, in particular but not only: the **parity participation of men and women in decision-making**; the **access to and supply of goods and services**; **taxation**; the right to **reconcile family and working life**; **social protection, social security, social benefits and non-occupational healthcare** and the fight against social exclusion; **education, training and research**; family and society-based **violence** against women; health; the images of women and men portrayed in **advertising and the media**, the **surname** (see articles 3 to 13).

Mainstreaming of equality of women and men is one of the tools to be used for achieving equality in combination with **specific measures, policies and institutional mechanisms** and a **duty on public authorities to promote it actively**. Tools such as **gender budgeting, gender analysis, and gender-**

disaggregated statistics are indispensable for defining the issues and tackling them accordingly (see articles 14 to 20).

Finally, EWL emphasises that important **definitions must be integrated in the directive**, for example the concept of discrimination, positive measures, parity democracy, gender mainstreaming, violence against women (see article 2).

**Shadow “*Directive on achieving equality of women and men outside
the field of occupation and employment*”
proposed by the European Women’s Lobby**

Having regard to the Treaty establishing the European Union and in particular Article 6 thereof,
Having regard to the Treaty establishing the European Community and in particular Articles 13, 2 and 3 paragraph 2 thereof,
Having regard to the Case Law of the European Court of Justice
Having regard to the Council Recommendation of 2nd December 1996 on the balanced participation of women and men in the decision-making process (96/694/CEE)
Having regard to the Council Recommendation of 13th December 1984 on the promotion of positive action for women (84/635/CEE),
Having regard to the Council Recommendation of 31st March 1992 on child care (92/241/CEE),
Having regard to the Council Resolution of 29th June 2000 on the balanced participation of women and men in family and working life - (Official Journal n° C 218 of 31/07/2000),
Having regard to the Resolution of the Council of 4th December 1997 concerning the report on the state of women’s health in the European Community – (Official Journal n° C 394 of 30/12/1997),
Having regard to the Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 5th October 1995 on the image of women and men portrayed in advertising and the media – (Official Journal n° C 296 of 10/11/1995),
Having regard to the Resolution of the Council and of the Ministers for Education, meeting within the Council of 3 June 1985 containing an action programme on equal opportunities for girls and boys in education – (Official Journal n° C 166 of 7/7/1985),
Having regard to the Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children – (Official Journal n° L 063 of 04/03/1997)
Having regard to the Nice Declaration on Human Rights
Having regard to Articles 20, 21 and 23 of the Charter of Fundamental Rights of the European Union.

Whereas:

1. In accordance with Article 6 of the Treaty on European Union, 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 the Member States. It 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. The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised in particular but not only by the Universal Declaration of Human Rights, by the United Nations treaties related to civil and political rights and social, economic and cultural rights, by the United Nations Convention on the Elimination of all forms of Discrimination Against Women, by the International Convention on the Elimination of all forms of Racial Discrimination, and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

3. Equality of women and men constitutes an essential mission and a fundamental right, in accordance with Article 2 and Article 3 paragraph 2 of the Treaty establishing the European Community, the Case Law of the European Court of Justice and Article 23 (1) of the Charter of Fundamental Rights of the European Union. These provisions make equality of women and men an objective of the Community and the Member States, which obliges them to achieve it in all fields covered by the Treaty.
4. Any form of direct or indirect discrimination based on sex in the areas covered by this Directive must be prohibited in the Community.
5. Gender mainstreaming set out in Article 3 paragraph 2 of the Treaty aims to mainstream equality of women and men into all policies of the European Union and the Member States at all levels. This obligatory and binding rule enforces Member States to implement an active and concerted policy.

The policy of gender mainstreaming strengthens the traditional policies of promoting equality and combating discrimination.

6. Discrimination based on sex is universal and gender relations also influence all other forms of discrimination. Many women are therefore subject to double or multiple discrimination.

All policies shall consider and integrate the needs and perspectives of different groups of women, according to their age, race or ethnic origin, religion or belief, disability, sexual orientation or identity or any other grounds for discrimination.

7. Humankind is made up of women and men. The existence of the two sexes structures all societies and human relationships, and should be incorporated into the rules of democratic operation through the establishment of the right to parity participation of women and men in the decision-making process as a prerequisite for democracy.

Parity participation in decision making depends on the equal representation of women and men in decision-making bodies at all levels in political, economic, social and cultural life and requires, in particular, their equal representation in positions of responsibility and positions where decisions are made.

The Member States, social partners, political parties and organisations, non-governmental organisations and the media play a determining role in the building of a society where responsibilities in the political, economic, social and cultural areas are held in a parity way by women and men.

8. In order to ensure the development of democratic and inclusive societies that allow for parity participation of women and men, action for the equality of women and men must be extended to the access to and supply of goods and services.
9. Taxation policies can be a determining factor in the participation of women and men in society and often include aspects that are discriminatory against women, in particular when marital status is taken into consideration. The individualisation of taxes is a prerequisite for achieving equality of women and men.

10. The right to reconcile family and professional life for women and men is a responsibility of the Member States and the Community that requires an integrated approach of policies and the way in which social structures function. The implementation of equality of women and men in the private sphere requires specific provisions to encourage an equal sharing of responsibilities concerning dependants and household tasks.
11. Some aspects of social protection and social security are not covered by professional equality and are therefore not covered by the existing community legislation in the field of equality of women and men in the workplace. It is necessary to achieve equality of women and men and to implement the principle of individualisation of rights in these areas, in particular to ensure a decent income for the most vulnerable women and to combat social exclusion, which affects women more than men.
12. Education and vocational training are prerequisites to achieving equality of women and men. Equal access of women and men to all kinds of education and training must be ensured through specific action. Education and training should not contain stereotypes, should favour their elimination and give a positive and realistic image of the role of women and men in society.

Women are particularly badly represented in scientific research and technological development. Despite the fact that women are sometimes in the majority in terms of numbers of graduates, the percentage of women declines as they move up the scientific and academic career ladder. Specific action is required to establish equality in this field.

13. All forms of violence against women as defined in this Directive are violations of women's human rights under the United Nations Convention on the Elimination of All Forms of Discrimination against Women signed and ratified by all Member States. These violations of human rights must be prohibited and eliminated if equality of women and men is to be achieved.

Gender-based and sexual harassment outside of work relations, which occurs frequently, hinders the implementation of the equality of women and men in society, undermines the dignity of its victims and is a form of violence.

14. The Member States, by signing the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, agreed to punish any person who procures, entices or leads away another person for purposes of prostitution, even with the consent of that person; exploits the prostitution of another person, even with the consent of that person; or keeps or supports a brothel. The Member States also agreed to take the necessary steps to prevent prostitution and to ensure the re-education and redeployment of victims of prostitution.
15. Women have the right to benefit from the best possible mental and physical health. Accessing this right is of vital importance for their life and their welfare and for their ability to participate in all public and private activities. This right must be guaranteed throughout their life on an equal footing with men. Poverty, economic dependence and violence against women, the lack of specific services and accurate facts on women's health are social realities which have a detrimental influence on women's health and which must be rectified and considered when public health policies are being drafted, implemented and evaluated.

Women's human rights include the right to control their sexuality, including their sexual and reproductive health, without facing any restriction, discrimination or violence, and the right to make decisions freely and in a responsible way in this regard.

16. Sexual stereotypes in public life, advertising and the media are one of the factors influencing attitudes towards equality of women and men. Advertising and the media can help to change attitudes in a positive way in society by reflecting in particular the diversity and wealth of roles played in public and private life by women and men. Promoting a positive image of women and men free of prejudice and stereotypes is necessary to achieve equality of women and men.
17. The institutional mechanisms responsible for promoting equality of women and men are essential tools to achieve equality in practice. It is necessary for a ministry with the necessary resources to be created in each Member State with the responsibility of implementing equality of women and men. Gender mainstreaming in all policies would also oblige all ministries and public services and authorities to carry out policies that are equally beneficial to women and men. Member States should also create one or several independent bodies that would have the responsibility of analysing problems that arise, studying the possible solutions and providing concrete assistance to victims of discrimination.
18. Positive actions in favour of women are set out in Article 4 of the United Nations Convention on the Elimination of all Forms of Discrimination against Women, in Article 23 paragraph 2 of the Charter of Fundamental Rights of the European Union, in the Council Recommendation of 13th December 1982 on the Promotion of Positive Action for Women, and is already being applied in practice in the area of equality in the workplace in accordance with Article 141 paragraph 4 of the EU Treaty.

The legal provisions to fight discrimination have proven insufficient to achieve real equality and must often be accompanied by measures for positive action or other strategies.

The basic right to equality of women and men as recognised in Community law obliges the Community and the Member States to use all necessary means to achieve it, including positive action.

19. Persons who have been subject to discrimination based on sex should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities that defend women's interests and rights should also be empowered to engage, as the Member States so determine, either on behalf of or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.
20. 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 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.

21. The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for equal treatment to be applied effectively; the burden of proof must shift back to the respondent when evidence of such discrimination is brought.
22. The effective implementation of equality for women and men requires adequate judicial protection against retaliation faced by the complainant.
23. Member States shall consult with non-governmental organisations to address different forms of discrimination and to combat them.
24. This Directive lays 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.
25. Member States must provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
26. In accordance with the principles of subsidiary and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely achieving equality of women and men in all the Member States, 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 does not go beyond what is necessary in order to achieve those objectives.
27. In addition to combating discrimination and guaranteeing rights, the European Union wishes to promote the establishment of a new gender contract, which will result in equality of women and men in both public and private life being recognised by society as a condition for democracy, a basic element of citizenship and a guarantee of independence and individual liberties, which will have an influence on all the policies of the European Union.

CHAPTER I OBJECTIVES AND DEFINITIONS

First Article

Purpose

The purpose of this Directive is to guarantee in practice equality of women and men within the European Union in the fields of activity as defined in Article 3 of this Directive.

Equality of women and men as far as this Directive is concerned implies the obligation to achieve in an active way de facto equality of women and men and to eliminate all forms of direct or indirect discrimination based on sex in all the fields of activity targeted.

Member States shall adopt the measures necessary to achieve equality of women and men including mainstreaming the gender dimension in all legislative, regulatory and administrative provisions, policies and activities in the fields of activity outlined in Article 3.

In all measures implementing this Directive, the Member States shall consider the interests and needs of the different groups of women according to their age, race or ethnic origin, religion or

belief, disability, sexual orientation and identity or any other grounds for discrimination, and place particular importance on combating multiple discrimination.

Article 2

Definitions

1. Concept of discrimination

For the purpose of this Directive, the following definitions apply:

- *discrimination against women*: any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field¹.
- *direct discrimination*: the situation in which for reasons based on sex, a person is treated in a less favourable way than another individual is, has been or would be treated in a comparable situation; or when a woman is treated in a less favourable way for reasons of pregnancy or childbirth.
- *indirect discrimination*: the situation in which an apparently neutral provision, criterion or practice:
 - o would put persons of one sex at a particular disadvantage compared with persons of the other sex, or would give rise to a particular disadvantage on the basis of parenthood, family responsibilities or for any other reason related to sex, unless this provision, criterion or practice is objectively justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary.
 - o would disadvantage a considerably greater proportion of members of one sex, unless this provision, criterion or practice is objectively justified by a legitimate aim unrelated to sex.
- *Multiple discrimination*: the situation in which for reasons based on two or more grounds of discrimination, a person is treated in a less favourable way than another individual is, has been or would be treated in a comparable situation.

Any behaviour consisting in inciting any individual to practice discrimination on the grounds of sex against other persons is seen as discrimination within the meaning of Article 1.2 of this directive.

2. Positive Action Measures

For the purpose of this Directive, the term *positive action measures* shall mean measures aiming at guaranteeing in a concrete manner the full equality of men and women, by providing for specific benefits or by offsetting disadvantages resulting from attitudes, behaviour and existing structures.

Positive actions aim primarily to improve the situation of women. These measures are temporary in nature and will cease once full equality of women and men has been achieved. They are not contrary to the principle of equal treatment.

3. Parity democracy

¹ See article 1 CEDAW

The notion according to which society is made up of as many women as men, their full and equal enjoyment of citizenship is dependent on equal representation at all levels and in all sectors of decision-making and the parity participation of women and men in decision-making is a democratic principle. The application of this principle implies the implementation of a *parity threshold*, i.e. a minimum percentage of approximately 50% of each sex in the bodies in question.

4. Concept of gender

For the purpose of this Directive the concept of *gender* shall refer to the social differences as opposed to the biological ones, between women and men that have been learned, are changeable over time and have wide variations both within and between different cultures².

5. Gender mainstreaming

For the purpose of this Directive *gender mainstreaming* shall mean the systematic integration of the respective situations, priorities and needs of women and men in all policies and general measures with a view to promoting equality of women and men by actively and openly taking into account, at the planning stage, their effects on the respective situation of women and men during their implementation, monitoring and evaluation³.

6. Individualisation of rights

For the purpose of this Directive the term *individualisation of rights* shall mean developing taxation and social security systems whereby rights accrue directly to the individual⁴ whatever their marital status.

7. Family and society-based violence against women

For the purpose of the this Directive the term *violence against women* means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, prostitution, benefiting from the prostitution of another, sexual exploitation of women and all forms of trafficking in women;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs⁵.

Gender-based harassment takes place outside of work relations when a an unwanted conduct related to sex occurs with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.

² See European Commission Glossary of terms on equality of women and men

³ Idem

⁴ Idem

⁵ Definition of the Beijing Platform for Action

Sexual harassment takes place outside of work relations when any form of verbal, non-verbal or physical conduct of a sexual nature occur, of which the perpetrator is or should be aware, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.

The rejection of such behaviour by the individual in question or their submission to it cannot be used as a basis for a decision affecting that individual.

Harassment and sexual harassment are considered as forms of violence against women.

Violence against women is a major obstacle to the achievement of the equality of women and men within the meaning of this directive.

Article 3

Scope

Within the limits of the powers conferred upon the Community, this Directive will apply to all persons, as regards both the public and private sectors, including public bodies, **in particular but not only** in relation to:

- a) The parity participation of men and women in decision-making in all sectors
- b) The access to and supply of goods and services
- c) Taxation
- d) The right to reconcile family and working life
- e) Social protection, social security, social benefits and non-occupational healthcare and the fight against social exclusion
- f) Education, training and research
- g) Family and society-based violence against women
- h) Health
- i) Images of women and men portrayed in advertising and the media
- j) Surname

CHAPTER 2

General provisions

Article 4

The parity participation of men and women in decision-making in all sectors

Member States shall promote the parity participation of women and men in the decision-making process at all levels in the political, economic, social, cultural and civil fields.

Political decision-making

Member States shall guarantee the parity participation of women and men in the decision-making process in governmental bodies and in elected assemblies or parliaments at all levels. This may be achieved through the use of positive action measures.

On the date of the first report mentioned in article 31, the Member States guarantee that the minimum percentage of women and men in governmental bodies or elected assemblies or parliaments will be at least 1/3 at all levels. It will be 40% on the date of the second report and

will reach parity on the date of the third, unless special circumstances do not allow for this condition to be met reasonably, subject to proof of the special nature of such circumstances.

Decision-making in the public sector and public enterprises

Member States shall guarantee the parity participation of women and men in decision-making in all sectors and public sector bodies as well as in the consultative bodies. This may be achieved through the use of positive action measures.

On the date of the first report mentioned in article 31 of this directive, the Member States guarantee that the minimum percentage of women and men involved in decision-making in public sector bodies as well as the consultative bodies will be at least 1/3 at all levels. It will be 40% on the date of the second report and will reach parity on the date of the third, unless special circumstances do not allow for this condition to be met reasonably, subject to proof of the special nature of such circumstances.

Juries

Member States shall guarantee the parity participation of women and men in the composition of juries. This may be achieved through the use of positive action measures.

Decision-making in the private sector, including in semi-state enterprises, trade union organisations and the media.

The States actively encourage the equal participation of women and men in the decision-making process in the private sector, including in semi-state enterprises, trade union organisations and the media, which may include the use of sanctions and incentives for businesses.

Article 5

The access to and supply of goods and services, which are available to the public

Member States shall take all necessary steps to eliminate direct or indirect discrimination based on sex and the implementation of equality of women and men in the access to and supply of goods and services in all fields, in the private and public sectors. Member States shall also take all steps to ensure the elimination of any discrimination based on sex in the conditions for gaining access to all kinds of goods or services, in particular as far as rates are concerned.

The right to equality applies in particular in the following fields: health, education, training, transport, banking and financial services, social security and social benefits, housing, insurance, information, cultural, sport and leisure services, healthcare, assistance and counselling services.

Member States shall implement specific measures immediately to ensure access to essential public services (in particular transport, housing and healthcare) for the categories in which women are in a majority in terms of social exclusion.

These provisions shall be implemented without prejudice to Article 16.2 of this Directive.

Article 6

Taxation

Member States shall take the necessary measures to eliminate direct or indirect discrimination based on sex and to apply equality of women and men in all taxation policies and legislation not covered by taxation issues associated with work. In particular, the criteria used to determine the level of taxation should not constitute indirect discrimination based on sex or family status.

Member States shall implement the individualisation of rights as far as taxation is concerned. Member States shall analyse the effect that taxation policies have on women and men and shall adjust the policies on the basis of the results of this analysis. Taxation policies must be defined and implemented in such a way that they promote equality of women and men, in particular concerning the equal division of family responsibilities between men and women.

Article 7

The right to reconcile family and professional life

Member States shall develop integrated strategies and policies to promote the equal sharing of responsibilities related to the care of dependants and household tasks between women and men.

Member States shall develop quality care facilities and support services at affordable prices for families to meet all needs. They shall provide specific protection for lone-parent families. They shall ensure an acceptable standard of living and conditions for women and men with dependants.

Member States shall take into consideration the right to reconcile family and professional life when defining the school cycles as well as the functioning of public services, in particular social services and transport services.

Member States shall run information and public awareness campaigns for children as young as possible on the equal sharing of family and household responsibilities. They shall undertake studies and fund scientific research in this field and shall collate data to gain detailed knowledge of the situation.

Article 8

Social protection, social security, social benefits and non-occupational healthcare and the fight against social exclusion

Member States shall ensure equal access to social services, benefits and healthcare and shall establish criteria for accessing these services exempt from any form of discrimination based on sex or family status. These services must contribute to the objective of equality of women and men.

Member States shall apply the individualisation of rights for all kinds of social welfare benefits and services.

Member States shall establish a basic non work-related, inflation-linked pension benefit at a decent level.

Member States shall ensure gender mainstreaming in all programmes and policies aiming to combat poverty and social exclusion through, in particular, the application of the measures defined in Article 17 of this Directive.

Member States shall conduct research on a regular basis concerning women and poverty and its social implications.

Article 9

Education, training and research

Member States shall take all necessary steps to eliminate discrimination based on sex and apply equality of women and men in the education sector, in all kinds of and at all levels of, vocational training, professional training, advanced training and retraining including practical training periods and research.

Member States shall ensure equal access to study at all levels, to qualifications and to study grants for women and men. They shall also ensure that no discrimination is made between girls and boys in the career guidance on offer and in the quality of education provided.

Member States shall ensure the parity composition of the teaching body at all levels of education, including the university sector and examination and selection boards.

On the date of the report mentioned in article 31 of this Directive, Member States guarantee that the minimum percentage of women and men in the teaching body at all levels of education, including the university sector and examination and selection boards will be at least 1/3. It will be 40% on the date of the second report and will reach parity on the date of the third.

Member States shall eliminate all sexist stereotypes at all levels, in particular in the training of teachers, the programmes, schoolbooks and education methods used. They shall include the topic of equality of women and men, the history of women and gender analysis as an interdisciplinary theme at all levels of the education system, and particularly at elementary level.

Member States shall actively promote the participation of women in research and development. They shall ensure that the research meets the needs of all citizens, both women and men, and shall make an analysis of the situation to evaluate policies that are currently in place. Research Institutes, third-level teaching institutions and private companies shall take part in this process.

These provisions shall be implemented without prejudice to Article 16.2 of this Directive.

Article 10

Family and society-based violence against women.

Member States shall take all the legislative, administrative and regulatory steps necessary to eradicate all forms of violence against women as defined in Article 2.7 of this Directive.

Member States shall adopt comprehensive action plans to combat violence in the family and in society. In particular, they shall take steps to ensure that the perpetrator is removed from the home and to increase penalties. They shall raise awareness and provide specific training to all the relevant public services and allocate adequate resources for assisting victims and victim support organisations.

Member States shall set out guidelines on how to handle verbal violence against women, which is often difficult to prove.

Member States shall take the steps necessary to eradicate all forms of trafficking in women, all forms of sexual exploitation of women and prostitution.

Pornography and materials that promote or give women a degrading image and/or of a sexual nature must be prohibited, including on the Internet.

Member States shall recognise gender-based persecution as legitimate grounds for seeking and being granted the right to asylum for women.

Member States shall prohibit female genital mutilation and any other practice that undermines the integrity and dignity of women within the European Union, and shall organise campaigns to raise awareness on this issue.

Member States shall organise awareness-raising campaigns, collect sex-disaggregated data and carry out surveys on the extent of violence against women in all its forms and the costs of this for society.

Article 11

Health

Member States shall develop affordable, good-quality healthcare services that meet the specific needs of women. When drafting public policies on health, they shall take full account of the needs of women, based on surveys, scientific research and sex-disaggregated statistics.

Member States shall ensure free access to family-planning services for all women, including the most marginalized groups, and shall ensure that information on sexual and reproductive health is made widely available.

Member States shall take steps to provide healthcare and appropriate psychological support to women victims of violence in terms of resources, infrastructure and the training of medical personnel.

Article 12

Images of women and men in advertising and the media

Sexist insults and incitement to sexual hatred contravene equality of women and men. Member States shall take all necessary steps to prohibit sexist insults and shall ensure respect for human dignity in political and public life, in advertising and in the media.

Member States shall instruct national bodies promoting equality of women and men, in consultation with media and advertising professionals, to draw up a code of ethics and to ensure that no sexual stereotypes of women or men appear in the media or in advertising. For this purpose, these agencies may request the competent authorities to impose sanctions on those who produce material that violates this code of ethics.

Member States shall conduct regular information and awareness-raising campaigns on the need to convey a positive image of women and men in the media and on the discriminatory content of images conveyed by advertising and the media.

Member States shall carry out research on the impact of the media and of advertising on attitudes, violent behaviour and opinions relating to sexual identities and equality of women and men.

These measures shall be implemented without prejudice to the principles of freedom of expression or freedom of the press.

Article 13

Surname

Member States shall give parents the right to choose freely to give their children the surname of the mother or the father and will not enforce an order of precedence.

CHAPTER 3 METHODS AND TOOLS

Article 14

Institutional mechanisms for promoting equality of women and men

Member States shall designate a ministry to promote equality of women and men. This ministry must have sufficient financial and human resources to be able to influence the drafting of all government policies.

This ministry must have the means necessary to use the existing methods for gender analysis and to implement the measures designed to eliminate the gender-specific impact of policies and programmes.

Member States shall impose on all public authorities a duty to promote equality of women and men purposefully and systematically in all their policies, programmes and budget documents by virtue of the principle of gender mainstreaming, duly taking into account the interests and needs of women facing multiple discrimination.

Member States shall ensure that, in all fields, statistics are regularly collected, compiled, analysed and presented by age and by sex, and that they reflect the gender dimension in society, especially where unpaid work by women and men is concerned.

Member States shall ensure that equality of women and men is reflected in their administrative and legal language.

Article 15

Positive action

To ensure full equality of women and men in practice, Member States shall adopt positive action measures to prevent or offset disadvantages linked to sex.

In practice, these measures may consist of continuing the activities or the funding of organisations, parts of organisations or establishments that provide goods or services intended exclusively for women, or which contribute to equality of women and men and the promotion of the rights and interests of women, or which seek the participation of women by working actively in the areas of application of this Directive.

Article 16

Gender mainstreaming

At all stages of policy decision-making, Member States and public authorities shall analyse its gender-specific consequences, including at all stages of the budgetary procedure, and shall alter the policy accordingly.

Member States and public authorities shall periodically examine policies, budgets, programmes and projects, and the way they are implemented, in order to assess the impact of policies on women and men, and shall alter them accordingly.

Article 17

Action plans

Every two years, Member States shall submit to the European Commission action plans for achieving equality of women and men, containing concrete objectives, where possible accompanied by figures, and including a gender-sensitive analysis of the budgets. These action plans will be produced in accordance with common guidelines to allow for comparisons at a European level.

Article 18

Minimum requirements

Member States may adopt or maintain provisions that are more favourable to the protection of equality of women and men than those set out in this Directive.

Article 19

Non-reducing clause

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 20

Independent bodies

Member States shall designate an independent body or bodies to implement equality of women and men. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguarding of individuals' rights, and must have sufficient financial and human resources to fulfil their mission.

The powers of these bodies shall cover all Community law in the field of the equal treatment of women and men.

Member States shall ensure that the powers of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 21(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- without prejudice to the rights of victims and of associations, organisations or other legal entities referred to in Article 21(2), receiving complaints from individuals, groups of individuals or organisations that are victims of discrimination on the grounds of sex, investigating them and following them up,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.
- ensuring the application of this Directive.

These bodies will ensure that the interests and needs of women subject to multiple discrimination are systematically incorporated into all of their activities.

CHAPTER V

REMEDIES AND ENFORCEMENT

Article 21

Defence of rights

1. Member States shall ensure that, no later than the first report on implementation referred to in Article 31, judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply to them the right to equality of

women and men, even after the relationship in which the discrimination is alleged to have occurred 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(s), with his/her or their approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive,
- determine, within the framework of a joint action in any judicial and/or administrative procedure, on their own initiative and regardless of the particular circumstances of individual cases, whether or not equality of women and men has been applied.

Article 22

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 right to equality of women and men 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 equality.

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.

4. Paragraphs 1, 2 and 3 also apply to any procedure brought in accordance with Article 22 (2).

Article 23

Civil liability

Member States shall introduce measures requiring persons responsible for all educational or any other public or private establishments providing goods or services to take all reasonable steps necessary to prevent discrimination and harassment as defined in this Directive in these establishments. These persons can be considered responsible for acts of discrimination on the grounds of sex or harassment by persons under their authority vis-à-vis users of such establishments, unless they have taken the necessary preventive measures and, if such acts occur, they have taken the necessary steps to correct their effects.

Article 24

Protection against retaliation

Member States shall introduce into their national legal systems the measures necessary to protect persons from any unfavourable treatment or consequence arising in reaction to a complaint or a legal action intended to enforce equality of women and men.

Article 25

Dissemination of information

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 throughout their territory.

Article 26

Consultation of non-governmental organisations

Member States shall consult regularly with the relevant non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of sex and to the achievement of equality of women and men, with a view to establishing this right in practice.

CHAPTER IV FINAL PROVISIONS

Article 27

Compliance

Member States shall take the necessary steps to ensure that:

- a) any laws, regulations and administrative provisions contrary to the principle of equality of women and men are abolished;
- b) any provisions contrary to the principle of equality of women and men which are included in contracts or documents setting the rates for goods and services, in the internal rules of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared, null and void or are amended.

Article 28

Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all steps necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive and must be applied effectively by the competent national authorities. Member States shall notify those provisions to the Commission on the date of the first implementation report at the latest, and shall notify it without delay of any subsequent amendment affecting them.

Article 29

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive within a period of three years at most, and shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 30

Report

1. Member States shall communicate to the Commission, within three years at the latest and every two 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 into account the views of the relevant non-governmental organisations. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the

European Communities.

Article 32

Addressees

This Directive is addressed to the Member States.

Drafting process of this shadow directive:

This document has been drafted by the Secretariat of the European Women's Lobby on the basis of research and of a broad consultation, of its national and European member organizations across the European Union.

A first letter highlighting essential issues in relation to the upcoming directive was sent to Ms Commissioner Diamantopoulou and other decision-makers in November 2001.

The consultation process of EWL members stated in the autumn 2001 through a briefing and a questionnaire sent to all members concerning needs, gaps in gender equality legislation and good practices at national level. One of the important points of the consultation process concerned what areas EWL members wanted to be tackled in the directive.

Parallel to this consultation the Secretariat made conducted a research and drafted a first project based partly on directive 2000/43 on the fight against discrimination on the basis of race. Two meetings and exchanges took place with Ms Eliane Vogel Polsky, well-known expert in the European equality legislation. All members of the EWL staff contributed to this work, in order to put together and use the existing expertise in the different areas.

The results of the EWL members' were integrated and a new consultation was organized o the basis of a new draft.

EWL also participated actively to the work of the working group of the Advisory Committee on equal opportunities on the new directive.

This shadow directive will be broadly disseminated at European and national levels. EWL and its member organisations will monitor closely the adoption process of the new directive from June 2002 onwards.

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