

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83)793 final

Brussels, 6 January 1984

INTERIM REPORT ON THE APPLICATION OF DIRECTIVE 79/7/EEC OF 19 DECEMBER 1978 ON THE PROGRESSIVE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN MATTERS OF SOCIAL SECURITY

COM(83) 793 final

INTRODUCTION

On 19 December 1978, the Council of the European Communities adopted a Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security. This Directive was notified to the Member States on 22 December 1978.

Under Article 8 of the Directive, the Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within six years of its notification.

The aim of this Directive is to eliminate all discrimination, whether direct or indirect, on grounds of sex in statutory schemes which provide protection against the risks of sickness, invalidity, old age, accidents at work, occupational diseases and unemployment.

In order to fulfil its obligations under the Treaty and, where appropriate, facilitate the implementation of this Directive, the Commission has drawn up this report which illustrates the problems raised by the requirement to bring the laws of the Member States into line with the Directive.

This report has been drawn up mainly on the basis of the replies sent by the Governments of the Member States and by the members of the Advisory Committee on Equal Opportunities for Women and Men set up to assist the Commission of the European Communities by its Decision of 9 December 1982 (1) (cf. attached summary of these replies).

It should be noted that some Member States did not wait until the end of the stipulated period to begin to amend their legislation. Indeed, in some countries this process is fairly advanced. However, there is also evidence of trends in the opposite direction, to a point which may be described as a step backwards, in some countries, as regards the principle of equal treatment (in Belgium and the Netherlands for example).

The Commission has monitored developments very closely. It has to ensure that, during the transitional period, measures are taken with a view to the progressive implementation of the Directive and that any measure which is likely to jeopardize the principle of equal treatment is avoided.

This report forms part of this task.

The first part of the report is devoted to problems connected with the application of the directive. The second part deals with a number of questions of interpretation, particularly as regards indirect discrimination and the problems posed by the substantive scope of the Directive.

(1) cf. OJ No L20, 28.1.1982, p. 35.

**I PROBLEMS CONNECTED WITH THE
APPLICATION OF THE DIRECTIVE**

A - Need to observe time limits

In Community Law, the Directive is a binding legal instrument; it lays down one or more specific objectives that the Member States must achieve within a certain period. Unlike the Regulation, which is obligatory in all its elements and directly applicable in the Member States and from its date of application forms part of their national law, the Directive leaves Member States to choose the form and the means most appropriate to their own system to adapt their legal instruments to the requirements created by the Directive within a specified period.

The need to observe the time limit (22 December 1984) means that the necessary measures must be decided on in good time, where such measures have still to be taken. The Commission would be entitled to initiate infringement proceedings against any Member State which had not complied with the Directive by that date.

B - Progress achieved or in hand - Need for governments to carry out a systematic examination of all their statutory schemes

The progress achieved with regard to the progressive implementation of Directive 79/7/EEC is considerable particularly in certain countries, as can be seen from the annex (1). The United Kingdom, for example, has adopted a comprehensive set of measures to this end. In other countries, the necessary measures have still to be taken, possibly in addition to specific decisions taken since the adoption of the Directive. Finally, in other countries, the application of the Directive does not seem to be presenting any major problems (Federal Republic of Germany, Denmark, France, Italy). Whatever the extent of such progress, it is laid down in the text of the Directive itself (Articles 5 and 8) that Member States must take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment in matters of social security are abolished.

It is therefore necessary for the Member States to carry out a systematic examination of all their statutory schemes applying to the various categories of persons (employees, self employed, civil servants, etc.) which might be covered by the Directive. The examination must cover all aspects of the legislation: scope of schemes, conditions of access, obligation to pay contributions, calculation of contributions, calculation of benefits, conditions governing the duration and retention of entitlement to benefits. Special attention must be paid to so-called social assistance benefits. These are covered by the Directive in so far as they are intended to supplement or replace social security schemes.

./.

(1) cf. Annex containing the replies of the governments and the comments of the Advisory Committee on Equal Opportunities.

C - Need to take account in this examination of the opinion of the Advisory Committee on Equal Opportunities for Women and Men

The Commission submitted the problems connected with the application of the Directive to the Advisory Committee on Equal Opportunities for Women and Men for its opinion (1). It endorses the following suggestions put forward by the Committee on specific points to ensure that the Directive is applied in an effective and coordinated way.

1. As regards cash benefits

- where national figures or remunerations are applied for periods treated as periods of insurance, such figures or remunerations should be the same for both sexes;
- where legislation provides for benefits calculated on the basis of a "household" rate for a couple both of whom are insured, the right to such benefits must be granted to either spouse; in the case of old age pensions, they should not be granted on the basis of the age of one spouse only.

2. The "social assistance benefits" are covered by the Directive where they replace or supplement insurance or social security benefits. The regulation in question should be reexamined in order to eliminate any discrimination.

3. Where the right to health care is granted not only to the insured person but also to his or her spouse, the conditions governing the exercise of this right must be the same for either spouse. More stringent conditions may not be applied to the husband of a female insured person than to the wife of a male insured person either under national regulations or under Community regulations on social security for migrant workers. The Commission also points out that the Advisory Committee on Equal Opportunities emphasized that a number of problems had still to be solved in some countries (cf. annex). The attention of the governments in question is drawn to this fact.

D - Need to indicate when use is made of the authorized exceptions and why

The Directive allows Member States to provide for certain exceptions (Article 7). Those Member States wishing to make use of this right must inform the Commission, specifying the provision of Article 7 to which they are referring. It should be added that under Article 7(2) Member States must periodically examine all matters excluded under Article 7(1) in order to ascertain, in the light of social developments, whether there is justification for maintaining the exclusions concerned and inform the Commission accordingly. The Commission, for its part, must ensure that no abuses occur. The Court of Justice of the European Communities has consistently ruled that (2) "the prohibition of discrimination is merely an enunciation of a general principle of equality which is one of the fundamental principles

(1) This opinion is given in full in the annex.

(2) cf., for example, Joined Cases 117/76 and 16/77 : 1977 ECR 1753.

of Community law. This principle requires that similar situations shall not be treated differently unless differentiation is objectively justified".

Accordingly, the Member States must justify their recourse to Article 7.

Furthermore, the exclusions must be interpreted in a restrictive way.

The Commission has had occasion to examine a case in which rules against the aggregation of a pension and a salary applied at different ages for men and women, whereas both received a pension at the same age (1).

The Commission feels that in such a case an exemption based on Article 7(1) (a) is inadmissible since it concerns only the pensionable age itself. The principle of equal treatment therefore has to be applied, which means the absence of any discrimination particularly as regards the conditions for granting benefits and hence the conditions governing the possible aggregation of such benefits with an occupational income.

E - Steps backwards not allowed

In the Commission's opinion, the adoption by the Council of this Directive, the aim of which is the progressive implementation of the principle of equal treatment in social security matters, implies an acceptance by the Member States of an obligation not to adopt at national level, during the period granted to the Member States to incorporate the Directive into national law, any legislative measure which would give rise to new instances of discrimination or worsen those already existing at the time of the adoption of the Directive. The Commission believes that Community Law obviously cannot lay down in a Directive an aim to be achieved at national level within a certain period of time and remain indifferent to national measures adopted during that period which by constituting a step backwards as compared with the situation existing at the time of adoption of the Directive would run counter to the aim to be achieved and be liable to jeopardize the achievement of the objective or one of the objectives of the Directive.

The Commission is therefore taking care to ensure that during this transitional period no worsening of the situation occurs and will, if necessary, initiate infringement procedures against governments which have taken measures having such an effect.

./.

(1) Answer to Written Question No 192/83 by Mr Glinne to the Commission, OJ No C 219, 16.8.1983, p. 9

II PROBLEMS OF INTERPRETATION

A - Indirect discrimination

The problem

Article 4 of Directive 79/7/EEC lays down that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

This text requires a number of points to be clarified : what is indirect discrimination ? To what extent does reference to marital or family status constitute indirect discrimination ? What is meant by marital or family status ? What other factors may constitute indirect discrimination ? etc.

A specific instance of this problem has arisen with regard to the Belgian regulations on unemployment insurance which apply the concept of "head of household" (1). Following a measure taken in Belgium to reduce, after two years, the amount of benefit for unemployed persons who are not heads of household, a complaint was brought before the Commission based on a presumption of indirect discrimination. This was claimed to arise from the fact that the head of household - in this case an insured man or woman with a dependent spouse or with children dependent on him or her alone - was, in 95 % of cases, a man.

A similar problem has arisen in the Netherlands, where the government has decided to allocate minimum unemployment or invalidity benefits to households with only one income. Here, too, it is found that, in most cases, only a man can benefit in practice from this measure.

The problem arises in a more general way in all social security schemes (United Kingdom and Ireland in particular) which provide for increases for dependent spouses. Although these increases are available to both men and women, they will in most cases be added to the benefits granted to men.

The reason for this situation is always the same : the percentages of men and women in employment are different. Practically all men have an occupation (except those who are sick or unemployed), whereas many women still remain at home. Few women will therefore be able to claim that they

(1) Cf. point 2(a) below.

have a dependent spouse. If therefore an increase in benefits is granted for the dependent spouse, the beneficiary will in most cases be the man.

Guidelines

The Commission acknowledges that the problem is complex and controversial. Without claiming to have covered the whole ground, it has already had occasion to give its opinion on various points. It has also initiated a study comparing the concept of indirect discrimination under the national legal systems. Reference can also be made to the decisions of the Court of Justice and opinions of the Advisory Committee on Equal Opportunities.

Within these limits, however, certain findings may be taken as established and should be summarized here.

1. Notion of indirect discrimination

In its answer to a Parliamentary Question (1), the Commission gave its position as follows on the notion of indirect discrimination in Directives on equal treatment. In the case in question, mention was made of indirect discrimination by reference to marital or family status.

- The notion of indirect discrimination by reference to marital or family status has not been defined either at Community level or during the preparation of Directives 76/207 of 9 February 1976 and 78/7 of 19 December 1978

- In the Commission's report to the Council (doc. COM(80)832 final of 9 February 1981) on the application of Directive 76/207/EEC, several examples of what is considered to be indirect discrimination in the Member States are listed on pages 13 to 21.

- As far as the Commission is concerned this term should be interpreted as referring to hidden discrimination which might in practice affect workers of one sex as a result of marital or family status being taken into account in determining the rights covered by the two Directives.

(1) Written Question No 2295/81 by Mrs Lizin to the Commission of the European Communities.

The Commission's position amounts to a recognition that in practice indirect discrimination has the same "effect" as direct discrimination. The difference is that it is not based directly on sex. It will therefore be necessary to establish that, since the effect is the same, the objective must be the same. However, need the effect be exactly the same? Furthermore, is it sufficient to establish that the objective is the same? Is it necessary to establish that discrimination was intended?

An initial answer to these questions is provided by a judgement of the Court of Justice of 31 March 1981 in Case No 96/80 Jenkins v Kingsgate. In the case in question, the Court rules that a difference in (hourly) pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 of the Treaty unless it is in reality merely an indirect way of reducing the pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women.

In the grounds for its judgement, the Court points out, however, that a difference in pay of this type may be due to factors which are objectively justified and are unconnected with any intended discrimination. To judge whether or not discrimination exists, it will therefore be necessary to examine whether such factors exist, "having regard to the actual circumstances of the case, the antecedents and the motives of the employer".

It is therefore clear that, in this context and given the present state of the matter, the fact that a measure affects persons of one sex plays an important role, whether it affects them exclusively or simply predominantly. This "statistical" fact may even be decisive if there are no other factors constituting objective grounds for the measure. In this case, the result obtained accounts for the intended objective.

At this stage in its deliberations, the Commission therefore feels that indirect discrimination may be presumed where a measure which is apparently neutral in fact predominantly affects workers of one sex, without it being necessary to establish that discrimination was intended. On the contrary, it is for the person applying the measure presumed to be discriminatory to provide proof that it was objectively justified and did not involve any intention to discriminate.

2. Reference to marital or family status

It should be emphasized that the reference to marital status (which may include cohabiting where such a situation gives rise to equivalent legal effects) or family status is not in itself prohibited by the Directives on equal treatment. This is clear from the existence of Article 4 of Directive 79/7/EEC, which concerns "increases due in respect of a spouse and for dependants" where reference to marital status in particular is explicit.

What is prohibited is that such reference should give rise to discrimination. It is in this context that the Commission has considered whether a problem of indirect discrimination arises in connection with the notion of head of household and increases for dependent spouses. These questions will be dealt with in turn.

a) The notion of head of household

The notion of head of household - or head of family - has practically disappeared in civil law. It still appears, however, in certain social security provisions. There are, furthermore, related concepts such as the English "breadwinner" and the Dutch "kostwinner" - all of which imply that in reality, in households where there is a married couple, one spouse is subordinate to (head of household) or financially dependent on (breadwinner) the other (1).

The Commission feels in this connection (2) that it is impossible to find a neutral definition of head of household and that, consequently, this notion is incompatible with the principle of equal treatment and the abolition of discrimination.

The Commission feels that, in applying this principle, one should not regard one spouse as "head of household", which implies some sort of hierarchy between a married couple: the spouses must be placed on an equal footing.

(1) It should be noted that in law, the capacity of breadwinner can be defined in a way which is not discriminatory, i.e. where it is attributed to each spouse where they both contribute to the resources of the household.

(2) It has put forward this point of view to the Belgian Government, whose unemployment insurance legislation maintains this notion.

This is one of the reasons why Directive 79/7/EEC does not include the notion of head of household; it refers to spouses and dependants and authorizes, under long-term benefit schemes only, derogations with regard to the derived entitlements of a wife or dependent wife.

Furthermore, the concept of "head of household" is no longer in line with either the realities of society or the provisions of civil law.

b) Increases for dependent spouse

Article 4 of Directive 79/7/EEC lays down that there shall be no discrimination as concerns - among other things - increases due in respect of a spouse and for dependants. This provision has given rise to conflicting interpretations as to whether, by making a distinction between spouse and dependant, it prohibited increases for a dependent spouse.

In its original proposal, the Commission made an overall reference to dependants, without making a distinction between spouses and other persons. The present wording stems from a desire to cover not only the dependent spouse, but also a non-dependent spouse where he or she is entitled to an increase in benefits. The intention was certainly not to prohibit increases for dependent spouses, but to allow both the husband or the wife to claim such increases where their spouse was dependent.

In practice, however, the beneficiary of such increases will in most cases be a man, for the reasons already mentioned above, and such a fact is likely to give rise to a presumption of indirect discrimination, unless, as has been stated, there are objectively justified grounds not involving any intention to discriminate. Such grounds exist: they stem from a desire to allow for the larger expenditure incurred by a household as compared with an individual in the absence of any other occupational income. One should still examine the extent to which such concern is justified. The Commission feels that such increases can be justified only in the case of social benefits guaranteeing a minimum income. Increases, on the other hand, to benefits which are proportional to remuneration - remuneration which is not itself subject to increases in respect of dependent spouses - are regarded by the Commission as indirectly discriminatory within the terms of the Directive and should, in time, be restricted or abolished.

3. Need to avoid the risk of indirect discrimination in social security provisions

The Commission shares the following opinion of the Advisory Committee on Equal Opportunities :

- steps should be taken to ensure that social security provisions which apply to part-time work do not constitute indirect discrimination in any way, in so far as they in fact relate predominantly to women;

- the conditions governing the grant of social benefits covered by the Directive must be capable of being fulfilled by workers of both sexes, regardless of their marital status;

- increases which exist under some national laws for dependent spouses should be checked to ascertain whether they in fact have a discriminatory effect, given that even where by law both spouses are entitled to such increases, the dependent spouse is in most cases the wife and, consequently, working married women will virtually never receive such increases.

B - Substantive scope

It has been observed that the substantive scope of the Directive has been defined in a restrictive way. By way of reminder, the Directive covers statutory schemes which provide protection against the risks of sickness, invalidity, old age, accidents at work and occupational diseases, and unemployment. Social assistance benefits are also covered in so far as they are intended to supplement or replace social security benefits.

Neither survivors' benefits nor family benefits are covered by the Directive (except in the case of family benefits granted by way of increases due in respect of the risks covered by the Directive).

Nevertheless, problems of interpretation have arisen within the scope thus defined.

1. In the case of accidents at work and occupational diseases, the question arises as to whether, in the event of death resulting from such accidents or diseases, the survivors' benefits are covered by the Directive.

To answer this question, it should first of all be borne in mind that the Directive covers accidents at work and occupational diseases without excluding death.

Secondly, in those Member States which have a special scheme for occupational risks, the rules applicable differ significantly from pension insurance schemes in general: both the widower and widow are entitled to the pension following death given that this type of payment is intended to compensate for the loss incurred. Under the survivors' pension scheme, however, it is in most cases the widow who receives the benefit. The Commission therefore feels that pensions for accidents at work and occupational diseases resulting in death come under Directive 79/7/EEC.

2. The case of the "invalidity care allowance". In the United Kingdom there is a benefit known as the invalidity care allowance which is paid to persons looking after an invalid.

This benefit is more or less unknown in the other Member States. Some systems do, however, have a special allowance or increase actually paid to the invalid for assistance by another person.

Does the United Kingdom benefit fall within the scope of the Directive?

The first thing to take into consideration is that the Directive applies only to the working population; the person in question would therefore have to be part of that population.

The person must then have incurred one of the risks covered. In the case in question, there is a risk of invalidity but it is incurred by someone other than the potential recipient of the "invalidity care allowance".

The Commission feels, however, that having regard to forms of compensation which, under schemes in other countries, have the same effect as the United Kingdom allowance, albeit through an increase in the benefit paid to the invalids themselves, it would be desirable, from the point of view of the harmonization of the implementation of equal treatment, not to exclude the benefit in question from the scope of the Directive, at least where the recipient is a member of the working population.

BELGIUM

In 1980, Belgium adopted three measures with a view to implementing the Directive. The main aim of these measures is to bring to an end discrimination regarding the concept of dependency in the fields of invalidity and sickness (in particular, health care). Belgium expects further measures to be necessary in order to ensure equal treatment for men and women in matters of social security - no information has yet been received about any such measures.

The 1980 measures bring about the following changes:-

1. A decree of the 23rd of January introduces a new wider definition of a worker with a dependant to include women with dependent husbands.
2. A decree of the 16th of May recognizes the principle of equal treatment for men and women as far as dependants in the health care (compulsory health insurance) scheme are concerned. It amends a decree of the 4th of November 1963 in the following ways:-
 - i). A husband may be a dependant just as a wife may be.
 - ii). A person who stays at home and is responsible for the housework may be male or female. Where a child (aged over 14) is so responsible, such a child may be of either sex.
 - iii). Where the father and mother do not live together, any children are the dependants of the parent who looks after them.
3. A decree of the 30th of June concerning health care and invalidity amends a decree of the 24th of December 1974 so that a person who stays at home and is responsible for the housework may be male or female.

DENMARK

Denmark considers that Danish legislation, as it stands, complies with the Directive and she provides a list of recent (viz., 1974 - 1980) legislation, which has brought this about(1).

Where any form of discrimination still exists, Denmark believes that it is covered by the exclusions as provided for in the Directive(2).

- (1). a). Law concerning daily allowances in case of illness or confinement (see law no.66 of the 21st of February 1978).
- b). Law concerning national sickness insurance (see law no.94 of the 9th of March 1976).
- c). Law concerning hospitals (see law no.324 of the 19th of June 1974).
- d). Law concerning invalidity pensions (see law no. 677 of the 15th of December 1978).
- e). Law concerning old age pensions (see law no.676 of the 15th of December 1978).
- f). Law concerning insurance against accidents at work (see law no.79 of the 8th of March 1978).
- g). Law concerning child allowances and other family allowances (see law no.609 of the 29th of November 1975).
- h). Law concerning social assistance (see law no.333 of the 27th of June 1980).
- i). Law concerning (supplementary) pensions for employees (see law no.203 of the 3rd of May 1978).
- j). Law concerning placements and unemployment insurance (see law no.373 of the 15th of August 1980).

- (2). a). Concerning old age pensions and invalidity pensions - non-Danish women who are married or were lately married to Danes have the same rights to these pensions as Danish women - covered by art.7, para.1(c).
- b). Concerning the granting of a wife's allowance to the holder of an old age or invalidity pension - the wife, who is aged between 62 and 67 years old, is not herself the holder of a pension - covered by art.7, para.1(c).
- c). Concerning the right of "single" women to an old age pension at the age of 62 - covered by art.7, para.1(a).
- d). Concerning widows eligible to invalidity pensions - they may sometimes use the period of residence of their deceased husband as the basis for calculation - covered by art.7.
- e). Concerning the existence of widows' pensions - there are no corresponding widowers' pensions - covered by art.3(2).
- f). Concerning social assistance - non-Danish women who are or who have been married to a Danish national have the same rights as the latter to social assistance in the form of regular maintenance payments - falls outside of the Directive.

FRANCE

France considers that no measures are necessary in order for her to comply with the Directive.

She takes advantage of the exclusions possible under art. 7.1(a) & (b).

LUXEMBOURG

On the 6th March, 1981, Luxembourg wrote that the Directive had been submitted to the Committee on Women's Labour, Social Security Section, so that the latter might propose measures in order to secure the implementation of the said Directive.

No information has been received about any such proposals.

GERMANY

On the 12th of February, 1981, Germany wrote that she intends to look at the relevant German legislation to see if any reforms are necessary.

No information has yet been received about any such reforms.

IRELAND

There were several points on which Irish legislation did not comply with the Directive, when it was being negotiated. Of these points, some have been dealt with totally (1), some have been dealt with partially (2) and some have yet to be dealt with (3).

- (1). Different rates of Social Security contributions - this was contrary to art.4.1 - since April 1979, contributions have been assessed on a percentage basis up to a certain ceiling, with the same percentage rates and ceiling applying to men and women.
- (2). a). Duration of payment of unemployment benefit - for most married women payment was made over a shorter period of time - this was contrary to art.4.1. In April 1979, the maximum limit for dependent women was extended from 156 days to 312 days. The maximum limit is generally 390 days, so discrimination against married women remains.
b). Area of eligibility for unemployment assistance - in October 1978, the restriction on the eligibility of single women and widows was removed. The restriction on the eligibility of married women remains - this is contrary to art.4.1.
- (3). a). Lower rates of payment - in the case of flat rate disability and unemployment benefits most married women receive less than other beneficiaries - this is contrary to art.4.1.
b). Increases in benefits for dependants - in the social insurance system, the conditions on which these may be paid are different for men and women - this is contrary to art.4.1.

- c). Increases in benefits for dependants - in the social assistance schemes, the conditions on which these may be paid are different for men and women - this is contrary to art.4.1.

The Irish Government decided to set up a working party to examine the concept of dependency and the problems that would arise in applying the principle of equal treatment to men and women in social security. This working party has reported back to the Irish Government and the latter is to decide upon further legislation in the light of this report. No information has yet been received about any proposed legislation.

ITALY

Italy considers that the law of the 9th of December, 1977, (no.903) anticipated the Directive by abolishing discrimination in this field. Indeed the law goes further than the Directive requires, by abolishing discrimination in matters such as family allowances and widow's pensions and by moving towards a common retirement age.

The Italian Ministry of Labour has contacted other Ministries and relevant organizations because, the field of application being so large, not everything falls within the ambit of the Ministry of Labour. Further information will be sent as soon as possible.

The changes that the law has made are as follows:-

1. Article 4:

Women normally retire five years earlier than men which means that they have not made the forty years of contributions which are necessary for them to have full pension rights. Under this article, women now have the option to work until the same age as men in order to obtain the same pension rights. Moreover, private companies cannot compulsorily retire women before they have obtained these necessary rights.

2. Article 7:

Under this article men are given the same rights as women regarding new born children, viz., men can leave work for a maximum of six months during the first year of a child's life, provided that the mother of the child has not claimed this right or that the father has the sole responsibility for the child. During the six months, a daily allowance is paid. This is equivalent to 30% of the parent's wages; the criteria for receiving the same may be compared with those applicable in cases of sickness.

This article covers all workers in the public and private sectors, apprentices and members of co-operative societies.

It does not apply to those who work at home or to domestic servants.

3. Article 9:

Under this article, both the father and mother have the right to claim and to obtain family allowances and increases of benefits. The same rights exist and the same limits apply to women and to those in receipt of a pension as to men.

If both the father and the mother claim in respect of a child, the allowance will be given to the parent who has the care of the child.

4. Article 10:

Under this article, men and women who work in agriculture now enjoy the same rights as regards protection against the risk of accidents at work.

5. Article 11:

Under this article, men and women now enjoy the same rights to a pension, e.g., invalidity, old age, survivor's, (cf. art.12 infra).

It applies to employees, the self-employed and the liberal professions alike.

6. Article 12:

Under this article men and women now enjoy the same rights to benefits for such things as accidents at work and professional illnesses (cf. art.11 supra).

NETHERLANDS

There were three points on which Dutch legislation did not comply with the Directive, when it was introduced.

- 1). Invalidity pension (AW) - married women were not covered by the scheme - this was contrary to art.4.1. Legislation in 1978 was destined to end this discrimination by 20th December 1979 - every man and woman, single and married, may claim invalidity pension in his or her own name. Both husband and wife may claim for dependent children.
- 2). Old age pension (AOW) - a married couple may only claim a pension if the husband (who is considered as the breadwinner) is 65, even if his wife is older than he is - this is contrary to art.4.1. In order to end this discrimination there was a consultative period which ended on 1st January 1981. On 17th July 1981, a proposal was submitted to the Economic and Social Committee.
- 3). Unemployment - there are at present three different schemes (90%, 75%, Supplementary Benefit). These schemes are to be amalgamated and the opportunity will be taken to end all discriminatory provisions (e.g., under the Supplementary Benefit scheme, the husband is considered as the breadwinner, even if he is not whereas the wife has to prove that she is the breadwinner). As yet, no timetable has been announced for this.

UNITED KINGDOM

The United Kingdom believes that the Social Security Act, 1980 and the Social Security (Northern Ireland) Order, 1980 will ensure equal treatment for men and women in matters of social security before the end of the implementation period.

The changes that this recent legislation has made or will make are as follows:-

1). A two-stage implementation of the Directive, as far as a married woman, residing with her husband, who is claiming an increase in benefit (national insurance or industrial injuries) in respect of her children, is concerned.

i). The replacement of the condition that the husband must be incapable of self-support by the condition that the husband's weekly earnings, if any, should not exceed the amount of the increase.

It is intended to introduce this provision in November 1983.

ii). The latter mentioned condition will cease to have effect altogether, thus either the husband or the wife will be able to make a claim irrespective of their spouse's earnings.

It is intended to introduce this change in November 1984.

2). Concerning a married woman's claim for an increase in benefit for her husband:-

i). The replacement of the condition that the husband must be incapable of self-support by the condition that the husband's weekly earnings, if any, should not exceed the amount of the increase.

Thus, as regards unemployment benefit, sickness benefit and maternity allowance, an increase for a dependent spouse will be available to a husband or to a wife on the same conditions.

It is intended to introduce this provision in November 1983.

ii). Despite art.7.1(d) of the Directive, an increase in a wife's invalidity pension for her husband will depend on the rule that the husband's earnings do not exceed the amount of the increase claimed. Thus, this goes further than the Directive, but it does not ensure (fully) equal rights for husband and wife, for it does not provide for a "tapered earnings rule". It is intended to introduce this change in November 1983.

3). Although the United Kingdom believes that the following change is not necessary under the Directive, she has decided to abolish increases for certain prescribed relatives (usually daughters at university or female relatives acting as unpaid housekeepers, of which there are only about 200 cases at any one time), for which there were different qualification conditions according to the sex of the dependant. In November 1981, the provision governing these increases was abolished as far as any new cases were concerned. Increases being paid before the abolition of the provision should be phased out by November 1983.

4). A beneficiary of either sex can already claim an increase in benefit in respect of a female child carer (provided the beneficiary is entitled to a dependency increase in respect of the child). The United Kingdom intends to go further than the requirements of the Directive, by allowing an increase to be paid whatever the sex of the child carer, except that where a child carer is a man, it will only be paid in those cases where it would be paid for a husband. The earnings test applicable to a husband will also apply to a male child carer. The date of the coming into force of this provision has yet to be announced.

- 5). At present, increases in benefit for adult dependants, claimed by beneficiaries who are over pensionable age, may only be paid if the latter satisfy the conditions for entitlement to a retirement pension. Under regulations yet to be announced, increases in benefit will be paid at the same percentage rate as applies for increases in the retirement pension. The date of the coming into force of these regulations has also to be announced.

- 6). The industrial injuries scheme will be extended so that those provisions which already apply to a husband's claim for an increase in respect of his wife, will also apply to a wife's claim in respect of her husband. In each case it will have to be shown that the spouses are either residing together, or that the claimant is contributing at least the amount of the increase to the maintenance of his/her spouse.
The present condition that the husband must be incapable of self-support will be replaced by an earnings test.
It is intended to introduce this change in November 1983.

- 7). The definition of "incapable of self-support", no longer being required for dependency benefit purposes, will be deleted from Schedule 20 of the Social Security Act, 1975 and from Schedule 17 of the Social Security (Northern Ireland) Act, 1975.

- 8). Under the present supplementary benefit (social assistance) scheme, the requirements and resources of a married or unmarried couple are aggregated, but only the man may claim and receive benefit on behalf of the family.
The scheme will be changed to provide that either one of a couple may claim, subject to certain conditions being satisfied.
It is intended to introduce this change in November 1983.

GIBRALTAR

(Gibraltarians benefit from the free movement provisions of the Treaties, despite the colonial status of Gibraltar. See the United Kingdom Declaration on the Definition of the Term "Nationals".)

It was thought that there were two points on which Gibraltar was not fully in compliance with the Directive. Both these points will be dealt with by January 1985.

1. Women's contributions are lower than men's - this is contrary to art.4.1 - since 1980 the contributions for both men and women have been increased annually by the same flat amount, and not by percentages as in the past - the remaining difference in contributions will be eliminated by January 1985.
2. Women's right not to pay contributions - this is contrary to art.4.1 - as from January 1985, this right will no longer exist - the right will however continue to exist, as provided for in art.7.1(e), for those women who have already chosen to exercise this right.

On one further point, Gibraltar goes further than the Directive requires. From January 1st 1985, a man will qualify for an old age pension by virtue of his wife's contributions. Thus, Gibraltar does not take advantage of art.7.1(c).

Examinations of the replies from the members of the Committee concerning the gradual implementation of the principle of equal treatment in matters of social security (statutory schemes)

The application of Directive 79/7/7/EEC does not appear to give rise to problems under the laws of the Federal Republic of Germany, Denmark, Italy, Luxemburg and, in all probability, France (no reply received).

The reply from the Federal Republic refers, however, to the need to change the tables of certain imputed incomes (especially for periods treated as periods of insurance).

The Danish reply indicates that the government's attention has been drawn to certain situations in the field of pensions involving the problem of indirect discrimination (no further given).

In other countries, however, there are still problems to be overcome.

BELGIUM

Problems have been identified in connection with unemployment, pensions, maternity leave and part-time work.

Unemployment - a more favourable regime is applied to unemployed persons who are heads of households, whether male or female. However, only 5% of unemployed females are heads of households, whereas the figure for unemployed males is 39%; there is, therefore, a possibility of indirect discrimination.

Pensions - apart from the difference in ages, discrimination is apparent in the methods of calculation (the "household" rate is available only to male married workers) and the minimum amounts of pension.

Maternity leave - unemployed women suffer a reduction in the maternity leave allowance.

Part-time work - access to social security has been improved in the case of part-time work : however, 90% of those concerned are women.

Progressive implementation of the principle of
equal treatment for men and women in matters
of social security (statutory schemes)

OPINION

Having considered a number of questions raised by the implementation of Directive 79/7/EEC on equal treatment for men and women in matters of social security (statutory schemes) and pleased, moreover, by the steps taken by the Commission to ensure the application in practice of equal treatment in this sphere (legal instruments to supplement Directive 79/7/EEC, the establishment of a network of experts to monitor the implementation of Community legislation etc), the Committee issued the following opinion :

1. With regard to cash benefits the Committee considers that :
 - where imputed values or incomes are laid down for periods treated as insurance periods, these values or incomes should not differ according to sex;
 - where legislation provides for benefits calculated on a "household" rate, for a couple both of whom are insured, these should be available to either one or the other spouse; old-age pensions should not be granted on the basis of the age of only one of the spouses.
2. Supplementary benefits are covered by the Directive where they replace or supplement insurance or social security benefits. The legislation in question should be reviewed to eliminate all discrimination.
3. Where the right to health care is granted not only to the insured person but also to the spouse, the conditions for exercising this right must be the same for both spouses; it is not therefore possible to lay down more stringent conditions for the husband of a female insured person than for the wife of a male insured person either under national rules or Community regulations on migrant workers.
4. With regard to indirect discrimination, the Committee takes the view that :
 - care should be taken that the provisions of social security legislation relating to part-time work do not have any indirect discriminatory effect insofar as these provisions in fact mainly concern women;
 - the conditions laid down for the granting of social benefits covered by the Directive must be capable of being fulfilled by workers of either sex regardless of their material status;

NETHERLANDS

From the reply, the changes in legislation give rise to considerable reservations insofar as the concept of "head of household" (kostwinner) has not been totally eliminated. The result is that the financial independence of a married female worker will not be guaranteed in the same way as a married male worker. In this respect, a problem of interpretation of the Directive arises with regard to the concept of indirect discrimination in the case of increases for a dependent spouse. According to the reply, such increases should be eliminated except in the strictly limited case referred to in Article 7, (d) of the Directive.

The reply also raises the problem of adapting public assistance legislation.

UNITED KINGDOM

The measures adopted by the government relate mainly to benefits for dependents (including spouses) where equal treatment would be guaranteed. In some cases, these measures even go beyond the scope of the Directive.

In other cases, however, implementing provisions have still to be adopted: increases for an adult dependent on a pensioner and supplementary benefits (in the latter case there is the possibility of indirect discrimination if one of the conditions laid down can only be fulfilled by males).

Finally, no measures have been notified with regard to:

- supplementary pensions (the age of the husband determines entitlement);
- the family income supplement (there has to be at least one full-time income: that of the husband);
- free care during visits to other Community countries (the husband may obtain this for his dependent wife but a wife can do so for her dependent husband only in a case of infirmity;
- other benefits considered to be excluded from the Directive.

- it is necessary to check whether increases granted for dependent spouses under the laws of some Member States do not in practice have a discriminatory effect since, even where these increases are available by law to either spouse, the dependent spouse will in most cases be the wife and consequently married female workers will hardly ever receive these increases.

In this connection, certain members of the Committee pointed out that, generally speaking, these increases were to be regarded as indirect discrimination based on marital or family status. However, the whole Committee reserved its position on this subject pending a more detailed study of the concept of indirect discrimination as envisaged in the new Community action programme on the promotion of equal opportunities for women 1982-85.