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***Palazzo del Ferdinando,
MIB School of Management
Largo Caduti di Nasirya n°1
tel: +39 040 918 8111***

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REPORT

“THE EVALUATION OF THE SWISS GENDER EQUALITY ACT”

by

Mr Luzius MADER

Vice-Director, Swiss Federal Office of Justice

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The Evaluation of the Swiss Gender Equality Act:

1. Contents of the Act of 1995
2. Prospective Evaluation (before 1995)
3. Retrospective Evaluation (1996-2006)

1. Contents of the Swiss Gender Equality Act of 1995

Objective

Equal opportunities for women and men in the professional life

Principles

- a) Prohibition of sexual discrimination
- b) Prohibition of sexual harassment
- c) Protection against dismissal out of revenge

Sexual discrimination

Gender, civil status, family situation, pregnancy

- Hiring
- Allocation of duties
- Setting of working conditions
- Pay
- Basic and Advanced Training
- Promotion
- Dismissal

Instruments

- Personal Application to the Court for an order:
To prohibit or stop discrimination; to confirm that a discrimination is taking place, for compensatory payment and for moral compensation
- Actions of organisations (confirmation of discriminatory acts)
- Reduced burden of proof
- Protection against dismissal out of revenge
- Arbitration proceedings
-

2. Prospective Evaluation at the preparative stage of a Swiss Gender Equality Act (before 1995)

Gender equality in the Federal Constitution

In 1981 the Swiss people and the Cantons adopted a new article 4 paragraph 2 of the Constitution:

Men and women have equal rights. The law shall provide for their equal treatment, especially as regards family, education and work. Men and women are entitled to equal pay for equal work.

Project

- Trigger: Postulat Jaggi (1985)
- Lead: Federal Department of Justice and Police
- Working group (1986): Mandate - based on an analysis of the legal situation - to determine the reasons for and the amount of pay inequality between women and men and to submit legal proposals corresponding to the results.

- 1988: final report „Equal salary for men and women“ based on 4 special reports

4 special reports about the equal salary principle (1988)

1. Salary discrimination in Switzerland:
Evidence of micro data
2. Equal pay for equal work:
 - 2.1 Considerations of industrial psychology
 - 2.2 Inquiries of industrial psychology
3. Enforcement of the equal pay principle:
 - 3.1 Survey of the effective enforcement of the equal pay principle
 - 3.2 Judicial conceptions and attitude to complaint of women
4. Design of legal instruments:
 - 4.1 Analysis and comparison of foreign experiences with the implementation of the equal pay principle between women and men
 - 4.2 The effectiveness of specific instruments and the feasibility of their application in Switzerland

Conclusions

- Pay discrimination exists in Switzerland
(At least 10 to 20 percent of the pay difference between women and men is due to gender discrimination)
- Discrimination exists not only in terms of salary but also with regard to:
 - Hiring
 - Allocation of duties
 - Setting of working conditions
 - Basic and advanced training
 - Promotion
 - Dismissal
- Women don't file actions because of various obstacles:
 - insufficient protection against dismissal
 - difficulties with the burden of proof
 - fear of social and professional exposure
 - insufficient support (morally, legally and financially)
- Family situation is difficult (not enough child care services, no maternal leave, ...)
- Labour market segregation (separate markets for women and men)
- A policy of equal opportunities is absolutely necessary
(equal pay policy alone is not sufficient)

Measures

- Enforcement of the individual right to equal pay
- Enforcement of the position of employees
- Improvement of the position of women in the labour market
- Improvement of the accompanying conditions for the equality of women and men
- Improvement of the societal fundamentals and the infrastructure for an equal opportunity policy

Follow-up

- The Federal Council of Switzerland decided in 1990 to pursue these measures

- In 1991 he opened the consultation procedure on a draft of a Gender Equality Act (consultation of the cantons, important political parties, social and economic organisations)
- In 1995 the Swiss Parliament adopted the Swiss Gender Equality Act.

Retrospective Evaluation of the Swiss Gender Equality Act (1996-2006)

Project

- Trigger: Postulat Vreni Hubmann (2002)
- Lead: Federal Office of Justice
- Evaluation work: group of two professional evaluators and an attorney specialised in equality cases
- Accompanied by an inter-departmental working group (experts in the fields of justice, equality, economics and statistics)

Raised Data (up to spring 2004)

- Analysis of all **court decisions** (269)
- Analysis of all arbitration cases (355)
- **Written interview (questionnaire)** with trade unions, professional associations, women and men organizations, specific advisory services and equality offices (ca. 1'500)
- **Written interview (questionnaire)** with 5'767 firms
- Detailed analysis of the court decisions of 4 cantons (ZH, VD, GR, SZ)
- **20 deepened interviews** with attorneys, trade unions, equality delegates, women organisations, specific advisory services

The most important results:

a) Confirmation of previous experiences

- small number of complaints / filed actions
- complaints / actions mainly by particular professional associations
- little complaints / actions by associations
- often (too) long duration of proceedings

b) New findings

- Big regional disparities with regard to:
 - sexual harassment proceedings in court
 - working quality of advisory services and success of mediation efforts by the boards of arbitration
- In most of the cases, the employer-employee relationship is already terminated when a complaint / action is brought based on the Gender Equality Act
- Courts and attorneys are not well acquainted with the Gender Equality Act

c) Contradictions

- Words are not followed by deeds, particularly with regard to:
 - preventive measures against sexual harassment
 - development of an active equality policy
- General attitude: there isn't any gender discrimination in the own firm

Report of the Federal Council on the evaluation of the effectiveness of the Swiss Gender Equality Act of February 15th 2006

Conclusions and Measures

Conclusions

- The Swiss Gender Equality Act stands the test
- The Swiss Gender Equality Act is useful, effective and practicable
- The Swiss Gender Equality Act does not have any serious loopholes
- There is no urgent need to revise the Act

Measures

- Information, sensibilisation and continued formation
- Establishment of an administrative body with power to control and enforce the Gender Equality Act
- Recommendations to obtain expert advice
- Incentives (label, certification, financial aid)
- Improvement of the boards of arbitration