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Report

drawn up on behalf of the Committee on Social Affairs
and Employment

on the Commission proposal for a Council directive
(COM(83) 217 final - Doc. 1-384/83) on the implementation
of the principle of equal treatment for men and women
in occupational social security schemes

Rapporteur: Mr H. PETERS

PE 87.755/fin.
Or. De.



By letter of 27 May 1983, the President of the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Article 100 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

On 6 June 1983, the President of the European Parliament referred this proposal to the Committee on Social Affairs and Employment as the committee responsible and to the Committee of inquiry into the situation of women in Europe for an opinion.

At its meeting of 23 June 1983, the Committee on Social Affairs and Employment appointed Mr Peters rapporteur.

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The committee considered the Commission's proposal at its meetings of 2 November 1983 and 23/24 February 1984.

At the last meeting, the committee decided unanimously to recommend to Parliament that it approve the Commission's proposals with the following amendments.

The following took part in the vote: Mr Papaefstratiou, chairman, Mr Peters, first vice-chairman and rapporteur; Mr Abens (deputizing for Mrs Duport), Mr Albers (deputizing for Mr Boyes), Mr Beumer (deputizing for Mr Barbagli), Mr Eisma, Mr Estgen, Mrs Maij-Weggen, Mr van Minnen, Mr Ouzounidis (deputizing for Mr Dido), Mr Patterson, Mr Prag, Mr Radoux (deputizing for Ms Clwyd), Mrs Salisch and Mr Simpson.

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At its meeting of 23/24 February 1984, the committee then considered and unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Mr Papaefstratiou, chairman; Mr Peters, first vice-chairman and rapporteur; Mr Abens (deputizing for Mrs Duport), Mr Albers (deputizing for Mr Boyes), Mr Beumer (deputizing for Mr Barbagli), Mr Brok, Mr Ceravolo, Mr Chanterie, Mr Eisma, Mr Estgen, Mrs Maij-Weggen, Mr van Minnen, Mr Ouzounidis (deputizing for Mr Dido), Mr Patterson, Mr Prag, Mr Radoux (deputizing for Ms Clwyd), Mrs Salisch, Mr Simpson and Mr Vernimmen (deputizing for Mr Motchane).

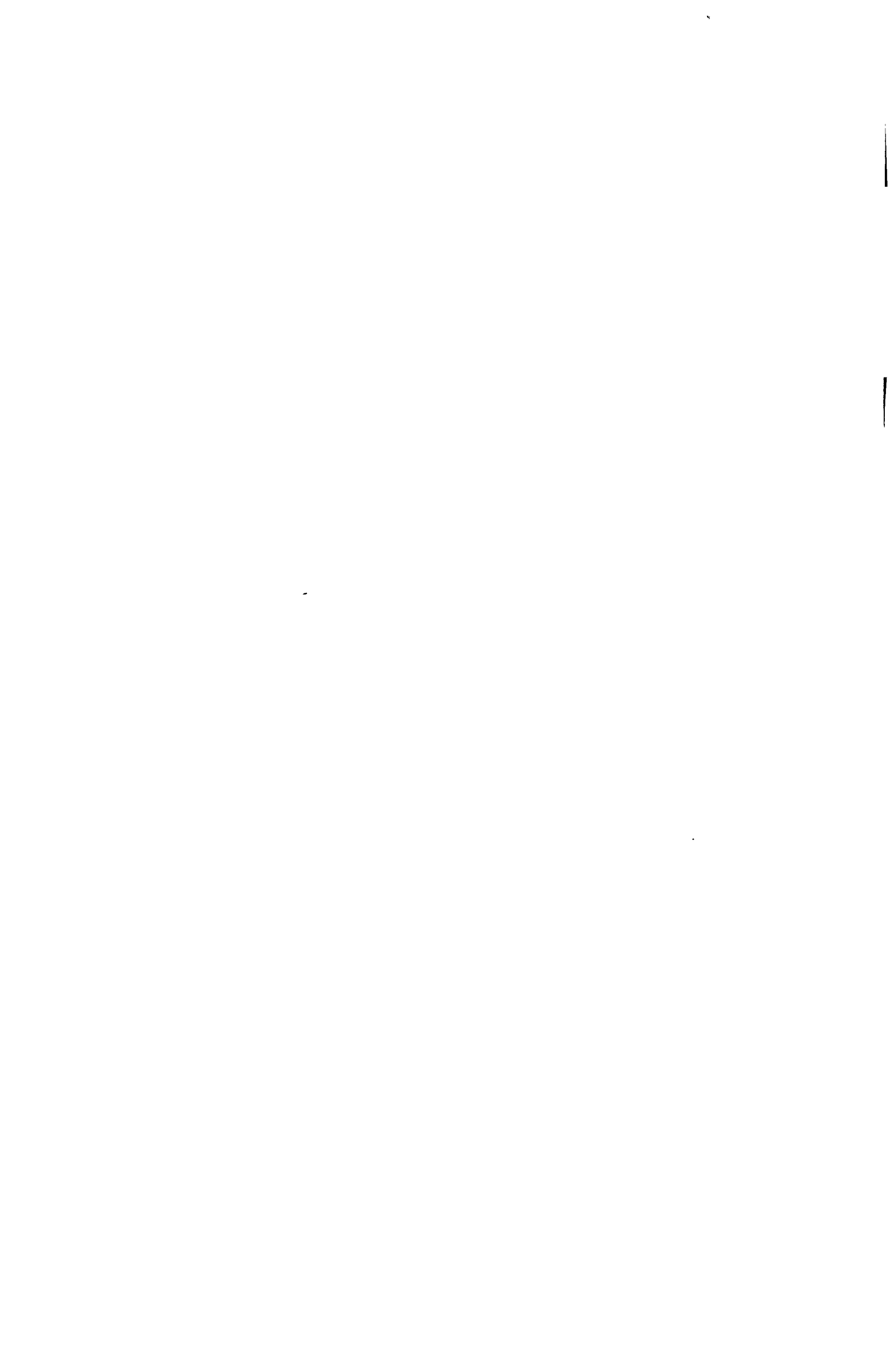
The opinion of the Committee on inquiry into the situation of women in Europe is attached.

The final version of the report was tabled on 28 February 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

- I. Commission proposal for a Council directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes (COM(83) 217 final)

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission of the
European Communities

Recitals

Recitals

Unchanged

**THE COUNCIL OF THE EUROPEAN
COMMUNITIES,**

**Having regard to the Treaty establishing the
European Economic Community, and in particular
Article 100 thereof,**

Having regard to the proposal from the Commission,

**Having regard to the opinion of the European
Parliament,**

**Having regard to the opinion of the Economic and
Social Committee,**

**Whereas Article 119 of the Treaty provides that each
Member State shall ensure the application of the
principle that men and women should receive equal
pay for equal work; whereas, for the purpose of the
said Article, pay means the ordinary basic or
minimum wage or salary and any other consideration,
whether in cash or in kind, which the worker
receives, directly or indirectly, in respect of his
employment from his employer;**

Amendments tabled by the Committee
on Social Affairs and Employment

Text proposed by the Commission of
the European Communities

Whereas, although Article 119 does indeed apply directly in cases where discrimination can be determined solely on the basis of the criteria of equal treatment and equal pay, there are also possible situations in which achievement of the principle of equal pay implies the adoption of additional measures which more clearly define its scope;

Whereas Article 1 (2) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (*) provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application; whereas the

Council adopted to this end 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 (1);

Whereas Article 3 (3) of Directive 79/7/EEC provides that, with a view to ensuring implementation of the principle of equal treatment in occupational schemes, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its applications;

Whereas the principle of equal treatment should be implemented in occupational social security schemes which provide protection against the risks specified in Article 3 (1) of Directive 79/7/EEC as well as those which provide, to employees, any other consideration in cash or in kind within the meaning of Article 119;

Whereas implementation of the principle of equal treatment does not prejudice the provisions relating to the protection of women on the ground of maternity,

HAS ADOPTED THIS DIRECTIVE:

(*) OJ No L 39, 14. 2. 1976, p. 40.

(1) OJ No L 6, 10. 1. 1979, p. 24.

Amendments tabled by the Committee
on Social Affairs and Employment

Article 1

unchanged

Article 2

unchanged

Article 3

Amendment No. 2

Add the following sentence:

The Directive shall also apply to
part-time workers, temporary workers
and those working at home.

Text proposed by the Commission of
the European Communities

Article 1

The object of this Directive is to implement, in occupational social security schemes, the principle of equal treatment for men and women, hereinafter referred to as 'the principle of equal treatment'.

Article 2

1. 'Occupational schemes' means schemes whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings or an occupational sector or group of such sectors, with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether affiliation to such schemes is compulsory or optional.

2. This Directive shall cover all occupational schemes, whether or not declared compulsory by administrative measures.

Article 3

This Directive shall apply to members of the working population, including self-employed persons, whose activity is interrupted by illness, accident or involuntary unemployment, to persons seeking employment and to retired and disabled workers.

Amendments tabled by the Committee
on Social Affairs and Employment

Article 4

• Amendment No. 4

This Directive shall apply to:

(a) occupational schemes which provide protection against the following risks:

- sickness,
- invalidity,
- old age,
- industrial accidents and occupational diseases,
- unemployment,

- death of a spouse

(b) unchanged

Article 5

unchanged

Text proposed by the Commission of
the European Communities

Article 4

This Directive shall apply to:

(a) occupational schemes which provide protection against the following risks:

- sickness,
- invalidity,
- old age,
- industrial accidents and occupational diseases,
- unemployment;

(b) occupational schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits, family allowances and benefits in respect of various periods of leave for family reasons, if such benefits are accorded to employed persons and thus constitute a consideration paid by the employer to the worker by reason of the latter's employment.

Article 5

1. The principle of equal treatment shall imply that there be no discrimination whatsoever on the basis of sex, either directly or indirectly by reference in particular to marital or family status, especially as regards:

- the scope of the schemes and the conditions of access thereto,
- the obligation to contribute and the calculation of contributions,
- the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

2. The principle of equal treatment shall not prejudice the provisions relating to the protection of women on the ground of maternity.

Article 6

unchanged

Article 6

1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, in particular by reference to marital or family status, intended *inter alia* to:

- (a) specify those persons who may participate in an occupational scheme;
- (b) fix the compulsory or optional nature of participation in an occupational scheme;
- (c) lay down different rules as regards the age of entry into the scheme or the minimum period of employment or affiliation to the scheme required to obtain the benefits thereof;
- (d) lay down different rules for the reimbursement of contributions where a worker leaves a scheme without having fulfilled the conditions guaranteeing him a deferred right to long-term benefits;
- (e) set different conditions for the grant of benefits or restrict such benefits to workers of one sex only;
- (f) fix different retirement ages;
- (g) suspend the retention or acquisition of rights during periods of maternity leave or family leave granted by law or collective agreement;
- (h) provide for benefits whose level or amount differ and, in particular, set the level of benefits by taking into account different factors of calculation, actuarial or otherwise, with regard to the phenomena of ill health, mortality or life expectancy;
- (i) set contributions at different rates, in particular by taking into account the factors of calculation mentioned under (h);
- (j) lay down different standards or standards applicable only to workers of a given sex as regards the guarantee or retention of entitlement to deferred benefits where a worker leaves a scheme or as regards the transfer of such entitlement to another scheme.

Amendments tabled by the Committee
on Social Affairs and Employment

Article 7

unchanged

Article 8

Member States shall take all necessary measures to ensure that provisions of occupational schemes contrary to the principle of equal treatment are revised before 1 January 1987.

Article 9

Amendment No. 9

1. unchanged

(a) unchanged

(b) delete

2. unchanged

3. unchanged

Text proposed by the Commission of
the European Communities

2. Where the grant of certain subsidiary benefits is left to the discretionary power of a scheme's management bodies, the said bodies must take account of the principle of equal treatment.

Article 7

Member States shall take all necessary measures to ensure that:

- (a) provisions contrary to the principle of equal treatment in collective agreements, staff rules of undertakings or any other arrangements relating to occupational schemes are null and void, or may be declared null and void or amended;
- (b) schemes containing such provisions may not be approved or declared compulsory by administrative measures.

Article 8

Member States shall take all necessary measures to ensure that provisions of occupational schemes contrary to the principle of equal treatment are revised before 1 January 1986.

Article 9

1. This Directive shall be without prejudice to the right of Member States to defer compulsory application of the principle of equal treatment with regard to:

- (a) determination of pensionable age for the purposes of granting old-age or retirement pensions;
- (b) pension awarded to the surviving spouse.

2. The right referred to above may be exercised provided that the principle of equal treatment has not yet been implemented in the corresponding provisions of statutory social security schemes.

3. Compulsory implementation of the principle of equal treatment shall not under any circumstances be deferred beyond the date on which such equality is achieved in statutory schemes.

Amendments tabled by the Committee
on Social Affairs and Employment

Article 10

unchanged

Article 11

unchanged

Article 12

unchanged

Article 13

1. Member States shall bring into force such laws, regulations and administrative provisions as are necessary in order to comply with this Directive before 1 January 1986. They shall immediately inform the Commission thereof.

Text proposed by the Commission of
the European Communities

Article 10

1. This Directive shall be without prejudice to the methods of calculating the benefits referred to in Article 6 (1) (h), in so far as they are calculated on the basis of different actuarial data for each sex, whether they are already settled and being paid or to be settled and paid in due course and which relate to a period of affiliation to an occupational scheme prior to the revision of that scheme as provided for in Article 8, from continuing to be governed by the provisions of the occupational scheme in force during the period of affiliation.

2. This Directive shall also be without prejudice to the establishing of appropriate methods, such as the payment of retroactive contribution supplements, which guarantee equal benefits for the earlier period of affiliation.

Article 11

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves injured by a failure to apply the principle of equal treatment to pursue their claims before the courts, possibly after bringing the matters before other competent authorities.

Article 12

Member States shall take all measures necessary to protect workers against dismissal where this constitutes a response on the part of the employer to a complaint made within an undertaking or to the institution of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 13

1. Member States shall bring into force such laws, regulations and administrative provisions as are necessary in order to comply with this Directive before 1 January 1985. They shall immediately inform the Commission thereof.

Amendments tabled by the Committee
on Social Affairs and Employment

2. unchanged

Article 14

unchanged

Text proposed by the Commission of
the European Communities

2. Member States shall communicate to the Commission, before 1 January 1987, all information necessary to enable the Commission to draw up a report on the application of this Directive for submission to the Council.

Article 14

This Directive is addressed to the Member States.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(83) 217 final)¹,
- having been consulted by the Council (Doc. 1-384/83),
- having regard to the directives on equal treatment²,
- having regard to the European Parliament's resolution on the position of women in the Community³,

¹ OJ No. C 134, 21.5.1983, p.7

² 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 (Directive 75/177) - OJ No. L 45, 19.2.1975, p. 19.

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

Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Directive 79/7) - OJ No. L 6, 10.1.1979, p. 24

³ OJ No. C 50, 9.3.1981, p. 21

- having regard to the judgments of the European Court of Justice and the Federal Constitutional Court and also to the United Kingdom Social Security Pensions Act 1975 ¹,
 - having regard to the report of the Committee on Social Affairs and Employment and the opinion of the Committee of inquiry into the situation of Women in Europe (Doc. 1-1502/83),
 - having regard to the result of the vote on the Commission's proposal,
- A. whereas the Commission's proposal is designed to fill a loophole remaining in the Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security;
 - B. whereas the judgment of the European Court of Justice against Lloyds Bank Limited defined rights under occupational insurance schemes as constituting 'pay' within the meaning of Article 119 of the Treaty of Rome, which means that it may be necessary for occupational schemes to meet requirements which are not stipulated by Directive 79/7/EEC concerning statutory schemes;
 - C. whereas the removal of differences between statutory and occupational social security schemes can only serve legal clarity and legal certainty insofar as employers and employees are concerned;
 - D. whereas the sole purpose of the proposed directive is to eliminate the many instances of discrimination on grounds of sex in occupational social security schemes which are not governed by law,

¹ Judgment of the European Court of Justice of 11 March 1981, 'Equal pay' (Case 69/80)

Susan Jane WORRINGHAM and Margaret HUMPHREYS v LLOYDS BANK Limited Social Security Pensions Act 1975 (British Parliament, August 1975)

1. Welcomes the basic content of the Commission's proposal and in particular its presentation in the form of a directive, which is the only means of bringing genuine influence to bear on national schemes;
2. Observes that the aim of the directive is solely to achieve equality in respect of individual claims, a principle embodied in all statutory schemes and many occupational schemes, and does not relate to a statistical group;
3. Considers it unacceptable therefore, in calculating benefits to discriminate on the basis of actuarial data relating to sex alone while ignoring other risk factors (smoker/non-smoker, manual/office worker, etc.);
4. Takes the view that it can scarcely be the purpose of this directive, which is concerned with the legal implementation of the basic Community principle of non-discrimination, to provide a detailed estimate of the costs involved since, given the multiplicity of existing occupational schemes (more than 80,000 in the United Kingdom alone)¹, this would exceed the scope of the proposal;
5. Observes that the proposed deadline for implementing the directive in national law, 1 January 1985, is too brief;
6. Accepts the provisional deferral in Article 9 of the determination of pensionable age for the purposes of granting old age or retirement pensions;

Takes the view, however, that survivors' pensions (i.e. pensions for widows and widowers) should be incorporated as soon as possible in the appropriate directives on the equal treatment of men and women (particularly in Directive No. 79/7);

7. Observes in addition that, in its decision on equal treatment in this area the German Federal Constitutional Court set the deadline at 31 December 1984 and proposes that the deadlines set at European level for the transitional phases be carefully examined;

¹ See document from the 'Groupe consultatif des associations d'actuares des pays des Communautés européennes'

8. Calls for the burden of proof to be reversed (under Articles 11 and 12) since, particularly in view of the general economic situation, women lack the courage to press their claims and do not have sufficient confidence that they will be protected from dismissal;
9. Otherwise approves the Commission's proposal;
10. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

EXPLANATORY STATEMENTIntroduction

The Commission's proposal for a directive is accepted in its present form. It is a necessary legal instrument to complement the third directive on equal treatment for men and women within the framework of statutory social security schemes. It should be seen in the context of previous directives on equal treatment for men and women, in particular the Council Directive on the application of the principle of equal pay for men and women of 10 February 1975¹ and the Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security².

The proposal for a directive covers occupational social security schemes, which were excluded from both the abovementioned directives, since the subject matter overlaps between the two, relating on the one hand to the question of equal pay under Article 119 of the EEC Treaty, and hence the first directive on the equal treatment of men and women, and on the other to the question of social security, and hence the third directive.

The Commission of the European Communities submitted this proposal for a directive with the intention of filling the existing gap in legislation on social security schemes, since it leads to considerable uncertainty concerning the legal position of for the employees concerned in the European Community. There can and must be no difference between statutory and occupational social security schemes and to this extent the Commission's proposal fills an essential need and is to be welcomed. The multiplicity of different occupational social security schemes, which are not covered by legislation to date in the Member States of the European Community, should be harmonized at least in respect of equal treatment for men and women in order to avoid the serious cases of discrimination referred to by the Commission.

¹ OJ No. L 45, 19.2.1975, pp. 19-20

² OJ No. L 6, 10.1.1979, pp 24-25

Definition: Occupational social security schemes

Occupational schemes fall between statutory social security schemes and purely private insurance contracts. Affiliation to occupational schemes derives from the contract of employment or from the exercise of an occupational activity. Unlike private insurance contracts, however, such schemes are not defined by free negotiation on an individual basis. They may be based on collective agreements or set up or planned unilaterally by the employer for the benefit of his employees or certain categories thereof. Alternatively they may be special schemes set up for the self-employed.

Scope of the proposal for a directive

The proposal for a directive applies to all workers entitled to occupational social security benefits on the basis of either collective agreements or company arrangements. The directive also applies to schemes set up by representatives of the self-employed (craftsmen, doctors, lawyers, etc.), which cannot be assimilated with statutory social security schemes. This proposal is designed to exclude all discrimination on grounds of sex in respect of the abovementioned categories of persons and social security schemes.

Legal basis

(a) Relevant provisions of Community Law

In its proposal for a directive the Commission refers to Article 119 of the Treaty establishing the European Economic Community, which lays down the principle of equal pay for men and women. The second paragraph of this article specifies that, for the purpose of this article, 'pay' means not only the basic wage or salary but also 'any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer'. Hence, by definition, occupational social security benefits for employees fall within the terms of the second paragraph of Article 119, and the proposal for a directive may accordingly be regarded as a provision implementing Article 119.

This argument is supported by a judgment of the European Court of Justice of 11 March 1981¹. In this judgment the Court takes the view that 'a contribution to a retirement benefit scheme which is paid by an employer in the of name employees by means of an addition to the gross salary and which therefore helps to determine the amount of that salary constitutes "pay" within the meaning of the second paragraph of Article 119 of the EEC Treaty.' The Court also ruled that 'Article 119 of the Treaty may be relied upon before the national courts and these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular in the case where, because of the requirement imposed only on men or only on women to contribute to a retirement benefit scheme, the contributions in question are paid by the employer in the name of the employee and deducted from the gross salary whose amount they determine.'

(b) Legislation in the Member States

To date the United Kingdom is the only Community Member State which has passed legislation on discrimination in respect of affiliation to occupational social security schemes. The 1975 Act, which provides for equal access to social security schemes, imposes a number of conditions on employers². For example

- in opting for an alternative occupational scheme employers may discriminate between their employees on the grounds of their occupation alone (that is to say that discrimination on grounds of age or sex for example, is forbidden);
- in respect of repayments of contributions (if the employee leaves the undertaking after less than 5 years) a distinction may be made only on the grounds of the length of employment with the undertaking,
- finally, the employer must stipulate the same conditions for men and women concerning affiliation to the scheme (equal access).

¹ Judgment of the European Court of Justice of 11 March 1981 on 'Equal pay' (Case 69/80), Susan Jane WORRINGHAM and Margaret HUMPHREYS v. LLOYDS BANK Limited

² Social Security Pensions Act 1975 (British Parliament, August 1975)

This example could be taken as a useful model for any legislation on the general application of the principle of equal treatment in respect of occupational social security schemes.

On 12 March 1975 the German Federal Constitutional Court pronounced a decision¹ calling on the legislature to introduce equal treatment for men and women within the framework of statutory social security schemes by the end of the next parliamentary term (1983).

Existing pension schemes for employers and employees offer preferential terms to gainfully employed married women who in addition to their own pension, receive a widow's pension, while widowers receive a widower's pension only in exceptional cases (if the married woman had supported the family before her death).

In a previous decision of 24 July 1963² the Federal Constitutional Court did not consider that it was necessary to change the law in respect of the different pension arrangements applying to married men and women. However, given the pronounced increase in the number of married women in employment, the Federal Constitutional Court now takes the view that a social development has taken place, necessitating a change in basic legislation.

An increasing number of women are employed, thereby contributing to the income of the family or even becoming the principal breadwinner. By its decision, which called on the legislature to remove existing inequalities in respect of pension schemes, the objective of the Federal Constitutional Court was to take account of this social development and the changed conceptions concerning the division of domestic and professional activities between men and women.

The decision of the Federal Constitutional Court of 1975 is therefore an example of the different position occupied by women in society today leading to a change in the law. It is necessary for occupational social security schemes to adapt to the new legislation, which recognizes the role of both women and men as breadwinners, entitling them to equal occupational social security benefits.

1 Decisions of the Federal Constitutional Court, Vol. 39, p. 169 ff.

2 Decisions of the Federal Constitutional Court, Vol. 17, p. 1

Forms of discrimination

1. Indirect forms of discrimination

Women receive social benefits less often than men for two main reasons:

(a) Undertakings employing mainly women often do not operate an occupational social security scheme

This is not a case of discrimination as such between men and women employed by an undertaking. It is not possible to remedy this disadvantage since occupational schemes are offered by employers on a discretionary basis.

(b) Part-time workers are excluded from many occupational schemes

Since most part-time workers are women, they are the most affected. However, this is not a form of direct discrimination against women. The problem can be solved only in the more general context of providing social security benefits for part-time workers. The directive on part-time work¹, which is relevant to this question, has not yet been adopted by the Council.

2. Direct forms of discrimination

(a) Conditions of access

- A number of occupational social security schemes, in particular pension schemes, systematically exclude women. In others only married women are excluded.
- In certain schemes it is possible for women to join on a voluntary basis while for men membership is compulsory.
- In a number of schemes the conditions concerning age or length of employment with the undertaking are stricter for women.

¹ Proposal for a Council directive on voluntary part-time work:
OJ No. C 62, 12.3.1982, p. 7 ff.
Amended proposal: OJ No. C 18, 22.1.1983, p.5 ff.