

**WORKPLACE GENDER EQUALITY
AND EUROPEAN UNION NEO-LIBERALISM**

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**Paper prepared for the European Community Studies Association Conference.
Madison, Wisconsin
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The project of European integration has been primarily a neo-liberal economic project of internal market building, excluding (with few exceptions) political and social policy which remain for the most part fixed at the national level. The European legal system emerges and evolves in connection with this project and, consequently, one could anticipate that overall the EU legal system would serve the ends of that project. Is there the basis for an evolving and effective process of social protection corresponding to the neo-liberal market economy, a Polanyi-esque counter-movement, if you will, to be found there as well? This paper takes the position that the evolution of gender equality in the workplace as a legal right attaching to European citizenship, is one 'countermovement' of sorts to the neo-liberal project.

The issue of the relation between economic and social issues has always been at least implicit in the process of European integration. Lately, particularly with respect to gender equality, the social dimension is becoming increasingly unavoidable as the apparent limits of economic programs and even the supporting legal structures prove inadequate to redress gender inequalities which spill out of the workplace and into the home and private lives of European Union citizens.

This dynamic of workplace gender equality necessarily exerts a humanizing and market regulating effect. Focusing on Britain and France, the paper briefly reviews and analyzes the development of equal pay law and changes in pay differentials. The work presented here is preliminary.

1. Implementation and enforcement of workplace gender equality/equal pay principle

Economic considerations were the impetus for the EC's adoption of the principle of pay equity for women. France had already adopted an equal pay principle and fearing it would prejudice France's competitive edge within the EEC, insisted during the negotiations that resulted in the Treaty of Rome (1957) that the competitive playing field be level with regard to women's right to equal pay and that all member states be required to adhere to this principle. Women's rights issues were not part of the discussion. The drafters originally placed the equal pay provision in the "economic core" of the Treaty but the equal pay principle was ultimately included as Article 119, as one of the six Social Provisions, indicating, as Hoskyns observes, that "in its very history and terminology, Article 119 raises questions, always central to EU development, about the relation of the economic and the social, and about whether it is possible to construct an economic market without a social content."¹

A period of nearly twenty years relative inactivity at the EC level was followed by adoption of the Equal Pay Directive in 1975² followed by the Equal Treatment Directive in 1976.³ Equal pay and equal treatment soon became areas of sustained and dynamic activity on the EC level with the Commission and European Court of Justice (ECJ) as the prime EC institutional motor forces. Litigation has been the primary institutional mechanism by which EU equality standards have been enforced with the ECJ producing a hefty body of equality case law

¹ Hoskyns 1996:43.

² A copy of the Directive is attached as Appendix 1.

³ The Equal Treatment Directive (ETD) addresses limitations on women's opportunities for training, promotion and access to male dominated jobs.

which forms part of the *acquis communautaire* which member states are obliged to adopt in principle notwithstanding existing contrary domestic law or government policy, and which domestic courts are bound to apply and private actors to abide by.

The EPD sets out a series of normative standards leaving each member state to formulate the particulars of domestic implementation and enforcement so that they may be effectuated in accord with the distinctive conditions of each member state. In so doing, a broad “interpretive space” is created within which domestic governments and courts may maneuver⁴ and still arguably remain formally in compliance with the Directive. Because there has been widespread member state resistance to operationalizing EU equal pay standards, their adoption and application by member states often has been delayed, incomplete and/or ineffective. This has certainly been true in France and Britain although the history and material factors in each have been in many respects quite different.

One may identify at least two general categories of post-EPD EU level approaches to member state compliance. The first may be characterized as adoption oriented and the second as process oriented. One looks for a third phase which might be characterized as outcome oriented. These approaches are overlapping and co-existent. The adoption and outcome phases are more formalistic than substantive, more legalistic than political or social. In the first phase, activity focuses primarily on formally effectuating compliance with the Directive, that is, encouraging and monitoring member states’ adoption of implementing legislation which formally complies with the general principles set out in the Directive. As implementation of

⁴ Kilpatrick 1997:27

fundamental principles is accomplished, one discerns a second phase marked by an increasing concern with issues of access, process and fairness, particularly with regard to the means which despite its drawbacks have come to be perhaps the most important for women to enforce their workplace equality rights, namely, litigation by individual women employees. The importance of this modality of enforcement may not have been foreseen but once its significance became apparent, efforts were made to encourage some loosening up of the legal process, most notably burden of proof standards. In the third phase one would observe a shift in focus to material policy effectuation, actual progress made toward realizing the goal of true pay parity and a willingness to address impinging social issues outside the workplace, e.g. stereotypes of women and gendered family roles. One may find the seeds of an outcome phase but the official institutional position is not there yet.⁵

2. Member state government judiciary resistance to implementing EU equality standards

EU equal pay standards must be implemented by national legislation in order that they become binding upon, i.e. enforceable against, private employers. Consequently, to the extent governments are slow, incomplete or obstructive in their legislative compliance, the process toward closing the wage gap is hampered. The ECJ's decision not to apply direct effect⁶ here (itself indicative of the influence -- even if oblique -- of business interests in the interpretation and application of EU law), slows down the process and subsequent government action (or

⁵ See, e.g., European Commission Report 2001; European Commission Handbook 2001; Prechal, et al. 2000.

⁶ While certain EU law is directly binding upon individual actors without the necessity of domestic implementing legislation, equality law is not.

inaction) and stands as a second integrative stage, yielding a multitude of opportunities to further undermine the process.

British governments of the left and right up to the present have affirmatively obstructed effective equality legislation. In France, the government rhetoric has been more welcoming to equality than in Britain and formal legalistic compliance, while defective in respects, has been more responsive to EU challenges. But while governments in France have supported the principle of equality, legislative measures have lacked teeth, tending to encourage employer action to ameliorate inequalities but lacking substantial incentives to ensure compliance. In Britain, governments tend to resist interference in market mechanisms and collective bargaining of wage determination (e.g., there was no minimum wage law until 1999). France is more sanguine about the use of market regulation to achieve social justice ends but, at least with regard to pay equity, has failed to enact sufficiently effective measures.

2.1 France

Historically parties of the left as well as of the right had not been strong supporters of equal rights for women workers. The ideal of women as homemakers and their use as a source of cheap supplementary labor as well as the resultant corollary protective legislation for women have tended to undermine an appreciation for substantive pay equity and workplace equality, and to undermine as well the seriousness with which these issues have been viewed. It is not surprising therefore to find that “French government responses to changes [in equality standards] forced by Community institutions have generally been the tardy introduction of minimal changes

necessary to avoid contravening EC law.”⁷

Apparently with the primary goal of increasing electoral support among women voters in the post-1968 era of a vital and growing women’s movement, political party leaders (as distinct from feminists agitating from within) began to promote the principle of equality. Three years before the EPD, the 1972 Equal Pay Law, enacted by a Gaullist dominated National Assembly, codified, although somewhat ambiguously, the principle of equal pay for work of equal value with violators subject to a very modest maximum fine of FF1000 for a first offense, and FF2000 and a possible ten days in jail for a subsequent offense. The 1972 law, however, failed to include provisions for determining ‘equal value’ or for securing meaningful compliance by employers. The law kept the burden on the employee to prove discrimination without liberalizing access to the employment records needed to meet the burden, and failed to authorize trade unions or women’s groups to bring court actions to enforce the law except as participants with individual employee complainants, in other words, no possibility of class action suits. Remarkably, neither the trade unions nor women’s groups sought authority to bring class action suits and the actual process of how discrimination claims would be litigated was not discussed. Mazur 1995:92-101.

Following his election in 1974, Giscard d’Estaing appointed Françoise Giroud as secretary of state for the condition of women and an anti-discrimination bill was passed in 1975. Although it nominally protected pregnant women from workplace discrimination, it was not primarily labor legislation and did not address issues of equal pay or equal opportunity.

France’s persistent failure to fully implement the 1975 EPD eventually resulted in a

⁷ Tesoka 1999:3. The 1998 Prechal, et al. Report to the Commission states, “Sex discrimination is still not considered a serious problem [in France.]” Prechal 1999:73.

Commission infringement action⁸ which was withdrawn in 1981 in light of the anticipated passage of acceptable legislation, eventually enacted by a left-wing dominated National Assembly in 1983. Mitterrand had featured *égalité professionnelle* as part of his campaigning since the 1960s and following the Socialist electoral victory in 1981, appointed Yvette Roudy as Minister of Women's Rights. The 1983 'Roudy Law' set out a framework for determining 'equal value' and offered unions access to employer data disclosing gender differences in job categories, qualifications, pay and hours worked. Discriminatory pay scales in collectively bargained agreements were expressly prohibited, the "legitimate motive" defense to discrimination was removed and maximum sanctions for violators were increased. The law provided for voluntary annual reports by employers of the comparative situations of their male and female employees, and for negotiated plans d'égalité.⁹ An independent activist oriented equality agency, rejected by government and business in 1972, was rejected again, this time in favor of a primarily consultative entity, the Conseil supérieur de l'égalité. Modest amendments in 1987 and 1989 have been largely ineffective.¹⁰

As litigation was emerging within the EU, even if not especially in France, as an important means to enforce EU equality standards, the failure of French law and judicial process to modify rules governing access to employment records or to modify burden of proof standards

⁸ Under Treaty Article 169, the Commission is authorized to bring actions against member states for failure to comply with EU law.

⁹ Plans d'égalité are intended to correct workplace inequalities and were contemplated to include preferential hiring, promotion and training.

¹⁰ Kilpatrick 1997; Mazur 1995.

(both of which pose serious obstacles to proving discrimination claims)¹¹ became a major concern at the EU institutional level particularly the Commission, and a directive on burden of proof rules was issued in 1997.¹² The French government has still apparently not enacted implementing legislation but, somewhat surprisingly, the Court de cassation recently issued corrective rulings so that now once the complaining party presents facts sufficient to establish that her claim is not unfounded, the burden shifts to the employer to demonstrate that the “disparité de situation est justifiée par des critères objectifs étrangères à toute discrimination.”¹³ Given that the amount of discrimination litigation in France has been fairly insignificant,¹⁴ it remains to be seen how valuable as a practical matter the court rulings will actually be.¹⁵

Employer compliance and enforcement in France remain weak. Less than half the businesses covered by the reporting requirement have submitted reports. Apparently responding to pressure from ‘insider’ women and from the EU -- and in light of coming municipal and presidential elections, amendments to the Roudy Law were adopted in 2000 specifically requiring employers to negotiate ‘equality plans’ and to prepare annual progress reports, with

¹¹ The factors within French judicial process which make it user unfriendly to sex discrimination cases are discussed by Alter 2000; Alter & Vargas 2000.

¹² Directive 97/80/EC.

¹³ Lanquetin 2000:53. The rulings are particularly noteworthy given that judicial review in France is suspect and judicial discretion severely constrained.

¹⁴ For instance, in the period from 1972 to 1983, pay and treatment discrimination litigation in France was rare and those courts that did hear pay equality cases were “reactionary and confused.” Kilpatrick 1997:30.

¹⁵ Perhaps it will encourage increased use of the courts. However, supporters of equality in Britain where there has been a great deal of discrimination litigation have begun to recognize the inefficiencies of litigation as a strategy to win pay equity. EOC Ann. Rpt 2001. Discrimination litigation is expensive, time consuming, relief is awarded on an individual basis and, among women in France, it is a “common perception” that “a woman’s case will not be treated fairly by the predominantly male judges” of the conseil de prud’hommes, the French labor tribunals of first instance for employment discrimination claims.

sanctions for failure to comply,¹⁶ although how effective the amendments will be seems doubtful inasmuch as the sanctions that already existed in the 1983 legislation were “practically never applied.”¹⁷

2.2 Britain

Discriminatory wage policy supported by both Labour and Conservative governments has long been a set-piece meant to bolster Britain’s industrial competitiveness.¹⁸ In 1970, a Labour government enacted a diluted version of ‘equal pay’ in its Equal Pay Act (EPA), the principle of equal value having been explicitly rejected by the government as overly burdensome to business and a threat to the health of the economy.¹⁹ Employers were given five years to adjust to the new law, at the conclusion of which, employees performing the same or ‘like work’ (the weaker British formulation in place of ‘equal value’) were to be receiving equivalent salaries. Assigning the relative values of jobs at the firm was left to the employer’s discretion. Claims of discrimination are cognizable only when the claimant’s job was classified in the same value category as one in which a more highly compensated male co-worker within the firm was employed. Thus, inasmuch as the job evaluation process was not mandatory, there was no real incentive to undertake one. Most egregiously, the EPA failed to provide women workers with a remedy against employers who violated the statute.

¹⁶ Le Monde interactif, 7 March 2000, p. 1, available on the internet at www.lemonde.fr/ . .

¹⁷ Lanquetin 2000: 51.

¹⁸ Duina 1999:11(fn. 2), 47. According to Duina, in 1955 the differential between British women’s and men’s wages was 53%, “possibly the lowest percentage in Europe.” Duina 1999:55. Britain continues to have among the worst pay gaps in Europe.

¹⁹ Ellis 1996.

British governments and courts continued to resist expanding “equal work” to the more comprehensive “work of equal value” and left job valuation to the employer’s discretion²⁰ until 1983 when, in an infringement action brought by the Commission the ECJ directed the UK to make the necessary revisions.²¹

The legislative response was enacted as the 1983 Equal Value Amendments to the Equal Pay Act (Equal Pay Regulations) but the loopholes and new advantages for employers it contained sabotaged much of the effort the Conservative government was purportedly making in support of pay equity.²² The 1993 Trade Union Reform and Employment Rights Act gave individuals standing to litigate allegedly discriminatory provisions in collectively bargained agreements.²³ Under UK law, only individuals may litigate allegedly discriminatory provisions in collectively bargained contracts.²⁴ Unlike France, Britain retains a “genuine material factor” defense for employers paying discriminatory wages.

3. Actual changes in pay differentials

As in EU member states generally, the gap between men’s and women’s salaries has

²⁰ The Sex Discrimination Act of 1975 primarily addressed ‘equal treatment’ issues, also created the activist equality agency, the Equal Opportunity Commission (EOC), a government funded agency which enjoys “relative autonomy, popularity, linkages with women’s groups.” Only Britain among the member states allows a public agency to participate in gender equality litigation and the EOC has become perhaps the leading activist organization promoting equality.

²¹ Case 61/81, Re Equal Pay for Equal Work, EEC Commission v. United Kingdom [1982] ECR 2601.

²² The House of Lords approved the bill with a rider stating that it believed “the regulations do not adequately reflect the requirements of the 1982 decision of the European Court of Justice and Article 1 of the Equal Pay Directive of 1975.” Ellis 1996:8.

²³ EPD, Article 4, enjoins member-states to ensure the means by which discriminatory provisions in wage agreements, including collectively bargained agreements may be rendered null and void or amended.

²⁴ Tesoka 1999.

narrowed in Britain and France but nevertheless persists. In the 1990s, a “glass ceiling” and a “sticky floor”²⁵ have clearly emerged as evidence of a stubborn resistance to closing the remaining substantial gaps in salary differentials.

3.1 Britain

In 1975, the average differential in hourly wages in Britain among full-time workers was almost 29%. In 1982, the full time wage gap was virtually unchanged at 28%. By 1994, the full time wage differential had diminished to 20%. Since then, progress has stagnated, dropping only two percentage points over the next six years to reach 18% in year 2000. For women working part-time, the situation is significantly worse. In 1982, female part-timers’ wage gap (as against men’s full-time hourly wage) was about 43% and it has hardly improved at all, holding steady at about 40%, reaching only 39% in 2000. EOC Annual Rept 2001. According to the European Commission’s Structure of Earnings Report, Britain has the worst equality record in the EU.²⁶

3.2 France

Progress was slow in France throughout the 1980s. In 1997, the overall (i.e. combined full and part-time workforce) pay gap was 26%.²⁷ Among full-timers the gap drops to about 12%. As might be expected, differences in full-time pay are more pronounced among high end

²⁵ Meurs and Ponthieux use the term “*plancher collant*” to refer to the tendency for women to remain stuck at the bottom. Meurs and Ponthieux 2000.

²⁶ Brooke, et al. 1998.

²⁷ The French sample is limited to employees under 46 years old which likely reduces the pay gap calculations since it is more likely that women over 45 earn less than younger women workers who are more likely to be more highly trained, to have benefited from the effects of egalitarian policy gains and to include women who have not yet felt the effects of child bearing and child rearing on their professional status. Thus, the actual differentials in France are likely greater than those given here.

incomes but when part-timers are included (one-third of French working women work part-time) the downward pressure is so great that the pay gap becomes greater at the bottom of the income scale. Meurs and Ponthieux 2000.

An analysis of pay differentials in Britain and France²⁸ strongly suggests that the wage gap will not be closed quickly and cannot be closed without addressing societal non-workplace issues which will necessarily entail further market regulation and recognition of the unfairness of assumptions of 'equality' which disadvantage women. This is because the data indicates that the most significant factors holding back progress toward pay equity are related to women's traditional familial obligations and to social undervaluing of women's time and labor. These factors are

1. part-time work
2. time away from work
3. occupational concentration
4. "glass ceiling" and "sticky floor"
5. structurally "inexplicable" discrimination

The first two factors are most directly related to women's traditional familial obligations and the remaining three are most directly related to social de/undervaluing of women, their time and labor.

4. Part-time employment and time away from paid employment

Time away from work, whether through part-time employment or temporary withdrawal from the workforce (even for relatively brief periods as in France where the time away from work is not very much greater on average for women than for men), results in lower pay for

²⁸ The samples and methodologies of these pay differential studies for Britain and France differ, however, the purpose of the paper is not to compare conditions across those countries, but to observe and comment on conditions within each country regarding the relationship between equal pay and EU liberalism.

women. This appears to be true not only because in the short run, hourly wages for part-time work are significantly lower. In the long run, it appears that women never make up their losses from the period(s) of reduced or non-employment. Those losses include the loss -- or perception of loss -- of work experience by individual women employees, and beyond this, a generalized diminishment in the degree of seriousness with respect to the way women are viewed at work.

The data from Britain and the Meurs and Ponthieux study strongly suggest that it is women's unequal access to full-time employment resulting from familial responsibilities, most importantly with respect to their children, that underlie much of the structural causative factors of pay inequity. In France, for example, the "consensus among labor, management and right-wing and left-wing government officials [in favor of] part-time work only emerged because part-time work was viewed as an option for working mothers seeking to resolve family and work conflicts and not for 'real' workers who want a full-time job." Thus, women are professionally marginalized and their labor de/undervalued.²⁹ Women, in effect, are penalized for parenting.

4.1 Britain

In Britain, about 44% of working women work part-time, compared with only 8% of men. The rates of part-time work among women have hovered at about 43% - 44% in Britain throughout the 1990s "with no evidence to suggest a future shift away" from those levels. Among women employees³⁰, 43% work part-time compared to only 8% of men who work part-time. The majority of women working part-time are aged 35-54, the years of child bearing and

²⁹ Mazur 1995; Dex, et al. 2000.

³⁰ The category "employees" does not include "self-employed" women who are hired by contract with less pay and benefits than employees would receive.

child rearing. EOC Ann. Rpt 2001; EOC Equal Pay Task Force 2001.

The impact of motherhood on employment is substantial. Of single parent mothers of dependent child/ren, 57% work part-time. Of married or cohabiting mothers of dependent child/ren, 60% work part-time. Of women single parents and in couples with dependent child/ren, 60% work part-time. EOC Ann Rpt 2001:13. In comparison with trends in France, British women tend to take extended child rearing breaks from paid employment. Crompton 1996.

The contrast with men is striking. Among male employees in Britain, only 3% of fathers of dependent child/ren both single parent and in couples, work part-time, among only single parent fathers of dependent child/ren, the number working part-time is statistically insignificant. EOC Ann Rpt 2001:13 On the other hand, 14% of employee fathers work more than 60 hours per week. TUC 2000:2. Single parent mothers with children under five years old are less likely to work than those with older children. Mothers of three or more children are less likely to work than those with fewer children. EOC Women & Men 2001.

Although levels of employment for single mothers and all fathers have mostly remained constant since 1984, the employment rate of mothers in couples went up one-third in the same period. EOC Women & Men 2001. This may in part reflect on one hand dual income earners' ability to pay for childcare and on the other, public welfare support. Once the Labour government's termination of this support takes effect, forcing women with children over the age of five to take paid employment, likely as low-paid part-timers and without adequate public childcare services, it may be that the pay gap will increase, particularly if the minimum wage law

is not extended to part-time work.³¹

4.2. France

Part-time workers have been a growing and significant factor in the French economy,³² a development “encouraged” by the government.³³ The number of women working part-time has grown steadily. In 1978, 15.8% of working women worked part-time, rising to 21.8% by 1985, and to 25% by 1989. Currently, about one-third of working women in France work part-time, as compared to only 5% of men.

Two-fifths of the 27% salary differential in France is attributable to the prevalence of part-time work among women. Among those under 30 years old, 8% of women and 2% of men have had a period of withdrawal from the workforce (*inactivité*) not attributable to unemployment (*chomage*, which affects men and women at virtually the same rate). However, among employees between 30-45 years old, 28% of women and only 4% of men have periods of employment inactivity not attributable to unemployment. Meurs and Ponthieux 2001.

The actual amount of time away from work is somewhat greater for women but apparently not dramatically different for women under 46 years old. Meurs and Ponthieux 2001; Crompton 1996. Perhaps in part because of the relatively generous public child care facilities available even to very young children, French women appear to tend to return to work, even if only part-time, relatively quickly, suggesting that French women tend to take short maternity

³¹ Dex, et al. project, however, that increasing the minimum hourly wage to £3.60 would improve the pay gap only “very slightly.” Dex, et al. 2000.

³² Seventeen percent of the French workforce hold part-time employment, of which 85% are women. Méda 2000:4.

³³ Mazur 1995:223.

breaks rather than lengthy child rearing breaks from employment.³⁴ Yet women's professional experience appears not to be valued as highly as men's, whether because those who take time off from their (full-time) working lives are viewed as less valuable, or because of actual diminishment in training and experience. Meurs and Ponthieux 2001:138-140.

French men spend more time at work. Ninety-two percent work full-time and among the full-time workforce, men put in more hours than women (Meurs and Ponthieux 2001:141) presumably at least in part because they have the time to do so: for the past twenty years, among working couples, women perform about 80% of the core domestic tasks (as measured by time expended). Méda 2001:6. On the other hand, as Meurs and Ponthieux conclude, marriage or cohabitation may have a negative effect on the probability of a woman's working full-time and of being taken as seriously in her profession as her male colleagues. Meurs and Ponthieux 2001:146-149.

Women are likely to decrease their hours at work as the number of their young children increases but most do not stop working entirely. This is true even among women with three children. On the other hand, men's hours at work are not diminished by having children. If their hours change at all, on average they increase. Méda 2001:2, 6.

5. Occupational Concentration, Glass Ceiling and "Sticky Floor"

Another major factor accounting for women's lower earnings is the concentration of women in categories of employment paying less on average than those in which men predominate.

³⁴ See Crompton 1996.

5.1. France

In France, 71% of women (compared to only 47% of men) work in “service” occupations which are generally lower paying than “industrial” jobs where about half of men are employed. Méda 2001:4. While 49.9% of men are “qualified” (i.e. higher skilled and better paid) workers, only 5.8% of women are so employed. Meurs and Ponthieux 2001:143 About 30% of full-time women workers are civil servants, as compared to 17% of men. Government jobs tend to be more “flexible” structurally and egalitarian in their pay scales but those pay scales tend to be overall lower than those in the private sector. Thus, those women who gravitate to government employment for its greater egalitarianism are penalized at the same time with lower over all pay.³⁵ In France in 1998, 85% of workers employed at the lowest salaries were women. Among the best paid, only 27% were women. Part of the explanation may be the educational system where stereotyping by teachers causes girls from a relatively young age to be directed to the less well-paying service jobs/careers. Méda 2001:5. But this explanation begs the larger question of why those jobs are not as well compensated.

5.2 Britain

In Britain, too, educational choices and the concentration of women within a relatively narrow group of service-type and other undervalued occupations are a significant factor accounting for the equality gap. EOC Ann. Rpt. 2001:10; EOC Women & Men :3. Men predominate in occupations with the highest earnings and women predominate in occupations with the lowest earnings. EOC Equal Pay Task Force 2001. Indeed, men’s weekly earnings in

³⁵ Méda 2001; Corby:1997.

Britain exceed those of women in every major occupational group (EOC Women and Men 2001) and Crompton's study notes "extensive segregation by sex" with "women concentrated in the lowest of the . . . hierarchy."³⁶ There is also the same phenomenon of women gravitating to public sector employment where wages are more egalitarian and conditions perhaps more family friendly but respecting the predominantly female occupations within the civil service, tend also to be less well paid. EOC Gender Pay Gap: Rsch Rev. 2001.

6. "Glass ceiling" and "sticky floor"

Even as more women have entered the higher paid professional and business worlds, a glass ceiling keeps them from reaching the top of the hierarchy in anything close to parity with men. For instance, in France, only 5.8% of women hold "cadre" positions, compared to 10.4% of men. Meurs and Ponthieux 2001:143. Complementing the glass ceiling phenomenon, is the likelihood that women will remain at the lower income rungs within their occupational categories, what Meurs and Ponthieux describe as the "*plancher collant*" or "sticky floor."

Meurs and Ponthieux 2001: The data for Britain confirms the existence of a "sticky floor" there as well.³⁷

Women in France have more advanced degrees than men and on average receive better grades than the men. They enter the workforce in virtually the same numbers and at roughly the same pay, so that among the better educated sectors of the workforce, the early portion of the career trajectory does not disclose egregious pay gaps. But women lose their parity over time as they fail to keep up with their male colleagues' career advancement. Currently in France, women

³⁶ Crompton 1996. Crompton compared women in finance and pharmacy in Britain and France.

³⁷ See, e.g., EOC Ann. Rpt 2001.

comprise about one third of the category “cadres et professions intellectuelles supérieures.”

Women make up only 7% of those at the highest level of management of large scale enterprise.

Meda 2001:4 In their study of three cohorts of UK college graduates, 1960, 1970 and 1980,

Dolton, et al. suggest that “while women and men [graduates] may enter occupations on the same terms, women find it harder to advance through the ranks.”³⁸

7. “Unexplained” discrimination

Apart from the disadvantageous effects of occupational concentration, part-time work and other observable factors, a substantial portion of the wage gap remains unexplainable except in purely discriminatory terms with no apparent justification: women earn less because they are women. This ‘irrational’ non-structural factor accounts for 20% of the pay gap in France³⁹ and from 24% to 50% of the pay gap in Britain.⁴⁰

8. Workplace gender equality (equal pay for work of equal value) and EU neo-liberalism

The tension between the social dimension and the neo-liberal economic dynamic is revealed in the EU’s equality agenda. Achieving pay equity requires market regulatory remedies that spill over into social, family and cultural realms and necessarily leads to questioning and weakening of traditional assumptions about women, the family and gender roles that preclude or at least complicate achieving social and economic justice for women. The challenge then arises of how to modify market society to make flexible work economically fair and not a modality of

³⁸ Dolton, et al. 1996:8.

³⁹ Meurs and Ponthieux 2000.

⁴⁰ Equal Pay Task Force 2001.

devaluation of women's labor, time and social role(s) and, as a corollary challenge, how to bring men into the flexible work world of child rearing and domestic responsibility. If one further considers family life as humanizing and de-commodifying, as able to serve as a partial antidote to the world of paid work and the 'market society', the challenge takes on even more significance.

De-gendering labor value implies equal value of men's and women's time and lives and is 'humanizing' in that sense, that is, it promotes the notion of equal human value. The notion of fairness intrinsic to the equal pay principle may be consistent with classical liberal notions but nevertheless limits strategic labor market manipulations advantaging business interests. This is not to overlook, however, that money as the prime expression of value in the workplace is itself commodifying (one's 'market' value) and to that extent de-humanizing and thus correspondent with a "market society."

The EU engages as a supranational market regulator when imposing an equality agenda, notwithstanding, for instance, what Streeck has described as the "collapse of the social dimension . . . [and] the defeat of its predecessor, the social action program."⁴¹ The limitations on EU social policy projects and aspirations magnifies the importance of workplace gender equality as a critical anti-liberal project. This is not to say that the equality agenda will be fully realized or even that significant further progress will be made. The array of opposing forces is, after all, prodigious. The momentum is away from EU social policy-making, and the constraints on market regulatory policy-making at the national level remain compelling. But an equality

⁴¹ Streeck 1995:406.

agenda exerts a counter-movement dynamic of market regulation and humanization, acknowledging that fairness to women is inconsistent with market-driven outcomes and priorities, and pointing to the larger implication that fairness and justice are incompatible with neo-liberal market society.

The impulse to humanize the neo-liberal economic project of European integration forces consideration of the structures and 'constructions' which characterize social and cultural domains. The pretense, no matter how well intentioned, that the economic domain can be treated separately begins to weaken when considered in light of workplace equality. The reality that economic inequalities are unavoidably social issues with far reaching consequences becomes clear.

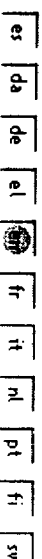
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APPENDI X



Community legislation in force

Document 375L0117



Directory chapters where this document can be found:

[05.20.20.20 - Wages, income and working hours]

375L0117

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Official Journal L 045 , 19/02/1975 p. 0019 - 0020

Greek special edition: Chapter 5 Volume 2 p. 42

Spanish special edition....: Chapter 5 Volume 2 p. 52

Portuguese special edition Chapter 5 Volume 2 p. 52

Finnish special edition....: Chapter 13 Volume 4 p. 78

Swedish special edition....: Chapter 13 Volume 4 p. 78

Amendments:

Incorporated by 294A0103(68) (OJ L 001 03.01.1994 p.484)

Text:

COUNCIL DIRECTIVE of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (75/117/EEC)
 The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community, an in particular Article 100 thereof;

Having regard to the proposal from the Commission;

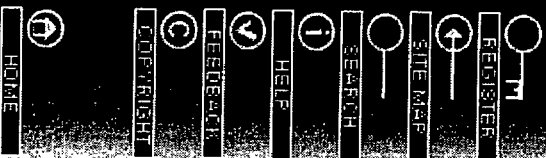
Having regard to the Opinion of the European Parliament(1);

(1) OJ No C 55, 13.5.1974, p. 43.

Having regard to the Opinion of the Economic and Social Committee (2);

(2) OJ No C 88, 26.7.1974, p. 7.

Whereas implementation of the principle that men and women should receive equal pay contained in Article 119 of the



Treaty is an integral part of the establishment and functioning of the common market; Whereas it is primarily the responsibility of the Member States to ensure the application of this principle by means of appropriate laws, regulations and administrative provisions;

Whereas the Council resolution of 21 January 1974 (3) concerning a social action programme, aimed at making it possible to harmonize living and working conditions while the improvement is being maintained and at achieving a balanced social and economic development of the Community, recognized that priority should be given to action taken on behalf of women as regards access to employment and vocational training and advancement, and as regards working conditions, including pay;

(3) OJ No C 13, 12.2.1974, p. 1.

Whereas it is desirable to reinforce the basic laws by standards aimed at facilitating the practical application of the principle of equality in such a way that all employees in the Community can be protected in these matters; Whereas differences continue to exist in the various Member States despite the efforts made to apply the resolution of the conference of the Member States of 30 December 1961 on equal pay for men and women and whereas, therefore, the national provisions should be approximated as regards application of the principle of equal pay.

HAS ADOPTED THIS DIRECTIVE:

Article 1

The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Article 2

Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities.

Article 3

Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay.

Article 4

Member States shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended.

Article 5

Member States shall take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal pay.

Article 6

Member States shall, in accordance with their national circumstances and legal systems, take the measures necessary to ensure that the principle of equal pay is applied. They shall see that effective means are available to take care that this principle is observed.

Article 7

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of employees by all appropriate means, for example at their place of employment.

Article 8

1. Member States shall put into force the laws, regulations and administrative provisions necessary in order to comply with this Directive within one year of its notification and shall immediately inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 9
 Within two years of the expiry of the one-year period referred to in Article 8, Member States shall forward all necessary information to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council.

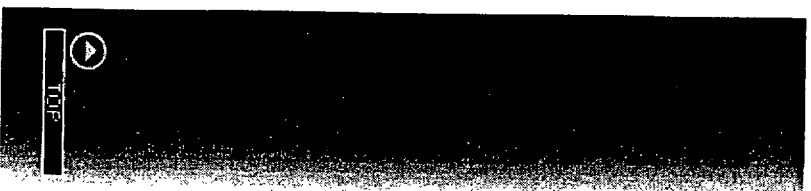
Article 10

This Directive is addressed to the Member States.
 Done at Brussels, 10 February 1975.

For the Council
 The President
 G. FITZGERALD

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Document delivered on: 11/03/1999



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