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From:	General Secretariat of the Council
To:	Delegations
Subject:	AOB for the meeting of the EPSCO Council of 10 March 2025: Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security: Need of updating <i>- Information from Spain</i>

DIRECTIVE 79/7 ON THE PROGRESSIVE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN MATTERS OF SOCIAL SECURITY. NEED OF UPDATING.

Directive 79/7, on the progressive implementation of the principle of equal treatment for men and women in matters of social security was published in the Official Journal on 10 January 1979, after its adoption on 19 December 1978. Member States should have implemented it by 23 December 1984 at the latest. As stated in its Article 1, its purpose is the progressive implementation in the field of social security and other elements of social protection¹, of the principle of equal treatment for men and women. In fact, this was **one of the first areas in which the principle of equal treatment was addressed at the European level.**

The Directive tackled structural inequalities in social security by **prohibiting all forms of discrimination**, either direct or indirect.

¹ Art. 3 Dir. 79/9: protection against risks as follows: sickness, invalidity, old age, accidents at work and occupational diseases, unemployment and social assistance when it is intended to supplement or replace other schemes

This Directive has undoubtedly achieved **positive outcomes**. However, a long time having elapsed since it was adopted, **it is no longer fit for purpose**. Circumstances around social security schemes have changed. At the same time, the understanding of what equal treatment means **has evolved drastically**. Therefore, increasingly often, the **EU Court of Justice has had to fill the gaps**, which it is not the best way to provide legal certainty to EU citizens, workers, employers, public administrations and governments.

The main EU Court of Justice rulings have referred to the following articles:

.- **Article 2** provides that the Directive applies to the “**working population**” whose activity has been interrupted by illness, accident or involuntary unemployment, as well as persons seeking employment. However, nowadays the **subjective scope of most social security schemes is more broadly defined**. The Court has interpreted that persons who can be indirectly affected by any social risk as defined in Article 3 are under the protection of this Directive¹. On the contrary, a **person who has left the labour market to bring up a child** does not fall under the protected scope.²

.- **Article 3**. Since the **material scope** of social security has been extended beyond the scope of the Directive, some benefits, such as **survivors’ pensions or occupational schemes**, remain outside its protection. As a consequence, an open interpretation is needed to protect beneficiaries of these schemes from discrimination, as the Court has held³.

.- **Article 4**. Here, it is concretely established that the principle of equal treatment means **no discrimination whatsoever on the ground of sex, directly or indirectly**. However, this does not exclude the provisions relating to the **protection of women against discrimination on the ground of maternity**.⁴ In this case, the Court has had to interpret the extension of this provision broadly, not just concerning the concept of sex and gender, but also as to what direct or indirect discrimination implies.

¹ Case 150/85(Drake); Case 77/95 (Züchner)

² Case 106/88 ;107/88 (Achterberg-te Riele and others); Case 625/20(KM)

³ Case 192/85 (Newstead)

⁴ Case 451/16; Case 652/20; Case 389/20

Special attention should be given to **Article 7**, which provides for the possibility that **some measures may not be considered discriminatory despite setting different requirements or conditions because of sex or family status**. It is important to point out that, despite the extensive case law concerning this article, **positive or affirmative action based on gender is not covered by it**, as the EUCJ has stated in Cases 623/2023 and 626/2023. Because of this, Member States can **face significant problems** when implementing regulations **aiming at tackling gender inequalities**, including the gender pension gap.

In this sense, it is crucial to bear in mind **Article 157(4) TFUE**, which reads: “*With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.*”

This provision cannot be read apart from **Article 2 TUE** recognizing equality as one of the values of the European Union, where non-discrimination and equality between men and women should prevail.

While recognizing the **added value of Directive 79/7** on the progressive implementation of the principle of equal treatment for men and women in matters of social security, the reality is that **almost fifty years after its adoption**, a new approach **is required**. This adjustment should not restrain the **freedom of Member States** to pursue, where applicable and when necessary, positive or affirmative action aiming to reduce inequalities, provided that such action is **proportionate and temporary**.

An update of this Directive in the direction presented here would also be in line with the overarching priority of simplification that help governments and public administrations to rationalize their efforts, since the litigation would subsequently decrease. European Union citizens, workers and employers will benefit from **a more stable and secure legal framework**.