

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (REFIT)		
LEAD DG – RESPONSIBLE UNIT	DG JUST - D.1	DATE OF THIS ROADMAP	09 / 2015
TYPE OF EVALUATION	<u>Ex-post Evaluation</u>	PLANNED START DATE	06 / 2015
		PLANNED COMPLETION DATE	06 / 2016
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
'The general objective of the evaluation is the implementation of the Directive with a view to its effectiveness, efficiency, coherence, relevance, sustainability and EU added-value with a specific focus on identifying possibilities for its modernisation in order to ensure the proper functioning of the gender equality principle enshrined in the TFEU in general and its coherent application in the area covered by this Directive.
(A.2) Justification
The evaluation of the Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (the Directive) is included in the Commission work programme for 2015 (COM(2014) 910, Annex III, - REFIT actions, Nr. 60).

B. Content and subject of the evaluation
(B.1) Subject area
<p>The Directive was adopted in 1978. Since that time European gender equality law and national social security systems covered by the Directive has been substantively developed and reformed.</p> <p>It is therefore appropriate to conduct an evaluation in terms of the efficiency, effectiveness, coherence, relevance, sustainability and EU added-value with a specific focus on identifying possibilities for modernisation.</p> <p>Taking into account that equality between men and women forms part of the fundamental principles on which the EU is based, the option of repealing the Directive should not be considered as a priority in the context of this evaluation. However there is a need for evidence-based assessment of whether and how the objectives set by the Directive are achieved. Furthermore the need for modernization of EU legislation on gender equality in social security should be assessed in order to ensure proper functioning of the gender equality principle enshrined by the TFEU and avoiding misinterpretation of the scope of the Directive.</p> <p>Directive 79/7/EEC aims to implement the principle of equal treatment between men and women in matters of social security. The Directive applies to the working population and to retired or invalidated workers and self-employed persons. The principle of equal treatment between men and women enshrined by the Directive protects European citizens against discrimination on grounds of sex, whether direct or indirect, as regards: a) the scope of statutory schemes and the conditions of access thereto; b) the obligation to contribute and the calculation of contributions; c) the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit. The Directive also allows for the adoption of specific provisions in order to ensure the protection of</p>

pregnant women.

The evaluation will examine the equality aspects of the national legislation governing statutory social security schemes and social assistance, supplementing or replacing these schemes: scope of schemes, conditions of access, obligation to pay contributions, calculation of contributions, calculation of benefits, conditions on the duration and retention of entitlements to benefits.

The evaluation will also cover the analysis of options for simplification of the Directive, as well as the question whether the limitation of the scope of Article 3(2) and the permitted difference of treatment in relation to the elements mentioned by Article 7(1) could be still justified today or should the principle of gender equality be further extended and the Directive amended accordingly.

(B.2) Original objectives of the intervention

The Directive aims to implement the principle of equal treatment between men and women in matters of social security (statutory social security schemes and social assistance, in so far as it is intended to supplement or replace these schemes).

(B.3) How the objectives were to be achieved

Initial description of the intervention logic:

The Directive defines the substance of the implementation of the principle of equal treatment as the elimination of discrimination on ground of sex. As regards the subject, the personal scope is the working population including retired or invalided workers and self-employed persons. As regards the object, the field of social security, the material scope is statutory schemes and social assistance providing protection against sickness, invalidity, old age, accidents at work and occupational diseases, and unemployment. It is also specified that discrimination can be direct or indirect by reference to marital or family status; and as regards the scope of the schemes and the conditions of access thereto, the obligation to contribute and the calculation of contributions, as well as the calculation of benefits including increases due in respect of a spouse and for dependents, and the conditions governing the duration and retention of entitlement to benefits. To attain this purpose, the means and arrangements established are, in the first place, that Member States ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. Furthermore, Member States have to introduce measures to enable persons who consider themselves wronged by failure to apply the principle of equal treatment to pursue their claims by judicial process, possibly after recourse to other competent authorities.

C. Scope of the evaluation/FC

(C.1) Topics covered

The evaluation of Directive 79/7/EEC will provide evidence as to whether this Directive is achieving its objectives and is fit for purpose in accordance with the REFIT programme.

The evaluation will examine all aspects of the national legislation governing statutory social security schemes, as well as social assistance, supplementing or replacing these schemes: scope of schemes, conditions of access, obligation to pay contributions, calculation of contributions, calculation of benefits, conditions on the duration and retention of entitlements to benefits.

The evaluation will cover the analysis of options for simplification of the Directive, as well as the question whether the limitation of the scope in Article 3(2) and a permitted difference of treatment in relation to the elements mentioned by Article 7 (1) could be still justified today or should the principle of gender equality also be further extended and the Directive amended accordingly.

The evaluation will collect and assess ideas for the possible modernization of the Directive to ensure the proper functioning of the gender equality principle. The evaluation will provide information with regard to the design of national statutory social security systems and the relevant forms of social assistance that may have a bearing on the applicability and the proper functioning of the Directive and the attainment of its aims.

(C.2) Questions/issues to be examined

The main questions aim to evaluate:

1. the extent to which the Directive has proven to be relevant to the aim of eliminating inequalities and promoting equality between men and women, which were the basis of its adoption;
2. whether and to what extent the objectives of the Directive have been achieved and what factors have hindered their achievement where expectations have not been met;
3. the efficiency of the Directive and its coherence with the approach taken in other existing EU gender equality directives;
4. the added value resulting from the Directive, compared to what could be achieved by Member States at national and/or regional levels, and the extent to which the Directive has contributed to the uniform application of the gender equality principle set by the EU Treaty (Article 3) across the EU;
5. how Member States' national legislation ensures the application of the principle of equal treatment for men and women in matters of statutory social security;
6. whether exclusions laid down in Article 3(2) of the Directive (provisions concerning survivors' and family benefits) and derogations set by Article 7 are applicable to the Member States' statutory social security schemes (and relevant provisions in their national legislation);
7. a potential modernisation of the Directive - in particular, in the light of the analysis of the relevance of exclusions and derogations set by Articles 3(2) and 7(1) of the Directive, the evolution of statutory social security systems in Member States and of CJEU case law since the Directive was adopted in 1978 with a view to better achieving the goals set by the EU Treaty - to promote equality between men and women and to combat discrimination based on sex.

(C.3) Other tasks

In March 2015 the Commission sent all Member States a questionnaire asking whether and to what extent gender-specific actuarial rules are applied in their statutory social security systems and if so, what measures they are taking or planning to take in order to discontinue the use of such actuarial rules with a view to implementing the CJEU judgment in case C-318/13 ("X") (see section D.3).

In May 2015 the Commission launched an evaluation (performed by an external contractor) which will perform an in-depth analysis of national social security systems of the EU-28 Member States with a view to understanding how the Directive has been transposed and develop recommendations on the basis of the findings in view of the possible modernization of the Directive. Its final report is expected in December 2015.

In addition the Commission will launch a public consultation in September 2015 (see section D.4)

D. Evidence base

(D.1) Evidence from monitoring

The ongoing consultation by the external contractor will include a series of interviews with various categories of stakeholders – ministries, national equality bodies, other national institutions, experts and private companies administering social security schemes covered by the Directive - to obtain in-depth information regarding relevant aspects for the evaluation of the implementation of the Directive.

(D.2) Previous evaluations and other reports

In order to fulfil its obligations under the Directive, the Commission drew up an interim report in 1983 (COM(83)793) and a synthesis report in 1988 (COM(88)769) that assessed the problems raised by the requirements to bring laws, regulations and administrative provisions into line with the Directive. In 1995 the Commission prepared an implementation report focused on the Directive's transposition in Portugal and Spain (COM(95)418).

In 2007 the Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women prepared an independent analysis of the transposition of this Directive into national legislation, followed by a report in 2011 highlighting the most relevant features of direct and indirect gender discrimination in the statutory and occupational old-age pension systems.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

The amount of complaints based on the provisions of this Directive is small. This can be seen as evidence that the Directive is well transposed and implemented by the Member States. However, in its recent judgment in case C-

318/13 ("X") the CJEU ruled that the use of actuarial factors, separately calculated for men and women, which allows women to collect a higher social benefit than men, based on their longer average life expectancy, for an accident at work, is discriminatory. This raises the need to examine the impact of the judgment, and in particular whether gender-specific actuarial factors related to life expectancy (i.e. mortality tables) are used in the determination of contributions and benefits in any of the Member States' statutory social security schemes.
(D.4) Consultation
<p>An open public consultation based on a questionnaire addressed to all citizens and stakeholders, EU Member States, EU institutions and other bodies, national, regional and local authorities, intergovernmental and non-governmental organizations, researchers with an interest in gender equality issues and/or social security issues, equality bodies, social partners, civil society organizations and other organisations or individuals started on 21 September 2015 and is open to 14 December 2015.</p> <p>The open public consultation and a questionnaire is published on the "Your voice in Europe" website¹. Questions posed to the public are concentrated on the EU added-value of the Directive, the use of exemptions and derogations laid down by the Directive and the need for modernization. The contributions received will be published on a dedicated website and a summary of the public consultation will be included in a Commission Staff Working document (SWD) which will be also published online.</p>
(D.5) Further evidence to be gathered
None

E. Other relevant information/ remarks
None

¹ http://ec.europa.eu/justice/newsroom/gender-equality/opinion/150901_en.htm