

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 105 final

Brussels, 20 March 1987

## **Protective Legislation for Women in the Member States of the European Community**

**Communication by the Commission**

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## I. INTRODUCTION

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### 1. Protective legislation and the Equal Treatment Directive

Application by the Member States of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions is guaranteed by the Equal Treatment Directive of 9 February 1976<sup>1</sup>.

However, article 2(3) of the Directive specifically provides an exception to the principle of equal treatment:

"This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity."

Articles 3 and 5, which deal respectively with access to employment, including promotion, and with working conditions, including the conditions governing dismissal, provide, in paragraph 2(c):

"...Member States shall take the measures necessary to ensure that:

...those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

The obligation to revise is made more specific in the second paragraph of article 9(1):

"... as regards the first part of article 3(2)(c) and the first part of article 5(2)(c), Member States shall carry out a first examination and if necessary a first revision of the laws, regulations, and administrative provisions referred to therein within four years of notification of this Directive<sup>2</sup>."

Member States are obliged to ensure that the principle of equal treatment is applied save in those cases where it can be shown that there is a clear justification for differential treatment. In other cases, they are obliged to change or repeal unjustified protective measures.

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<sup>1</sup> Council Directive 76/207/EEC of 9 February 1976, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, OJ No. L 39 of 14.2.1976, p.40

<sup>2</sup> The date in question was 14 February 1980

In 1980, the Commission considered the relationship between article 2(3) and paragraph 2(c) of articles 3 and 5 in its Report on the application of the Equal Treatment Directive<sup>3</sup>. It took the view that article 2(3) refers only to pregnancy and maternity and should be interpreted strictly as such, as in practice the protective legislation that forbids the access of women to certain work or foresees for them specific working conditions is provided for in paragraph 2(c) of articles 3 and 5 of the Directive. The Commission concluded that it did not recognise any other protective measures coming within the field covered by the principle of equal treatment.<sup>4</sup>

This strict approach has been confirmed by the Court of Justice in the recent Johnston decision:

"It must be observed in this regard that...Article 2(3), which also determines the scope of Article 3(2)(c), must be interpreted strictly. It is clear from the express reference to pregnancy and maternity that the directive is intended to protect a woman's biological condition and the special relationship which exists between a woman and her child."<sup>5</sup>

Advocate-General Darmon noted in his Opinion in that case:

"...there can be no question of taking into consideration...a need for protection - however well founded - whose origin is socio-cultural or even political..."<sup>6</sup>

The Directive therefore provides for protective measures which either provide specifically for pregnancy and childbirth or are otherwise connected with the special biological condition of women. A specific initiative on maternity protection<sup>7</sup> is being considered separately by the Commission in the context of the current Medium Term Community Programme on Equal Opportunities for Women 1986 -1990<sup>8</sup>. This Report will deal with those other protective measures which must be justified under paragraph 2(c) of articles 3 and 5.

<sup>3</sup> Report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment for men and women as regards access to employment and promotion, access to vocational guidance and training, working conditions." COM (80) 832 final, 11 February 1981 4 §74, p.62

<sup>5</sup> Case 222/84, Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary, decision of 15.5.1986 as yet unreported, §44

<sup>6</sup> *Ibid.* at §8. See also Case 184/83, Hoffman v Barmer Ersatzkasse, (1984) ECR 3047, §25 in which the Court affirmed that the directive recognized the legitimacy of measures protecting the "biological condition" of women during pregnancy and childbirth.

<sup>7</sup> Action 27(d), Social Protection and Social Security

<sup>8</sup> Bull. Supp. 3/86

## 2. Historical background

The Commission's 1981 Report defined the "protective" legislation covered by paragraph 2(c) of articles 3 and 5 as that which excludes women from certain occupations, ostensibly for their protection, or stipulates that they should be entitled to special working conditions. Since such provisions are prima facie contrary to the principle of equal treatment, paragraph 2(c) of articles 3 and 5 provides that that they should be repealed when the concern for protection which originally inspired them is no longer well founded. The Report observed that:

"...there are no common permanent requirements concerning the specific protection of women which have proved imperative in all countries in identical circumstances but, on the contrary, that a mosaic of extremely varied and highly specific regulations exists, the reasons for which are not clearly defined."<sup>9</sup>

The Commission therefore undertook to examine the situation in the Member States to ensure that the application of the principle of equal treatment is not unjustifiably limited by the maintenance of outmoded protective measures.

In the first instance, it examined the question in a further Report of 1982, on the basis of the national provisions which had been reported to it by the Member States and an analysis by a consultant, assisted by experts from the then nine Member States<sup>10</sup>. This Report contained a general survey of exemptions and efforts made to revise protective measures and showed that many national measures remained which were detrimental both to equality of opportunity and to protection policy itself (see conclusions below).

The Commission therefore went on to target the "Revision of national and Community protective legislation" as a specific Action (action 3) of its New Community Action Programme on the Promotion of Equal Opportunities for Women 1982 - 1985<sup>11</sup>. The aim of this Action was:

"To abolish in accordance with Directive 76/207/EEC unjustified protective legislation in the field of access to employment and working conditions and to promote equal standards of protection for men and women."

Member States were required to continue their efforts to revise protective legislation, and the Commission undertook to back up these efforts by determining which protective measures should be abolished on the grounds that the concern for protection which originally inspired them is no longer well founded. At the end of the Programme, the Commission reported on measures which had been taken or were

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<sup>9</sup> Page 161

<sup>10</sup> Monique Halpern, "Protective measures and the activities not falling within the field of application of the Directive on Equal Treatment - Analysis and Proposals" V/707/3/82 - EN fin.

<sup>11</sup> COM (81) 758 final, 9 December 1981

being considered in the Member States over the period<sup>12</sup>. It was clear from this Report that there had been some revision of individual protective measures, but no concerted treatment of the question.

In 1986, the Community embarked on the current Medium Term Community Programme. Member States were again required to take the necessary measures to revise protective measures. The Commission undertook to ensure that the Directive was applied, and to:

"...submit in this context (following the study carried out in 1982/83) a report on the revision of protective legislation for women, so as to achieve a more even mix in employment; the problems of night work in particular will be examined, because the ban on night work for women only often has a very negative impact on women's employment, for example in the new technologies."<sup>13</sup>

Most recently, the Council has specifically committed Member States to increase the equality of access to, and opportunity within, the labour market for women by a "re-examination of the need for certain types of restrictive legislation affecting women's employment, as for example that relating to night work in industry."<sup>14</sup>

### 3. Sources

This Report is based on information from the following sources:

- (a) Commission Report of 1981, note 3 *supra*
- (b) the Halpern Report, note 10 *supra*
- (c) the Report on Greece, note 21 *infra*
- (d) responses from the Member States to the Commission's letter of 10 August 1984 asking for information on protective legislation in each Member State
- (e) information provided by each Member State towards the inventory of measures adopted in each country pursuant to the New Community Action Programme on the Promotion of Equal Opportunities for Women 1982-85, in particular with regard to Action 3
- (f) ILO List of Ratifications of International Labour Conventions as at December 31, 1985.
- (g) Information which has subsequently been brought to the attention of the Commission.

<sup>12</sup> Report from the Commission to the Council on the implementation of the New Community Action Programme on the Promotion of Equal Opportunities for Women (1982 - 1985), COM (85) 641 final, 29 November 1985, pp.15-19

<sup>13</sup> Action 23(g), Employment

<sup>14</sup> Resolution of 11 December 1986 on an Action Programme on Employment Growth, point 2(f)

The information supplied by the Member States did not conform to a standard pattern, and some countries offered more details than others. In addition, the documents referred to under a) and b) above are no longer very recent, dating respectively from 1981 and 1982, and do not contain comprehensive information on legislation referred to. Member States are therefore requested to notify the Commission of changes in national law or gaps or inaccuracies in the information provided with a view to an update of this Report.

#### **4. Scope and legal implications**

Parts Two and Three of this Report contain specific recommendations concerning national protective measures known to the Commission. These recommendations represent the view of the Commission and follow closely the advice given by the Advisory Committee on Equal Opportunities for Women and Men. Part Five, the annexes, sets out the relevant national and international provisions by Member State.

The Report does not consider the situation in the two new Member States, Spain and Portugal. This will be considered separately in the Report currently being prepared on the legal situation upon accession in those Member States.

This Report will deal with two types of protective measures, those which lay down bans on women's employment in certain areas and those which require specific working conditions for women.

Bans on employment counter women's right to work and must therefore be based on well-founded arguments if they are to be justified.

In contrast, protective working conditions are less directly dangerous and less serious in the sense that they embody more favourable conditions and can often be extended by collective agreement on the basis that extension of the scope of protection is an improvement to the regulations concerned. Indeed they often represented a major factor of progress when they were originally formulated, and it has been strongly argued that they should be maintained as essential to women's right to work, especially where women have to run a family at the same time.

However, the distinction between bans on employment and protective working conditions is not in practice as great as might seem. They may both have considerable negative effects on women's work. In times of high unemployment, women can lose out on good jobs if employers are dissuaded from recruiting women because they are, for example, less flexible, even though not actually barred as such from hiring women. As a result, such protective measures may contribute to the marginalisation of women into new "atypical" forms of employment.

In addition, they are daily reminders of different treatment, where women are placed into a separate category, and there is a danger they may serve to reinforce the traditional underlying sexual division of social functions and the unequal treatment at work of men and women.

### Categories of protective legislation

Protective legislation of both types has been divided for the purposes of this Report into three broad categories:

#### a. anomalous provisions

Provisions which are categorised as anomalous for one reason or another do not fall within the scope of, and cannot be justified under, paragraph 2(c) of articles 3 and 5 of the Directive. Such provisions must be revised by the Member States concerned as soon as possible. Otherwise it will be the duty of the Commission as Guardian of the Treaties to require such a revision by legal action.

It should also be noted that the question might arise whether a national court should not directly apply the Directive in favour of an individual in the case of a clear inconsistency between the principle of equal treatment guaranteed by the Directive and a protective measure concerning an individual employed by or serving a public authority.<sup>15</sup>

Lastly, the problem might arise that a State might be required to maintain such a measure by virtue of its international obligations under a provision of, for example, an ILO Convention or the European Social Charter. The question would then be whether that obligation could still be respected inside the Community, or whether it would have to give way to Community law, which takes precedence in any case of conflict with the Member States' laws, even if the latter are intended to implement a non-Community international obligation.<sup>16</sup>

In fact, this problem does not arise at present, since none of the provisions categorised as anomalous are required under international law. However, Member States should take care in the future to assess their continuing international obligations in the light of paragraph 2(c) of articles 3 and 5 and to revise or abrogate those provisions which could give rise to potential inconsistencies between their obligations under the international and the Community legal orders.

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<sup>15</sup> See Case 152/84, *M. H. Marshall v Southampton and South West Hampshire Area Health Authority (Teaching)*, decision of 26 February 1986, as yet unreported, §56; Case 26/62, *van Gend en Loos v Nederlandse Administratie Belastingen* (1963) ECR 1; Case 106/77, *Simmenthal* (1978) ECR 629

<sup>16</sup> Member States have a general duty under article 234 of the Treaty to take the steps necessary to do away with incompatibilities between Community law and pre-existing obligations. They are precluded by article 5 of the Treaty from entering into new, inconsistent international obligations.

## b. humanitarian provisions

Some provisions exist which represent a humanitarian wish to improve the lot of at least part of the workforce. Women may have been selected, firstly, because of a certain view of their capacities or of their family obligations<sup>17</sup>.

In addition, other provisions may have come into being to protect women from arduous or unhealthy jobs. For example, a prohibition or restriction on the employment of women in a given activity may have been adopted because of a wish to protect women from a risk or danger inherent in the activity or the process involved work which the legislator considered too arduous for women or involving the risk of exploitation of women. However, on this point the Court of Justice has stated that:

"...the directive does not therefore allow women to be excluded from a certain type of employment on the ground that public opinion demands that women be given greater protection than men against risks which affect men and women in the same way and which are distinct from women's specific needs of protection...."<sup>18</sup>

Thus, though such conditions may originally have represented a step forward, they must now be replaced by working conditions which are inherent in the job itself and which apply equally to men and women. Member States must assess the continuing validity of humanitarian provisions to ensure that there continues to be a sufficient justification for exclusion of the activities concerned from the principle of equal treatment. Such exceptions must be strictly construed on the basis that they derogate from a fundamental human right guaranteed by Community law<sup>19</sup>:

"...a derogation from a human right as fundamental as that of equal treatment must be appraised in a restrictive manner."<sup>20</sup>

It should be noted that the obligation to ensure equal treatment must be seen within the context of the need to improve working conditions set out in article 117 of the Treaty. Equality should not be made the occasion for a disimprovement of working conditions for one sex, and it would be insufficient to simply take away necessary protections which are presently limited to one sex<sup>21</sup>.

<sup>17</sup> Cf. the narrow approach to family responsibilities taken by the Court of Justice in Case 163/82, *Commission of the European Communities v Italian Republic* 1983 (ECR) at §16

<sup>18</sup> Case 222/84, *Johnston*, *supra* at §44

<sup>19</sup> Case 149/77, *Defrenne v Sabena* (1978) ECR 1365, §§26-27; Cases 75 and 117/82, *C. Razzouk and A. Beydoun v Commission of the European Communities*, decision of 20 March 1984, §18

<sup>20</sup> Advocate-General Darmon, Case 222/84, *Johnston*, *supra* at §9; see also decision of the Court at §44

<sup>21</sup> See Report from the Commission to the Council on the situation with regard to the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions in Greece, COM (85) 587 final, p.30

### **c. health and safety provisions**

A group of provisions exists which is undoubtedly related to a legitimate need to protect women as women, that is, to protect them from biological risks special to them. Where a provision has come into being in order to protect women (or unborn children) from risks to health which are greater for them than for men, the need for protection will in principle continue until such time as the process is changed so as to eliminate special biological risks to women, or protective equipment becomes available with the same effect, or the original concern for health is proved unfounded by subsequent research.

Since equality is a fundamental human right, however, it may be necessary on the one hand to narrow the scope of protective legislation so as not to deny employment opportunities to women who do not fall within the danger contemplated by the measure in question, for example, all women capable of bearing children. On the other hand, it may also be the case that research, particularly on male and female reproduction, may demonstrate that protective measures must not only be continued but must also be extended to men.

In contrast, there is a group of provisions aimed at excluding women from exposure to certain substances or processes which are potentially harmful to both sexes. Some of these provisions have been brought about for humanitarian rather than for truly biological reasons. These provisions are, as above, no more than indicators of dangerous and unhealthy jobs for both sexes. Such provisions must either be repealed, together with a general improvement in working conditions, or they must be extended to both sexes.

## II. PROTECTIVE LEGISLATION IN THE MEMBER STATES

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### (1) anomalous provisions

Provisions in France, Greece, Ireland, Luxembourg and the UK lay down tighter **administrative controls** on women's work or provide for special posting of the appropriate regulations. They are clearly intended to underline protective legislation by ensuring that it is better known and enforced. However, to the extent that the protective legislation itself is necessary and inevitable, it should be supervised in the same way as all other administrative regulations.

The Regulation on **internal navigation on the Rhine**, which affects Belgium, the Federal Republic, France, the Netherlands and the UK, provides for a ban on women being employed in certain circumstances and for certain specific working conditions. The number of women crew members is limited, working women are referred to in the certificate drawn up by the visiting Commission, the conditions relating to age and qualifications required of crew members contain special derogations based on sex, and there are rules against women wearing tight clothing during working hours. Such regulations, which considerably discourage women's employment, are anomalous and should be abrogated.

Measures on **hygiene** at the place of work, particularly concerning the provision of separate sanitary facilities, raise the question whether separate facilities really are needed. In the Netherlands, both employers and employees have come out in favour of mixed cloakroom facilities. The separate provision of such facilities is not universal, e.g., trains, aircraft, and it could lead to a smaller number of facilities overall. It may also be the case that employers may use the lack of separate facilities as an excuse for not employing women. In any event, there does not seem to exist any reason why the principle of equality ought to be set aside for such considerations. In effect such provisions have been wrongly classified as special protection for women, whereas they ought in fact to be extended to both sexes.<sup>1</sup>

French law prevents women from **working outside shops** after 10 p.m. or when the temperature is below 0° upon presentation of a medical certificate from the industrial doctor. However, the industrial doctor has in any event a general power to intervene on health grounds for any worker. There does not seem to be any need for extra medical control of female staff which would justify provisions which run counter to the principle of equality<sup>2</sup>.

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<sup>1</sup> Cf. ILO Recommendation No. 162 of 1956. §19 suggests that rest rooms be provided to meet the needs of women workers

<sup>2</sup> With regard to the control of night work in shops, see the general discussion of night work below

## (2) humanitarian provisions

### (a) family commitments

Some provisions were originally intended to cater for certain family commitments rather than a concern for specific protection.

ILO Recommendation No. 116 of 1962 on the reduction of working hours gives priority to the gradual reduction of working hours in areas of special fatigue or risks, particularly where the labour force is mainly women<sup>3</sup> and recommends that the special situation of pregnant and nursing mothers be taken into account concerning overtime<sup>4</sup>.

Some national provisions impose **limits on working hours** or the length of time worked. These provisions limit the maximum daily or weekly working time<sup>5</sup>, specifically limit access to part-time work to women, ban shift work, place a lower limit on overtime for women, or provide a greater number of days leave, whether annual leave or leave for family or domestic purposes.

Other provisions which exist in a majority of Member States impose **qualitative limits on the time women work**. These consist most often of a ban or limitation on Sunday work, sometimes combined with a ban on working part of Saturdays, for example that work has to stop at 5 p.m. the day before. Similar limitations exist concerning public holidays. In practice, however, there are significant exceptions to these protections so that, for example, it was shown in France that as many women work on Sundays as men.

Such measures are suspect because they may restrict job opportunities for women as workers. Some of these provisions may not be sufficiently justified and should be removed, whilst others ought to be extended to both parents or to all workers.

### (b) night work

There are four ILO instruments dealing with night work - Night Work (Women) Convention No. 4 of 1919, revised in Convention No. 41 of 1934 and Convention No. 89 of 1948, and Recommendation No. 13 of 1921 on Night Work of Women (Agriculture).

All these Conventions exclude firms which only employ members of one family and permit derogations in case of *force majeure*. Conventions No.41 and No.89 exclude women holding technical, responsible posts, health & welfare. There is no standard definition of "night".

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<sup>3</sup> §9

<sup>4</sup> §18

<sup>5</sup> About to be repealed in the UK, see Sex Discrimination Act 1986

Denmark has never ratified any of these provisions and has no specific laws on night work. The other Member States have ratified and in some cases denounced these provisions, providing a very varied legal picture across the Community, which is summarised in the annex in table form.

In practice, the general effect of both the ILO instruments and national provisions is to prohibit night work as harmful to women if they do manual work in industry, but not if they do white-collar or managerial work or work in service sectors such as health (nurses).

Night work raises two distinct issues, the protection of family life and the protection of workers against particularly unpleasant or arduous work. Various studies have demonstrated that it has unpleasant consequences for all workers due to the lack of sleep, disturbance of biological rhythm, and interference with family, social and professional activities.

Women have been regarded as particularly vulnerable because of the extra burden of domestic and family commitments that they traditionally bear, imposing a double load of stress and fatigue upon women workers. It is certainly arguable that such provisions are designed to do more than simply spare women at least from certain tasks unpleasant for everyone. As a result, the opening up of night work to women so as to achieve greater flexibility has been resisted by their trade unions because they feared a worsening of working conditions.

On the other hand, it has been pointed out that these provisions are inconsistent in that they exempt, for example, manual workers and not nurses and women working in the service sector, and that they take no account of modern processes. Most importantly, they can have the effect in practice of excluding women from jobs<sup>6</sup>, even though it may be specifically provided that the ban on night work should not lead to a ban on employment in the day shifts, as in Belgium, Italy and the Netherlands. As a result, changes are contemplated or have recently been made in France, Ireland, the Netherlands and the U.K.

It is interesting to note the current thinking of the ILO here:

"Far-reaching technical and social changes have taken place since the last ILO Convention on the night work of women was adopted. What was originally welcomed as a measure to protect working women from additional fatigue now raises a number of objections. First of all, it deprives women of employment opportunities and constitutes an obstacle to the achievement of equality of opportunity and treatment for men and women workers. Secondly, it is argued, such a prohibition is no longer in line with present-day conditions in industry, where in some sectors conditions have improved as a result of new technologies. Finally, there is no medical evidence that night work is more harmful to women than to men (except during the period of pregnancy or nursing)."<sup>7</sup>

<sup>6</sup> The Netherlands specifically denounced Convention No. 89 on the grounds that it constituted a barrier to women's employment opportunities

<sup>7</sup> "World Labour Report" Volume 2 - Labour relations, international labour standards, training, conditions of work, women at work, ILO, Geneva, 1985, p.229

Within the ILO there has been support for a revision of the Conventions on night work, particularly Convention No. 89, since the completion in 1975 of a general survey on their application. Up to now, it has not been possible to reach agreement on the purpose and scope of such a revision, but "the view that new standards should apply to both men and women workers seemed to be gaining ground."<sup>8</sup> An expert report made for the ILO concluded that the harmful character of night work is such that it should be banned where it is only justified on financial grounds, and that where it is essential it should be restricted for all workers, men and women alike, and the length of such work considerably reduced<sup>9</sup>.

It is clear that there are differing views as to what represents practical equality of opportunity with regard to the regulation of night work. The Commission takes the view that discussion of the problem should no longer concern whether a job should be done by men or women, but rather the legitimacy and necessity of night work at all. The Commission would therefore recommend the following considerations to the Member States:

- (a) Ideally, there should be a ban on night work for all men and all women, coupled with equal derogations for both sexes, with the exception of pregnant or nursing mothers.
- (b) If this is not possible, then the ban should be raised for women in the context of a general improvement in working conditions agreed with the Social Partners, e.g., by a general reduction of night work, where possible.
- (c) If it is impossible to reach agreement on such improvements, the result should neither be a perpetuation of the ban nor a worsening of women's working conditions.

**(c) strenuous or arduous work**

A variety of provisions attempt to protect women from strenuous or particularly arduous work on the grounds that they are weaker than men. They are based on outmoded fears as to greater risks to women and on the idea that different levels may be set for the "average man" and the "average woman", which is no longer justifiable in this context.<sup>10</sup> Some of these provisions should be removed; others should apply an improved standard to both sexes.

A minority of Member States lay down an obligation to provide women workers with **seats** in shops or businesses<sup>11</sup> and the **right to a break** for women. Such provisions should be extended to the relevant workers of both sexes, as in most Member States.

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<sup>8</sup> *ibid.*, p.228

<sup>9</sup> "Night work: its effects on the health and welfare of the worker" J. Carpentier and P. Cazamian, ILO, Geneva, 1978

<sup>10</sup> See Opinion of Advocate-General Darmon in Case 222/84, Johnston, *supra* at §8

<sup>11</sup> ILO Recommendation No. 102 of 1956, §16, suggests that seats be provided particularly for women & young workers

In France, female manual workers who have brought up 3 children may retire (at full rates) earlier than men in the same sector. In the Netherlands, the **age limit** for women in certain jobs is lower than for men. It would be legitimate to take into account the age and individual circumstances of the worker and the unpleasant nature of the job. There is no reason why men who can show that they fulfil the same conditions should not have the same benefits.

A ban on women handling (repairing, lubricating, etc.) **dangerous machinery**, particularly when it is still running, exists in Ireland and Greece. A similar provision was abrogated in France in 1976 on the basis that women were sufficiently well trained to hold such posts. The question would seem to be the level of training given rather than any inherent danger to women in such machinery.

A ban on women working in **compressed air caissons** operates in the U.K., in France, where there is an absolute ban based on medical reasons, and in Belgium, where the ban is confined to manual labour and seems to be based on criteria of physical force and the strenuous nature of the work. The validity of the Belgian provisions must be considered alongside all the other global measures based on a standard view of the physical capacity of women. The French provisions have some medical backing, since working with compressed air machinery can cause spinal problems, arthrosis and vascular trouble, but there is no evidence that women are more vulnerable than men to such problems. More particularly related to women is the problem for undersea workers of the link between fatty tissue and embolisms, and the idea that women have more fat on them than men. However, this problem affects all undersea workers, particularly fat men, and has led to stringent medical supervision being introduced. It would not seem that there is any need to provide more than these general medical precautions already in force together with special provision for pregnant women. Further bars on the undersea employment of women, particularly doctors and engineers trained in deep-sea diving, seem to be unjustified.

There are two ILO instruments on the **regular manual shifting of loads**, Convention No. 127 of 1967, and Recommendation No. 128 of 1967. These instruments come out firmly in favour of there being a lighter maximum load for women<sup>12</sup>. However, there is a very varied situation among the Member States of the Community, ranging from a complete absence of provision in Denmark and Italy to differing specific thresholds in other Member States. Measures may lay down bans on employment or specific working conditions. There are a number of bans for specific and apparently unrelated activities in the Federal Republic which are in fact based on the problem of shifting heavy loads. It has been strongly argued in this Member State that there are sound medical reasons for treating men and women differently, such as differences in the male and female muscular and respiratory capacities and the attendant dangers to women of carrying weights that are too heavy, such as prolapse of the uterus.

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<sup>12</sup> See article 7 of Convention No. 127.

In contrast, the idea has developed that it is inadequate to talk in terms of a "standard man" and a "standard woman". No two workers are the same and a particular woman may be stronger than a particular man; she may at the same time be weaker than a standard based upon the male average.<sup>13</sup> Better knowledge of general load-carrying facilities and consideration of the age, height etc. of the worker could lead to a disappearance of the difference between men and women in the establishment of rules. Instead there could be standards that apply to everyone via general selection based on physical strength. Furthermore, mechanization and a better understanding of ergonomics has made many jobs easier, and technological advances may have caused some bans to be outmoded.

In these circumstances, it would be better to provide a general limit on manually shifted loads, combined with adequate training in carrying loads up to that limit. Mechanical aids should be obligatory over this common maximum weight. In this area, social progress means finding standards that apply to everyone and lowering the point at which physical strain begins for everyone.<sup>14</sup>

In different sectors in various countries there is a common, shared concern to protect women from exposure to certain kinds of **danger**, similar to the concern to protect them from dangerous substances or processes described below. However, the absence of scientific or medical justification for the very different measures dealt with here gives rise to the suspicion that these measures represent a wish simply to protect women, at least, from having to do what is regarded in each country as particularly unpleasant work.

Thus **high temperatures** are a matter of concern in the Federal Republic and Ireland, though there is no evidence that high temperatures may cause particular harm to women. In Belgian and Ireland, women are protected against performing "**dangerous and unhealthy work**." In Ireland and the Netherlands, women are banned from being **dockers**. Though these are strenuous jobs, there is no evidence of special female vulnerability.

In effect, the essential function of such protective legislation seems to be an "unpleasantness indicator" which indicates the unpleasantness of a particular job. The jobs singled out remain unpleasant and protection remains desirable, but not for the original, outmoded reasons. These protective measures are also out of date in that they take no account of mental strain, of new fears about certain products (asbestos, cadmium, etc), or of damage induced by new technology (cathode screens, etc) in jobs which are particularly filled by women<sup>15</sup>.

Since it is impossible to use the exclusion of women as a method of indicating unpleasantness, the role of these bans has become very difficult to justify.

#### (d) mines

The ban on women working down mines is embodied in ILO Convention No. 45 of 1935. Article 3 of the Convention provides for important exceptions from the ban, such as for women employed in management or carrying out health or social duties.

<sup>13</sup> See Case 237/85, Rummler v Dato-Druck GmbH, decision of 1 July 1986, as yet unreported, §§23,24

<sup>14</sup> See Report of the Ad Hoc Committee on lumbar hazards at work, Doc. No. 2080/86.

<sup>15</sup> See ILO World Report, *op. cit.*, p.229

The ban exists in all Member States except Denmark. It was first introduced in the nineteenth century and constituted one of the first concrete steps in social protection. The reasons for its adoption were moral, economic and physiological. It is perpetuated today for physiological reasons which seem to disguise the true humanitarian purpose, to prevent women from having to do particularly difficult, dangerous and dirty work. As is the case in the above discussion in part (c), such considerations are equally applicable to men and women.

As a first stage, the Commission would recommend repeal of the ban for certain workers such as engineers and cleaning staff. In the longer term, a timetable ought to be drawn up leading to repeal of the ban in a wider sense, on condition that working conditions be improved where necessary.

### (3) health and safety provisions

#### (a) harmful substances

Certain protective measures are aimed at excluding women from exposure to certain particularly harmful substances or processes. ILO Convention No. 136 of 1971 prohibits nursing mothers and women medically certified as pregnant from work involving exposure to **benzene**, a form of aromatic hydrocarbon.

The chemicals, substances and processes covered by the national provisions referred to in this Report can cause a variety of damage to workers of both sexes. **Mercury** can cause damage to the spinal cord, **silica** can cause silicosis, **zinc** can cause "foundryman's fever", and **naphthylamine** and similar **aromatic hydrocarbons** can cause cystitis (which is more common in women but more serious in men when it does occur). It should also be noted that there are important inconsistencies in the application of some of these measures which question or weaken the basis for such provisions. For example, they allow women who are not engaged in the processes in question to enter without restriction, and they do not cover all the relevant industries (such as electric battery factories which make considerable use of mercury).

#### (b) lead

A variety of measures exists at national and international level based on a common concern to protect women from the harmful effects of lead. It is not always obvious that certain measures are concerned with lead, although that is the reason for some measures apparently only concerned, according to their titles, with products such as batteries, pottery and ceramics, and glass. The concern for protection is of long standing, e.g., ILO Recommendation No. 4 of 1919 on the protection of women and children from lead poisoning<sup>16</sup> and Convention No. 13 of 1921 on the use of white lead in paint<sup>17</sup> but remains very topical today. The measures are based on biological and medical considerations such as the medical evidence that the embryo and foetus are more sensitive to the effect of working with products with high lead content, which has produced stringent safety regulations for women of child-bearing age in the Federal Republic, Ireland and the UK. However, epidemiological studies have not demonstrated that women as such are at greater risk than men of lead poisoning.

<sup>16</sup> The employment of women is prohibited in work which involves the handling of lead or iron ore because of the danger these substances represent in respect of child bearing

<sup>17</sup> Article 3 forbids the employment of women in industrial painting involving white lead, lead sulphate or any product containing these pigments

Member States have had to update and evaluate their positions on lead protection following the adoption of the Directive on lead risks<sup>18</sup>, which sets out twenty-four illustrative activities which may involve a risk of lead. Community law now obliges Member States to reach an acceptable balance of protection and equality<sup>19</sup>.

The Directive as finally adopted does not specifically refer to women. Article 1(3) provides:

"This Directive shall not prejudice the right of Member States to apply or introduce laws, regulations or administrative provisions ensuring greater protection for workers or for a particular category of workers."

The expression "particular category of workers" is amplified by a Declaration by the Council and the Commission in the Minutes. Member States may in particular "take account of the potential risks for the embryo and the development of the foetus in high blood-lead levels in women."<sup>20</sup>

There is a view that pregnant women, and only pregnant women, should be specifically protected. On the other hand, there are strong arguments both in favour of extending protection to men and against confining it to women of reproductive capacity. This view suggests that it is not only mothers who pass on anomalies and that account should be taken of the male worker as reproducer<sup>21</sup>. In this context, there is medical evidence that genotoxic risks affect men, particularly the sperm, which are less protected from the risks of mutation than a woman's ovaries. The Council therefore declared that scientific and medical studies should be carried out on the ill effects of lead both on the female worker as reproducer and on the male reproductive functions.<sup>22</sup> Studies are presently being carried out in this area, including experimental and epidemiological studies of comparative groups of men and women.

It may be concluded that the aim of provisions relating to exposure to lead is fundamentally sound, but that such provisions should not exclude unacceptably broad categories of workers who wish to work and who because of their particular circumstances will not be affected by the risk more than other workers. The Commission would recommend, subject to further research, that protection should either be extended to men who are able or intending to have children or that the European Parliament's recommendation on a timetable fixing the same (lower) level for all should be adopted<sup>23</sup>.

<sup>18</sup> Council Directive 82/605/EEC of 28 July 1982 on the protection of workers from the risks related to exposure to metallic lead and its ionic compounds at work, OJ No. L 247 of 23.8.1982, p.12, based on the framework-directive 80/1107/EEC. National provisions are set out in annexes I and II to Halpern Report, *supra*, and in the Newton-Dunn Report, 15 December 1980, Document No. I.675.80 - EP

<sup>19</sup> See Commission Declaration concerning article 1, paragraph 4(c)

<sup>20</sup> Council and Commission Declaration concerning article 1, paragraph 4(a). The Advisory Committee wanted the words "...or in men" to be added, to take account of the male worker as reproducer.

<sup>21</sup> See Written Question No. 623/80 by Ms. Yvette ROUDY concerning the Directive on the protection of workers from the risks related to exposure to metallic lead and its ionic compounds at work

<sup>22</sup> Council Declaration concerning article 1, paragraph 4(b)

<sup>23</sup> Opinion of the European Parliament, OJ No C 101 of 4.5.1981, p.14

### (c) ionizing radiation

Lastly, there are provisions in all Member States which relate to exposure to ionizing radiation. The concern for protection against radiation shares many of the elements concerning lead: harm for both sexes is possible, there is an even greater danger to the foetus, and there is concern but no certainty with regard to the effects of exposure to the genital organs and reproductive faculties of men and women during the period prior to conception. In particular, there is considerable scientific uncertainty as to the exact effect of exposing women of reproductive capacity to radiation<sup>24</sup>.

At Community level there has been regulation of this area since 1959. Current Community rules are contained in the Euratom Directive of 1980, revised 1984, which covers all work involving ionizing radiation, in particular work in medical and nuclear installations.<sup>25</sup> There is also the Council Directive of 1984 concerning the radiation protection of persons undergoing medical examination, which regulates *inter alia* the training of medical and para-medical personnel.<sup>26</sup>

At international level there are also three relevant ILO instruments, Recommendation No.114 of 1960 on the protection of women workers from ionizing radiation<sup>27</sup>, Convention No.115 of 1960 on the protection of workers from ionizing radiation<sup>28</sup> and Recommendation No.157 of 1977 on the employment and living conditions of nursing staff<sup>29</sup>. In addition, there is Recommendation No.112 of 1959 on the provision of industrial medical services. This provides for the particular surveillance by way of medical examinations, including biological and radiological examinations, for special categories of workers, including women.

These instruments lay down the same figure for the level tolerated annually, 50 mSv for all workers. The revised 1980 Directive stresses that the level of exposure should be as low as is reasonably achievable. They also suggest spreading the dose in the case of women of reproductive capacity (to a maximum accumulated dose over 13 weeks of

<sup>24</sup> See "Developmental Effects of Irradiation on the Brain of the Embryo and the Foetus." International Commission on Radiological Protection Publication No. 49 of July, 1986

<sup>25</sup> Directive 80/836/EURATOM of 15 July 1980 laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation, OJ No. L 246 of 17.9.80, p.1, as amended by Directive 84/467/EURATOM of 3 September 1984, OJ No. L 265 of 5.10.84, p.4

<sup>26</sup> Directive 84/466/EURATOM of 3 September 1984 laying down basic measures for the radiation protection of persons undergoing medical examination or treatment, OJ No. L 265 of 5.10.84, p.1

<sup>27</sup> Article 16 states that where work involving radiation is undertaken by women of child-bearing age, every precaution must be taken to ensure that they are not exposed to strong doses of radiation

<sup>28</sup> It was not possible to agree the inclusion of any special provisions concerning women, but the ILO Commission on radiation pointed out that it would, generally speaking, be sensible if women of child-bearing age were not exposed to strong doses of radiation, Report of the proceedings of the 44th session of the International Labour Conference - Annex VII

<sup>29</sup> Pregnant women and mothers of young children should not be asked to carry out work involving exposure to ionising radiation or to anaesthetic substances or work involving contact with infectious diseases. This is the only instrument that does not refer to women of child-bearing age; it may be asked why it refers to women with young children rather than to nursing mothers

13 mSv, ie, 1/4 of the annual dose per quarter), whereas men and other women may be exposed to the maximum annual dose. In the case of pregnant women, article 8 of the 1980 Directive goes on to require that the dose to the foetus should be as low as reasonably practicable and should in no case exceed 10 mSv.

A particular problem is that none of these instruments provides a definition of "women of reproductive capacity". On the one hand, Denmark felt there ought to be identical protection standards for men and women and would like to extend the provisions concerning women of reproductive capacity to all women and men. On the other hand, the Federal Republic adopted a particularly broad interpretation of this expression which covers all women who are considered capable of bearing children, i.e., all women under the age of 45. Such an age bracket was not thought to be desirable in the UK. The Health and Safety Commission preferred a narrower interpretation which would not cover women physically unable to have children, whilst the Equal Opportunities Commission wished to go further and exclude in addition women who do not intend to have children.

The limitation of the restriction to women affects their employment and the question therefore arises whether the Danish example should be followed and the quarterly dose limitation extended to everyone. This was certainly the view of the European Parliament.<sup>30</sup> The UK Health and Safety Commission feels that this would be difficult, but that in practice most jobs do not involve such a level of exposure, and that there is not such a problem<sup>31</sup>. The U.K. Approved Code of Practice of 1985 therefore requires an employer who refuses to employ a potential mother (certified by a doctor to be of reproductive capacity) to prove that it is impracticable to restrict radiation doses to 13 mSv.

Provisions relating to exposure to ionizing radiation must be based upon a level of medical and scientific knowledge whereby the existence of a danger - and one for women alone - can be asserted. The notion of risk is inadequate, as any work situation involves a certain, acceptable level of risk and the right to run this risk is not taken away from men. There must be a concrete justification for limiting the right to work. These provisions may be maintained as they stand for a specific period and provided research is undertaken to demonstrate (i) the existence of a danger which (ii) applies to potential mothers only.

Further, pending greater medical and scientific knowledge and subject to further research:

- i) any exclusion must be made conditional on proof that it is impossible to adapt the job to the special conditions of exposure decided on (13 mSv per quarter);
- ii) so far as possible, provisions relating to the protection of women of reproductive capacity should be extended to men who are able or intending to have children.

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<sup>30</sup> EP Resolution 6/32/81, point 2

<sup>31</sup> It is estimated that about 1,000 jobs in a restricted number of establishments involved a quarterly dose in excess of 1.3 rems (13 mSv)

### III. SUMMARY TABLE OF RECOMMENDATIONS

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#### (1) Anomalous provisions

1.	administrative controls	F, G, IRL, UK, LUX (bars)	repeal
2.	obligatory notification	F, G, IRL	repeal
3.	internal navigation on the Rhine	B, D, F, NL, UK	repeal
4.	regulation on the employment of women on board ship	D, UK	repeal
5.	women freed from working outside shops on presentation of a medical certificate: -after 10 p.m. -when the temperature is below 0°	F	repeal repeal
6.	provision on hygiene at the place of work	B, D, F, IRL, NL, UK (also goes for special working clothes)	generalisation

#### (2) humanitarian provisions

##### (a) family commitments

1.	specific length of (daily or weekly) working time	D, G, NL, UK	generalisation or repeal
2.	specific access to part- time work	F (collective bargaining)	generalisation or repeal
3.	limitation of overtime	D, NL, UK	generalisation
4.	ban on continuous working	F	repeal
5.	extra annual leave	F, NL (collective bargaining)	generalisation to workers with family commitments
6.	family leave	F, NL (collective bargaining)	generalisation to workers with family commitments
7.	leave to do housework	D	generalisation to workers with family commitments

8.	ban on Sunday work (or on derogation from a general ban in the case of women workers)	D, F, G, IRL, NL, UK	generalisation or repeal
9.	same provision as for public holidays	D, G, IRL, UK	generalisation or repeal
<b>(b) night work</b>			
	ban on night work for women in industry (or fewer possibilities of derogating from a general ban in the case of women workers)	all countries except DK	raising of ban alongside general improvement in working conditions, e.g., by general reduction in night work where possible
<b>(c) strenuous or arduous work</b>			
1.	provision of seats in shops	F, IRL, NL	generalisation
2.	right to a break	D, F, G, UK (local)	generalisation
3.	early retirement in certain jobs	F, NL	generalisation to : - parents (F) - all workers of a given age (NL)
4.	work on machines that are running	IRL, UK	repeal
5.	work on compressed air caissons	B, F, UK	repeal
6.	loader-artificer -blaster-driller	G	repeal
7.	shifting of loads :	F (assisted)  D, F, IRL NL, UK (manual)	lowering of levels to generalise better working conditions, relevant vocational training to be extended to women
8.	Certain construction jobs Transport of raw materials and other material in all kinds of construction	D	repeal

9.	manual earth shifting, digging and excavation; preparation of quarry stone	B, D, UK	repeal of ban
10.	dangerous or unhealthy work	B, IRL	repeal or generalisation
11.	work in blast furnaces, steel works, metal factories, plants producing laminates and plate, iron and steel works and work with other metal which is heat processed (production)	D, IRL	repeal
12.	dockwork	IRL, NL	repeal

**(d) mines**

ban on work down mines                      all countries  
except DK

Recommendation: as a first stage, repeal of the ban for certain workers (engineers, cleaning staff). Timetable to be drawn up leading to repeal of the ban in a wider sense, on condition that working conditions improved where necessary.

**(3) Health and safety provisions**

1.	mercury	F UK	-ban limited to pregnant women -sexual neutralisation of the regulation
2.	estersthiophosphorics	F	repeal of ban
3.	aromatic hydrocarbons	F	repeal of ban
4.	zinc	D, IRL	repeal
5.	demolition work on industrial ovens contain- ing refractory materials containing free silica	F, UK	repeal of ban

6. specific measures on exposure to lead for:
- |                                  |     |                     |
|----------------------------------|-----|---------------------|
| - all women                      | IRL | narrower protection |
| - all women of child-bearing age | D   | narrower protection |

Recommendation: carry out research to back up the EOC's definition, plan to extend it to men who are able or intending to have children, or take over the European Parliament's recommendation on a timetable fixing the same (lower) level for all

7. special conditions on exposure to ionizing radiation for women of reproductive capacity
- |  |                          |
|--|--------------------------|
|  | all countries<br>in time |
|--|--------------------------|

Recommendation: pending greater medical and scientific knowledge and subject to further research:

- i) any exclusion must be made conditional on proof that it is impossible to adapt the job to the special conditions of exposure decided on (13 mSv per quarter);
- ii) so far as possible, provisions relating to the protection of women of reproductive capacity should be extended to men who are able or intending to have children.

#### IV. CONCLUSIONS

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The national and international protective measures discussed in this Report were originally conceived in a spirit of social progress, which sought in the main to take account of current perceptions of women's physical characteristics or family obligations.

However, with the passage of time it has become clear that many national protective measures may now be criticised because they have become anomalous or inadequate, that is, because:

- they have lost their original justification;
- they have become negative in their effect upon women or upon workers generally, both with regard to the internal adaptability of undertakings and to the global policy of prevention;
- they do not in practice systematically consider, assess or apply themselves to all the problems involved.

This Report has shown that, for example, arduous work or work involving heavy loads may be barred to all women because women overall tend to be physically weaker than men; women are barred from work with certain substances or processes which are dangerous to reproduction whilst no account is taken of particular cases or of dangers to the reproductive functions of both sexes; and some women, but not all, and in certain sectors only, are given special protection against night work.

"It could be concluded that, overall today, this legislation protects women less than it maintains their difference and that by passing over the need to protect men too, it has a negative effect when it comes to the global policy of prevention."<sup>1</sup>

The Commission therefore takes the view that protective legislation should in principle be consistent across sexes and across occupational areas<sup>2</sup>. The Equal Treatment Directive has provided a narrow exception to this principle which authorises measures strictly necessary to protect the special biological condition of women. The Commission regards this physiological test as the touch-stone for legislation protecting women, a rigorous approach which has been confirmed by the Court of Justice. It may be concluded that many of the protective measures discussed in this Report will have to be extended to both sexes or repealed.

Member States are therefore requested to consider the recommendations contained in this Report with a view to revising the measures concerned and taking any action at international level which they may deem necessary in this context.

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<sup>1</sup> Halpern Report, *supra*, p.92

<sup>2</sup> as is the case generally in Denmark and in the public service in France

**Follow-up**

This Report was provided for by the Medium Term Community Programme on Equal Opportunities for Women and Men 1986-1990.

An update of the Report will be issued three years from the date of its adoption in time for it to be considered in the context of the evaluation of the Medium Term Community Programme.

In the meantime, the Commission will fulfil its role as Guardian of the Treaties with regard to any measures in breach of Community Law which are not revised or repealed so as to conform with the principle of equal treatment for women and men.

## V. ANNEX

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### NATIONAL AND INTERNATIONAL PROVISIONS CONCERNING EACH MEMBER STATE

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This section lists information on protective legislation per individual Member State, as follows: the A-sections deal with changes or prospective changes in legislation in each Member State, the B-sections list details of existing legislation, and the C-sections give information on ratifications or denunciations of ILO Conventions.

In the Annex there are also Tables which give an overview of the existing protective legislation of all the Member States together, the entries referring back to the details given under Section B of each individual country. Further Tables in the Annex set out ILO Conventions ratified and denounced by Member States as at 1 January 1986 and the situation relating to night work in all twelve Member States in 1986.

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#### Introductory notes

- (1) In certain instances legislation referred to applies to a number of Member States, having come about as a result of an international agreement. Belgium, France, the Federal Republic, the Netherlands and the United Kingdom signed a Convention with Switzerland in the framework of the Mannheim agreement (original version in 1868). The amended Regulation (1st April 1976) lays down the conditions of shipping on the Rhine, including a number of provisions banning access of women to work on board ship.
  
  - (2) With respect to work involving exposure to ionising radiation, legislation in the Member States is being checked to establish whether this is now in line with the EURATOM Directive of 1980, as revised in 1984, on radiological protection. In this respect, comments below refer only to the situation relating to protective legislation for women and the application of the principle of equal treatment.
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## **BELGIUM**

### **A. Changes in protective legislation**

1. The Royal Decree of 26.7.1984 has abrogated article 1, paragraphs 1, 2 and 3 of the Royal Decree of 24.12.1968, thereby ending the ban on female workers in :
  - a) occupations involving exposure to white lead, lead sulphate and other products containing these components. (Cf., however, ILO Convention No. 13 under *C.infra*).
  - b) work involving the manual lifting of loads exceeding 27 kg and the manual lifting on a regular basis of loads exceeding 15 kg.
2. The Royal Decree of 24.5.1984 changes article 6E5 of the Royal Decree of 24.12.1968, thereby allowing women to carry out night work in certain professions in the area of sea and air transport (cf. ILO Convention No. 89 under *C.infra*).

### **B. Existing protective legislation**

#### **Bans on Access to Employment**

1. Labour law of 16 March 1971 (article 10) allowing the King to forbid women and young people to carry out dangerous or unhealthy work, or to make the performance thereof subject to certain protective measures.
2. Labour law of 16 March 1971 (article 8) prohibiting women access to underground work in mines, open-cast mines and quarries.
3. Royal Decree of 24.12.1968 (article 1, para. 4) concerning manual work involving the digging, henching and excavation of soil.
4. Royal Decree of 24.12.1968 (article 1, para. 5) concerning manual work in compressed air caissons.
5. Amended regulation (1976) concerning shipping on the Rhine - cf. preliminary notes (1).
6. Royal Decree of 28.2.1973 concerning protection against the dangers of ionising radiation, as subsequently amended. A draft Royal Decree amending this legislation will shortly enter into force.

#### **Conditions and terms of employment**

7. Labour law of 16 March 1971 banning the principle of night work (8 pm - 6 am) for all workers. The Law on the protection of work and a Royal Decree of 24 December 1968 provide more derogations for men than for women. The derogations for women are, in particular, provided for urgent machine work or for a few hours of shift work.

The length of working time may be extended by a few hours in both the private and public sectors. In the case of women, this applies in press agencies, domestic service, cleaning firms, restaurants and hotels and tourist centres.

Some women are authorized to work throughout the night - those in posts of responsibility in director's offices, journalists, doctors, chemists, ancillary medical staff, etc.

A minimum break of 11 consecutive hours is obligatory for women (Article 36(2) of the labour law).

Cf. also remarks under A.2. in this respect.

8. Royal Decree of 25 September 1947 (article 19) concerning the provision of entirely separate facilities (cloakrooms, washrooms and WCs) in establishments employing mixed staff.

## **C. ILO Conventions on the protection of women in work**

### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 12.7.24)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 4.8.37)

### **Conventions still in force**

- Convention No. 13 concerning the Use of White Lead in Painting (ratified 19.7.1926)
- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 4.8.1937)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 1.4.1952)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 23.5.1952)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 22.3.1977)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 2.7.1965).

It would seem that the changes in Belgian law as described under A.1(a) and A.2. concerning work involving exposure to white lead, etc. and night work, will be of no effect so long as ILO Conventions No. 13 and No. 89 are still in force.

## **DENMARK**

### **A. Changes in protective legislation**

Denmark's response to the Commission's letter of 10.8.1984 reveals that there is no reference to special protection of women under Danish labour environment law. There are, however, provisions in the law to establish further rules on which safety and health regulations should be set up so that work can be considered as responsibly planned and executed. These rules include prohibitions concerning particularly dangerous work, work processes and methods. These provisions can be used, *inter alia*, to set up protective legislation for women.

### **B. Existing protective legislation**

1. Ministry of the Interior Order No. 657 of 17 September 1986 on the use of X-ray installations, etc.
2. Order No. 278 of 27 June 1963 on measures to prevent accidents in nuclear installations, etc.
3. Environment Ministry Order No.502 of 1 October 1974 and Environment Ministry Order No. 574 of 29 November 1975 on safety measures in connection with the use, etc., of radioactive substances.

### **C. ILO Conventions on the protection of women in work**

#### **Conventions still in force**

- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 22.6.1960)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 22.6.1960)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 7.2.1974)
- Convention No. 149 concerning Employment and Conditions of Work and Life of Nursing Personnel (ratified 5.6.1981).

## **FEDERAL REPUBLIC OF GERMANY**

### **A. Changes in protective legislation**

1. The Federal Government is proposing to derogate from the ban on the employment of women in construction works. Only those women who would have undergone a medical examination in the course of the six months preceding the start of work and who could give their employer a written medical declaration indicating that there are no objections to doing such work on health grounds, will be permitted to carry out construction work.
2. An abrogation of the Order of 2 December 1971 relating to the employment of women involving the driving of trucks of more than 3.5 tons or having more than 8 seats has been proposed. Only chapter 11 of paragraph 1 of the Order will be maintained, prohibiting women from carrying or lifting without mechanical aid and on a regular basis loads of more than 10 kgs.
3. An abrogation is proposed of No.20 of the Order of Work Execution relating to working hours. The draft law on the duration of working time would, however, maintain a ban on women working in blast furnaces, etc., if the jobs concerned involve heat.
4. The Federal Government proposes to abrogate paragraph 92 of the maritime navigation law which bans women from being employed at work that exceeds their physical strength. Individual decrees, however, will continue to provide possibilities to ban women from particular work areas on health grounds or in case of risk to the foetus.
5. As concerns rest periods, daily and weekly working time, preparatory and complementary work, prohibitions to work on Sundays and holidays, the Federal Government proposed to introduce the same rules for men and women in its draft law on working time.
6. The Federal Government proposed to abolish paragraph 93 of the maritime navigation law relating to special rest periods for women; uninterrupted rest periods of at least 10 hrs for women (8 hrs for men); other time restrictions for women - 60 hrs per month (90 hrs for men).

## **B. Existing protective legislation**

### Bans on Access to Employment

1. Law of 30 April 1938 concerning underground work in mines and quarries.
2. Regulation of 8.9.1975 concerning manual digging, earth moving and excavation.
3. Ordinance of 1 March 1973 concerning protection from damage by X-Rays;  
Order of 13 October 1976 concerning protection against ionising radiation.
4. The regulation of 29 July 1980 in respect of work involving exposure to white lead, lead sulphate and other products containing these components.
5. Regulation of 8 September 1975 concerning work involving dangerous substances (firms manufacturing ceramics and clay pottery).
6. Decree of 2 December 1971 concerning work involving the lifting or transport of loads (cf. A.2. above).
7. Decree of 12 December 1938 and law of 30 April 1938 concerning the ban on the employment of women in construction works (cf. A.1. above).
8. Decree of 12 December 1938 and law of 30 April 1938 concerning work in blast furnaces, steel works and work involving other heat-produced metals (cf. A.3 above).
9. Provisions concerning the ban on exposing women to zinc regarding work in shipbuilding (1.4.1934) and work involving welding, cutting and similar processes (1.4.1973).
10. Amended Regulation (1976) concerning shipping on the Rhine - cf. preliminary notes (1).

Decree of 26.3.1976 concerning shipping on the Rhine, particularly provisions relating to accomodation, and Decree of 14.1.1977 concerning inland shipping.

### Conditions and terms of employment

11. Law of 1938 (AZO)<sup>1</sup>, art. 19, paragraph 1, concerning night work.
12. Law of 1938 (AZO), art. 17, paragraph 2 concerning total length of working day (not to exceed 10 hours).
13. Law of 1938 (AZO), art. 17, paragraph 1 concerning specific overtime regulations.
14. Law of 1943 concerning leave to do house work for women with family commitments.
15. Law of 1938 (AZO), art. 17, paragraph 2 and art. 19 paragraph 1 concerning Sunday work, and working on holidays.
16. Law of 1938 (AZO), art. 18, paragraph 1, concerning length of breaks during the day (60 minutes for women, 30 minutes for men).
17. Law of 26 July 1957, law on maritime navigation, art. 92 and 93 concerning regulations of employment on board ship (cf. A.6 above).
18. Law of 1938 (AZO) concerning bans on shift work.
19. Regulation of 20 March 1975 concerning hygiene in the working environment (particularly provisions for separate cloakrooms, wash-rooms and WC's).

### **C. ILO Conventions on the protection of women in work**

#### **Ratifications:**

- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 15.11.1954)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 8.6.1956)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 15.6.1961)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 26.9.1973)
- Convention No. 136 concerning Protection against Hazards of Poisoning Arising from Benzene (ratified 26.9.1973).

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<sup>1</sup> The regulations governing working hours.

## **FRANCE**

### **A. Changes in protective legislation**

1. National legislation has been brought into line with ILO Convention No.89 by the introduction of the following provisions regarding night work :
  - the Law of 2 January 1979 which lifts the ban on women holding administrative and technical posts of responsibility and also on women employed in health and welfare services who do not usually perform manual work;
  - the Decree of 16 January 1982 (82-41) which makes it possible to shift the duration of night work periods (normally fixed at 10 pm - 5 am) by means of a collective agreement ("convention ou accord collectif") and after the approval of the enterprise or the inspector of labour.

The recent Law of December 1986 lays down a derogation procedure concerning the restrictions on night work, based on collective agreement at both the sectoral and undertaking levels. The Law emphasises the organisation of working time, particularly with regard to continuously-working undertakings.

2. Article 6 of the Law of 13 July 1983 (No.83-634) concerning the rights and obligations of workers in the Public Service has reinforced the principle of equal treatment for all its workers; there are no protective measures for women as concerns access to employment or conditions and terms of employment in the public service.
3. A review of all existing protective legislation was due to take place from October 1984 onwards to be executed by a technical commission specially introduced within the "Conseil Supérieur de l'Egalité Professionnelle" which was established on 16 July 1984.

### **B. Existing protective legislation**

#### **Bans on Access to Employment**

1. Article L.711.3. of the Code du Travail, concerning underground work in mines and quarries.
2. Articles R. 234.9. and R; 234. 10. of the Code du Travail concerning dangerous or unhealthy work (compressed air, estersthiophosphorics, mercury, silica, aromatic hydrocarbons).
3. With regard to ionising radiation, Decree No. 66-450 of 20 June 1966 concerning general principles of protection; Decree No. 67-228 of 15 March 1967 concerning public administration rules (to be replaced by Decree No. 86-1103 of 2 October 1986 due to enter into force in October 1987); Decree No. 75/306 of 28 April 1975 concerning nuclear installations.
4. Article R.234-6 of the Code du Travail, concerning work involving the lifting of loads (women over the age of 18 are banned from carrying loads of more than 25 kgs).
5. Amended Regulation (1976) concerning shipping on the Rhine - cf. preliminary notes (1).

Conditions and terms of employment

6. Article L. 213 1-5 of the law of 1892 on night work (cf. A.1. above).
7. Collective agreements on part-time work .
8. Article L.223-5 of the Code du Travail concerning extra leave : two extra days per dependent child for mothers under 21.
9. Family leave: some firms' regulations and collective bargaining have special leave for women with sick children.
10. Article L 221.14 and L 221.15 concerning a ban on Sunday work.
11. Article L 222.2 concerning a ban on working on holidays (women are banned from working on holidays in firms where there is a ban on night work.
12. Decree of 1975, art. R.234-4 on work outside shops: ban on women (only) working at the shelves after 10 pm or where the temperature is below 0°C if the works doctor suggests this.
13. Age limits for access to some exams : the age limit for the A grade civil service exam is raised for women who have brought up one child. No age limit for widows.
14. Early retirement for certain jobs: for women manual workers who have raised at least 3 children the age of retirement is brought forward.
15. Art. L 620.1 and R 632.1 concerning labour control: any employer proposing to employ female staff (where it did not before) must give prior notice to the labour inspectorate.
16. Art. L 620.4 on compulsory information on working conditions and terms by the employer to the workers.
17. Law of 1900 - Art. B 232.30 concerning seats in shops.

18. Law of 1892 - Art. L 212.9 - 11 concerning the length of breaks during the day.

19. Decree of 1975, Art. R 234.6.

The labour code provides for different manual loads for men (55 kg) and women (45kg). It also lays down additional limits for certain types of transport - trolleys, wheelbarrows, tricycles and push-carts. The two latter forms of transport may be banned to women at the request of the industrial doctor.

20. Art. L 212.11 concerning the ban on systems of continuous working ("travail de relais").

21. Art. R 232.23 and 33, and Art. R 232.28 concerning hygiene in the working environment. French legislation calls for entirely separate sanitary arrangements where staff is mixed: at least one WC and one urinal for 25 men, one WC for 25 women.

### **C. ILO Conventions on the protection of women in work**

#### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 14.5.1925)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 25.1.1938)

#### **Conventions still in force**

- Convention No. 13 concerning the Use of White Lead in Painting (ratified 19.2.1926)
- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 25.1.1938)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 21.9.1953)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 10.3.1953)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 15.4.1981)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 18.11.1971)
- Convention No. 127 concerning the Maximum Permissible Weight to Be Carried by One Worker (ratified 31.5.1973)
- Convention No. 136 concerning Protection against Hazards of Poisoning Arising from Benzene (ratified 30.6.1972)
- Convention No. 149 concerning Employment and Conditions of Work and Life of Nursing Personnel (ratified 10.9.1984).

## **GREECE**

### **A. Changes in protective legislation**

Article 11 of Law 1414/84 has amended several provisions, enumerated in the following list of protective measures, by deleting the reference to women as a specially-protected category:

1. The first sub-paragraph of Article 33 of Royal Decree No 14 of 26 August 1913 implementing the Law 4029 (Official Gazette No 165, First part) concerning the maintenance and lubrication of drive shafts, mechanisms for the transmission of motive power and machines which are in operation, or the servicing of boilers in factories.
2. The introductory paragraph of Article 36 of Royal Decree No.14 of 26 August 1913 implementing Law 4029 concerning jobs in various industrial sectors (article 17).
3. The introductory paragraph of Article 37 of Royal Decree No.14 of 26 August 1913 implementing Law 4029 concerning jobs in various industries (article 17).
4. Article 21 of the Royal Decree of 16 March 1923 governing hygiene and cleanliness in dried grape warehouses (Official Gazette No.91, First part).
5. The first two paragraphs of the sole article of Presidential Decree No.18 of 23.12.1926 on the employment of women and minors in the tobacco industry (Official Gazette No 437, First part).
6. The sole article of Presidential Decree No. 11 of 17.10.1932 on the employment of women and minors in boiler-making works (Official Gazette No 371, First part).
7. Article 4 of the Royal Decree of 10.9.1937 on the safety of workers and craftsmen working in joinery workshops (Official Gazette No. 405, First part).
8. Point 3 of Article 11 of emergency Law No.1204 of 1938 (Official Gazette No 177, First part) concerning the preparation and use of lead-based paints.
9. Article 15 of Royal Decree No. 464 of 1968 on health and safety rules for workers in printing works, graphic arts workshops in general and paper processing undertakings throughout the country (Official Gazette No. 153, First part).
10. Article 22 of Royal Decree No. 590 of 1968 on health and safety measures for workers in workshops and factories manufacturing lead accumulators (Official Gazette No. 199, First part).

## **B. Existing protective legislation**

### Access to employment and working conditions

1. Law 4029 on the employment of women and minors (Articles 5, 12, 13, 15, 16).
2. Royal Decree No. 14 of 26 August 1913, Implementing Law 4029 (Articles 7, 25, 27, 29, 30).
3. Law 602/1915 on cooperatives, as amended by Decree-Law of 28 November 1925 and Law 5259 of 1931 (Articles 13, 43).
4. Royal Decree of 10 February 1916 fixing the lunch break, during the winter months, in firms working magnesium ores (Articles 1, 2).
5. Law 2274/1920 ratifying the International Convention concerning the employment of women before and after childbirth (Article 3).
6. Law 2294/1922 ratifying the International Convention of the international conference in Geneva on the use of white lead in paint (Article 3.1).
7. Law 6011/1934, amended by the Royal Decree of 7 January 1937 and the emergency Law 204/1938 (Article 11.3).
8. Emergency Law of 30 October 1935 on the employment of women and underground work in mines of all kinds (Articles 2, 3).
9. Decision 117756/1966 of the Ministry of Labour and the Ministry of Merchant Shipping.
10. Decision of the Ministry for Industry No 115958/7870/23012/1970 amending and supplementing No. 19406/2376/850 of 25 February 1969 on the issue of licences for loader/shotfirer/shot-hole driller/shot clearance experts (Article 3.2).
11. Law 61/1975 on the protection of workers against the risks associated with the use of benzol or products containing benzol (Article 6).
12. Ministerial Decision No. A2ST/1539 of 8 March 1985 on protection against ionising radiation, implementing the Euratom Directive of 1980, revised 1984.

### Discrimination between men and women as regards night work

13. Law 4029/1912 on the employment of women and minors (Article 6).
14. Royal Decree of 14 August 1913 implementing Law 4029/1912 (Article 8).
15. Royal Decree of 25 September 1913 on night work by women in fish canning plants and factories (Articles 1, 3, 4).
16. Royal Decree of 10 February 1916 fixing the length of the lunch break in firms working magnesium during the winter months (Article 3).
17. Presidential Decree of 4 July 1925 on night work by women over 18 in dairies (Article 15).
18. Presidential Decree of 30 August 1927 on night work by women in plants and factories packaging dry and fresh figs (Articles 1, 2).

19. Presidential Decree of 28 April 1937 extending the 8 hour day to spinning and weaving (wool, cotton, silk, etc.), rope-makers, the hosiery trade and the flannel and knitted goods industry (Article 2.2).
20. Law 3239/1955 laying down procedures for the settlement of collective labour disputes and setting up a national advisory council on social policy.
21. Law 3294/1959 ratifying International Convention No. 89 concerning night work of women employed in industry (Articles 3, 5, 8).
22. Decision No. 36757/8288/1972 of the Minister for Economic Affairs governing work in mines and quarries, as amended by article 43 of Decision No. 38923/7631/1712/1973.

Law 1414/84 makes no changes to the legislation on working in mines or night work. The Greek Government points out that it has ratified the ILO Conventions No. 45 and No. 89 which cannot be denounced until 1987 and 1991 respectively.

## **C. ILO Conventions on the protection of women in work**

### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 19.11.1920)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 30.5.1936)

### **Conventions still in force**

- Convention No. 13 concerning the Use of White Lead in Painting (ratified 22.12.1926)
- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 30.5.1936)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 27.4.1959)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 6.6.1975)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 7.5.1984)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 4.6.1982)
- Convention No. 136 concerning Protection against Hazards of Poisoning Arising from Benzene (ratified 24.1.1977)
- Convention No. 149 concerning Employment and Conditions of Work and Life of Nursing Personnel (ratified 28.2.1985).

## **IRELAND**

### **A. Changes in protective legislation**

1. The Employment Equality Agency has recommended the repeal of provisions of the Conditions of Employment Act 1936 which impose restrictions on the employment of women in industrial work at night and at weekends which do not apply to men. Many of these provisions were pursuant to ILO Convention No. 89, which was subsequently denounced on 26 February 1981 (cf. C. below) to allow the Minister for Labour to make exclusion regulations and issue shift work licences under the 1936 Act, enabling women to be employed in industrial work at night. The Government has now decided to remove the above statutory restrictions on the employment of women on industrial work and has laid the Employment Equality (Employment of Women) Order 1985 before the Oireachtas (Parliament).
2. A Statutory Instrument under Section 14(2) of the Employment Equality Act 1971 has been signed by the Minister for Labour on 18.6.1985 to amend certain requirements of the Mines and Quarries Act, 1965 (Employment Equality Act (Employment of Females in Mines) Order, S.I. No. 176 of 1985). This Order abolishes the restriction on night work at mines by women, opening up employment areas such as canteen and services work. It also removes the prohibition on women working underground in a range of non-manual occupations: positions of management, health and welfare services, periods of training below ground at a mine as part of a course of studies, and occasional work below ground.

The Order takes advantage of the widest possible area of exclusion allowed for under the terms of ILO Convention No. 45 (cf. C. below), the denunciation of which in May 1987 will be given careful consideration in advance of that date.

### **B. Existing protective legislation**

#### **Bans on access to employment**

1. Conditions of Employment Act 1936 and law of 1944 concerning dangerous and unhealthy work (cf. A.1 above).
2. Mines and Quarries Act 1965 (cf. A.2. above).
3. Factories Ionising Radiations (Sealed Sources) Regulations 1972; Factories Ionising Radiations (Unsealed Radioactive Substances) Regulations 1972; Nuclear Energy (General Control of Fissile Fuels, Radioactive Substances and Irradiating Apparatus) Order 1977, concerning exposure to ionising radiation.

4. Laws of 1955, 1965, 1975. The Factories Act 1965 bans women from work in blast furnaces from jobs involving the handling of lead or substances containing more than 10% lead. It also bans from cleaning premises where lead is handled.
5. The Factories Act 1955, concerning work with electric battery accumulators.
6. Regulation 1975/76, concerning work involving the manufacture of pottery and ceramics.
7. The Factories Act 1955, concerning glass manufacture (young women).
8. The Factories Act 1955 and 1972, banning women from carrying loads of more than 16 kgs.
9. The Factories Act 1955, concerning the manufacture of zinc or work involving exposure to zinc.
10. Law of 1944, concerning dockers.

#### Conditions and terms of employment

11. Conditions of Employment Act 1936, s.38, prohibiting the employment of women on industrial work before 8 a.m. on any day; s.46, prohibiting the employment of women on industrial work between the hours of 10 p.m. and 8 a.m. and requiring that there be an 12 hour gap between shifts worked by women (cf. A.1. above).
12. Conditions of Employment Act 1936, s.49(2), prohibiting the employment of women on industrial work on Sundays, except in some sectors (newspapers, publishers, holiday centres, etc.) (cf. A.1. above).
13. Conditions of Employment Act 1936 and 1944, concerning working on holidays.
14. The Factories Act 1955, banning women from working with machinery that is running.
15. The Mines and Quarries Act (1965), requiring that lists of the names, addresses and birth dates of women and young people on the staff must be kept. It also requires that there must be a 12-hour break of which 7 hours must be between 10 p.m. and 7 a.m. where women are employed in open-cast mining.
16. Shop Conditions of Employment Act 1938. Only women staff in shops are entitled to 1 seat per 3 people.
17. The Factories Act 1955 and the Office Premises Act 1958, requiring that separate sanitary facilities must be provided for men and women, as follows: 1 WC for 25 men, 1 WC for 15 women.

## **C. ILO Conventions on the protection of women in work**

### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 4.9.1925)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 15.3.1937)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 14.1.52, denounced 26.2.1981)

### **Conventions still in force**

- Convention No. 45 concerning the Employment of Women In Underground Work in Mines of All Kinds (ratified 20.8.1936)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 18.12.1974)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 5.5.1971).

## **ITALY**

### **A. Changes in Protective Legislation**

There has been no response from Italy to the Commission's letter of 10.8.1984. Document COM(80) 832 final mentions with regard to Italy (p. 179) that in accordance with Article 19 of Law No. 903 all contrary provisions have been repealed. It must therefore be assumed that there no longer exists any kind of protective legislation<sup>1</sup>.

The law does, however, provide that derogations may be granted if the job in question involves the performance of particularly arduous tasks, as specified in a collective agreement. Similarly derogations are possible within the framework of collective bargaining with regard to the only remaining ban, that on night work between midnight and 6 a.m.

### **B. Existing protective legislation**

Presidential Decree No. 185 of 13 February 1964 concerning the safety of nuclear installations and the protection of the health of workers and the population against the dangers of ionising radiation.

### **C. ILO Conventions on the protection of women in work**

- Convention No. 4 concerning Employment of Women during the Night (ratified 10.4.1923)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 22.10.1952)
- Convention No. 13 concerning the Use of White Lead in Painting (ratified 20.10.1952)
- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 22.10.1952)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 8.6.1956)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 12.8.1963)
- Convention No. 127 concerning the Maximum Permissible Weight to Be Carried by One Worker (ratified 5.5.1971)
- Convention No. 136 concerning Protection against Hazards of Poisoning Arising from Benzene (ratified 23.6.1981).

<sup>1</sup> cf., however, section C. below for ILO Conventions on the protection of women in work, still in force.

## **LUXEMBOURG**

### **A. Changes in protective legislation**

In its response to the Commission's letters of 5 July 1983 and 10 August 1984 Luxembourg announced that the 'Conseil de Gouvernement' has approved a draft law concerning legislation involving employment in cabarets and public houses, introducing a general procedure of authorisation for all persons employed in a public house without reference to the worker's sex.

### **B. Existing protective legislation**

#### **Bans on access to employment**

1. Law of 10.2.1958 concerning underground work in mines and quarries.
2. Grand-Ducal Decree of 30 March 1932 with regard to work involving the use of ceruse, lead sulphate or any product containing these pigments.
3. Grand-Ducal Regulation of 8 February 1967 relating to the execution of the Law of 25 March 1963 concerning the protection of the population against the dangers resulting from ionising radiation.

#### **Conditions and terms of employment**

4. The Grand-Ducal Decree of 30 March 1932 and the Law of 8 December 1981 ban women from night work in public and private industrial establishments between the hours of 10 p.m. and 5 a.m. Domestic legislation has taken over the rules of ILO Convention No. 89.

### **C. ILO Conventions on the protection of women in work**

#### **Denunciations**

- Convention No.4 concerning Employment of Women during the Night (ratified 16.4.28, denounced 19.2.1982)
- Convention No.89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 3.3.58, denounced 19.2.1982)

#### **Conventions still in force**

- Convention No. 13 concerning the Use of White Lead in Painting (ratified 16.4.1928)
- Convention No 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 3.3.1958)
- Convention No 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 23.8.1967).

## **THE NETHERLANDS**

### **A. Changes in protective legislation**

1. The Law of 5 March 1986 (StB 147); which entered into force on 11 April 1986, abolished the ban on night work by women in factories or workshops as laid down by the 1919 Law of Employment, provided they work as part of a team. The Law contains a provision for a three-year transitional period during which women require a permit, after which its practical effects will be assessed.
2. With regard to the amendment of the 1920 Labour Decree the Social and Economic council is currently discussing the draft safety Decree for residual social groups. This Decree will replace the relevant provisions of the 1920 Labour Decree.
3. It is expected that a draft Decree amending the 1938 Safety Decree for factories and workshops will soon be submitted to the Government; it will replace provisions regarding sanitary arrangements which distinguish between the sexes.
4. Finally, the Netherlands reports that general provisions regarding women in the Law will be amended.

### **B. Existing protective legislation**

#### Bans on access to employment

1. The Law of 1903 and Regulation of 1964 regarding underground work in mines and quarries.
2. Decree of 24 June 1981 amending the Decree relating to radioactive substances of 10 September 1969  
  
Decree of 24 June 1981 amending the Decree relating to appliances of 10 September 1969
3. Ban on work involving the lifting of loads.
4. Law on dock workers, 16 October 1914.
5. Amended Regulation (1976) concerning shipping on the Rhine - cf. preliminary notes (1).
6. Article 4 of the 1919 Law on Employment concerning cargo-stowing activities.

### Conditions and terms of employment

7. 1919 Law on Employment, art. 24, paragraphs 2-30, on night work (cf. A.1. above).
  - art. 28 (total length of working day)
  - weekly limit on working time - 53 hours.
  - series of specific overtime regulations - in some sectors the maximum number of hours of overtime is lower for women than for men.
  - extra leave: in some cases the Hoogovens collective agreements give women more days off than men.
  - family leave: some firms' regulations and collective bargaining have special leave for women with sick children.
  - art. 22 bans work on Sunday or Saturday afternoon for both sexes, but derogations are easier to obtain for men than for women.
8. Articles 1 (1) and 19 of the Decree on the age limit in certain jobs. The age limit for women doing certain jobs (in respect of early retirement) is lower than for men.
9. Article 58 of the 1920 Labour Decree concerning the availability of seats in shops for women.
10. Several decrees on hygiene and work safety requiring firms with more than 10 workers of both sexes to provide separate sanitary facilities for men and women.

## **C. ILO Conventions on the protection of women in work**

### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 4.9.1922)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 9.12.1935)
- Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948) (ratified 22.10.1954, denounced 26.2.1972)

### **Conventions still in force**

- Convention No. 13 concerning the Use of White Lead in Painting (ratified 15.12.1939)
- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 20.2.1937)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 16.6.1971)
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified 15.3.1973)
- Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 29.11.1966).

## UNITED KINGDOM

### **A. Changes in protective legislation**

The U.K. wishes to revise protective legislation with regard to:

- employment of women at mines and quarries;
- hours of work;
- manual handling of weights.

1. It is intended that sections 42(1) and 43 of the Mines and Quarries Act 1954, concerning the handling of winding or rope haulage apparatus above ground by male persons of a specified minimum age, be changed to refer to a "competent person - male or female". A consultative document is expected to be issued in 1987.
2. The Equal Opportunities Commission (EOC) has taken the line that there is no longer any justification for legislative restrictions on the hours of work of women alone; that existing legislation should be repealed save where on health and safety grounds the Commission feels it ought to be retained and extended to both men and women; and that an approved Code of Practice applying equally to men and women should be produced. Legislation on hours of work was introduced in 1986, the Sex Discrimination Act, which empowers the Secretary of State to repeal specified legislation by Statutory Instrument. The Government has stated that all such provisions, except those relating to night work, will be repealed within three months of the entry into force of the Act. The Government will consult on provisions relating to night work over the course of 1987 with a view to the denunciation of article 8(4)(a) of the European Social Charter in February 1988 prior to the repeal of those provisions.
3. Proposals have been made to repeal existing legislation on work involving the lifting of loads and to replace it with a general regulatory and guidance framework applying to all employees, etc. This would be non-discriminatory in that no specific requirements for men and women are specified, sex being only one of many factors to be taken into account when assessing an individual's ability to handle loads.
4. Section 20 of the Factories Act 1961 banning women from inspecting, lubricating and supervising machines, and from cleaning moving machinery has been considered for amendment.

### **B. Existing protective legislation**

#### Bans on Access to Employment

1. The Mines and Quarries Act 1954 as amended by Section 21 of the Sex Discrimination Act 1975 (cf. A.1. above).

Regulation 13 (1) of the Quarries (Ropeways and Vehicles) Regulations 1958 permits only male persons over 21 to drive locomotives for handling vehicles and to operate certain other mechanically-operated apparatus for moving any conveyance or vehicle above ground. This provision restricts the employment of women at mines and quarries in a way considered discriminatory by the EOC and the Health and Safety Commission (HSC) (cf. A.1. above).

The EOC and the HSC agree that generally women should not be prohibited by section 21 of the Sex Discrimination Act 1975 from being employed in certain specialist or professional posts below ground at mines. If the courts do not agree with this interpretation, the EOC will recommend that these posts should be specifically exempted from the restriction on women working below ground. (cf. in this respect ILO Convention No. 45 under *C.infra* which is still in force and article 8(4)(b) of the European Social Charter).

2. The Pottery (Health and Welfare) Special Regulations 1950 (S.I. 1950 No. 65) prohibiting the employment of women in certain processes in pottery production, including demolition work on industrial ovens containing refractory materials containing free silica.
3. U.K. legislation in respect of work involving exposure to ionizing radiation (Ionising Radiations Regulations 1985, and Approved Code of Practice) is in line with the Euratom Directive on radiological protection 1980, revised 1984.
4. The Factories Act 1961 with regard to exposure to lead, particularly sections 74, 131 (prohibited employment), 128 (conditional employment).

The Control of Lead at Work Regulations 1980, which came into force on 18 August 1981, removed a variety of limitations on the employment of women in work involving exposure to lead. The Regulations do not distinguish in any way between men and women but the associated Approved Code of Practice introduces more stringent requirements for the medical surveillance of women of reproductive capacity in order to protect the unborn child. These provisions accord with Directive 82/605/EEC relating to exposure to lead at work.

5. The Electric Accumulator Regulations 1925 (S.R. and O. 1925 No. 28), Regulation 1, under the Factories Act 1961, with regard to working with electric battery accumulators.
6. The Pottery (Health and Welfare) Special Regulations, 1950, Regulation 6 (S.I. 1950, No 65) concerning work in the pottery and ceramics industries.
7. Factories Act 1961, s. 73, banning the employment of young women in the process of glassblowing.

8. The following statutory instruments made under the Factories Act 1961 ban women from work involving the handling of heavy weights :
  - The Woollen and Textiles (Lifting of Heavy Weights Regulations 1926 (S.R. and O.1926 No. 1463)
  - The Jute (Safety Health and Welfare) Regulations 1948 (S.R. and O.1948 No. 1696)
  - The Pottery (Health and Welfare) Special Regulations 1950 (S.I. 1950 No. 65), Regulation 6
  - Mines and Quarries Act 1954, section 93 (cf.remarks under A 4. above).
9. The Sex Discrimination Act, 1975, Section 51, which has been used by an employer to justify a ban on women of child-bearing age with respect to driving trucks carrying chemicals under the Health and Safety at Work Act, 1974 - Page v Freight Hire (1981).
10. The Compressed Air Special Regulations 1958 (S.I. 1958 No. 61) concerning work in compressed air caissons (cf. p. 163, point 8 of document COM(80) 832 final: "Since the legislation only relates to male employees, a ban is assumed to exist on female employment").
11. Amended Regulation (1976) concerning shipping on the Rhine - cf. preliminary notes (1).

#### Conditions and Terms of Employment

12. The Hours of Employment (Conventions) Act 1936; the Mines and Quarries Act 1954; the Baking Industry (Hours of Work) Act 1954; the Factories Act 1961 Part VI. This legislation concerns restrictions in women's daily working hours, weekly hours, breaks and intervals during work, starting and finishing times of work, nightwork, shift system etc. It is currently under review (cf. A.2*supra*).
13. The Factories Act 1961 Part VI and sections of the Shops Act 1950, setting different restrictions on the hours of work of male and female young persons under the age of 18.
14. The Merchant Shipping (Medical Examination) Regulations 1983 (S.I. 1983 No. 808) concerning the employment of pregnant women.

Below is a list of protective legislation in respect of conditions and terms of employment about which details were unavailable. Some of this may no longer be in force:

15. Protective measures concerning work involving tin-plating of metal articles, iron drums and harness furniture - Regulation of 1909 (cf. entry p. 168 doc. COM (80) 832 final).
16. Protective measures concerning bronzing (cf. entry p. 168 *op. cit.*).

## **C. ILO Conventions on the protection of women in work**

### **Denunciations**

- Convention No. 4 concerning Employment of Women during the Night (ratified 14.7.1921)
- Convention No. 41 concerning Employment of Women during the Night (Revised 1934) (ratified 25.1.1937, denounced 4.10.1947)

### **Conventions still in force**

- Convention No. 45 concerning the Employment of Women in Underground Work in Mines of All Kinds (ratified 18.7.1936)
  - Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified 15.6.1971)
  - Convention No. 115 concerning Protection of Workers against Ionising Radiations (ratified 9.3.1962).
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Bans on Employment	B	DK	D	F	G	I	IRL	LUX	NL	UK
Dangerous + unhealthy work	(1)				(1) (2)		(1)			(9)
Loaders, artificers, blasters, drillers					(11)					
Underground work in mines + quarries	(2)		(1)	(1)	(8)		(2)	(1)	(1)	(1)
Manual digging, earth moving + excavation. Preparation of quarry stones	(3)		(2)							
Demolition work on industrial ovens containing refractory materials containing free silica				(2)						(2)
Work involving exposure to ionising radiation	(6)	(1)	(3)	(3)		(1)	(3)	(3)	(2)	(3)
Work involving exposure to lead + its components - exposure to white lead, lead sulphate - lead manufacture - use of lead compounds, etc.			(4)		(6)		(4)	(2)		(6)
Work with electric battery accumulators							(5)			(5)
Pottery + ceramics			(5)				(6)			(6)
Glass manufacture (young women)							(7)			(17)
Lifting of loads, Transport of loads			(6)	(6)			(8)		(3)	(4) (9)
Certain construction works, Transport of raw + other materials in all kinds of construction works			(7)							(9)
Driving heavy vehicles										
Work in compressed air caissons	(6)			(2)						(10)
Work in blast furnaces, steel works, etc., producing laminates + plate; iron + steel work; work involving other heat produced metals			(8)							(16) (17)
Manufacture of zinc or work involving exposure to zinc			(9)				(9)			
Dock work							(10)		(4)	
Use of mercury and mercury compounds in the felt industry				(2)						(11)
Preparation + packing of esterathio phosphates				(2)						
Work involving exposure to aromatic hydrocarbons				(2)						
Work involving use of benzol, etc.					(11)					
Internal navigation on the Rhine	(5)		(10)	(5)					(5)	(12)
Cargo-stowing activities									(6)	
Work requiring licences for shotguns					(10)					
Work in cooperatives					(3)					

	B	DK	D	F	G	I	IRL	LUX	NL	UK
Night work	(7)		(11)	(6)	(12) (21) to		(11)	(4)	(7)	(13)
total length of working day			(12)		(19)					(13)
weekly limit on working time									(7)	(13)
Part-time work				(7)						
Specific overtime regulations			(13)						(7)	
extra leave				(8)					(7)	
family leave				(9)					(7)	
Leave to do housework			(14)							
Ban on Sunday work			(15)	(10)			(12)		(7)	
Ban on working on holidays			(15)	(11)			(13)			
Work outside shops				(12)						
Age limit for access to jobs or to some exams				(13)					(8)	
Early retirement for certain jobs				(14)						
Ban on working with machinery that is running							(14)			
Labour control				(15)			(15)			
Compulsory information				(16)						
Seats in shops, etc.				(17)			(16)		(9)	
length of break during the day			(16)	(18)	(5)					(12) (14)
Ban on some means of transport				(19)						
Regulations of employment on board ship			(17)		(10)					(15)
Ban on shift work/systems of continuous working			(18)	(20)						(13)
Hygiene in the working environment	(8)		(19)	(21)			(17)		(10)	

PROTECTIVE LEGISLATION RELATING TO NIGHT WORK BY WOMEN

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	<u>LEGISLATIONS</u>	<u>REMARKS</u>
<u>BELGIUM</u>	<ul style="list-style-type: none"> <li>- Law of 16.3.1971</li> <li>- Royal Decree of 24.12.1968</li> </ul>	<ul style="list-style-type: none"> <li>- ban on all workers between 20h-6h;</li> <li>- minimum interval of 11 consecutive hours for women;</li> <li>- derogation more limited for women; available particularly for urgent work and shift work;</li> <li>- extension of working hours for women in services;</li> <li>- authorization of night work for women in posts of responsibility - managers, doctors, chemists, etc.</li> </ul>
<u>DENMARK</u>	<ul style="list-style-type: none"> <li>- no specific provisions</li> </ul>	
<u>FEDERAL REPUBLIC OF GERMANY</u>	<ul style="list-style-type: none"> <li>- Law of 1938 (AZO) art. 1931</li> </ul>	<ul style="list-style-type: none"> <li>- ban on women manual workers between 20h-6h or after 17h Saturday/day before holidays;</li> <li>- derogations : - shift work in services                             <ul style="list-style-type: none"> <li>- all kinds of economic reasons</li> </ul> </li> </ul>
<u>SPAIN</u>	<ul style="list-style-type: none"> <li>- Decree of 26.7.1957</li> <li>- Constitution of 29.12.1978</li> <li>- Law of 10.3.1980 modified by the Law of 2.8.1984 art. 17</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*)</li> <li>- probably no longer in force (impliedly repealed by the principle of non-discrimination enshrined in the Constitution, and by the ban on all sex discrimination in the Law of 1980)</li> </ul>
<u>FRANCE</u>	<ul style="list-style-type: none"> <li>- Law of 1982, art. L. 213</li> <li>- Art. L. 213/4</li> <li>- Decree of 17.1.1982 (82-41)</li> <li>- Law of December 1986</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*) between 22h-5h in most of private and public sector;</li> <li>- minimum night break for women of 11 consecutive hours between work days;</li> <li>- length of night work concerning any period of 7 consecutive hours between 22h-7h may be altered by collective agreement</li> <li>- derogations concerning organisation of working time may be made by collective agreement at sectoral and undertaking levels, particularly with regard to continuously working undertakings.</li> </ul>
<u>GREECE</u>	<ul style="list-style-type: none"> <li>- Law of 20.5.1955</li> <li>- Legislation of 1912, 1913, 1925, 1927</li> <li>- Law of 1959, art. 3</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*) between 21h-5h</li> <li>- exclusions : women in responsible posts, in health or welfare services, or who are not doing usual job ;</li> <li>- derogations for women working in plants producing fish, dairy products, figs, raisins, etc.</li> <li>- exceptions where only members of same family are employed, force majeure, or perishable materials will be lost.</li> </ul>

(\*) on night work by women

<u>IRELAND</u>	<ul style="list-style-type: none"> <li>- Conditions of Employment Act 1936</li> <li>- Employment Equality (Employment of Women) Order, submitted 1985</li> </ul>	<ul style="list-style-type: none"> <li>- ban on women working before 8h and after 22h (20h young women);</li> <li>- compulsory minimum break of 12 hours for women;</li> <li>- limited exclusions;</li> <li>- removal of restrictions on employment of women in industrial work at night</li> </ul>
<u>ITALY</u>	<ul style="list-style-type: none"> <li>- Law N° 903 of 1977 art. 5</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*) between 24h-6h in factories and cottage industries;</li> <li>- derogations possible within framework of collective bargaining for particular production needs. Compulsory notification of labour inspectorate.</li> </ul>
<u>LUXEMBOURG</u>	<ul style="list-style-type: none"> <li>- Decree of 30.3.1932</li> <li>- Law of 8.12.1981</li> </ul>	<ul style="list-style-type: none"> <li>- ban on women working between 22h-5h in public and private industrial establishments;</li> <li>- compulsory minimum rest period of 11 consecutive hours</li> <li>- derogations possible for seasonal work, force majeure, or to save perishable materials.</li> </ul>
<u>NETHERLANDS</u>	<ul style="list-style-type: none"> <li>- Law of Employment 1919, art. 20 § 2-30</li> <li>- Law of 5.3.1986</li> </ul>	<ul style="list-style-type: none"> <li>- ban on night work by women aged 18 or more in factories and workshop;</li> <li>- compulsory minimum rest period of 11 hours, of which at least 7 hours between 22h-6h;</li> <li>- may be altered to enable women to do shift work until 23h or from 5h provided the 11 hours break is respected;</li> <li>- repeal of ban for work in teams, transitional 3 year period.</li> </ul>
<u>PORTUGAL</u>	<ul style="list-style-type: none"> <li>- Decree-Law N° 409/71 of 27.9.1971, art. 31, 32</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*) between 20h and 7h;</li> <li>- probably no longer in force (impliedly repealed by the principle of non-discrimination enshrined in the Constitution).</li> </ul>
<u>UNITED KINGDOM</u>	<ul style="list-style-type: none"> <li>- Acts of 1936, 1954, 1961</li> <li>- Sex Discrimination Act 1986</li> </ul>	<ul style="list-style-type: none"> <li>- ban (*), in principle between 20h-7h in industry, mines, factories;</li> <li>- general derogations exist, particularly for women in posts of responsibility or management,</li> <li>- possible repeal of all restrictions on night work by women</li> </ul>

(\*) on night work by women.

ILO Conventions ratified and denounced by the Member States

R) = Ratification registered

D) = Denunciation

- 1) Convention denounced in context of ratification of Conventions Nº 41 and 89  
 2) Convention denounced as consequence of ratification of Convention Nº 89

Conventions No./date	Date of entry into effect	B	DK	FRG	F	G	I	IRL	LUX	NL	UK
4 R (1919) D	13.6.21	12.7.24 (1)			14.5.25 (1)	19.11.20 (1)	10.4.23	4.9.25 (1)	16.4.28 19.2.82	4.9.22 (1)	14.7.21 (1)
13 R (1921) D	31.8.23	19.7.26			19.2.26	22.12.26	20.10.52		16.4.28	15.12.39	
41 R (1934) D	22.11.36	4.8.37 (2)			25.1.38 (2)	30.5.36 (2)		15.3.37 (2)		9.12.35 (2)	25.1.37 4.10.47
45 R (1935) D	30.5.37	4.8.37		15.11.54	25.1.38	30.5.36	22.10.52	20.8.36	3.3.58	20.2.37	18.7.36
89 R (1948) D	27.2.51	1.4.52			21.9.53	27.4.59	22.10.52	14.1.52 26.2.81	3.3.58 19.2.82	22.10.54 26.2.72	
100 R (1951) D	23.5.53	23.5.52	22.6.60	8.6.56	10.3.53	6.6.75	8.6.56	18.12.74	23.8.67	16.6.71	15.6.71
111 R (1958) D	15.6.60	22.3.77	22.6.60	15.6.61	15.4.81	7.5.84	12.8.63			15.3.73	
115 R (1960) D	17.6.62	2.7.65	7.2.74	26.9.73	18.11.71	4.6.82	5.5.71			29.11.66	9.3.62
127 R (1967) D	10.3.70				31.5.73		5.5.71				
136 R (1971) D	27.7.73			26.9.73	30.6.72	24.1.77	23.6.81				
149 R (1977) D	11.7.79		5.6.81		10.9.84	28.2.85					