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**A CODE OF PRACTICE ON THE
IMPLEMENTATION OF EQUAL PAY FOR WORK
OF EQUAL VALUE FOR WOMEN AND MEN**

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INTRODUCTION

The principle of equal pay for men and women for work of equal value is based on Article 119 of the Treaty of Rome and on the 1975 directive relating to the application of the principle of equal pay for men and women¹.

Despite these provisions of Community law having been adopted and transposed into the legislations of the Member States 20 years ago, the differences in pay between women and men remain considerable. Indeed, information available on the manufacturing and retail trade sectors (by way of an example) shows a significant disparity between women and men's wages in all the Member States.

What is more, it is confirmed that these pay differences are even greater for non-manual than they are for manual workers, which reflects the many different types of job available and the tendency for men to occupy managerial positions and women to be secretaries, whereas in the case of manual workers, the distribution of jobs, and therefore of pay is more restricted (the calculation of the disparity of women and men's pay is based on gross average hourly pay for manual workers and on gross average monthly pay for non-manual workers).

However, it is worth noting that the average wage is calculated on a general base which includes the pay both for full and part time workers. The fact that the proportion of women with a part-time job is greater than that of men could partly explain why they make up a greater proportion of those on low pay.

The difference between women and men's incomes is due to many factors and in particular:

- to the vertical and horizontal segregation of jobs held by women and men (so-called female jobs are still generally less well paid),
- to the numerous sectors of the economy where mainly men work, offering extra pay, working time bonuses etc, all of which widen the pay disparities between the sectors outside of the base rates,
- to the considerable differentiation in pay resulting from collective agreements linked to the recognition of skills, to the type of business and the type of industry or sector. Gender-specific segregation in employment applies to each of these divisions, increasing the potential for such differentiation,
- to the systems of collective agreements which allow salary structures to reflect the negotiating power of different groups of employees. As a result, women are generally weaker in negotiations.

¹Directive (EEC) N. 75/117 of the Council OJ N. L 45, 19.2.1975, p.19

In order to help lessen this difference, the Commission has decided to adopt this code of practice which follows on from its Memorandum on Equal Pay for Work of Equal Value, published in June 1994².

The Code aims to provide *concrete advice* for employers and collective bargaining partners at business, sectoral or intersectoral level to ensure that the principle of equality between women and men performing work of equal value is applied to all aspects of pay. In particular it aims to eliminate sexual discrimination whenever pay structures are based on job classification and evaluation systems.

The Code is intended to be applied in the workplace both in the public and the private sector. Employers are encouraged to follow the recommendations in the Code, adapting them to the size and the structure of their businesses. The nature of the approaches and measures set out in the Code is neither exhaustive nor legally binding but provides models for action which could be taken in the area in question. The Code should be read in conjunction with the memorandum, which illustrates the principle of equal pay in the light of the decisions of the Court of Justice of the European Communities.

Codes of practice are more widely and effectively applied when they have been conceived in close co-operation with the intended users. This is why the Commission consulted the social partners on the content and drafting of the current code. It was essential for the Code to reflect, as far as possible, the approach proposed by the social partners, which was that the Code should be short, its use voluntary and effective and that it should be capable of being used during different stages of collective bargaining.

Essentially the Code proposes two things:

- * that negotiators at all levels, whether on the side of the employers or the unions, who are involved in the determination of pay systems, should carry out an analysis of the remuneration system and evaluate the data required to detect sexual discrimination in the pay structures so that remedies can be found ,
- * that a plan for follow-up should be drawn up and implemented to eliminate any sexual discrimination evident in the pay structures.

²COM (94) 6 final

PART II

ADDRESSEES OF THE CODE

A. BUSINESSES

The Code is principally aimed at employers regardless of whether they are from the public or private sector because the principle of equal pay for work of equal value must in the first instance be applied by employers, who are required to pay equal wages whenever work of equal value is being carried out by male and female workers and whenever a difference in pay cannot be explained or justified other than on the basis of the worker's sex .

It is worth noting the particularly important role played by the public authorities as employers. Indeed, the full application of the principle of equal pay in the public sector would have an added value by serving as a good example.

Businesses, are of course invited, in agreement with their staff and/or their representatives, to apply the measures proposed in the Code, in the manner most suited to their size and structure.

B. PARTNERS IN WAGE NEGOTIATION

The Code targets the social partners directly. Indeed, most pay scales are the result of collective bargaining at sectoral or intersectoral level. The Court of Justice of the European Communities has also stated on a number of occasions that collective agreements must respect the principle of equal pay for the same work or work of equal value.

The task is therefore one of helping the parties in wage negotiations to remove all direct or indirect discrimination from the collective agreements concerned, thereby obtaining equal recognition for the work of women and men when the job requirements to be met are equal.

Indeed it would be desirable if at this level and subject to any necessary adjustments, the type of approach proposed could also be applied in relation to analysis of pay structures and follow-up action.

C. INDIVIDUALS

Finally, the Code also aims to assist women and men who believe their work is under-valued because of sexual discrimination to obtain the necessary information to resolve their problem through negotiation or, as a last resort, to bring the matter to the national courts.

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It should be noted in this respect that the question of equal pay goes far beyond a mere study of pay structures within any one business, sector or group of sectors. It also requires action at national level not only on behalf of employers' and employees' associations but also by governments. To this end, for example, a national-level statistical apparatus allowing a survey to be carried out concerning the relative pay rates found in various branches, sectors or regions could prove to be an effective instrument in the measurement of the extent to which a worker's sex accounts for the differences established.

PART II

STUDY OF PAY STRUCTURES

The study of pay structures aims to reveal any possible under-valuation of work typically carried out by women in comparison with that typically carried out by men and vice-versa. To this end the employer must determine, preferably in agreement with the staff and/or their representatives, what useful pieces of information should be gathered and then evaluate this information to see if there are signs of any procedures and practices relating to pay which are at the root of instances of discrimination.

This study should comprise three phases. First the relevant information should be collected and then it should undergo a two-stage evaluation. The first stage would be to draw up a general table showing the sex and pay of workers, and then the second stage would consist in analysing those pay-related elements identified as potentially discriminatory.

A. THE RELEVANT INFORMATION

Information relevant for the purposes of the analysis should be collected across the whole of the organisation's workforce. Pay analysis within one establishment or within an individual grading or bargaining structure is not adequate as problems of sex discrimination may well arise between employees who work at the same or separate establishments, across grading structures or in different bargaining units. The focus of the information collected will vary according to the structure of the company and its pay system. Some of the information set out below will not be relevant to some organisations. It is for the organisation to determine, in conjunction with its employees, what information is relevant and necessary for the analysis.

1. Employees

Information about employees should be obtained from personnel and payroll records to show:-

- gender
- grade
- job title
- hours of work excluding breaks
- bargaining unit or collective agreement
- required entry qualification
- other relevant qualifications

- length of service with organisation
- length of service with other relevant organisations
- basic pay
- additional payments and contractual benefits

The information should include temporary staff as well as those who are on permanent contracts and any employees who work as homeworkers/outworkers.

2. Pay arrangements and practices

Information about pay arrangements and practices should be obtained from the organisation's rules, handbooks and collective agreements. This will vary from organisation to organisation but may include:

- job descriptions
- grading, classification and evaluation systems
- grading/classification criteria
- pay provisions of collective agreements
- rules governing entitlement to pay and other contractual benefits
- job evaluation manual
- performance pay handbook
- rules governing the operation of bonus and incentive schemes
- piece work or contract work pay arrangements
- information on the market situation of individual jobs where relevant.

It is important that information is also obtained on pay arrangements and pay practices which follow custom and practice as well as formal rules.

B. ASSESSING THE GENERAL INFORMATION

The first stage of the assessment of the information should be the establishment of a general picture on gender and pay. An analysis may reveal that the pay system rewards employees by reference to qualifications. It may be that the qualifications rewarded do not reflect the informal qualifications which women have acquired. For example, in some Member States sewing skills might not attract a certificate but sewing machinists could not undertake the work without such skills. The definition of qualifications may need to be reviewed and in some cases expanded. Are the qualifications necessary for the jobs performed?

Where a large organisation has a complex pay structure, a clear course of action to address discrimination identified may not emerge. Therefore the wage structure should be transparent.

The general picture will provide an overview of pay arrangements and will assist in the identification of areas for priority attention. Particular aspects of the pay system will require a greater depth of analysis.

Examples of key indicators of potential sex bias are given below:

- women have lower average earnings than men with the same job title.
- women have lower average earnings than men in the same grade.
- women in female dominated unskilled jobs are paid less than the lowest male dominated unskilled job.
- jobs predominantly occupied by women are graded or evaluated lower than jobs predominantly occupied by men at similar levels of effort, skill or responsibility.
- women are paid less than men with equivalent entry qualifications and length of service.
- where separate bargaining arrangements prevail within one organisation those dominated by men receive higher pay than other bargaining groups dominated by women.
- the majority of men and women are segregated by different grading, classification and evaluation systems.
- part-time or temporary workers, who are mainly women, have lower average hourly earnings than full-time or permanent employees in the same job or grade.
- part-time or temporary workers, who are mainly women, have access to fewer pay and other contractual benefits.
- different bonus arrangements, piece rate and other "payments-by-result" systems, apply in different areas of production affecting disproportionately one gender.
- different bonus, piece rate and other "payment by results" calculations apply to different jobs in the same department affecting disproportionately one gender.
- different overtime rates apply in different departments affecting disproportionately one gender.
- holiday entitlements vary between jobs in the same grade affecting disproportionately one gender.

Whilst the findings above do not in themselves mean that there is unlawful sex discrimination in the pay system, they all merit further investigation. Each element in the make-up of pay or in the entitlement to pay and other contractual benefits needs to be analysed to ensure that there is an objective justification which is not affected by the sex of the workers explaining the differences in pay.

C. PARTICULAR ASPECTS OF THE PAY SYSTEM

Practices will vary from organisation to organisation and this will affect the outcome of the analysis. Set out below are examples of practices which might prove to be discriminatory together with guidance on how to address them.

However, it should be stressed that these practices are only mentioned as examples and that it is in no case implied that they are to be found in all organisations.

1. Basic Pay

- **Women are consistently appointed at lower points in a pay scale than men are.**

Examine recruitment and promotion records to see if different treatment is objectively justifiable irrespective of sex.

Are qualifications rewarded by allowances necessary for the posts? Is the way qualifications are defined affecting women adversely?

- **Women are paid less than male predecessors in the job.**

Check if job duties and responsibilities are the same or have changed. Do the changes justify any pay reduction?

- **Women progress more slowly through incremental scales and/or seldom reach higher points.**

Check whether service pay is linked to ability to do the job rather than length of service. Where women have broken or shorter periods of service because of family responsibilities, they may be less able to meet length of service criteria.

Investigate criteria by which employees are progressed through a scale.

- **Men are paid more, by supplement or by a higher grading, because of "recruitment and retention" problems.**

Adopt measures to deal with recruitment and retention problems eg: existing staff could be trained and then avail of development initiatives. The pool from which staff are normally drawn could be expanded. For example clerical and non-manual staff might be considered for management training and apprenticeships through the use of positive action.

2. Bonus/Performance Pay and Piece Rates

- **Female and male manual workers receive the same basic pay but men have access to bonus earnings.**

Check if the differences in access to bonus can be objectively justified irrespective of sex. Do the differences in earnings reflect real differences in productivity? Investigate how access to overtime, weekend and shift working is provided.

- **Performance pay is only available to senior posts/full timers/employees covered by the appraisal system.**

Check if the coverage of the scheme and the exclusions are objectively justified.

- **Women consistently receive lower performance ratings than men.**

Review the criteria for performance rating to identify direct and indirect sex discrimination.

3. Pay Benefits

A smaller percentage of women employees than men are covered by the organisation's pay benefits.

Check the eligibility requirements for pay benefits (such as sick pay, pensions, low interest loans, share options scheme or other allowances) to ensure there is no indirect discrimination in particular in the criteria.

4. Part-time workers

Part-time workers receive lower hourly pay rates or they are excluded from bonuses and benefits.

Part-time workers are often excluded from pension and sick pay schemes. They may be required to work many more years than full time workers before they are eligible for training or service payments. Unless a clear and objective explanation is provided, the exclusion of part-time workers is likely to amount to sex discrimination. Check whether part-time workers are treated differently and, if so, why.

5. Job Classification, Grading, Evaluation and Skills/Competency-based systems

Job evaluation, grading classification and skills/competency-based systems are mechanisms which are used in some Member States to determine the hierarchy or hierarchies of jobs in an organisation or group of undertakings as the basis for pay systems. The following comments are to assist those organisations which use such schemes to analyse them to check they do not inadvertently discriminate against typically female workers in particular. Pay systems based on such schemes may have been in place in organisations for many years, without any review and many incorporate features which contribute to the undervaluing of work undertaken by women.

a. Nature of the organisation

What is the objective of the organisation? What is its nature? What services and/or products does it provide?

Asking these questions will contribute to a determination of whether the design of the scheme reflects reasonably the priorities of the organisation. It may transpire that by valuing certain elements in work the priority of the organisation is not reflected. For example, a scheme in a hospital which fails to value at all the care of patients but over-emphasises financial skills and responsibilities may require review.

b. Type of Scheme

Is the scheme capable of measuring the different elements in diverse work or does it rank jobs without such assessments?

Are different jobs covered by different schemes, for example one for manual and one for clerical workers, or are all jobs covered by the same scheme? In the latter case, is the system capable of evaluating evenly the work performed by different groups of employees?

Is it appropriate to the jobs covered?

Because of gender segregation in the labour market and the argument that traditional job evaluation and classification schemes are not capable of classifying inherently different work on a uniform scheme, often there has been no common yardstick for measuring typically male and female jobs. Schemes which do not cover certain types of predominantly female work obviously cannot determine whether such work may be equally demanding, albeit in different ways, as male work. The concept of equal pay for work of equal value requires the measurement of diverse work by reference to a common standard. Whilst this approach is not common, some organisations are attempting to integrate manual and clerical jobs into unified systems. If such a scheme is put in place it assists in the removal of sex bias normally associated with gender-segregated pay structures.

c. Job titles

Are different job titles given where similar work is undertaken?

Different job titles may be given to the same or similar jobs distinguished only by the gender of the job holder eg: Storekeeper, Stores Assistant. This may have implications for status and pay levels.

d. Job Content

Do the job descriptions describe all the work of the jobs and of typically female jobs in particular?

Do the job descriptions accurately describe the content of the tasks performed? In particular, is traditionally female work adequately captured? Is attention drawn to aspects of women's work which have previously gone unrecognised?

Is the work content of jobs consistently described?

Job descriptions should be constant in format irrespective of the sex of the person carrying out the occupation. There are often inconsistencies in the way male and female work is described.

e. Factors

A factor in a formal job evaluation scheme is an element of a job which is defined and measured, such as skill or mental effort. A factor may in turn be divided into sub-factors which go into greater detail under a particular heading. Jobs to be evaluated are assessed against the factors and sub-factors chosen.

Have any significant job features been omitted?

Some factors may favour one sex only. It should be ensured that factors capture both male and female work.

Factors which are more likely to be present in female jobs may not be identified at all by a scheme and therefore not valued at all, for example caring skills and responsibilities, human relations skills, organisational skills/responsibilities, manual dexterity and/or co-ordination, etc. Categorising jobs by reference to light or heavy work or weighting different factors without taking account of other elements in female as opposed to male work impacts adversely on women.

Does the job classification based on factors, or the weighting of these factors, respond to objective criteria?

Classifying work by reference to formal qualifications alone can in some instances impact adversely on women. There are skills which cannot be learned by experience alone but which benefit from formal education and qualifications. However, the qualifications or skills which many women have gained are frequently not identified as qualities to be counted positively when classifying work in the labour market. For example, nurturing, cleaning and caring skills may be assumed in certain types of work and not rewarded in pay systems. A kindergarten nurse's training may be school-based and therefore less well rewarded than typically male jobs which may be apprenticeship based.

Formal qualifications are generally rewarded but those learnt through a different process are frequently ignored. For example, experience learned in the home or by example from another worker may not be credited in the payment system. Thus the basis on which training and qualifications are rewarded may need to be reviewed.

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Further to this assessment, the determination of the pay rates to be attached to the final job evaluation should reflect the relativities of *actual* demands of the work not "the rate for the job" which may be influenced by traditional sex-based assumptions of worth. Therefore women should attract the pay levels enjoyed by male occupations with which their work has been found to be equivalent.

PART III

FOLLOW-UP ACTION TO TARGET EQUAL PAY

A. APPROACH

Once the pay-structure study is completed, follow-up action is needed to tackle every instance of sexual discrimination detected in the pay structure. The aim of this action should be the elimination of all discrimination by applying, as soon as possible, the principle of equal pay for work of equal value. The options chosen to tackle any discrimination ascertained will depend on many factors including the size and the structure of the business as well as the nature and extent of the discrimination.

The level of collective bargaining involved will also have a considerable impact on the measures for eliminating pay discrimination. When the pay structure under consideration is the result of a collective agreement concluded at a higher level, (eg sectoral or national) it is at that level that action needs to be taken in cases where sexual discrimination is detected. If the agreement covers a number of very different workplaces with different proportions of women and men on the pay-roll, other studies may be needed to determine whether the problem of pay discrimination applies to all, or most, of the workplaces concerned.

This follow-up action must be evaluated in order to establish how the matter of equal pay is progressing. Whenever pay structures are subsequently adjusted a study will be needed to ensure that sex-based discrimination does not reappear. Regular reviews of pay structures are then recommended - every three years for example - to verify that the principle of equal pay for work of equal value is being respected.

B. POINTS WHICH COULD FEATURE IN A FOLLOW-UP ACTION

The follow-up action to remedy the problems of discrimination found to exist in a given pay system could comprise:

- * a merging of those jobs which are gender-specific in terms of the workers who carry them out and application of the higher rate of pay which the men receive;

- * efforts to harmonise pay systems which create barriers between different types of job (eg: office jobs and production jobs);
- * a redefinition and re-evaluation of formal qualifications. For example, certain skills which women are likely to acquire in an informal manner could be taken into account and put on an equal footing with formal skills that are traditionally male (plumbing, stone and brickwork, etc)
- * a re-evaluation of the skills which traditionally are more women's than men's (eg: manual dexterity);
- * a reorganisation of work by broadening the employment categories to allow women to access typically masculine jobs where conditions are better;
- * the organisation of active training measures to allow access to jobs where the other sex predominates; for example the organisation of courses allowing women to take up apprenticeships for mechanical jobs, which until now have attracted mainly men;
- * an extension of the various advantages to include part-time workers.

C. EVALUATION OF THE FOLLOW-UP ACTION

To evaluate the implications of the proposed follow-up action and to avoid perpetuating sexual discrimination, the following questions need to be asked:

- * What is the effect, for each sex and the workforce as a whole, of the proposed follow-up action aimed at securing equal pay for work of equal value?
 - (1) how many women are better paid as a result?
 - (2) how many women see their pay blocked or remain at the same level of pay?
 - (3) how many women are worse paid as a result?
 - (4) how many men are better paid as a result?
 - (5) how many men see their pay blocked or remain at the same level of pay?
 - (6) how many men are less well paid as a result?
 - (7) what are the movements of men and women in any grading, classification, evaluation or competence system?
- * What levels of pay does the follow-up action propose?
- * Are groups of employees, such as the part-time workers, excluded from certain procedures and conditions of employment?
- * What proposals does the action plan make concerning bonuses, piece work and other pay systems based on results or output?
- * Will there be a period of transition for the application of equal pay? If so, how long? Is it reasonable?
- * What procedures are proposed with regard to the schedule for regular pay negotiations?

* What levels of pay and employment conditions are proposed for new staff?

It must be ensured in every case that the follow-up action brings about an improvement in pay and other work conditions and does not have the opposite effect.

CONCLUSION

The aim of the Code is to serve as a working tool for the greatest possible number of social actors who are likely to be in a position to further the principle of equal pay for women and men for work of equal value.

This initiative should therefore be seen as part of a dynamic follow-up exercise involving management and labour plus other parties concerned at all levels capable of ensuring both a wide dissemination and an effective use of the Code.

At European Union level and in the context of the Fourth Community Action Programme on equal opportunities for men and women (1996-2000), which was adopted by Council Decision 95/593/EEC³, the will to mobilise all those who are concerned with the economic and social questions of everyday life as well as those who work in the legal sphere to focus on this problem has already been clearly expressed.

In the light of the recommendations made by the European Parliament in its Report on the Memorandum on Equal Pay for Work of Equal Value (PE 213.161/final), adopted on 21 December 1995, the Commission in cooperation and/or jointly with the social partners and other appropriate authorities, will be able to develop further and/or support initiatives aimed at promoting such schemes as:

- campaigns to raise awareness and provide information on equal pay for work of equal value, targeting, in particular, employers, employees and/or their representatives, as well as the parties involved in collective bargaining;
- the training of experts who can study and propose practical solutions to resolve problems affecting equal pay;
- the greater involvement of women in the processes of collectively negotiated wage settlements;
- the identification, examination and exchange of best practice likely to enrich the Code by providing concrete examples of the type of measures that it proposes, as well as their practical implementation.

³OJ L 335, 30.12.1995 p.37