

# **SOCIAL EUROPE**

**New technology and social  
change —  
Ten years of Community policy  
on equal opportunities  
for men and women**

**SUPPLEMENT 2/86**



**COMMISSION OF THE EUROPEAN COMMUNITIES**

**DIRECTORATE GENERAL FOR EMPLOYMENT,  
SOCIAL AFFAIRS AND EDUCATION**





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TEN YEARS OF COMMUNITY POLICY ON  
EQUAL OPPORTUNITIES FOR MEN  
AND WOMEN



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FOREWORD

Equal treatment is the subject of several legal instruments adopted as early as 1975 by the Council, at the proposal of the Commission. Three Directives on equal pay, equal treatment in working conditions and equal treatment in social security matters make up the Community triptych on equal treatment. It can be said without fear of contradiction that, where equal treatment is concerned, there is no more complete model than that created by the Community.

The Commission, as guardian of the Treaty, has on several occasions had to safeguard the rules and objectives of Community law by having recourse to legal action through Article 169 of the Treaty establishing the European Economic Community.

It continues and will continue to ensure that the Directives are effectively applied, especially as the present economic situation could give rise to discrimination against women. The Council indeed stated in its Resolution of 12 July 1982, which accompanied the adoption of the action programme for women 1982-1985, that the economic situation should not be a reason for discrimination.

In June 1984, the Council adopted a Resolution on action to combat unemployment amongst women and in December 1984, it adopted a Recommendation on the promotion of positive action for women.

It is worth noting that the Commission was criticized by the groups concerned, by the European Parliament and the Economic and Social Committee, for having failed, in regard to certain subjects and particularly in respect of positive action, to propose binding instruments which alone ensure that the right of men and women to equal treatment is fully respected (this right has frequently been upheld by the Court of Justice).

It is now for the Member States to show that the flexible, adaptable approach which resulted in the two Decisions can produce tangible results and real progress. Commitments have been made, and a series of actions and measures planned: they now have to be implemented.

The Commission will actively play its part by providing the encouragement, exchanges of experience and follow-up provided for in the Decisions. It plans to draw up a guide to good practices, based on experiments conducted in Member and non-Member States, to help promoters of positive measures, in particular at the workplace.

The Commission does not intend to rest on its laurels in this area. In the last three years, we have presented the Council with three proposals for directives, all of them fulfilling a real need among our citizens, and among women in particular. The Council is currently discussing the proposals.

The earliest proposal (April 1983) concerns equal treatment in occupational social security schemes and is expressly provided for in the preceding Directive of 1978 on equal treatment in statutory social security schemes, which it supplements.

The second proposal for a directive on parental leave and leave for family reasons is aimed at harmonizing existing measures in this area. Eight Community countries already have provisions on parental leave which in most cases go further than the minimum entitlement laid down by the Directive.

The third proposal for a directive concerns the application of the principle of equal treatment as between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women. It is intended to provide spouses who work and have no occupational status with certain rights and to ensure that self-employed men and women are treated equally.

It is aimed at filling a large legislative gap which is detrimental to spouses participating in the activities of self-employed workers. In addition, it comprises a large body of measures aimed at helping small and medium-sized enterprises to develop, since not only are they the essential economic and social backbone of social equilibrium and production, they are also the key to fuller employment in the context of our present economy.

Although technically speaking this proposal is complex, it is nonetheless a directive which sets out the principal aims to be achieved and which allows each Member State to do so in the manner it considers most appropriate. Any amendments to laws or regulations that are necessary can be examined at national level once the directive has been adopted.

The Council of Ministers has started discussions on the three draft directives. Although there are still some major problems, both technical and political, the Commission is convinced that they can be solved if the political will is there. It will for its part maintain a very open attitude to prevent the discussions from reaching an impasse and to seek compromise solutions without, however, yielding any fundamental rights.

Apart from these legal standards, other actions are in progress and will be examined shortly.

As the Commission is aware of the complexity of this problem and its many ramifications, it did not wish actually to legislate in this area. It believed further discussion was necessary in order to identify guidelines. This is the aim of the Memorandum it presented on this subject on December 1984.

A second initiative concerns the question of education. The stereotyped attitudes learnt in childhood and the choice of occupations they lead to are unanimously acknowledged to be one of the causes of the segregation of the female labour market. It was with this in mind that, following the Conference organized jointly by the Irish Presidency and the Commission in 1984, an action programme on equal opportunities in education was discussed by the appropriate Council Committee - the Education Committee, which resulted in the adoption of a Resolution by that Committee on 3 June 1985. The Commission had attached particular importance to a successful outcome for this dossier, as it filled a need which lay at the very roots of the problem of unequal opportunities for men and women.

The Commission is also continuing, within the limits of its budget, to support Member State action to promote equal opportunities, in particular as regards positive action and job creation measures, and local initiatives and awareness campaigns aimed at changing attitudes, which are a major contributory factor of inequality in practice. As regards vocational training for women, especially in fields where they are under-represented, the European Social Fund contributes extensively to operations aimed at women.

In July 1982, the Council approved the Community action programme on equal treatment. In July 1985, the Commission took part in the Conference in Nairobi marking the end of the UN Decade for Women; at the end of November 1985, the Commission presented the Council with its Report on the implementation of the action programme 1982-1985.

But the Commission wishes to do more than simply report on the situation, which is why, on 18 December 1985, it adopted a new, medium-term programme for the period 1986-1990, which it has forwarded to the Council. The programme proposes to consolidate the achievements

of the 1982-1985 action programme, promote equal opportunities in practice and step up the campaign to make the public more fully aware of the whole question of equality for men and women, a matter which concerns not only women but society as a whole.

We must aim for real results, bearing in mind that Community achievements in the field of equal opportunities are one of the positive aspects of the People's Europe which we have been asked to create by our Heads of State and of Government.

The following pages in this special issue on equal treatment for men and women are intended to give a broad and varied public an idea of the work carried out in this field and of the prospects for the future. There can be no People's Europe without the full and effective application of the fundamental principle of equal treatment.

Jean DEGIMBE



TEN YEARS ON -  
COMMUNITY POLICY ON EQUAL TREATMENT

INTRODUCTION

1985 marked the tenth birthday of the first piece of Community legislation to touch on social policy issues: for it was on 10 February 1975 to be precise, that the Council of Ministers adopted a Directive on "the application of the principle of equal pay for men and women".

A decade later, the Community is in the throes of putting in place a comprehensive and highly developed policy for promoting equal opportunities for women in working life.

This broad canvas of the situation will, I hope, provide the elements of an answer to those remaining (male or female) sceptics who still wonder why such an issue should be the focus of one of the Community's most far-reaching policies in the social sphere.

I. THE CORPUS OF COMMUNITY LAW: ARTICLE 119 OF THE TREATY OF ROME, THE THREE 'EQUAL TREATMENT' DIRECTIVES AND CASE LAW (1)

1. The Treaties establishing the European Communities - and particularly the Treaty of Rome - apply indifferently to both men and women. It is particularly significant that the preamble to the Treaty of Rome affirms as the essential objective of the Member States "the constant improvement of the living and working conditions of their peoples".

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(1) This part will offer a broad overview only. The various legal instruments and the case law will be considered in depth in separate articles. See: G. Zorbas: "Review of legal issues raised by the implementation of the directive concerning equal treatment for men and women" Social Europe, September 1985, n° 3 pp 54-61; J. Boudard "Equal pay" and A. Laurent "Equality in Social Security", infra,



The problem of equal treatment for men and women is expressly dealt with in only one single article of that Treaty: the celebrated article 119, which provides for the application of the principle that men and women should receive equal pay for equal work.

This article, which falls within the "Social Provisions" section of the Treaty of Rome and which, interestingly enough, is the only article of the Chapter to impose a positive duty, was born less from social aspirations than economic considerations. Quite simply, at the time of signature, one of the Member States (France) considered itself so far in advance of its partners in the equal pay stakes that it feared the real possibility of a distortion of competition.

The "Founding Fathers" of the Community would doubtless have found it hard to credit at the time what mighty oaks would eventually grow from the social acorns sowed in such conditions.

2. Twenty years on (1), the Community is equipped with three legal instruments in the field of equal treatment for men and women.

2.1. The root of all such instruments can be traced back to the Social Action Programme adopted by the Council of Ministers on 21 January 1974, calling in particular "to undertake action for the purpose of achieving equality between men and women as regards access to employment and vocational training and advancement and as regards working conditions including pay ... to ensure that the family responsibilities of all concerned may be reconciled with their job aspirations".

2.2. The first Directive adopted in 1975 (2) dealing in detail with equal pay for men and women, filled out, defined and amplified the provisions of article 119 of the Treaty.

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(1) The "3rd Directive" on equal treatment was adopted in 1978

(2) Directive 75/117/EEC of 10 February 1975 concerning the approximation of the laws of Member States relating to the application of the principle of equal pay for men and women workers

Amongst other things, it introduced the concept of work of equal value, the duty to apply the same criteria to men and women in job classification systems, made the right enforceable by process of law, provided for the eradication of discrimination resulting from laws or collective agreements, and offered protection to employees against dismissal arising out of attempts to enforce compliance with the principle of equal pay.

2.3. The second Directive was adopted in 1976 (1), and enshrines the principle of equal treatment in access to employment, vocational training and promotion, and working conditions.

This measure stemmed directly from the proposal annexed by the Commission to its 1975 Memorandum on the position of workers. This noted that women - and married women in particular - were coming onto the labour market in increasing numbers, but were essentially being confined to a limited range of generally low-skilled jobs offering few prospects for advancement. This discrimination stemmed from historical, cultural and social factors, reinforced by the educational system, and inappropriate vocational guidance and training.

What was needed to spur on progress towards equal treatment, therefore, was legislative action across a broad front, the scope and impact of which would go far beyond the 1975 Directive to attack the very root of sex discrimination.

The chief purposes of this Directive are:

- to define the principle of equal treatment as being "no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status";
- to define the field of application of that principle;
- to delimit the general exceptions: "occupational activities...for

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(1) Directive of 9.2.1976 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 (76/207/EEC) O.J. L 39/40, 14.1.1976

which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor";

- to provide scope for 'positive action' (1); the Directive "shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities";
- to assure the eventual eradication of discriminatory provisions contained in laws, collective agreements, employment contracts or occupational rules;
- following Directive 75/117, to enable individuals to enforce their rights by due process of law and be protected against dismissal for seeking to do so.

One aspect of the 1976 Directive which should not be overlooked is the provision in article 1 for applying the principle of equal treatment to social security systems. In this context, paragraph 2 provides more specifically 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".

- 2.4. That was accomplished - in part, at least - in the Directive adopted by the Council in December 1978 (Directive 79/7/EEC) concerning the progressive implementation of the principle of equal treatment for men and women in matters of social security.

This particular Directive has only recently come into force (2), its implementation having been deferred for the unusually long period of 6 years.

The effects of the Directive extend only to statutory social security schemes, however. As far as occupational schemes are concerned, article 3 (3) of the 1979 Directive provides that "the Council, acting

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(1) c.f. infra, point II

(2) 21 December 1984

on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application". (1)

The Directive applies to members of the working population, meaning workers, whether employees or self-employed, whose activity is interrupted by illness, accident or involuntary unemployment, to persons seeking employment and to retired and disabled workers.

As regards the categories of individual covered by its provisions, the Directive casts a very wide net indeed.

The same cannot be said, however, for its scope as to subject matter, where it extends only to schemes providing protection against the risks of illness, invalidity, old age, industrial accidents and occupational diseases, unemployment and provisions for social benefits in the same areas.

It applies neither to survivors' benefits nor family allowances (save for family benefits granted as increases of benefits covered).

It allows Member States to create special cases, which are exempt from the principle of equal treatment: these include such matters as the fixing of pensionable age to qualify for the award of old-age and retirement pensions, the grant of social benefits relating to children's education, or the right to old-age or invalidity benefits derived from the spouse and increases in benefits in respect of dependant spouses; but again, only in respect of long-term benefits (invalidity, old-age, industrial accidents). In contrast, no exclusion is permitted for other forms of benefit-related supplement, (child-related increases in all forms of social security benefit, together with increases of sickness and unemployment benefit for spouses).

The Directive expressly requires Member States to review their exceptions on a regular basis to determine whether continued exemption is justifiable in the light of social developments.

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(1) The Commission submitted a Proposal for a Directive to this effect to the Council in March 1983

Finally - some might say, obviously - the Directive was not to prejudice provisions relating to the protection of women on the ground of maternity.

Following Directive 76/207, it defined the principle of equal treatment as implying that there should be no discrimination whatsoever on the basis of sex, either directly or indirectly by reference in particular to marital or family status.

And, again in common with its egalitarian predecessors, it made the rights conferred enforceable at law.

2.5. The road to giving these three Directives their intended effect has been strewn with obstacles, and a good many cases have come before national courts and the Court of Justice - some brought by the Commission itself. Detailed examination not only of the national legislation putting the Directive into effect, but also of decided cases and the terms of collective agreements, point up the difficulty of reaching general agreement on what constitutes discrimination - particularly indirect discrimination - and to what extent Community law applies to allegedly discriminatory situations. It also bears eloquent testimony to the extent to which subjective feelings dictate perceptions of discrimination (1).

2.6. The Court of Justice of the Communities has been called on to settle a variety of disputes involving the principle of equal treatment, sometimes by way of preliminary rulings under article 177 of the Treaty, but also in actions brought by the Commission. It has repeatedly stressed (2) that "the principle of equal treatment forms part of those fundamental rights, the observance of which it is its duty to ensure". In a number of cases, however, - particularly in the area of equal pay - it has actually adopted a much narrower stance.

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(1) c.f. *infra*

(2) c.f.: the Defrenne Ruling of 15 June 1978, and the ruling in *Razzouk and Beydoun*, 25 March 1984

An analysis of the (fairly meagre) case law of the various Member States turns up a number of sometimes disturbing problems which courts have encountered in construing equality provisions.

3. An analysis of the corpus of Community law on this topic points up not only its extreme complexity, but also the limited effectiveness of attempting to legislate away a social problem which is so ingrained a part of our societal structures and traditions.

Strict legal equality does not necessarily carry over into daily life. That is why an overall, multi-fronted policy is so vitally important.

## II. LAW AND LIFE: FROM EQUAL TREATMENT TO EQUAL OPPORTUNITIES: THE COMMUNITY ACTION PROGRAMME, 1982-1985

1. The Commission has constructed a dynamic legal framework but becoming aware of its practical limitations, it has begun to broaden the scope of its policy. The aim was to develop a dual-track approach combining legal action with a policy aimed at redressing existing inequalities stemming from a climate of sociopolitical attitudes and forms of behaviour and structures permeated by entrenched sexual stereotypes.

It therefore embarked on the process of developing a comprehensive women's rights policy in its 1982-1985 action programme on the promotion of equal opportunities for women.

The programme revolves around two linchpins:

- strengthening individual rights through the development of legal action (improved monitoring and supervision of the application of existing legislative provisions, new legislation)
- promoting equal opportunities on the ground by more positive discrimination in favour of women.

The broad thrust of this action programme was adopted (not without problems) in a Resolution of the Council of Ministers in July 1982, in which the Community Member States undertook that :

" the action undertaken at Community and national level should be not only continued but also intensified, in particular in order to promote the achievement of equal opportunities in practise through the implementation of inter alia positive measures ...

to realise in practise the principle of equal opportunities without discriminating against women whatever the economic situation obtaining".

2. Personal human rights are to be strengthened in two ways:

- by closer supervision and better use of existing legal provisions
- by plugging loopholes in existing legislation and regulations

2.1.

2.1.1. The job of overseeing the operation of Community law - particularly the Directives - which is part of the Commission's task as custodian of the Treaties, is always a far more complex affair than it might appear at first sight. Firstly, because the Commission gets all - or most - of its information from the Member Governments themselves, and it is clearly not in their interests to draw attention to loopholes and failings in their national legislation; and secondly because the only national laws and regulations over which it has jurisdiction are, at most, those actually implementing the Directive but failing to cover the practical situation adequately.

Constraints of this nature are particularly onerous in an area as sensitive as that of equal employment opportunities. That is why the Commission felt it advisable to call for assistance from a network of independent national experts from the various socio-occupational groups and/or law practitioners.

The first priority of this network was to vet cases of indirect discrimination with a view to arriving at a more precise definition of a somewhat hazy concept.



2.1.2. At the same time, it was observed that relatively few discrimination complaints had been pursued through the national courts in most Member States. The greatest incidence of attempts to enforce equality rights under the law was found to occur in the one country in which a specialised Commission (Britain's Equal Opportunities Commission) had been set up to promote equality and assist claimants with bringing complaints. A comparative review of national experiences was conducted, aimed at identifying good practice and extracting suggestions.

One of the key aspects to emerge from the study was the importance of throwing the burden of proof squarely back onto the employer or alleged discriminator, more in certain countries than others. Other points which emerged very clearly are the extreme difficulty of proving discrimination (particularly the indirect variety) and the need for more information and awareness campaigns.

2.1.3. Finally there is the action aimed at provoking a review of so-called protective legislation, a legacy of the past which, by affording women more protection than men simply serves to exclude women entirely from certain types of job.

The most glaring example is the continuing prohibition in certain countries on night work for women in industry which, during a period of radical reorganisation of working time - particularly following the introduction of new technologies - effectively puts entry barriers across many avenues of employment to women.

2.2. The progressive expansion of Community legislation has gathered pace in recent years.

The Council of Ministers currently has before it three proposals for new Directives in this area.

- The first aims to amplify Directive 79/7 (supra - equal treatment for men and women in statutory social security schemes) by extending the application of the same principle to occupational (contractual)

social security schemes (1).

- The second seeks to introduce the principle of equal treatment into provisions governing self-employed occupations, including agriculture (2). The aim here is to confer a certain number of rights on working spouses not enjoying recognised self-employed status (those helping their spouses by performing ancillary activities). This would give them the right to benefits commensurate with the work performed, personal social security entitlement, access to training and professional representation, etc...). It would also assure working women in this sector suitable protection during pregnancy and maternity - the apocryphal stories about agricultural worker's wives being back in the fields the day after giving birth is no idle tale!
  
- The third proposal relates to parental and family leave. The granting of leave after the period of maternity leave, generally for looking after young children, is becoming an increasingly widespread practice. Often, however, paid parental leave is only granted to the mother (which further disadvantages women). Time off of this nature can be particularly important for children's education, to achieve a fairer sharing of family responsibilities between working parents, and may have a positive impact on unemployment (where a 'temp' - often a young worker - is employed to 'fill in' for the person on parental leave). Family leave (for illness or the death of a relative, etc.) is now also firmly established - whether in collective agreements, by informal agreement with the employer or simply by an irreducible level of absenteeism. The purpose of this Directive would be to give fathers a statutory right to a minimum period of parental leave comparable to that awarded to mothers, and to family leave with guaranteed job reinstatement rights and his social secur-

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- (1) Proposal for a Council Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes
  - (2) Proposal for a Council Directive on equal treatment for men and women in self-employed occupations including agriculture, and on protection during pregnancy and maternity

ity entitlement preserved.

But these proposals for Directives are not the only areas of Community concern. Action is also being taken on the problem of the impact of taxation systems on women's employment.

A commonly-heard refrain goes something along the lines of "my wife doesn't work. It isn't worth it, what with the extra tax and the costs of child care". It was therefore felt necessary to extend the study's brief to include the income-tax arrangements in the various Member States. The conclusion emerged that some tax systems (those in which the spouses are aggregated for income-tax purposes) actively discourage married women from working, and that, in the final analysis, the only truly neutral system was separate taxation of earned income. But was that an appropriate matter for Community legislation? The limits of Community powers over tax matters, the delicacy and complexity of the problem, not to mention the economic ramifications, all militated in favour of a careful step-by-step approach. The Commission therefore began by submitting a modest Memorandum (1) to the Council to stimulate debate between and within the Member States.

- 2.3. The Commission's proposals are still under discussion by the Council of Ministers; some have been examined in depth (parental leave and equal treatment in occupational social security schemes), while others have received somewhat less exhaustive treatment. None has yet been firmly adopted.

The reasons for this are not entirely unconnected with the hurdles put in the way of Community decision-making by the existing unanimity rule, particularly when the issues involved are highly complex, but not necessarily high on the priority list.

3. The intensity of Community legal activity has not held the Commission back from embarking on a number of more innovative, on-the-ground actions across a broad spectrum of fronts and involving a renewal of the social dialogue.

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(1) Memorandum on income tax and equal treatment for men and women

The second facet of the Action Programme focuses on the development of positive action to promote equal treatment in existing situations.

3.1. What exactly is 'positive action'? It is something which crops up under a variety of names (such as 'affirmative action', or 'positive discrimination'), and covers a multitude of concepts. It originated in the U.S.A. as a legal method of enforcing equal rights, often backed by sanctions, and very often involving so-called 'rigid' actions, such as the imposition of quotas.

The European variety does not quite go to the lengths of its American predecessor, but it is more flexible and diversified.

The Commission has tried to define the concept in very fluid terms as any action whose objective is to contribute to the eradication and/or redress of existing inequalities, thereby promoting the presence and participation of women in all sectors and professions and at all levels of responsibility.

3.2. How is positive action to be promoted?

An analysis of actual experiences reveals how poorly-developed positive action is throughout the Community Member States; where attempts have been made, they tend to be strictly small-scale, or even pilot, operations of limited impact and whose worth is hard to evaluate.

It is far more highly-developed, in contrast, in those countries where it is legally-enshrined, such as the USA and Sweden.

That finding decided the Commission to construct a framework for positive actions, to assure them of more coherent, systematic development. The idea took the form of a proposal for a Recommendation on the promotion of positive action for women, submitted to the Council in April 1984, and finally adopted in December of the same year (1).

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(1) Council Recommendation of 13 December 1984 on the promotion of positive action for women

Why choose a Recommendation, in preference to any other form of Community instrument? Simply because national legislation in this area is comparatively under-developed:

- no Member State has enacted a statutory duty to develop positive actions
- some have made no provision for it whatever, and certain statutes have been construed as actually prohibiting positive action
- some exclude certain types of positive actions from the scope of their equal opportunities legislation (UK, Ireland)
- the most enlightened do provide for it, but on an optional basis (encouragement: France), or have yet to make detailed provision (Belgium).

In the light of that, and given the myths which continue to weigh down on positive action, it seemed preferable at this stage to provide a flexible and adaptable instrument capable of stimulating comprehensive strategies for positive action.

- defining positive action in the broadest and most flexible terms (c.f., supra point 3.1.)
- following on from that, identify the areas in which positive action is viable: the broadest mix possible; many of them combined;
- secure a commitment from the Member States to:
  - develop an overall strategy of positive action
  - above all to establish a framework containing appropriate provisions designed to promote and facilitate the introduction and extension of positive measures
  - ensure that affirmative action receives suitable follow-up
  - encourage both sides of industry to promote positive action in the workplace, such as by suggesting guidelines or codes of good practice
  - to encourage the public services to adopt an exemplary role
  - finally, to make information on positive action available as extensively as possible to the public, and create a network for the exchange of experiences, with the Commission acting as a sort of clearing house for positive action experiences.

3.3. Alongside the establishment of such a framework, national governments are called on both to step up positive action and widen the areas in which it is taken.

3.3.1. Of the various areas for action, the Commission has singled out one for priority treatment; and one which goes to the very the root of the problem: education, as compounded by vocational training.

A major resolution dealing with educational issues was adopted by the Council and the Ministers for Education in June 1985, containing an action programme "on equal opportunities for girls and boys in education". The ten-point programme consists of:

1. Promoting awareness among all the participants in the educational process of the need to achieve equal opportunities for girls and boys
2. Educational and vocational guidance as a service to all pupils to encourage girls and boys to diversify their career choices
3. Opening up schools to working life and the outside world
4. Extending the possibilities for effective access by both girls and boys to all vocational training options and supporting, through suitable measures, girls and boys who have chosen non-traditional openings
5. Including the question and pedagogics of equal opportunity in teachers' initial and in-service training
6. Reinforcing co-educational practices in mixed educational establishments
7. Developing a balance between men and women holding positions of responsibility in education

8. Eradicating persistent stereotypes from school textbooks, teaching materials in general, assessment materials and guidance material
9. Special measures to help the underprivileged
10. Introducing specific structural and organisational measures to encourage the promotion of programmes for equal opportunities for girls and boys.

A working party will be set up to implement the programme. The Commission will be taking a leading part in the group and supporting the various measures taken.

A number of projects are already under way: a study and recommendations on stereotyping in school textbooks; equal opportunity as one of the criteria of the Community programme to ease the transition of young people from school to working life; but most of all, the experimental network of equal opportunity correspondents and counsellors set up at the beginning of 1984 to analyse and assess the situation, and on the basis of their findings to stimulate integrated national education and training programmes which will widen the range of vocational choices open to girls and women, with particular emphasis on those concerned with the introduction of new technologies. Projects currently under way under the aegis of the network run the entire gamut from pre-primary education to adult training.

The part played by the European Social Fund in encouraging the Community's early efforts at positive action in the field of vocational training should not be overlooked. Among the ESF's chief priorities are action to widen the scope of women's occupational choice, and helping women re-enter the labour market after a career break.



At the Commission's request, CEDEFOP (1) evaluated a number of trailblazing experiments within the positive action framework, and a seminar held in 1984 enabled a number of conclusions to be drawn to serve as the basis for discussion on the development of a Community strategy.

The two Resolutions adopted by the Council in 1983 on:

- vocational training policies in the 1980s
- vocational training measures relating to new information technologies

also provided for positive action aimed at widening the range of vocational choices.

In general terms, the emphasis is on what needs to be done to stop women from missing the new technology boat, not only within the education and training systems (where specific studies have been conducted) but also in the workplace.

- 3.3.2. The objective for the next stage (employment) is to achieve a more equitable division of the sexes by eradicating de facto segregation in all sectors and occupations and at all levels of responsibility.

A series of projects working to precisely that end, encouraged by the Commission, are currently being carried on in the form of positive action programmes in selected private and public companies.

The target of choice was banking - a natural candidate in view of the high level of research activity in the sector in recent years. Programmes under a variety of guises have been developed by a number of banks, with Belgium's two largest banks leading the field in this respect. Other schemes are under way in British and French banks, while still others are being nurtured in Italy and Luxembourg.

The experiment was considered sufficiently valuable to extend to industry, and the Commission is now fostering across-the-board action in 6 Community countries, with two to three major companies in each country serving as guinea pigs.

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(1) European Centre for the Development of Vocational Training (Berlin)

This is a sphere of activity which the Commission intends developing to the limits of its budgetary resources in the hope of producing a significant 'snowball' effect. One important aspect of this is that positive action must be an integrated part of the company's own human resource management policy. A bald demand for "equal opportunities" will never thrive if it stands isolated.

Alongside this, and as part of the Community initiatives to develop local enterprise initiatives in the fight against unemployment, the Commission is supporting and encouraging the development of such ventures by women (particularly in the form of womens' cooperatives). In this way, the Commission helped 4 cooperatives get off the ground in 1983, a further 8 in 1984 and 8 in 1985, in fields as unrelated as craft industries (particularly for migrant womens' cooperatives), new technology, printing, publishing, audiovisual techniques, and farm holidays. The ESF also helps fund training courses in how to establish collectively-run cooperatives.

This is a key sphere of action since cooperatives - and small-scale ventures in general - are particularly important for women in many respects (both as regards the experience of collective responsibility and development of managerial abilities, but also with respect to wages and working conditions).

That is the reasoning underlying the recent encouragement given to the plan to set up some kind of network for the exchange of experiences between women-owned cooperatives in Community countries. The network would need to be large enough for the (women) promoters of frequently isolated and poorly publicised initiatives to make contact with each other and draw on mutual experiences, and would have to have the twin aim of encouraging similar initiatives in other areas.

The public sector is - or should be - a key sector for the promotion of positive action. A comparative survey of the position in 4 Member States has revealed a number of fairly tentative experiments under way in some countries (Belgium and the United Kingdom are the out-

standing examples). Further research is being conducted and a seminar on the theme is being organised to increase awareness among national senior civil servants and encourage them to increase their efforts still further.

The Community Institutions are also putting their own houses in order. For its part, the Commission has launched an initial programme rethinking its policy approaches in a number of areas, such as recruitment, training, career opportunities and staffing measures. It has also set up an Equality Committee to monitor and propose affirmative actions. The official in charge of the Committee's administrative work is also in overall charge of the problem.

- 3.3.3. The basis of any coherent action to achieve job equality lies in an awareness and appreciation of the situation regarding womens' employment. This is not an aspect which has, to date, been considered as a composite whole by any of the existing employment monitoring agencies.

The Commission has set up a panel of experts to establish, monitor and evaluate a series of qualitative and quantitative indicators: basically, the group will act as a kind of European monitoring station on womens' employment, collating data which will, at a later stage, be integrated into the general analytical and assessment machinery.

- 3.3.4. The plight of immigrant women calls for special attention. They are discriminated against on both counts - magnets for unequal treatment. Specific positive actions are needed.

Studies conducted on their problem (discrimination by the law and bureaucratic red tape, lack of training) should offer the basis for a decision on how best to orient the proposed remedies.

The Commission has also made its own contribution to supporting particularly worthwhile positive action projects, such as cooperatives, etc.

3.3.5. A recurrent - but nonetheless still highly pertinent - topic, and one particularly relevant to the extension of positive action concerns the division of occupational, family and social roles. It is also one to which the Commission has devoted much active consideration, taking the view that the problem of womens' employment - particularly that of ensuring effective desegregation of jobs - will only be solved once the right balance has been struck.

Research has been conducted on:

- the mismatch between the development of values and that of the organisation of work and labour law;
- the position of women in the decision-making centres of Community countries and the development of community facilities and services.

Both bodies of research draw conclusions and put forward proposals for improving the existing situation.

A seminar on the latter and more fundamental of these two problems was organised in 1985 by the Commission and the Italian Government with a view to putting forward proposals for a general Community approach.

3.3.6. Last but not least, actions to heighten public awareness and bring about a change in entrenched attitudes are - and will, for the foreseeable future, remain - necessary if all the measures described above are not to wither away and die on stony ground.

Here again, Community action is both large-scale and broad-fronted.

First and foremost there are the conventional actions carried out by the Commission as part of its information policy (1), consisting of the various series of seminars and conferences (particularly with associations of womens' groups), brochures, folders, etc..., and especially the clearing house for information and experience offered by the "Women of Europe" magazine.

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(1) c.f. infra

More recently the Commission, in a bid to broaden the scope of its policy, has tied it more directly to the implementation of the action programme. In particular, it has tried to develop actions aimed at the various target groups, particularly decision-makers at all levels and the European public opinion base in general.

This resulted in two major actions during the course of 1985:

- one aimed at making practising lawyers, the judiciary and legal academics more aware of the import and interpretation of legal provisions on equal treatment (Louvain-la-Neuve seminar, May 1985)
- the other dealing with the media - particularly television - focusing on the image of women put over by TV and women's place in television (Brussels seminar, June 1985)

Two opinion polls were also conducted during 1984:

- one on the comparative attitudes held by men and women
- the other on discrimination against working women, with particular emphasis on the problems of unemployment and the introduction of new technologies

Both surveys are of interest. Firstly because they reveal how little the picture has changed since the last polls were conducted. Secondly, because the former confirms the relative decline of interest in the plight of women and womens' movements as a separate issue. And thirdly, because they point up the extent to which both men and women still view the man as the main breadwinner in a household (if you were only allowed one job and one income for the two of you, whose would it be?). But they also reveal how vulnerable women are to unemployment and the need felt by women to prepare themselves or retrain to cope with the advent of the new technologies.

They have also helped fine-tune the general analysis by pinpointing those segments of society most hostile or receptive to changing attitudes, and those most discriminated against and most vulnerable.

A survey is currently being conducted on women in the self-employed occupations, including agriculture.

4. Finally, more stress should be laid on the value of positive action to the fight against women's unemployment. This was a factor acknowledged by the Council of Ministers in its June 1984 Resolution on the matter. A variety of positive measures were pinpointed, centering chiefly on training, recruitment, placement, staffing measures and the improvement of intelligence facilities and information (particularly statistical data).

At the same time, the Ministers recognised and made provision for the need to integrate the measures into the overall policy to combat unemployment at Community level.

5. Despite the pressures of severe budgetary constraints, the Commission has managed to provide support for a broad spectrum of positive actions which, taken together, show a rich seam of experience with great potential for the future.
6. As required by the Council Resolution of 12 July 1982, the Commission has prepared a report (1) on the implementation, both by itself and the Member States, of the 1982-1985 Action Programme. The report comes to the conclusion that:
  - the economic crisis has not halted the march of progress towards equal opportunities in the Community, although a more watchful eye needs to be kept both on national legislation and on the promotion of equal treatment in practice
  - the Member States have made efforts to achieve the objectives of the Action Programme, but they have frequently tended to concentrate more on pilot projects and research and information activities at the expense of coherent actions forming part of a comprehensive national policy. The verdict so far? 'Must try harder'.

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(1) Report on the implementation of the New Community Action Programme on the promotion of equal opportunities for women (1982-1985) - COM(85)641 Final

7. What stands out from all this is the sheer breadth and diversity of Community action to promote women's prospects - a campaign destined to grow in strength as the 1986-1990 action programme is put into operation.

How should we see the action programme, then? As simply an attempt to filter feminist thought down from the top? Or is it rather that, faced with an issue capable of changing the face of society, the Commission has tried to come up with a multi-faceted policy, which in some cases has meant radical new departures in the type of Community action needed - chiefly in the form of direct, material actions with business. It has developed new and interesting forms of social dialogue and flexibility at a time when both are issues of widespread concern.

Above all, it has helped society along the road to a fairer sharing of responsibilities and greater social justice, proving that the Community has a "human face".

Odile Quintin



THE WORLD CONFERENCE CLOSING THE  
UNITED NATIONS DECADE FOR WOMEN

The United Nations Decade for Women is over. Looking back, it was, on the whole, quietly forgotten between the big World Conferences (Mexico in 1975, Copenhagen in 1980 and Nairobi in 1985) which served, at 5-year intervals, to focus attention on its objectives and achievements.

What did the Decade achieve, for us in the European Community? We have all got so used to the extraordinary improvements in women's rights since the War that we are inclined to forget that many of these are fairly recent and that most were introduced only during the last decade - the United Nations Decade for Women.

The Community's policy to bring about employment equality for women and men was revolutionised during the Decade. In 1975, at the outset, this policy was but in its infancy, and its legislative basis still confined to Article 119 of the EEC Treaty (1), which had been tested only once in the Court of Justice - the first equal pay case (Defrenne ) was decided in 1971 (2).

The start of the Decade was associated with immediate change: 1975 saw the adoption of the equal pay Directive (3) which was rapidly followed by Directives on equal treatment at work (4) and equal treatment in matters of social security (5). These Directives are by now an established part of the national law of the Member States, where they have also served as a stimulus for further action on behalf of women.

The adoption of a more comprehensive Action Programme on behalf of women (6) followed in 1981. This provided both for further legal and legislative change and for positive action to be taken during the 1982-1985 period. It will be followed by a further medium-term action programme (1986-1990) continuing, reinforcing and extending the policies and measures already initiated.

The stimulus given by the United Nations Decade certainly served to hasten the adoption of measures by the European Community. Not only did successive world conferences call for reports on real progress made, but the resultant raising of consciousness also caused women and their asso-

ciations throughout the Community to redouble their efforts to obtain change and created a climate in which such change was more acceptable than before. Other international organisations (OECD, Council of Europe, etc.) pursued their various efforts on behalf of women, with the active involvement and backing of the European Community.

#### Preparation of the Conference

The Nairobi Conference closing the Decade was given two specific tasks: to review and appraise progress achieved and obstacles encountered during the Decade, and to adopt a coherent set of forward-looking strategies for the advancement of women up to the year 2000. Both of these items required extensive preparations which were undertaken by the UN Secretariat with the guidance of the Commission on the Status of Women, a UN body which devoted three special sessions to the preparation of the Conference in the spring of 1983, 1984 and 1985, respectively.

The regional economic commissions of the United Nations organised their own preparatory events, the Economic Commission for Europe (ECE) holding a Seminar on the economic role of women in the ECE region in October 1984.

Apart from organising these meetings, the UN Secretariat also sent a voluminous questionnaire to all its Member States, the replies to which served to prepare the detailed documentation reviewing progress achieved and obstacles encountered during the Decade, which was submitted to the Conference.

#### European Community role

The European Community as such participated in the entire preparatory process leading up to the Conference, as well as in the Conference itself. The Community position was a strong one: its advanced and by now well-established policy on behalf of women enabled it to contribute effectively throughout - particularly as regards the topics of equality, development and employment - and its unity and cohesiveness helped it to ensure that its concerns were taken care of in the final outcome of the Conference. Co-ordination among the Member States was a constant process, starting in Brussels during the advance preparations for meetings, and continuing on the spot as and when required.

### The Nairobi Conference

The Conference itself surpassed most of the expectations vested in it. Even in merely numerical terms, it was a great achievement: attended by 157 States and 160 other entities (including the European Community), covered by 1,400 journalists and accompanied by a large Forum of non governmental organisations, it ranks as the biggest Conference ever organised by the United Nations and will be remembered as one of the most important events of its 40th anniversary year.

The main debate took place in a number of different fora. It was the Plenary that handled the review and appraisal of the Decade, with reports on developments being presented by the heads of the different delegations, eminent personalities all and often the Ministers responsible for women's rights. The European Community was represented by Mr. Peter Sutherland, Commissioner for Social Affairs, Education and Competition, who reported on the Community's activities and achievements during the Decade and indicated his hope for further improvements in future.

Two committees were formed to debate and prepare a comprehensive programme of Forward-Looking Strategies up to the year 2000, dealing with all aspects of the advancement of women. The European Community was particularly interested in ensuring that these Strategies could give a constructive impetus to its own future policy development, and its representatives participated in the intensive negotiations with patience and tenacity.

The eventual adoption of the Strategies by consensus in the Plenary, was a remarkable success for the Conference. This document constitutes an internationally agreed basis for policy development on behalf of women - something that the first two conferences of the Decade had been unable to achieve.

The items that, throughout the Conference, threatened this eventual consensus, were a number of general political questions which sometimes served to relegate women's specific problems to a secondary position. This applied in particular to items such as disarmament, peace, international conflict and economic and financial questions which are dealt with in other UN bodies. The fact that the differences on these acknowledged problems could finally be set aside for the sake of the advancement of women, was a major victory for the Conference as a whole.

### The Forward-Looking Strategies

The Nairobi Forward-Looking Strategies for the Advancement of Women, to give them their full title, contain chapters taking up in turn each of the three goals and objectives of the UN Decade for Women, i.e. Equality, Development and Peace. In addition, they deal with categories of women that are of special concern, and with international and regional co-operation for the advancement of women.

Each chapter in turn addresses itself to the obstacles in the way of a successful pursuit of the policy, followed by the strategies and measures to overcome these obstacles. The following brief summary of the 372-paragraph document refers in particular to those items that are of major importance to the European Community.

The chapter on equality as between women and men contains a blend of legislation and positive action to make equality a practical reality. The effectiveness of legislative measures is to be reinforced by appropriate legal redress mechanisms. Action must further be taken to ensure that the judiciary and all paralegal personnel are fully aware of the importance of the achievement by women of their legal rights.

The document calls for the promotion of positive action to redress the imbalance imposed by centuries of discrimination against women, so that de facto equality between men and women may be accelerated. Governments should ensure that their public service is an exemplary equal opportunities employer; political parties and other organisations such as trade unions should make a deliberate effort to increase and improve women's participation within their ranks. The rights of self-employed women, particularly in agriculture, fisheries and food processing and distribution, should be strengthened.

The persistence of stereotypes constitutes an important obstacle to women's equality. They should be eliminated by means of education and broad public information.

The over-riding theme of the development chapter is the objective that women should participate in the totality of development as both beneficiaries and active agents. Effective machinery should be installed to bring this about, and both legislation and positive action deployed to the same end. Extensive mention is made of economic and

political obstacles to development, and the need to ensure that economic growth benefits women as well as men, is emphasised.

The Strategies stress the importance of women's self-reliance and the role that improved access to credit and other financial assistance and to training and extension services can play in this respect.

The three sub-themes of employment, health and education are also treated here.

In the field of employment, the Strategies call for measures to enable women to obtain jobs involving more skills and responsibility, including those at managerial level, in all sectors of the economy. Re-entry programmes, complete with training and stipends, should be provided for women who have been out of the labour force for some time.

Parental leave following the birth of a child should be available to both women and men and preferably shared between them. Provision should be made for accessible child-care facilities for working parents.

As regards the need to combat unemployment amongst women, the document very positively reflects European Community policy.

The section devoted to health centres on the vital role of women as providers of health care both inside and outside the home. Family health-care responsibilities, now primarily the province of women, should increasingly be shared with men while the higher professional and managerial positions in health institutions should henceforth be filled with a greater proportion of women.

The Strategies also concern themselves with occupational health and safety which should equally protect female and male workers.

Education is recognised as the basis for the advancement and full integration of women into the overall development effort. Governments should strengthen the participation of women at all levels of national education policy, both as organisers and beneficiaries of education and training. Girls and women should be encouraged to diversify their educational and, hence, occupational choices. Gender stereotyping in education should be eliminated.

The development chapter also deals with a number of specific fields in which women are, and should be, involved. Food, water and agriculture is particularly important among these, since women's contribution is vital in this area, but does not always receive appropriate recognition and

rewards. The Strategies call both for the improvement of women's position and status in respect of agriculture, fisheries and food production, and for their full integration into mainstream development projects.

Women should be enabled to participate increasingly in policy-making and decision-taking roles at all levels of industry. Specific consideration should be given to the removal of discriminatory practices concerning employment conditions, health and safety, and to introducing appropriate provisions in respect of pregnancy, maternity and child care. Women should be eligible for social security benefits, including unemployment benefits, on an equal footing with men.

Women's cooperatives and other local employment initiatives should be supported and helped.

Women should be involved in technological change as both agents and users. The introduction of advanced technologies in industry in particular must allow women to enter into sectors in which they have not so far participated to any significant extent.

The Strategies recognise the critical role of the communications sector in eliminating stereotyped images of women. If this is to be done successfully, the participation of women must be increased at all levels of communications policy and decision-making as well as in programme design, implementation and monitoring. This is all the more important since the media's portrayal of stereotyped images of women can have a profoundly adverse effect on attitudes towards and among women.

Other sections deal with housing, settlement, community development, transport, energy, environment and social services.

The chapter on peace does not directly concern Community policy, except insofar as it calls on governments to ensure that women are enabled to reach civil service posts at all levels and to represent their countries as members of national delegations.

Under the heading of areas of special concern, the Strategies turn to those women who, because of their special characteristics, experience not only the problems common to all women, but also specific difficulties due to their socio-economic status, health, age, minority situation or a combination of these factors. Thus, the Strategies discuss the particular problems of :

- women in areas affected by drought,
  - urban poor women,
  - elderly women,
  - young women,
  - abused women,
  - women victims of trafficking and involuntary prostitution,
  - women deprived of their traditional means of livelihood,
  - women who are the sole supporters of families,
  - women with physical and mental disabilities,
  - women in detention and subject to penal law,
  - refugee and displaced women and children,
  - migrant women, and
  - minority and "indigenous" women,
- and offer a number of solutions complementary to the more general strategies advanced.

The final chapter, on international and regional co-operation, deals mainly with the activities which the United Nations system will be carrying out in future. The Conference recommended that at least one World Conference be held during the period between 1985 and the year 2000, taking into account that the General Assembly will take the decision on the holding of the conference in each case within existing financial resources.

The chapter also lays down various recommendations to development agencies so as to ensure that women's concerns are integrated into the programmes and projects adopted.

### Outlook

Besides contributing to the Forward-Looking Strategies, the Community also proposed two resolutions to the Conference. One of these was a broad text on future perspectives and equal opportunities, the other was devoted more specifically to women's education, training and job promotion. Due to shortage of time, the Conference was unable to adopt these or any of the other 103 resolutions proposed, referring them instead to the General Assembly for further action. The General Assembly has meanwhile asked the Commission on the Status of Women, meeting in February/March 1986, to report back to it with appropriate recommendations, particularly as regards the likely dates of any future World Conferences on women.

As for the Community itself, it has already drawn first conclusions from the Nairobi Conference and its Forward-Looking Strategies. The Medium-Term Community Programme on Equal Opportunities for Women(1986-1990) adopted by the Commission in December 1985, while building on the 1982-1985 Community Action Programme, also takes account of the relevant Nairobi Strategies. The Community can thus look forward to being able to report further progress at the next United Nations World Conference.

Isabelle PRONDZYNSKI.

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- (1) Art. 119 of the EEC Treaty lays down that "each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work".
  - (2) Judgment of 25 May 1971, Defrenne v. SABENA (Case 80/70) 1971 ECR 445.
  - (3) Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, O.J. L 45, 19.2.1975.
  - (4) Council Directive 76/207/EEC 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, O.J. L 39, 14.2.1976.
  - (5) Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, O.J. L 6, 10.1.1979.
  - (6) New Community Action Programme on the Promotion of Equal Opportunities for Women (1982-1985), COM(81) 758 final.



COMMUNITY STRUCTURES RESPONSIBLE  
FOR PROMOTING EQUAL OPPORTUNITIES

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I. THE COMMISSION

1. Bureau for questions concerning employment and equal treatment for women(1) is a service of the Directorate General for Social Affairs.

Its aim is to define and implement Community policy on questions concerning equal treatment for men and women.

In this capacity, it drafts relevant legislation (directives) and more generally prepares proposals from the Commission to the Council in this area (action programmes, draft resolutions, recommendations, memoranda, reports, etc. ).

Within the framework of its role as a guardian of the Treaties of the Community, it monitors the implementation of existing directives. It also ensures that the "equality of opportunity" dimension is taken into account in relevant policies (for example education, training, employment, working conditions, etc. ).

It maintains an active dialogue with employers and labour in this area, like the Advisory Committee on Equal Opportunities (see below) and the network of contacts and exchanges set up by the Commission as part of its 1982-1985 action programme.

In addition, it encourages specific measures (positive measures in companies, for example) and organises or supports

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(1) See Annex 1 for a list of those working in this Bureau.

various activities aimed at promoting equal opportunities effectively (studies and research, seminars, meetings, local job creation measures, etc. ) within the framework of the budget assigned for this.

Finally, it represents the Commission and often the Community in international discussions and organisations concerned with this problem (UN, ILO, Council of Europe, OECD, etc. ).

2. The Advisory Committee on Equal Opportunities between Men and Women was set up in 1981 as part of the 1982-1985 Action Programme. It is made up of the official committees or bodies in each country whose job it is to advise governments or promote policies on questions of equality at work.

A Chairperson<sup>(2)</sup> and two Vice-Chairpersons are elected each year by the Committee members.

The Committee is responsible for advising the Commission on the drafting of its policies on equality of opportunity related questions (in particular by expressing its opinion) and promoting exchanges of experiences.

It meets two to three times a year.

To make sure the various measures of interest to women are properly coordinated, the Committee has observer status on various other Commission committees or organs (ESF Committee, Vocational Training Committee, Freedom of Movement Committee).

3. The Women's Information Service<sup>(3)</sup> comes under the Directorate-General for Information, Communication and Culture. Placed under the "priority information campaigns" Division, it

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<sup>(2)</sup> See Annex II for a list of Chairpersons since the Committee was set up.

<sup>(3)</sup> See description in the article on information.

is responsible for informing women's groups, associations and movements on Community policy, particularly on equal opportunities.

In this capacity, it is responsible for various activities: symposiums, seminars, meetings, brochures, leaflets, information campaigns.

4. The "women's" cell, in the Directorate-General for Development comes under the "human resources" Division of this Directorate--General.

It is responsible for ensuring the participation of women is taken into account in development within the framework of Community projects, and in particular for implementing the relevant provisions of the Convention of Lomé (Association Agreement between the European Community and the African, Caribbean and Pacific States).

5. The Joint Committee on Equal Opportunities for Women and Men (COPEC) is a committee set up by the Commission in 1983 to analyse the situation and advise the Commission on implementing an equal opportunities policy for the Commission staff. It is made up jointly of representatives from the Administration and trade unions and professional organisations<sup>(4)</sup>.

## II. THE EUROPEAN PARLIAMENT

The European Parliament has a particular structure for equal opportunities.

Indeed, after its second election by direct universal suffrage (in 1984) it set up a Standing Committee on Women's Rights. This took over from the following temporary structures :

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<sup>(4)</sup> See Annex III for a list of its members in November 1985.

- the ad hoc Commission set up in 1980.
- the Committee of Enquiry into the situation of women in Europe set up in 1981<sup>(5)</sup>)

and which had drawn up wide-ranging reports on equal opportunities policies to be carried out by the Community and by the Member States.

The Commission on Women's Rights<sup>(6)</sup> is responsible for monitoring the implementation of resolutions adopted by the Parliament in this area, drawing up reports on Commission proposals on this matter and reports on any initiative considered desirable.

The opinion of the Commission is sought on all matters discussed by the Parliament affecting equality of treatment questions.

The Commission meets every month and also organizes hearings on various matters.

Odile QUINTIN

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<sup>(5)</sup>cf. see below  
<sup>(6)</sup>See Annex IV for list of members.

ANNEX I

BUREAU FOR QUESTIONS CONCERNING EMPLOYMENT AND EQUAL TREATMENT  
FOR WOMEN

Address : 200, rue de la Loi, 1049 Brussels - Tel. 235.30.32

Odile Quintin, Head of Department  
Christopher Docksey, Administrator  
Gerassimos Zorbas, Administrator  
Isabelle von Prondzynski, Administrator  
Marie-José Raetsen, Expert  
Christiane Coulon, Assistant  
Secretariat : Paulette Vienne  
                  Hannelore Tern  
                  Geneviève Pasque

ANNEX II

Chairpersons of the Advisory Committee on Equal Opportunities  
between Men and Women

1982/1983	Baroness Lockwood Chairperson of the Equal Opportunities Commission (U.K.)
1983/1984	Mme Devaud Chairperson of the Comité du Travail Féminin (France)
1984/1985	Mrs Meehan Chairperson of the Equal Employment Agency (IRL)
1985/1986	Frau Ellen Wolf Director of the "Women's Promotion" Department- Ministry of the Family, Youth and Health (F.R.G.)

ANNEX III

List of the members of the Joint Committee on Equal Opportunities  
for Men and Women (COPEC)

Mr Hay, Chairperson

Mr Christoyannopoulos, Head of the Training Division

Mr Landes, Head of the Careers Division

Mr Junior, Head of the Recruitment Division

Mr Capogrossi, Administrative and Financial Rights Division

Staff representatives

Mrs VAN LOO, Vice-Chairperson

Mrs BOSSCHER

Mrs DE COSTER

Mrs FUERST

Mrs IJDENBERG

Mrs OUD

Secreariat : Mr LOIR

Mrs PINT

ANNEX IV

Commission on Women's Rights

Chairperson

Mrs Marlene LENZ

Vice-Chairperson

Mrs M.L. CINCIARI-RODANO

Mrs K.M. GIANNAKOU

Mrs M.C. CRAWLEY

## EUROPEAN PARLIAMENT ACTIVITIES TO ASSIST WOMEN

At a time when our countries are finding economic development difficult and are on the threshold of a new technological revolution, when unemployment, especially among women and young women, has reached a level rarely witnessed before, it would probably be useful to analyse the European Parliament's activities to help the women of the European Community. It is not only a chance to see what has been achieved but also a time for reflexion to define, based on the appraisal that will be made, the stages that need to be carried out and the projects that need to be reinforced both to safeguard the Community's achievements and to complement and extend them.

### First measures

The European Parliament has a long-standing interest in women and their condition. The basis for its action can be found in Article 119 of the EEC Treaty which stipulates that "each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work", an article for which provision had been made by the authors of the Treaty of Rome, both to analyse the pay of men and women for equal work and to avoid, in a future Common Market, distortion of competition between Member States in certain industrial sectors (for example textiles) as a result of lower pay for women workers.

Back in 1961 (resolution of 26.6.1962), the not yet directly elected Parliament expressed its serious concern over the disregard by Member States for the obligations imposed on them by this Article 119. Indeed, in spite of the fact that the first stage of the transitional period of the EEC Treaty was coming to an end, there were still differences in pay in the Community and it could be said that application of Article 119 of the EEC Treaty had failed.

It was only in 1971 that the Parliament drew attention to the disregard of Article 119 and for the first time asked the women of the Community to try and guarantee respect of the basic principle of equal pay themselves. During the international year of the woman in 1975, for the first time the Community launched a "social project to assist women" worthy of the name. Three directives would subsequently be adopted to form the legal framework which, ever since, has guided the Member States of the Community in implementing the principle of equal treatment for men and women and which, beyond national borders, has considerably influenced laws in Member States.

In accordance with Community procedures, then, between 1974 and 1978 the Parliament successively delivered its opinions as obliged to by the treaties, on the proposals for directives or decisions submitted to it by the Council:

- on 25.4.1974, its opinion on the proposal for a directive concerning the approximation of the laws of the Member States to the implementation of the principle of equal pay for men and women.
- on 29.4.1975, its opinion on the proposal for a directive concerning the implementation of the principle of equal treatment for men and women concerning access to employment, training and promotion at



work and working conditions;

- on 15.11.1977, its opinion on the proposal for a directive relating to the progressive implementation of the principle of equal treatment for men and women on social security matters.

The activities of the Social Fund, which was originally intended to restructure the labour market, were also to prove a useful instrument for promoting the vocational training of women. On 11.10.1977 the Parliament expressed its opinion on the draft decision relating to the contribution of the Social Fund to assist training projects for women over the age of 25.

It regularly monitored not only the implementation of the provisions of the treaty, of the directives and of the decisions made on this matter but, the Parliament also did not fail to denounce with vigour non-respect of the legislation (see its resolutions of 11.4.1978 and of 9.5.1979), by drawing up reports and adopting resolutions. Finally on this matter, mention should be made of an impressive series of written or oral questions with or without debates.

Indeed, as work went on, the Parliament noticed that the advance of women on the labour market, which is one of the noticeable phenomena of our society over the last 10 years, was an irrevocable fact. Over these decades, the rate of activity for women had changed, especially as regards the age groups and the jobs done. The attitude of young girls to working life is already practically comparable to that of young men and work is an important element in each of their lives, as it is in the life of society. Unless there is a reversal of sociological trends, at the start of the 21st century women will have an attitude to work which is nearly identical to men's; in other words, in 20 years time around another twenty million women will be able to enter the

Community labour market, a market which is in the midst of change, as a result of technological developments, a market which requires sound, flexible vocational training so it can adapt to change and take up the struggle of the years to come.

#### The commitment of a Parliament

One of the first institutions to have understood these new developments was the directly elected European parliament.

Although before the direct elections the European parliament more or less scrupulously respected in its activities the narrow, obligatory legal framework of both the treaties and of the directives and decisions, in its written and oral questions it greatly went beyond this to deal with subjects which were certainly "non-Community" matters but nonetheless very important for women. A large share was devoted to problems related to the compatibility of paid work with their traditional role as the mother of a family, work which was sometimes a financial necessity for many of them to increase family income or to put their school or vocational training to the test, as well as to benefit from social contact. Among the matters discussed were family policy, education, motherhood and abortion.

The old parliament had already realised that the existing legal provisions were proving necessary, but that their scope should be broadened and that measures in other areas were necessary, if there was a genuine desire to take action against the inequalities which had been forged over the centuries by tradition and mentalities. The parliament also realised these inequalities could scarcely disappear within just one decade.

The directly elected parliament held its inaugural meeting on 17.7.1979 and the percentage of its women members was on average greater than that in most national parliaments.

Its first President was a woman, Mrs Simone VEIL, and three months later, on 26 October 1979, it decided to set up an ad hoc committee, "The Committee of Enquiry into the Situation of Women in Europe." The MEPs were determined to deal with the problems related to the female condition in depth. Before the direct elections, all reports and motions for resolutions were drawn up and dealt with by the Committee on Social Affairs and Employment. The ad hoc "Committee of Enquiry into the Situation of Women in Europe", with several male members, worked relentlessly for 14 months to submit to the Parliament a report and motion for a resolution from which it clearly emerged that the female condition in 1981 was not an enviable one; that not only had pay differences not been reduced but they were tending to get even larger and that as efforts were made, through legal provisions, to eradicate direct discrimination against women, new indirect discrimination, skillfully disguised, was arising and continuing to perpetuate a situation on the labour market where opportunities for women were extremely unequal.

This important first resolution on the situation of women in Europe was adopted on 11.2.1981. It greatly goes beyond the strict scope of EEC Article 119 and of the directives in force. For the first time it attempts to view women's lives in their entirety and no longer just from the "work" point of view. The resolution gave rise to very lively debates in the Parliament and showed very clearly, on the one hand, the agreement of all the political parties on the goals to be targeted and, on the other, the deep-rooted differences that existed especially concerning the ethical problems related to abortion as a result of the differing conceptions of a woman's freedom to choose.

This first resolution also reflected the fact that this Parliament had become aware of the difficulties inherent in the female condition and that it was seriously committed to improving this condition during a crisis. The resolution is the work of a political

compromise and reflects differing opinions and traditions. 137 amendments to the basic text submitted were adopted during the session. This resolution is undoubtedly one of the cornerstones for new measures to assist women at Community level since it requires not only the adoption of specific measures but also an overall programme to provide a framework for such measures. This resolution motivated and encouraged the European Commission to continue its activities and draw up the Community's first Action Programme to assist women and the proposals for directives which were to follow.

In spite of the initial decision to set up a body to supervise the implementation of measures required before the end of the term of office, the women members of this Parliament rapidly realised that, unless an organ was set up within the European parliament very quickly to monitor implementation of the measures required by this most important resolution, the resolution risked ending up a dead letter. In June 1981, a committee of enquiry was set up to monitor implementation by the European authorities of the guidelines adopted by the European parliament in the resolution of the 11.2.1981, and to follow developments in the situation of women in the Community countries.

After two and a half years of work, and on the basis of 18 specific subjects, the committee presented an important enquiry report, together with a proposal for a resolution which the Parliament adopted on 17.1.1984. In this resolution, for the second time the Parliament listed the failures, the progress and requests and pointed out that the unfavourable economic situation added further to the problems of the female condition. In addition, the technological revolution might lead to more streamlining of large industrial sectors and therefore job losses for women. The promotion of equal opportunities for women was therefore seriously jeopardized by the crisis.

In this resolution, the Parliament expressed the wish to extend the term of validity of the committee of enquiry to the end of its own term of office. It also expressed the wish that the second directly elected Parliament should set up a standing committee to ensure the Community's achievements were safeguarded and to develop the promotion of equal opportunities for women.

The First Standing Parliamentary Committee on Women's Rights

In July 1984, the newly-elected European Parliament was again made up of 18% women members. 1/3 (in other words 6) of the Parliament's committees are chaired by women; this is undoubtedly a world record and clearly shows that women are able to fill head positions at all levels of political life. With this constellation, it was logical that this Parliament should meet the wish expressed by its predecessor and set up a Standing Committee on Women's Rights whose terms of reference were to supervise implementation of the resolution of 11.2.1981 and of 17.1.84 with specific reference to the following matters:

implementation and completion of the directives relating to equal opportunities and the formulation of new proposals for directives, formulation of a new employment policy for young women and women and proposed measures aimed at combatting female unemployment, supervision of Community policies affecting women, especially information policies, examination of the problems linked to women's work activities and the sharing of family and work responsibilities, the situation of women in the Community institutions, the situation of migrant women and the wives of migrant workers, observation and surveillance of United Nations work linked to the World Conference on the Decade of the Woman.

This first standing committee immediately got down to work and first of all examined a draft recommendation relating to the promotion of positive measures to assist women, which was a major part of Community activities. The Parliament asked for framework legislation to be adopted on this matter and that within the framework of the Social Fund top priority should be given to the firms who, in their request for a subsidy, outlined positive measures to help women.

During the 1980s the Member States of the Council of Ministers were very reluctant to continue the work of the directives which

had given so much encouragement to national laws. Since then, no new directives have been adopted and the more equal rights became an undisputed legal and political factor, the more indecisive Member States have become about moving in this direction at Community level.

Those in charge of the women's bureaux in the Commission and the members of the parliamentary committee of the European parliament are not however resigned to this state of affairs. Behind their work programmes, the image of a "European" woman is taking shape who, naturally is the product of the various national traditions, but is already very conscious of the role she has to play in all sectors of society.

The Committee then drafted an opinion on the motion for a resolution relating to projects designed to combat female unemployment; it has drafted an opinion on the new general direction for management of the European Social Fund from 1986 to 1988; it has drafted an opinion on the Memorandum relative to income tax and equality of treatment between men and women but, above all, it should be pointed out that this commission is concerned with matters of importance to women that, strictly speaking, fall outside the Community's sphere of activities. For example, it is drawing up a report on violence to women; it is also working on an important report on education for young girls, one of the subjects about which it is probably the most insistent. The reason for this insistence is not just to ensure that young girls get a better education and vocational training to provide a smoother transition from school to working life but principally because the committee had realised that present directives are coming at a time when women are already very committed in life and when it is difficult, even through legal provisions, to offset long-standing inequalities. The committee gave a favourable reception to the resolution adopted by the Council which included an equal opportunities action programme for girls and boys in education.

The committee has also drawn up a questionnaire to serve as a basis for an important public hearing on the subject of "The Place and Role of Women in the Media" to be held in February 1986 and which will see the first participation of Spanish and Portuguese women.

In spite of differences on certain details, the European Parliament is vigorously calling for the adoption of new framework-legislation, in other words directives, to promote equal opportunities in Member States. It therefore wishes to see the Council finally adopt proposals on which it has already expressed its opinion, namely : the proposal for a directive on parental leave and leave for family reasons, the proposal for a directive on equal treatment in social security as regards occupational schemes and the proposal for a directive relative to equal treatment between men and women with a self-employed status and in agriculture. The Parliament politically defended the breaches which may have been opened up by the judgments of the European Court of Justice to favour harmonious development of the legal framework of the Community.

Finally, the committee actively prepared the United Nations conference to assess the decade of the woman and a delegation followed the work on the spot but did not refrain from criticizing the badly coordinated preparations and work in the Community which could have played a much more important and demonstrative role.

It should also be pointed out that in the opinions it has expressed since the direct elections, the Parliament, as a result of the preparatory work of the various "women's" committees has not only gone beyond the scope of the treaty but has also made a number of positive criticisms of the directives. For example, it has criticized the lack of definition of the notion of indirect



discrimination. It has requested the principle of the reversal of the burden of proof and has underlined the lack of sanctions provided for in the directives themselves.

As regards the promotion of equal opportunities for women, it has fully exercised its various functions, namely :

- its advisory function : it has regularly expressed its opinion on proposals submitted;
- its budgetary function : as a result of the amendments from the various "women's" committees it has systematically reintroduced the appropriations for women which had been reduced by the Council.
- its supervisory function : it has increasingly systematically followed the implementation of the texts, both by direct and oral questions and by resolutions, thereby encouraging the Commission to exercise its role as a guardian of the treaties more effectively;
- its initiative function : especially on matters regarding women, it has shown imagination and formulated, on its own initiative, an overall plan (resolutions of the 11.2.1981 and of the 17.1.1984) and various concrete measures, such as, a proposal for a directive on equal treatment for men and women with self-employed status and agriculture.

In conclusion, it can be stated that the Parliament's activities have become much clearer and more specific and that the Parliament, which is a political body that is recognized because it is directly elected, has tried through its activities to help women to succeed at least in an area partly included in the treaties, namely the promotion of equal opportunities for women. As in other areas, the Parliament has acted as a defender of the rights of the men and women citizens of Europe.

Marlene LENZ  
Chairperson of the committee  
on women's rights

EQUAL OPPORTUNITIES FOR WOMEN  
MEDIUM TERM COMMUNITY PROGRAMME 1986-1990 (1)

INTRODUCTION

1. The 1982-1985 New Action Programme has come to an end. This date coincides both with the end of the United Nations Decade for Woman and the perspectives for the future defined by the Nairobi Conference.

The conclusions arrived at by the Commission in its assessment and evaluation of this Action Programme (2) "show that, even if progress has been made, many projects still remain to be undertaken and that an overall and diversified policy is required to ensure concrete achievements in the area of equal opportunity".

This is how the Commission expressed itself when introducing its 1986-1990 medium term community programme of Equal Opportunity for Women.

2. The 1982-1985 programme (2) was an ambitious programme, to be carried out within a short period (3 years), which opened the door to a very sizeable broadening of the Community's role and policy in this field.

In particular the Community was able in many cases to launch projects which should be continued, to make proposals (in particular of legal instruments) which have to be adopted, and to carry out research and preliminary studies.

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(1) Final COM(85) 801

(2) Report on the implementation of the new Community Action Programme for the promotion of equal opportunity for women (1982-1985)

3. This lead role of the Community must therefore be continued, intensified and broadened. This is particularly important in a period of economic crisis where the most vulnerable categories of the population are particularly affected by technological and social changes and by unemployment.
4. We speak a lot about a citizens' Europe, but there has been little concrete success to date. The equal opportunity policy is one such success. This must now enter a new and more concrete phase, more able to meet present-day challenges.

#### I. GENERAL CHARACTERISTICS OF THE NEW MEDIUM-TERM PROGRAMME

1. The new programme does not constitute any break with the 1982-1985 programme. On the contrary, it represents, in many cases, a prolongation, a further development, and a more in-depth approach to the same programme.

One of its objectives, indeed, is to consolidate the 'acquis communautaire' while aiming at a better implementation of existing provisions and the adoption of directives (1) proposed under the previous programme.

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(1) Proposal for a Council Directive relating to parental leave and leave for family reasons

Proposal for a Council Directive relating to the implementation of the principle of the equal treatment of men and women in professional social security systems

Proposal for a Council Directive on the implementation of the principle of the equal treatment of self-employed men and women, including those working in agriculture, as well as maternity protection.

It is from the same point of view of continuity that the new programme provides for the continuation and development of a number of projects already initiated under the previous programme, in particular those involving networks for contacts and the exchange of information. At a time when dialogue between different areas of society is difficult and in a situation where equal opportunity does not always constitute a major concern of the traditional partners in this dialogue, these networks of contacts and exchange, which involve the persons and bodies concerned in the broadest possible manner, have made a very positive contribution in terms of both know-how and action. The number of networks will be increased from three (1) to six (2) and will be conceived more and more in terms of action.

2. This is indeed the second characteristic of the new programme: a greater orientation towards concrete action.

Both the legislative and political framework for this Community programme is already in place, even if it still needs to be supplemented and strengthened. We must now attempt to promote a modification of the present state of affairs by a concrete and pragmatic approach.

A substantial effort will therefore be undertaken to stimulate the development of "positive programmes" (3) in both the private and public sectors as well as local employment initiatives for women in all their different forms.

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(1) Implementation of the Directives, Education and Training, Analysis of Female Employment

(2) The three new networks will be: Women and TV, Cribs and Nurseries, Local Employment Initiatives for Women

(3) Pursuant to the recommendation of the Council of 13 December 1984

Though extremely different in nature, these two programmes have been conceived with a common objective in mind: to promote the integration of wommn in employment and in professional and social life in general.

4. Such an objective can only be reached if better account is taken of the specific problems arising in different categories. Surveys (2) and studies have demonstrated the aspirations, needs and specific problems of certain categories. In addition, sociological developments are emphasizing the increasing needs of certain groups (for example: older women, single parent families, etc...).

A particularly innovative aspect of the new programme consists, indeed, in a a more "targeted" approach, in particular with respect to the most vulnerable and/or disadvantaged social categories

5. Such a programme will not be effective without the political will of all the actors concerned.

If the previous programme had a number of positive effects and provided a considerable stimulus (in particular with regard to "positive programmes"), it was also severely handicapped by the absence of political will of certain persons and groups to support or introduce, for example, new legislative measures.

The governments will have to express this political will clearly by means of a Resolution proposed by the Commission. The Council of Ministers should demonstrate such willingness, on the one hand, by adopting the Directives proposed under the previous programme (2), on the other hand, by demonstrating their commitment to implementing this programme.

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(1) In particular the sample survey carried out by the Commission in 1984 on "female employees in Europe"

(2) cf footnotes p. 1 (1)

The increased tendency of such bodies, group and associations to look towards Community institutions, either for legislative or political initiatives or for concrete support of specific projects, was also noted .

Such a tendency, whilst demonstrating the role of the Community as a leader and an example, should not be accentuated to such an extent that it leaves in the shade the responsibilities of the other players (for example: national, governmental and legal authorities, regional and local authorities, social and professional organizations, equality bodies, etc...).

The new programme clearly identifies the roles and responsibilities of each different set of players.

6. This "distribution" of roles and the responsibilities further underlines the need for increased cooperation between all the players involved at Community level.

The Commission will continue to develop the existing contact mechanisms (The Equal Opportunity Consultative Committee, discussion with both sides of industry, networks for contacts and the exchange of information, etc...).

Closer cooperation with government representatives and a more systematic dialogue with various groupings and associations concerned with this problem will also be developed. .

Finally the exchange of information between all players concerned need to be better organized, in order to ensure greater cohesion and coordination of activities.

7. This programme contains a multiple policy. In a delicate field involving major social changes and subject to extreme prejudices, stereotypes and attitudes, simultaneous action should be undertaken in all the fields concerned to ensure the real effectiveness of ongoing policy and that this policy can fit harmoniously into overall economic and social policy. This multiple policy will need to result in action programmes on several fronts.

## II. PROJECTS FOR INCLUSION UNDER THIS PROGRAMME

The programme provides for seven principal fields of action, and the tasks of the Member States on the one hand and the Commission on the other hand are clearly defined.

### 1. Improved implementation of existing provisions

This is a major responsibility of the Commission, guardian of the Treaties. The implementation of Community provisions remains fundamental.

But the problem which arises here involves not only the correct transposition of Community provisions (1) into national legislation but also the proper interpretation and implementation of the same, as well as better use of the possibilities of recourse.

To answer this concern, the principal activities planned for the future include:

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(1) for which the normal procedures of the Treaty, and in particular of Article 169, apply

- improving information available to and sensitizing in particular persons involved in implementing such legislation (conferences (1), seminars, vocational training, individual and joint initiatives, etc...)
- developing mechanisms for the follow-up, control and further development of the provisions
- at the Community level further developing the work of the group of independent experts in monitoring the implementation of the Directives on equality
- reviving discussions with both sides of industry with a view to an improved implementation of wage equality (problem of professional classifications and work of equal value).

Lastly, and perhaps especially, a new Community legal instrument is planned which will give official recognition of the inversion of the principle of the burden of proof in questions involving equality, which should permit the improvement of possibilities of recourse.

## 2. Education and vocational training

The promotion of equal opportunity will only be effective if problems are dealt with at the roots. This is why a very specific stress is laid on education and vocational training.

(1) cf in particular follow-up at the national level of the 1985 Louvain-la-Neuve Conference (cf supra)



As regards education, an outline plan of action has been adopted at Community level (1) including a broad range of programmes aimed at sensitizing and training all the players in the educational process, the improvement of guidelines, the promotion of a greater variety of teaching posts, the elimination of the stereotypes in teaching material, etc...

This programme will be used as a basis for national projects and will be supported at the Community level. A group of national representatives will be entrusted with the task of implementing this programme.

The "Widening of Professional Choices" (2) network will continue to develop its promotion of wide-ranging measures with regard to both school education and vocational training as well as the implementation of the recommendations that it has drawn up (3).

Equal opportunity is one of the main elements to be emphasized in the "Transition towards active life" programme. .

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(1) Resolution of the Council and of the Ministers of Education of 3 June 1985

(2) set up as action B 11 of the 1982-1985 action programme

(3) cf report drawn up by E Sullerot, coordinator of the group, in October 1984

In the area of vocational training, we would point to the possibilities offered by the European Social Fund, in particular as regards training of women in non-traditional trades. So far only limited use is being made of these possibilities. All possible means should be used to encourage a better use of the Fund in this area. Experience has showed that publicity and information campaigns on the one hand and mutual support on the other (networks) are very useful in this area.

In addition, the Commission intends, via CEDEFOP, to promote research and activity programmes on various aspects of this question.

The specific problems of certain categories of women will also have to be dealt with. Studies are in hand and recommendations will be published shortly, for example, on the subject of women wishing to return to work, migrant women, young women and handicapped women.

Finally, based on the results of projects carried out to date, the Commission intends to propose Community project guidelines to allow it to promote, via vocational training programmes, greater male-female integration in various jobs.

### 3. Employment

3.1 Female employment still remains a matter of serious concern. Even if breaches have been made in several sectors and professions, a massive concentration of women in certain sectors and professions can still be observed. Additionally, economic and social changes, the economic crisis and the measures adopted to combat it have not always had any positive effect on female employment.

Women are the first to be affected by the development of precarious forms of employment, and the general tendency towards "flexibility" is not necessarily to their advantage. The increase in the female unemployment rate within the Community is moreover frankly worrying, especially if we bear in mind that women form the majority of the "army" of the long term unemployed.

3.2 For this reason projects aimed at promoting female employment continue to figure large in the programme. These include:

- the improvement of quantitative and qualitative information
- coordination of specific measures in favour of women with overall economic and employment policies
- scrapping of out-of-date protective legislation, with a specific emphasis on the prohibition of night work for young women
- development of "positive action" in various sectors and intensification of Community pressure in the business sector
- support of local employment initiatives, which are particularly interesting for women who find themselves faced with special difficulties (for example, in obtaining credit)
- development of taxation systems which do less to discourage women for working.

3.3 In addition, we should mention the innovative aspect of the programme which, for the first time, provides specific measures for certain categories which present specific problems (for example: single-parent families, single women, migrant women, handicapped women, women working at home, etc...). A greater degree of "targettting" is particularly important following on more generalized action which has already been carried out.

3.4 Lastly, it should be stressed that the objective of promoting female employment in future-looking jobs is closely linked with the introduction of new technologies and their major impact on female employment.

#### 4. New technologies

The development of the new technologies has major consequences on female employment. In this context, the case of office automation is particularly revealing.

In addition, women are often less well-prepared to take up the challenge of the chances that these technologies can offer (inadequate training, traditional roles, etc...). Specific efforts need to be undertaken in their favour.

Those must be at all levels:

##### - Education

Measures aimed at increasing the access of young women to teaching programmes relating to the new technologies and at initiating both girls and boys to the new technologies right from primary school level.

- Training

The number of innovative initiatives should be increased. The vertical mobility of women should be encouraged in specific sectors of the new technologies. Training modules should be provided for, with the European Social Fund playing a major role in this respect.

- Employment

Measures aimed at encouraging women to apply for and companies to recruit women in responsible positions in future-looking industries, making full use of the new technologies. Here too the European Social Fund has an important role to play if used properly.

- Working conditions

The problem of working from home in telecommunication contact with an office will also be studied, with a view to setting up new guidelines, as well as the impact of the new technologies on the division between work and leisure.

- The effect of the introduction of the new technologies on the health and occupational safety of women will also be the subject of research.

- The effects of the new technologies on female employment will have to be taken into greater consideration in negotiations and discussions between the two sides of industry and in particular in the formulation of wage settlements.

- Finally and perhaps above all the programme provides for publicity and promotional campaigns (prizes, booklets, seminars, etc...). We would point out in this respect that the Commission is undertaking a series of round tables in each Member State involving all the partners concerned. The Commission proposes, finally, laying down overall Community guidelines on the subject.

#### 5. Social protection and social security

Certain traditional notions related to the concept of "head of household" or of "household" still often continue to govern the area of social security, leading to direct or indirect discrimination between men and women. Reductions and limitations of social security budgets lead, furthermore, to measures contrary to the principle of equality.

The Commission, which is seriously concerned about this situation, intends to ensure that, when revising their legislation, Member States adhere to the obligation fixed by the 79/7/CEE Directive (1) to eliminate any direct or indirect discrimination.

- (1) Council Directive relating to the progressive implementation of the principle of equal treatment of men and women as regards social security (79/7/CEE) - OJ L 6/24 of 10.1.1979

Furthermore, the Commission will add to provisions already in force a new legal instrument involving important fields not yet covered by the existing Directive (for example: retirement age, widows' and widowers' pensions, family benefits, etc...). Work will be carried out towards a progressive individualization of rights which, in the long term, should make for a greater degree of equality.

Finally, the protection of pregnant and nursing mothers should be improved to guarantee adequate protection, on the one hand, and to abolish, on the other hand, discriminatory effects on recruiting and careers, an area in which, it should be added, it is very difficult to strike a good balance.

6. The sharing of family and professional responsibilities

remains the ultimate basis of real professional and social equality. Publicity campaigns, on the one hand, and measures aiming at encouraging a better sharing of these various tasks on the other, form the basis of Community action in this area.

The Community's action will focus in particular on parental leave, the development of nurseries for children, infrastructure improvements (work scheduling, transport, etc...), the problem of older women and of help for the elderly and adaptations of working times.

7. Sensitizing and development of attitudes

Attitudes to the problem are changing, but moves towards equality continue to be blocked by negative and stereotyped attitudes.

It will be necessary therefore to develop larger and more specifically focused information campaigns in this area. This involves, on the one hand, continuing to develop traditional publicity aimed at women, whilst adapting such publicity to changing requirements. Furthermore, such campaigns must not be limited to "preaching to the converted", thereby creating a "feminine ghetto", but involve "targeted" activities, aimed in particular towards those groups whose activities have a direct impact on the question of equal opportunity (for example: family, parents', young peoples' and consumers' associations, etc...), and towards "decision makers", in the broadest sense of the word, on both sides of industry.

In addition, more broad-based campaigns will be undertaken with the help of the media. To start with, a committee of TV organizations will be set up.

8. Lastly, provision has been made for greater funding. It is proposed to increase the existing budget by 50% to allow the both the further development of existing projects and the implementation of the new projects provided for in the programme.

This programme will require a Resolution of the Council of Ministers.



It will at the same time provide an occasion to test the political will of the Member States on this subject.

The Community programme has, indeed, led the way in this field. The Community, which has committed itself to taking up the challenge of a citizens' Europe, is presented here with the opportunity of demonstrating its will to move forward in what is an both an essential social question and a key element of the new humane Europe which it is seeking to create.

Odile QUINTIN



Why information for women?

The European Commission is the only European institution to have set up a women's information service.

However, the Directorate-General for Information, Communication and Culture which, within the Commission, is responsible for information policy addresses all Community citizens, men and women, in its general message.

Even at the start of the 70s, however, it was obvious there was a need for information aimed specifically at women to make them aware, wherever they met and in the newspapers and magazines they read, both of the construction of Europe and of new Community policy on equal opportunities which gave them new rights.

At the request of leaders of women's organizations (associations, movements, trade unions, party commissions, etc...) in 1977, therefore the European Commission created, within the Directorate-General for Information, Communication and Culture, a working party aimed at informing female public opinion better. In this way a permanent dialogue was started which has enabled the European Commission to identify women's aspirations, point out its policy guidelines, specify how the European enterprise can benefit its citizens, but which also promotes a wide movement of ideas and information from one organization to another and from one country to another.

Sectors for action

The women's information service uses various methods to attain its aims :

- It publishes "Women of Europe", a bimonthly bulletin now

published in nine languages for all women (or men) actively engaged in activities to assist women.

"Women of Europe" provides information in three areas:

- . on aspects of Community policy principally affecting women; for example, in the 42 issues published since 1977, "Women of Europe" has regularly followed the activities of the European institutions (Commission, Parliament, Court of Justice, Social and Economic Committee);
- . the development of equal opportunities in the institutions and laws of the ten Community countries (from now on, twelve);
- . the activities of both national and international women's associations each furthering in their own way the cause of women and Europe.

- The Service also publishes information dossiers ("Supplements to Women of Europe") on Community policies of specific concern to women; it has published 21 issues, respectively on the position of women in Spain and Portugal, on statistics on women, on the equal opportunities Action Programme, on Community law and women, on women in agriculture, on women at work, on women and development, on university research concerning women, etc..

In order to measure the development of attitudes on certain problems in our society, the Service periodically has opinion surveys carried out in Community countries on the comparative attitudes of men and women on such matters as : the female condition, women's work, sharing responsibility, women's involvement in political, social and economic life. The reports on these opinion surveys (carried out in 1975,

1977 and 1983, in addition to a survey on the behaviour of women in the European Parliament elections in 1984) are published in the "Women of Europe Supplements".

- The Service encourages, organizes, occasionally makes a financial contribution to and takes part in symposiums, seminars, training courses etc.. on Community matters prepared jointly with women's associations.
  
- by way of back-up information on these activities, the Service produces brochures for the public at large, posters, an audio-visual kit (50 slides + sound cassette + guide for the organizer) on the European Community and women. As with "Women of Europe" and its "Supplements" this material is available to all women and men organizing conferences, symposiums, meetings, classes in schools, etc.

#### Some examples of activities

Each year the Women's Information Service organizes a European symposium of women's associations aimed at exchanging with the delegates, who represent millions of women in the Community, information on progress made on equal opportunities, on future prospects and on current matters of interest to women.

At the 1985 symposium in The Hague (Netherlands), the 80 participants approved recommendations that were forwarded to the Commission, the Council of Ministers and the European Parliament and aimed at adopting directives submitted by the Commission and not yet adopted by the Council; the resumption of negotiations on reorganizing working time to take into account a better sharing of family responsibilities; the proposal for a second action programme for equal opportunities between men and women; the fourth recommendation called for the awareness of women and training officers to the demands linked to the introduction of new technology.

The results of these symposiums very often show how the women involved can exert an influence on the development of European policies drawn up to favour them.

In preparation for increasing the Community to 12 members, the Women's Information Service has already organized two symposiums to prepare Portuguese and Spanish women for membership. One was held in Lisbon in March 1982 and the other in Madrid in November 1983. Since then efforts have been made to maintain contacts.

To promote the participation of women in political and social life, a first European symposium of local and regional elected representatives was organised in Pisa (Italy) in 1983. It will be followed by another symposium in Santiago de Compostella (Spain) in January 1986, under the same title of "The local and regional elected representatives : to renew Society".

#### Information and participation

Those are just a few examples of measures aimed mainly at ensuring the full participation of women, and their support for, the enterprise of the European Community.

Information campaigns for a larger audience are planned for 1986 always with a view to attaining a triple aim : to inform women on all the Community policies, since the construction of Europe is of concern to them as citizens; to inform them of the specific measures taken to promote equality of opportunities between men and women to make them aware of their rights; to contribute to the evolution in mentalities and the change in attitudes.

Useful addresses

The Women's Information Service considers itself as being of service to the women who are themselves committed to European integration and promoting the condition of women; however, it is ready to help all those working towards this aim.

The Service has a small team for this large task:

Head of the Service and in charge of "Women of Europe"	Fausta Deshormes La Valle Extension 2352860
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Secretary	Marilyn Pincott Extension 2357876
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Assistant	Hilde Albertini Extension 2356189
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"Women of Europe" - Planning	Richard Aplin Extension 2359772
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Fausta DESHORMES

## POSITIVE MEASURES

### Introduction

For most of the time action has been taken to promote equality of opportunities between men and women in employment, it has taken the form of repressive and eliminatory measures. The aim was to forbid or eliminate discrimination. Discussion basically concerned the struggle against discrimination, which was to be waged by anti-discriminatory legal measures.

From the technical point of view, the mechanisms used were based on six fundamental ideas<sup>1</sup>, namely:

1. Recognition of the principle of equality;
2. Definition of the contents of the notions of equality and discrimination;

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<sup>1</sup> Consolidated report on the positive action programmes as strategies designed to integrate female workers and other groups, in a minority position, into the labour market.



3. Formulation of norms on all equality and discrimination matters.
4. Prohibition of unjustified discrimination;
5. Formulation of penalties;
6. Setting up institutional monitoring mechanisms.

Community action, then, basically took concrete form in an anti-discriminatory approach, in other words through the adoption of legal instruments concerning equality between men and women. The three Directives of the Council adopted during the 70s on equality between men and women bear this out (2).

It was only during a second phase that equal opportunities were translated by an active approach, with new impetus being given to the policies already being followed through the implementation of positive measures aimed at ensuring that the principle of equality was applied de facto.

This change in approach was really confirmed when discussion and analyses of the question ceased to centre on recognition of a right to equality and the defence of this right but rather on the concrete, practical ways of changing the rules of the game in real life.

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(2) Directive 75/117/EEC on equality of remuneration. Directive 76/207/EEC on equality of treatment in access to employment, training, promotion at work and working conditions. Directive 79/7/EEC relating to equality of treatment under the legal social security schemes.

Community policy for equal opportunities

Although only a very brief mention is made of women in the Treaty of Rome (Art. 119 on Equality of Remuneration), the Community has a long-standing involvement in the process aimed at improving their situation, especially in the working world.

Initially, Community activities were limited to studies, conferences and recommendations on the state of implementation of equal pay and on the employment of women.

The following stage consisted of the publication of a Memorandum<sup>(3)</sup>, in other words a programme designed to improve the situation of women workers. It was on the basis of this Memorandum that the three Directives on equality (see footnote 2), which form the present framework for Community legal action, were implemented.

Although Article 119 was not included in the Treaty to guarantee the principle of equality between men and women, but rather to avoid too great a distortion in wages hindering the free play of Community industrial competition, this Article has nonetheless given rise to far-reaching laws on equality. Directives in the area of equality have acted as an important driving force for Member countries and have allowed or speeded up the adoption of national legislation in the area.

With a view to assessing the past and discussing future prospects, in 1980 the Commission organized an international conference in Manchester attended mainly by national representatives of women's work and equal opportunities.

The unanimous, over-riding conference conclusion concerned the need to implement new action strategies to complement traditional

<sup>(3)</sup> Equality of treatment between men and women workers (access to employment, training, promotion at work and working conditions"), doc. COM(75) 36 of 12.2.1975.

legal measures.

The conference recommendations were adopted by the European Parliament, which in its Resolution of the 11 February 1981 on the situation of women in the Community asked the Community institutions to strengthen and broaden their activities in the field of equality.

In response to this request and the concern of several other authorities and bearing in mind social and economic developments, in December 1981 the Commission submitted to the Council an Action Programme on Equal Opportunities for Women, covering 1982 to 1985.

The notion of "positive measures" was first used in Community policy in this Action Programme, although the legal basis for the implementation of positive measures already existed: Article 2.4 of Directive 76/207 states that this Directive shall not hinder measures aimed at promoting equality of opportunities between men and women, in particular through remedying present inequalities affecting opportunities for women.

But it must be admitted that this article, which was not couched in very dynamic terms, has never really promoted equality.

However, such measures already existed here and there in the Community, either as a result of private initiatives or efforts by public authorities, although they were nearly always isolated small-scale measures, of limited impact and difficult to assess.

What the Commission had in mind at the start of the 80s, was a real Community measure designed to remedy not only de jure inequalities, but also de facto inequalities resulting from sociopolitical attitudes and behaviour and out-dated, yet persistent, stereotyped structures.

The Action Programme it submitted to the Council was based on two key principles:

- the strengthening of individual rights through the development of legal measures (improved monitoring and supervision of existing laws and of their implementation, formulation of new legal instruments<sup>(4)</sup>);
- the de facto promotion of equal opportunities through the development of positive measures, aimed at neutralizing and overcoming obstacles to equal opportunities, other than legal ones, in particular the constraints and conditioning of attitudes based on the traditional segregation of roles in society.

The measures put forward centred on the following: preparation for working life; initial and continuing education; campaign to make those interested and their family and school circles aware of the real opportunities to choose for girls; the promotion of mixed employment in all sectors and professions and at all levels of the professional hierarchy; assessment of developments in equal opportunities in employment and working conditions; the sharing of professional, family and social responsibilities and an awareness campaign directed at the public at large and at those groups directly concerned by the positive aspects of the change in mentalities. The Action Programme points out the measures to be taken by the Commission and by the Member States on each aspect.

In a Resolution in July 1982 the Council committed itself, among other things, to implementing de facto the principle of equal opportunities with no discrimination against women regardless of their economic situation. At the same time, it undertook to step up action taken at Community and national levels in order to promote equal opportunities de facto through the imple-

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<sup>(4)</sup> Three draft Directives are now before the Council, viz. concerning parental leave and leave for family reasons, application of the principle of equal Treatment to self-employed women, including in agriculture, and equal treatment in social security professional schemes.

mentation of positive measures.

#### A Community framework

To identify the most suitable ways for these measures to develop, the Commission carried out studies and research in Member States and in third countries which have wide experience in this area, such as the United States and Sweden. It is mainly on the basis of these studies and of a top-level conference held in Athens in September 1983, whose main aim was to provide guidelines for the formulation of a Community instrument in this field, that the Commission put forward a recommendation to the Council in 1984.

A binding instrument, at this early stage, in the "development" of national laws on the matter would have been premature since there were no binding national laws in this area. Even the most advanced laws only provided for positive measures as an optional step (France) or contained measures of encouragement (United Kingdom), or made provision for their authorization (Denmark, Belgium and the Netherlands).

In this situation and bearing in mind the myths still surrounding the positive measures, the Commission has chosen to make provision for an adaptable, flexible instrument capable of giving encouragement to overall strategies of positive measures<sup>(5)</sup>. Nonetheless,

<sup>(5)</sup> On the other hand, the countries most advanced in this area of positive measures are those with a basic legal framework that determines the types of measures to be put into effect, the resources and the necessary penalties.

In Sweden, the projects often arise after government decisions based on a legal instrument, which requires the public authorities to take action.

In the United States measures are a direct result of a legal instrument which obliges any undertaking financed wholly or partially by public funds to draw up a positive action programme.

there is still the possibility to go further at a later stage.

The Recommendation in question was adopted by the Council in December 1984.<sup>(6)</sup>

This Recommendation makes provision for the adoption by Member States of a positive action policy designed to eliminate de facto inequalities which women are subject to in their working lives in addition to promoting mixed employment and setting up a framework with provisions suitable for attaining this objective.

The actions put forward for implementation or encouragement in the public or private sectors cover a wide range of aspects. For example, campaigns to provide information and arouse awareness as to the need to promote equal opportunities; the formulation of studies or analyses relating to the situation of women on the labour market; the diversification of professional choices and more appropriate professional qualifications; the setting up of employment, guidance and advisory services with staff especially experienced in women's problems; encouragement to applications, recruitment and promotion of women in sectors, professions and at levels where they are under-represented; a better sharing of professional and social responsibilities and the active participation of women in decision-making bodies, including those representing employers and labour.

The Recommendation included a request to the Commission to submit a report to the Council on progress achieved in the three years following its adoption.

The Commission, accordingly, drew up a questionnaire designed to gather systematically the necessary information. This question-

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<sup>(6)</sup> Recommendation relating to the promotion of positive measures to assist women of 13.12.1984 (84/635/EEC) OJ no. L 331/34

naire has already been sent to the members of the Advisory Committee on Equal Opportunities between Men and Women<sup>(7)</sup> and will be sent to the governments at a later date. The data and national information gathered will enable the Commission to follow developments and lay down guidelines on possible measures to be taken.

The Commission also plans to publish a guide to good practice for equal opportunities in the place of work. This guide, directed principally at the employers, trade unions and women concerned, will provide a framework for the creation and implementation of positive measures in the place of work whilst respecting the traditions of each individual company<sup>(8)</sup>.

#### Implementation of positive action policies:

As has already been pointed out, positive action already existed on a very limited scale. It is recent Community policy<sup>(9)</sup> which has provided the impetus for the implementation of such action. The extension and wide variety of measures taken in the meantime is a reflection of the increasing familiarity with the concept of positive action and shows the wealth of the initiative at all levels both in the public sector and in the private sector<sup>(10)</sup>.

One of the first areas for activity is education and vocational training.

A Community network of informers and advisers on equality questions, set up at the start of 1984, is responsible for encouraging integrated education and training programmes with a view to

<sup>(7)</sup> This Committee was set up by the Commission on 9.12.1981 (OJ L 20/35 of 28.1.1982) to assist it in implementing its policy on equal opportunities.

<sup>(8)</sup> Such a code is already in force in the USA, Australia and Canada (Quebec).

<sup>(9)</sup> Cf. also Council Resolution of 7.6.1984 on measures to combat female unemployment (OJ no. C 161/4 of 21.6.1984) and the Resolutions on Vocational Training in the 80s and on New Technology (both adopted in 1983).

<sup>(10)</sup> Report on the implementation of the Action Programme 1982-1985 (doc. COM(85) 641).

diversifying professional choices with a special agreement on those linked to the introduction of new technology.

A recent Resolution<sup>(11)</sup> includes a specific action programme on equal opportunities between young girls and boys in education. Within the framework of this programme, the Commission undertakes, among other things, to promote the principle of equality in all Community activities and policies linked to education, training and employment policy. A group made up of national representatives of equal opportunities in education and of the representatives of the authorities responsible for this subject will be created with a view to pooling together the experiences of Member States.

New technology as such also covers an area where positive measures to help women are important, if not indispensable. Over the next two years the Commission will promote national round tables on women and new technology on the basis of recent studies<sup>(12)</sup>. At the same time it is continuing its research in the field<sup>(13)</sup>.

The Social Fund, for its part, is providing encouragement for the training activities for women in new technology, particularly for decision-making positions.

As regards the other important area for the implementation of positive measures, employment, a certain number of interesting activities are being or have been carried out both at Community level and national level.

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<sup>(11)</sup> Resolution from the Council and the Ministers of Education, meeting within the Council of 3.6.1985 (85/C166/01 O.J. no. C 166/1 of 5.7.1985)

<sup>(12)</sup> A study on office automation and two others on training needs following the introduction and extension of new technology.

<sup>(13)</sup> A study is currently being carried out on work at home via a terminal and women, another will be carried out in 1986 on the repercussions of the agreements on new technology on female employment.



The positive action programmes in certain sectors which, in cooperation with the Commission, are being implemented in various Member countries are particularly interesting.

These research actions, into employment and equal opportunities started in 1978 in the banking sector, and are still being pursued.

It is worth pointing out that as a result of the programme some indirect, unintentional discrimination against female workers has been eradicated and therefore they have been able to reach higher, decision-making levels. The programme has led to a better working atmosphere and the whole project has benefited from a better utilization of abilities and talents hitherto unknown.

Since this research-action was crowned with success, it has been extended to the industrial sector (pharmacy, electronics, food, metals, clothes etc....). Actions are currently underway in six Community countries with two or three enterprises per country. These measures have also been implemented in the public sector, which is a key sector for the promotion of positive measures, and in television organizations. The former were the subject of a seminar in Maastricht; the latter were the basis for a seminar in Brussels, both in 1985.

At the same time, and as part of the development of local employment initiatives, the Commission gives particular support and encouragement to women's cooperatives. Since 1983 it has accordingly been helping a large number in various Member States and in very varied areas ranging from craft work to new technology, including printing, publishing, the audiovisual sector and farm holidays<sup>(14)</sup>. It is setting out to set up a sort of network of exchanges of experiences in this area in Community countries.

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<sup>(14)</sup> The European Social Fund also finances training that leads to the creation of cooperatives.

In order to assess the female employment situation more effectively, the Commission has set up a group of experts responsible for establishing qualitative and quantitative indicators, a sort of European observation post, on female employment. The material available will be integrated into the global analysis and assessment mechanisms (in cooperation with the Statistics Office).

The sharing of family and work responsibilities is a particularly interesting sphere of involvement for the development of positive measures and, in this context, especially for the development of suitable means for looking after children, parental leave and family leave and the review of the social infrastructure in general.

The Commission is following developments and will undertake measures to improve the present situation.

Finally, mention should be made of a great number of actions in the field of increasing awareness and change of mentality campaigns at Community level in various Member States.

In addition to the large quantity of research and surveys, meetings and exchanges of information and experiences transmitted particularly by the journal "Women of Europe", diversified specific measures are being or have been taken, for example an audiovisual film and a brochure on Community action.

As regards the national level, the legal framework, which is still too vague, is the reason why the positive measures have not developed systematically within a framework even if there exist very interesting experiences here and there. This is the case both for the private and public sectors. The positive measures favoured most often take the form of vocational guidance and training. There are very interesting examples in this area such as the special access to

training and special classes for the female unemployed (Belgium, Denmark, France and Italy). However, there are many other interesting measures which range from incentives to recruit and promote women in sectors where they are underrepresented (such as IBM in France, Thames T.V., Rank Xerox and the London Borough of Camden in the United Kingdom); the quantitative and qualitative analysis of women on the labour market (public sector in the Netherlands and the Société Nationale Industrielle Aéro-Spatiale (SNIAS) in France); campaigns to provide information and arouse awareness as to the need to promote equal opportunities (Compagnie Aer Rianta and the Radio and Television Service in Ireland); the diversification of professional choices and more appropriate professional qualifications (the public sector in various Member States, especially France, Belgium, the United Kingdom and the F.R.G. and the Compagnie d'Assurances générales in Belgium); to the adaptation of the equipment of employment services to deal with the particular problems of female workers more adequately (Denmark, France and Belgium: equality advisers attached to regional offices).

In its medium-term Community Programme Equal Opportunities for Women (1986-1990) which replaces and pursues the Action Programme 1982-1985, the Commission gives paramount importance to positive action. It will pursue and extend its own activities in this area and will continue to support the initiatives by the Member States.

Marie-Josée RAETSEN

LOCAL INITIATIVES - WOMEN'S INITIATIVES ?

The 1980s have seen, alongside continuing high unemployment a growing interest in local job creation, marked at Community level by a major policy document on the contribution of local initiatives to the fight against unemployment, endorsed by the Council of Ministers in June 1984 (1).

The majority of working women are in precarious forms of employment, notably the unskilled sector and part-time and temporary work, where they are particularly vulnerable to the growing competition of jobs. The situation of women is exacerbated by the effects of public expenditure cuts on social infrastructures such as crèches and pre-primary education, and by the introduction of manpower-saving technologies in areas such as secretarial work and retailing where female labour is preponderant. As a result of these and other factors, women account for almost half the registered unemployed, although they represent little more than a third of the Community's working population.

Even on entry into the labour market, young women are more affected by unemployment than young men. In spite of the inroads made by certain women in non-traditional occupations, the overall concentration of women in a very limited range of professions has hardly changed.

In this context, Action 12 of the Community Action Programme on the Promotion of Equal Opportunities aims to promote desegregation in employment in all sectors and occupations and at all levels of the occupational hierarchy. While women workers remain concentrated in a few sectors of activity and at lower hierarchical levels, there is evidence of the capacity of women to occupy any post that is genuinely open to them. Pilot schemes, such as cooperatives, were felt to be one method of stimulating the process of change in enabling women to work in occupations considered to be traditionally male.

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(1) See Social Europe

Local initiatives also have the particular benefit for women, upon whom most of the burden of family responsibilities still falls, of providing a working environment which can include flexible hours, and convenient local working arrangements. The experience in itself of running a business, even if part-time and at least initially with small rewards, can be invaluable for the self-confidence and esteem of the women undertaking the project. The social value to the whole of the local community in the creation of local employment must also be weighed in the balance, when deciding on support for these initiatives, because in most cases they need support both moral and financial at least in the initial stages.

In a situation where we can see across the European Community a growth in jobs provided by all types of local initiatives, and where in cooperatives alone the number of people working has doubled in the past five years, and against a background of ever-rising unemployment, we have to look carefully at the possibilities for women in particular of taking full advantage of any opportunities that exist.

The Commission, given its own extremely limited resources in this area, decided that the money available would be best used in supporting the creation of jobs, either in cooperatives or in similar local initiatives in countries where cooperatives were not recognised as such or where the procedure for establishing cooperatives was so expensive or cumbersome that it ruled out small initiatives. Starting in 1983, the Commission has therefore given small start-up grants to a number of initiatives for women.

Each year, as our funding possibilities become more widely known, and as the initiatives we have already funded encourage others to follow in their footsteps we are seeing greater demand for our participation in these projects.

So far the Commission has helped women to create jobs by organising farm holidays in Greece, publishing in Ireland and Denmark, video-making in Wales, working in micro-electronics in London, film distribution in Italy, a party service in Berlin, and many more. A particularly interesting aspect of this work has been in assisting migrant women in the development of cooperatives, as in addition to the problems most women face, migrant women can only, for cultural reasons, find acceptable employment in cooperatives. Here the Commission has helped two initiatives so far, for Turkish women in Denmark and for North African women in Belgium.

In this area then the Commission has a limited, but practical, experience of the problems facing women who want to set up their own business.

The fundamental problem is often one of authenticity - of being taken seriously - which ties in strongly with the major issue for anyone setting up in business - capital, however small. Women often do not have, or cannot use, family assets such as a house or a savings account to guarantee a bank loan. Allied to this, women often set out to start businesses which rely more on expertise than material assets, and banks inevitably find it easier to finance, for example, the purchase of a lorry than the renting of premises for the provision of a service.

The corollary to this is that women often start smaller, and need less capital, but find even the little they need extremely difficult to find.

The Commission has been granting very small sums of money to these initiatives, but has found that the support of a public body can work wonders, not only in giving moral encouragement, but in giving the project the authenticity it needs particularly vis-a-vis the Banks.

While initial capital is clearly essential to setting up the business, more emphasis needs to be laid at an earlier stage on the availability of training and support for women who are prepared to create their own jobs. We need to make sure that where schools are now beginning to encourage a "spirit of enterprise" that girls take part fully and that women's initiatives are brought to the fore as examples. Training in cooperative and business management is vital to women, who often have little if any business experience. Here experiments in the provision of women only training courses need to be evaluated to see whether the advantage of learning in a single-sex environment is ultimately beneficial.

The role of support agencies of all kinds, including business consultants and cooperative development agencies, is crucial to any small enterprise, providing expertise, assistance and reassurance, and often insisting on a regular control at least in the early stages. These agencies need to be aware of the specific problems that can face women in the open market and can provide valuable official backing.

There is, however, a danger in assuming that the answer to women's unemployment is for women to create their own jobs. A climate of despair may in some cases lead to initiative, but it is not the healthiest basis for setting forth on a risky venture. There is evidence already to show that women's businesses, once created, remain small, pay low wages, are often badly housed and fear to expand.

Schemes in existence in the Member States to grant allowances to the unemployed wishing to start their own businesses should not be based on the criteria of being officially on the job register, or in receipt of unemployment benefit, factors which often exclude married women.

In some Member States, it is difficult to set up small cooperatives, often a preferred solution for women, owing to legal requirements for unrealistic capital investment. As many governments are promoting the removal of barriers to small business creation, this issue should be put on the agenda.

It takes courage to start your own business, and with some training, some encouragement, a little capital and good health it can succeed. For many women, however, it can still mean isolation from other women in a similar position. Running a small business does not leave a lot of time for other contacts.

This is one of the reasons why the Commission is also running a project to try to ascertain the position of women's cooperatives and of women in cooperatives across Europe, a massive task which has only just begun. An exchange of information and experience on local initiatives between women working in them across the European Community could provide valuable support and contacts to the women themselves and insights for the Commission into the steps that need to be taken to ensure equal opportunities for women in the area of local job creation.

Sarah Evans.



### LOME III AND WOMEN

The new Convention concluded between the Community and 66 countries from Africa, the Caribbean and the Pacific (Lomé III) contains in chapter VIII on cultural and social cooperation, an article on projects to be undertaken in favour of women in the African, Caribbean and Pacific countries which are signatories to the aforementioned Convention.

#### ARTICLE 123

1. Cooperation shall support the ACP states' efforts aimed at enhancing the work of women, improving their living conditions, expanding their role and promoting their status in the production and development process.
  
2. Particular attention shall be given to access by women to all aspects of training, to more advanced technology, to credit and to cooperative organizations, and to appropriate technology aimed at alleviating the arduous nature of their tasks.

Article 123 is the result of de facto situations. The reason for inserting the clause "Cooperation shall support the ACP States' efforts aimed at enhancing the work of women, ..." is that in many cases the problem of women's work has not been taken into consideration. Only too often, the outcome of development projects has demonstrated that not taking the female population into account leads to the failure of these projects on an overall social and economic level.

Lomé III has thus established both the existence of a lack and the desire to remedy it. What will be the outcome of such desires? Will they be implemented or will they remain "pious hopes"? Everything will depend on the will of the ACP and EEC partners to achieve the objectives of Article 123 and to mobilize the means to implement such objectives.

Such action should begin at the pre-programming stage, i.e. starting from the preliminary definition of a particular country's needs, and the nature and volume of the aid required. Right from this stage, it is advisable to take into account the current place of women in the society concerned, and to raise certain questions concerning in particular the status of women:

- their participation or non-participation in regional and village social structures, and particularly their status in relation to men;
- their situation within the family earning unit (animal breeding, fishing, agriculture): the distribution of agricultural and pastoral work, their role in marketing, the financial burdens imposed on women, women's incomes in relation to men, including extra-agricultural sources of cash incomes.

Following this diagnosis, whenever strategies are prepared to support sectoral policies and projects and programmes undertaken, it is advisable to fight discrimination against women:

- by including women in the consulting process both at the design and the implementation stage;
- by encouraging the creation of specific women's incomes via their accession to ownership status, and accompanying this measure by access to credit;
- by encouraging the training of women, thereby enabling them to participate fully part in these projects, in particular in the maintenance of equipment;

- by improving their working conditions, in particular by the supply of drinking water;
- by facilitating their access to "more sophisticated technologies" in particular with those "aimed at alleviating the arduous nature of their tasks" (Article 123, subparagraph 2);
- ensuring that medical measures are included in the development projects.

The presence of these few lines specifically related to women in Lomé III is in itself a sign of progress. They should not remain a dead letter. Very recently, the Communities' Development Council defined in broad outline its concerns as regards development aid and the position of women in the developing countries. The essence of the official statement merits being quoted here. It states that the Council:

- stresses the need to consult women on the implementation of projects financed by the Community;
- confirms that it would be advisable, in the preparation, follow-up and ex-post evaluation of such projects, to include a specific environmental study;
- reaffirms the importance of the role of women in development, which should in every case be taken into account in the pre-programming, programming and study of such projects, and in their financing by the Community. To this end, specific measures could usefully be undertaken to strengthen the contribution of women in development;

- would like to see a substantial increase in the number of women involved in the technical assistance sector;
- would like to see an intensification of the Communities' contacts with women's organizations in developing countries, in particular in the form of regional seminars. Contacts should also be sought with women's associations at village level,
- requests the Commission to do all within its power to include in the future a breakdown by sex in statistical data relating to projects submitted for Community financing;
- requests the Commission to continue its programmes aimed at promoting - in line with the previous conclusions - a more concrete participation of woman in its development programmes and activities and intends to discuss this question further at its next meeting, if possible on the basis of an initial Commission Report and of information to be communicated by Member States on their experience in this field.

This putting into concrete practice of Article 123 can only go to strengthen the future role of the Community in taking into account the potential represented by women in the developing countries.

Andrée VANDERHAEGHE

## Implementation of equality of opportunities within the Commission of the European Communities

### 1. The Commission and equality of opportunities

As part of the Community's action programme to promote equal opportunities for women (1982-1985), the Commission made an undertaking to the Council that it would take a certain number of measures aimed at promoting greater equality of opportunities between men and women, even within its own services.

A Council resolution of 12 July 1982 reiterated the need to promote mixed employment in all sectors and professions as well as a more equal proportion of women at the various levels of responsibility, both on a national and a Community level. In addition, it pointed out that "the public sector, including the Community institutions and organs should set an example on this matter".

At that time, the Commission, in a speech made by its President before the E.P., stated its determination to undertake positive action in its staff policy to promote greater equality of treatment.

The Commission was asked by the Council to make an interim progress report before 1st January 1984 and, to make an initial assessment of the measures taken before the end of 1985.

### 2. The first recommendations adopted by the Commission

An "Equality of Treatment" committee made up of Administration and Personnel representatives drew up a series of initial recommendations in 1983, based on statistical data, within the framework of the action programme (1982-1985) adopted by the Council.

These initial recommendations concerned the 4 following areas:

- Recruitment policy aimed at increasing female recruitment particularly at top levels.
- Careers where the equality aim must be pursued to obtain the same career profiles for men and women.
- Training aimed at improving access to training, the implementation of training programmes that make provision for mobility, the return to work after leave for personal reasons and takes into account aspects affecting female staff.
- Social infrastructure and adaptation of working time aimed at obtaining and complementing a necessary social infrastructure and suitable working conditions for women to be able to fully commit themselves to their professional life.

In addition to these initial recommendations, a permanent central organ called the Joint Committee on Equal Opportunities for Men and Women (COPEC) was set up to provide encouragement, coordinate subsequent actions and monitor them. Its chairperson is a top-level representative from the Administration; the trade unions and professional organisations choose its vice-chairperson. The Administration members on the Committee are chosen so that those Administration services most affected participate, thereby guaranteeing effective follow-up action.

### 3. COPEC's work

The Commission approved the guidelines set out above and COPEC started work in November 1984.

It has taken specific measures in the areas identified as being the most important :

As regards the recruitment of new officials, the Commission

faces the difficulty of recruiting enough women candidates for the top categories. Experience shows that, at the open competitions, there are far fewer female than there are male candidates. Under these circumstances it will be some time before there is an equal distribution of men and women on the Commission's detailed list of posts. In an attempt to remedy this state of affairs, one of COPEC's recommendations is that the wording in the open competition notices that appear in newspapers should be changed and that efforts should be made to publish them in those newspapers most likely to reach potential candidates.

COPEC has already taken measures to ensure equal opportunities for officials already working in the Commission.

Awareness campaigns for members of the Selection Board members for internal competitions as well as for promotion boards are underway in an attempt to eliminate hidden discrimination practices; efforts are being made to obtain a more equal distribution of the sexes on selection and promotion boards.

From the legal point of view, in the future men and women will be treated equally as regards survivor's pensions.

As a result of its multilingual context, terminology is a very important area for the Commission. Terminology experts have made studies to promote the use of a vocabulary applicable to both men and women in administrative documents.

#### 4. Need for a Positive Action Programme.

In spite of the efforts already made to promote equal opportunities, there are no radical changes foreseeable in the situation as any change is linked to the evolution of mentalities in society and to the roles assigned to women in it. Many powerful elements unaware of discrimination still exist and specific measures

are not enough to overcome them.

It is for this reason that COPEC has considered it necessary to complement its analysis with a study made by external experts which, in particular, includes sociological surveys and a statistical analysis of Commission staff. This study is designed to make a diagnosis of the situation and help get a Positive Action Programme within the Commission underway.

It is already foreseeable that the new PAP will include the following areas already included in the 1982-1985 project: recruitment, training, careers, working conditions (including adaptation of working time) and social infrastructure. This will involve identifying and specifying realistic aims to be attained in target-groups within set periods of time.

Steps already underway in the same sectors of staff policy will be pursued during the diagnostic phase and, if need be, complemented according to the information obtained during the course of the study.

Depending upon the results of this diagnosis, the Commission will examine how suited its internal structures are for implementing the PAP.

It will be a matter of bringing the Commission's internal policy into line with the commitments it has put forward at Community level.

##### 5. Modernization of management of Commission staff and equal opportunities

The Commission intends modernizing its method of staff management, in particular through a series of measures able to highlight the human potential available more effectively.



The equal opportunities aspect is a basic element to be taken into account in this context as the Commission has acted, and still acts, as the driving force for member States so that the new equality values are fully included in the national statute books and in the everyday life of Community citizens.

The experience gained from the positive measures promoted by the Commission in the industrial and services sector has shown that highlighting women's potential has paid off. Indeed, highlighting them will make a large contribution to our societies' need to communicate and to the rapid technological evolution since it will bring the necessary extra skills of adaptation to change, creativity, a sense of human relations and a sense of a person's value. Moreover, highlighting the potential of women will form part of a policy of more effective utilization of human resources.

6. The Commission intends assessing and distributing the results obtained at the end of the period covered by this action programme.

Philippe LOIR



EQUAL PAY

DIRECTIVE 75/117 AND ARTICLE 119 OF THE EEC TREATY

1. If we want to assess, from the legal point of view, the last ten years of Community action in the area of equal pay for men and women, we ought to start, in practice, with Directive 75/117 of the Council of 10 February 1975<sup>(1)</sup>.

However it is in fact impossible not to start with Article 119 of the Treaty establishing the European Economic Community, which stipulates that :

" Each Member State shall during the first stage ensure and subsequently  
" maintain the application of the principle that men and women should receive  
" equal pay for equal work.

" For the purpose of this 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.

„ Equal pay without discrimination based on sex means :

" a) that pay for the same work at piece rates shall be calculated on the  
" basis of the same unit of measurement;

" b) that pay for work at time rates shall be the same for the same job."

2. The question arises why, in addition to Article 119, the Commission wished to draw up and submit to the Council on 19 November 1973 a proposal for a new Community instrument, which was negotiated in 1974 and which became Directive 75/117 of 10 February 1975.

Given the difficulties encountered in obtaining the implementation of Article 119 in the original Member States, the Commission's main aim was to specify more clearly certain procedures likely to facilitate the realization of the principle of equal pay and to fix, at the same time, certain minimum standards for the protection of women workers.

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(1) 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) - O.J. No. L 45 of 19/2/75, p. 19.

In addition, the Commission also hoped that new and future Member States should benefit from the experience already acquired and use Article 100 of the Treaty as its legal basis in order to obtain an approximation of the legislative, regulatory and administrative provisions of the Member States<sup>(1)</sup>.

Three remarks need to be made in connection with Article 1 of this Directive, which aims to specify the contents and scope of the "principle of equal pay" :

- a) the broadening of the concept of "equal work" to "work to which equal value is attributed", along the lines of Convention no. 100 of International Labour Organization;
- b) the inclusion of the formula "elimination of all discrimination on grounds of sex" with regard to all aspects and conditions of remuneration;
- c) the obligation to use criteria common to both sexes in job classification systems.

This Directive also aims :

- to ensure, by judicial process, respect for the right of equal pay (Article 2);
- to eliminate any discrimination which may still exist in certain legal provisions (Article 3);
- to render ineffective any collectively agreed or contractual provision contrary to the aforesaid principle (Article 4);
- to require the protection of women workers at the level of the undertaking against any dismissal related to the implementation of the principle (Article 5);
- to provide workers with sufficient information on their rights (Article 7);
- to reaffirm the direct responsibility of the Member States to ensure, by effective means, respect for the aforesaid principle (Article 6). (the original Commission proposal provided for supervision at the level of the undertaking with the right of the supervising body to impose sanctions).

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(1) Article 100 stipulates that : "The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation."

3. It is interesting to point out that the aims of the Commission have been confirmed to a certain extent by the Court of Justice of the European Communities in the famous Judgment on the subject of equal pay of 8 April 1976 (the second Defrenne case, which will be referred to later on).

In this judgment, the Court refers to Directive 75/117 and states that is intended "to encourage the proper implementation of Article 119 by means of a series of measures to be taken on the national level", and which "provides further details regarding certain aspects of the material scope of Article 119 and also adopts various provisions whose essential purpose is to improve the legal protection of workers who may be wronged by failure to apply the principle of equal pay laid down by Article 119". The Court confirms the implementation of Article 119 from the point of view of extending the narrow criterion of "equal work" in accordance in particular with the provisions of Convention No. 100 on equal pay concluded by the International Labour Organization in 1951, Article 2 of which establishes the principle of equal pay for "work of equal value".

ACTION BY THE COMMISSION AND TRANSPOSITION INTO NATIONAL LAW OF COMMUNITY  
LEGISLATION ON EQUAL PAY

4. Within the general framework of the tasks entrusted to it under Article 155<sup>(1)</sup> of the EEC Treaty, the Commission had in particular drawn up from the beginning periodic reports on the state of implementation in the various Member States of the principle of equal pay set out in Article 119 of the Treaty. All these reports were forwarded by the Commission not only to the Council but also to the European Parliament and to the Economic and Social Committee.

Its seventh report was drawn up at the time of the first enlargement of 1973 and described the situation at 31 December 1972<sup>(2)</sup>, which mainly consisted of a "balance sheet" of developments since 1958 in the six original Member States. In the conclusions of this report, the Commission stressed its intention to instigate, for the first time ever in this area, infringement

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(1) This Article instructs in particular the Commission "in order to ensure the proper functioning and development of the common market" to ensure "that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied".

(2) Doc. COM(73) 3.000 of 18 July 1973.

procedures based on Article 169 of the Treaty<sup>(1)</sup> against certain Member States which had not yet complied with all the formal and direct obligations imposed on them by Article 119.

The Commission went on to commence two infringement procedures, against Luxembourg (on the 16 October 1973) and the Netherlands (on the 31 October 1973) which, without going as far as the ultimate stage of a hearing before the Court of Justice, obtained positive results by bringing into existence, on the one hand, the Regulation of the Grand Duchy of Luxembourg of 10 July 1974, and on the other hand, the Dutch Law of 20 March 1975.

It should also be pointed out that an eight report was drawn up on the state of implementation as at 31 December 1973 of the principle of equal pay in Denmark, Ireland and the United Kingdom<sup>(2)</sup>.

5. As for Directive 75/117, this entered into force on 12 February 1976 or one year after its notification to the Member States. Article 9 stipulated that within three years of this date of notification, or before 12 February 1978, the aforementioned Member States had to forward to the Commission all the necessary information to enable it to draw up a report to the Council on the implementation of the Directive.

The principal object of this report<sup>(3)</sup> was to analyse the transposition into national law of each Article of the Directive and to reveal any possible "loopholes" in the law.

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(1) Article 169 stipulates that : "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice".

(2) Doc. SEC(74) 2721 of 17 July 1974.

(3) Doc. COM(78) 711 of 16 January 1979.

On this basis, seven infringement procedures were opened : the measures required by the Commission were taken after the delivery of a formal warning letter (1st stage) in two Member States (France and the Federal Republic of Germany), after the issuance of a reasoned opinion (2nd stage) in two further States (the Netherlands and Belgium) and after a judgment of the Court of Justice in two other States (Luxembourg and the United Kingdom). Denmark, condemned by the Court, had just drawn up a modifying Bill.

Without going into details, it may be said that these proceedings were based on :

- certain supplementary wage advantages connected with the concept of "head of household" (Belgium, Luxembourg, France);
- the fact that judicial review was based only on a very general Article of the constitution (the Federal Republic of Germany);
- the limitation of the law on wage equality to the private sector only (the Netherlands);
- the incomplete character of the law on wage equality with regard to work "of equal value" (the United Kingdom, Denmark).

In addition, a report relating to Greece<sup>(1)</sup> was drawn up which stated in particular in its conclusions that the law of 30 January 1984 carried out in certain important respects the transposition of the Directive into national law but that the Commission would continue to watch closely the development of the situation.

6. To compile a brief table of national laws relating to the principle of equal pay, one can mention :

- In Belgium a Royal Decree of 9 December 1975 has made collective agreement no. 25, dated 15 October 1975, relating to wage equality, binding on the private sector.

An economic reorientation law of 4 August 1978 contains a Section V relating to the equal treatment of men and women in particular as regards working conditions, including pay. This law includes the public sector.

Finally a Royal Decree issued on 10 September 1981 following an infringement procedure, amends the conditions governing the granting of household allowance to civil servants.

- In Denmark, the law of 4 February 1976 on wage equality will be amended following an infringement procedure.

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(1) Doc. COM(84) 667 of 4 December 1984.

- In the Federal Republic of Germany, a law of 13 August 1980 introduced into the Civil Code the principle of wage equality "for equal work or work of equal value", also following an infringement procedure.
- In Greece, in addition to the precise provision of the constitution of 1975, a law of 30 January 1984 carried out in several important respects the transposition of the 1975 Directive.
- In France, following the law of 22 December 1972 on equal pay, a decree was issued on 2 May 1979, following an infringement procedure, to repeal a discriminatory provision in the mining industry.
- A law of 13 July 1983 on job equality between women and men has strengthened very appreciably the provisions of the Labour Code relating to wage equality.
- In Ireland, there exists the Anti-Discrimination (Pay) Act of 1 July 1974 as amended by the Employment Equality Act of 1 June 1977.
- In Italy, law 903 of 9 December 1977 on the equal treatment of men and women in employment contains 5 Articles on the implementation of wage equality.
- In Luxembourg, following the Grand Ducal Regulation of 10 July 1974 on equal pay issued following an infringement procedure, a law of 20 May 1983, also following an infringement procedure, modified the conditions governing the granting of family allowances to officials.
- In the Netherlands, the law of 20 March 1975 on wage equality in the private sector was expanded following an infringement procedure to include the public service sector, by a law of 2 July 1980, itself the result of another infringement procedure.
- Lastly, in the United Kingdom, the Equal Pay Act of 29 May 1970, as amended by the Sex Discrimination Act of 12 November 1975, was amended again, with regard to work of equal value as a result of an infringement procedure, by the Equal Pay (Amendment) Regulations of 6 December 1983.



COMMUNITY CASE LAW RELATING TO EQUAL PAY

7. According to Article 164 of the EEC Treaty, the Court of Justice of the European Communities "shall ensure that in the interpretation and application of this Treaty the law is observed".

We have already seen that the Commission may initiate an infringement procedure against a Member State, the final phase of which is, if necessary, the bringing of the matter in front of the Court to obtain a judgment of failure to fulfil its obligation. Up to now three judgments have been handed down against Luxembourg, the United Kingdom and Denmark and six other infringement procedures have been resolved prior to the matter being brought in front of the Court.

On the basis of Article 177 of the Treaty, a national court or tribunal may, if it is a body of first or second instance, and must, if its decision is not susceptible to appeal, request the Court of Justice for a preliminary ruling so as to obtain an interpretation of Treaty or secondary legislative provisions. Nine rulings have been issued to date as regards equal pay and three cases are in hand.

The Court can also decide, under the terms of Article 179 of the Treaty, on any dispute between the Community and its employees. A series of judgments, in particular those relating to the conditions of the attribution of the "expatriation allowance" set out in the Staff Regulations, relate to the principle of equal pay.

The most important ruling of the Court of Justice on the question of equal pay

8. The most important ruling is the second "Defrenne" case of 8 April 1976<sup>(1)</sup>, (the name of an air hostess employed by the Belgian airline SABENA), on the question of the direct applicability of Article 119 for the courts of the Member States.

The Court recognized the dual economic and social purpose of this Article and affirmed that the principle of equal pay forms part of the foundations of the Community.

As to the direct applicability or not of Article 119, the Court distinguished between, on the one hand, "direct and overt discrimination" which may be distinguished, within the same establishment or service, private or public, using the sole criteria of identity of work and equality of pay

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(1) Case 43/75, Gabrielle Defrenne v. S.A. SABENA (1976) E.C.R. 455.

contained in this Article and, on the other hand, "indirect and disguised discrimination" which can be identified only according to more explicit provisions of a Community or national character.

Direct applicability, limited to only "direct and overt discrimination", took effect, in principle, on 1 January 1962 in the original Member States and on 1 January 1973 in the three adherent States. However, the Court specified, regarding the practical scope of its decision, that "the direct effect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of this judgment", i.e. 8 April 1976.

Limitation of the field of application and the concept of "pay"

9. In an earlier Defrenne ruling of 25 May 1971<sup>(1)</sup>, which constitutes the first position which the Court of Justice took on the contents and scope of Article 119, the Court excluded from the concept of "pay" social security schemes or benefits, in particular retirement pensions, directly regulated by Law "without any element of agreement within the undertaking or the occupational branch". The Court specified that employers' contributions to the financing of similar systems do not constitute any direct or indirect payment to the worker and that "these schemes ensure for workers the benefit of a legal scheme, the financing of which workers, employers and possibly the public authorities contribute to in a measure which is determined less by the employment relationship between the employer and the worker than by considerations of social policy".

10. In a more recent preliminary ruling (Worringham)<sup>(2)</sup>, the Court stated in its judgment of 11 March 1981 that contributions to a retirement benefits scheme (which are the result of collective bargaining) paid by the employer, on behalf of the employees, by means of a sum of money in addition to the gross salary, do indeed constitute "pay" within the meaning of Article 119, the direct applicability of which was confirmed. On the other hand, the Court excluded aspects relating to rights and benefits which a worker can receive under such a pension plan, this being considered a subsidiary point.

The Court analysed the type of contribution in question which is added to the gross salary paid to the worker to determine the amount of certain benefits and social advantages, such as redundancy payments or unemployment benefits, family allowances and mortgage or credit facilities, etc ...

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(1) Case 80/70, Gabrielle Defrenne v. Belgian State (1971) E.C.R. 445.

(2) Case 69/80, Worringham/Humphreys v. Lloyds Bank (1981) E.C.R. 767.

11. Another ruling of the Court (Liefting)<sup>(1)</sup> of 18 September 1984 repeats almost literally the contents of the previously mentioned paragraph of the Worringham judgment in much a more complicated case relating to the structure of the financing ("couples'" contributions) of Dutch government officials' pension schemes.
12. Questioned within the context of the third Defrenne case<sup>(2)</sup> as to whether the principle of equal pay could be interpreted as requiring, in a general fashion, equality in respect of working conditions applicable to men and women, the response of the Court was negative.

In its ruling of 15 June 1978, it recalled that Article 119 was strictly limited to the problem of wage discrimination and at the time adjudicated that there existed "as regards the relationships between employer and employee under national law, no rule of Community law prohibiting discrimination between men and women in the matter of working conditions other than the requirements of pay referred to in Article 119 of the Treaty" (cf. Council Directive 76/207 of 9 February 1976, effective 12 August 1978, relating to the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions).

In answer to another question relating to the existence of a general principle prohibiting discrimination based on sex in conditions of employment and in working conditions, the Court recalled that it "had repeatedly stated that respect for fundamental personal human rights is one of the general principles of Community law, the observance of which it has a duty to ensure", and "there can be no doubt that the elimination of discrimination based on sex forms part of these fundamental rights"<sup>(3)</sup>.

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(1) Case 23/83, W.G.M. Liefting v. de Directie van het Academisch Ziekenhuis bij de Universiteit van Amsterdam.

(2) Case 149/77, Gabrielle Defrenne v. S.A. SABENA (1978) E.C.R. 1365.

(3) The Court refers here in particular to its two judgments of 7 June 1972 on the right of direct appeal of agents of the Commission and the European Parliament (Article 179 of the Treaty) relating to the conditions of the attribution of an "expatriation allowance" to European officials as set out in the Staff Regulations. It had then felt that the disputed provision "does in fact create a difference of treatment as between male and female officials inasmuch as it renders the retention of the expatriation allowance conditional upon the acquisition of the status of head of household within the meaning of the Staff Regulations (Cases 20/71, Bertoni v/ the European Parliament - and 32/71, Bauduin v. Commission (1972) E.C.R. 345 and 363).

13. The Burton Case<sup>(1)</sup>, involved a man who considered it to be discriminatory that his employer had fixed the minimum age for obtaining a "voluntary redundancy benefit" under a manpower release scheme at 60 years for men and at 55 years for women. The question was raised whether such an allowance falls within the field of application of Article 119, of Directive 75/117 of 10 February 1975 or of Directive 76/207 of 9 February 1976.

In a ruling delivered on 16 February 1982, the Court was of the opinion, firstly, that the question of interpretation referred to it did not concern the benefit itself (and thus neither Article 119 nor Directive 75/117) but whether the conditions of access to the voluntary redundancy scheme were discriminatory. After affirming that the principle of equal treatment in Article 5 of Directive 76/207 of 9 February 1976 applied equally to the conditions for admission to such voluntary redundancy benefits, the Court noted that the Directive 79/7 on 19 December 1978 on the implementation of the aforesaid principle of equal treatment as regards matters of social security provides in Article 7 that the Directive should be without prejudice to the right of Member States to exclude from its scope the determination of pensionable age. As this age was set by British legislation at 60 years for women and 65 years for men, the Court inferred that the fact that access to voluntary redundancy was available only during the five years preceding the minimum legal pensionable age, even though this age was not the same for men as for women, could not in itself be regarded as discriminatory on the grounds of sex within the meaning of Article 5 of Directive 76/207 of 9 February 1976.

14. The Garland case<sup>(2)</sup> introduced into the concept of "pay" certain social advantages granted after an employee's active working life, i.e. to pensioners.

The Court was in effect asked to adjudicate on whether the fact that an employer grants special travel facilities to its former male employees and their families whereas the families of former female employees are excluded from these advantages is compatible with Article 119, Directive 75/117 of 10 February 1975 and Directive 76/207 of 9 February 1976.

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(1) Case 19/81, Arthur Burton v. British Railways Board (1982) E.C.R. 555.

(2) Case 12/81, Mrs. E. Garland v. British Rail Engineering (1982) E.C.R. 359.

In its ruling of 9 February 1982, the Court answered that, in the case in point, this was a case of discrimination within the meaning of Article 119, which was directly applicable.

15. We have already said that the Commission, under an infringement procedure against Luxembourg, had already brought a case before the Court of Justice<sup>(1)</sup>.

The accusation consisted of the fact that an allowance known as "a head of household" allowance had been allotted in the Luxembourg civil service to any male married official but not to any female married official except under very restrictive conditions not imposed on men.

In its judgment of 6 July 1982, the Court held that "by not adopting within the period prescribed in Article 8(1) of Directive 75/117/EEC of 10 February 1975 measures necessary to eliminate discrimination in the conditions for the grant of head of household allowances to civil servants, the Grand Duchy of Luxembourg has failed to fulfil one of its obligations under the EEC Treaty".

Limitation of the field of application and the concepts of "equal work" and "work to which equal value is attributed"

16. In the context of the Macarthys case<sup>(2)</sup>, the Court held in its ruling of 27 March 1980, that the principle of equal pay was not confined to situations in which men and women were "contemporaneously" doing equal work for the same employer. This principle applied "to the case where it is established that, having regard to the nature of her services, a woman has received less pay than a man who was employed prior to the woman's period of employment and who did equal work for the employer".

17. The Jenkins case<sup>(3)</sup> raised the question of whether granting a woman working part-time an hourly wage lower than that of a man carrying out same work but on a full-time basis constitutes discrimination within the meaning of Article 119 of the Treaty and of Article 1 of Directive 75/117 of 10 February 1975.

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(1) Case 58/81, Commission v. Luxembourg (1982) E.C.R. 2.175.

(2) Case 129/79, Macarthys Ltd. v. Wendy Smith (1980) E.C.R. 1.275.

(3) Case 96/80, Mrs. J.P. Jenkins v. Kingsgate Ltd. (1981) E.C.R. 911.

The Court replied, in its ruling of 31 March 1981, that a difference in hourly pay between full-time and part-time workers does not constitute, per se, discrimination as prohibited by Article 119, unless it is actually a question of an indirect means of reducing the pay of part-time workers "on the ground that that group of workers is composed exclusively or predominantly of women".

The Court also stated that the difference in pay between part-time and full-time work can nevertheless be attributable to factors which are objectively justified and are in no way related to any discrimination based on sex, so that the employer may plead well-founded economic reasons.

18. The infringement procedure engaged by the Commission against the United Kingdom<sup>(1)</sup> dealt with the fact that the Equal Pay Act 1970 only allows a worker to demand equal pay on the basis of work of equal value if a job evaluation scheme is in force in the establishment in which he or she is employed.

In its judgment of 6 July 1982, the Court held that "by failing to introduce into its national legal system in implementation of the provisions of Council Directive 75/117/EEC of 10 February 1975 such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay for men and women for work to which equal value is attributed and for which no system of job classification exists to obtain recognition of such equivalence, the United Kingdom has failed to fulfil its obligations under the Treaty".

19. The third infringement procedure under Directive 75/117 where the matter in question had to be brought before the Court concerns Denmark<sup>(2)</sup> and led to a judgment of 30 January 1985.

The main claim of the Commission dealt with the fact that the Danish law of 4 February 1976 on wage equality, aimed at transposing into national law the provisions of the Directive referred to above, limited implementation to the concept of "equal work" and not to "work to which equal value is attributed".

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(1) Case 61/81, Commission v. the United Kingdom (1982) E.C.R. 2.601.

(2) Case 143/83, Commission v. Denmark.

According to the Danish Government, the expression "samme arbejde", appearing in the law in question had a much broader meaning than the French expression "même travail" ("equal work") and included the concept of "work of equal value". The Government also based its case on the "specific character" of Danish labour law with regard to the autonomy which both sides of Danish industry enjoy in the negotiation of collective wage agreement. As the latter had used only the expression "samme arbejde", the law was obliged to use the same wording, if it was not to create legal uncertainty.

In its judgment of 30 January 1985, a particularly important judgment with regard to principle, the Court of Justice held that Denmark, by not introducing all the measures necessary in order to ensure conformity with Directive 75/117, was failing in its obligations under the terms of the EEC Treaty.

Whilst taking an identical position to the Danish Government on the question of "legal certainty", the Court explained that the law in question did not achieve the clarity and the precision necessary for the protection of the workers concerned. Even if it were to accept the affirmations by the Danish Government that the implementation of the principle of equal pay according to the broad purpose of the Directive, was ensured within the framework of the collective wage settlements, it was not evident that the same application of this principle was guaranteed to workers whose rights are not defined by collective agreements :

"The principles of legal certainty and the protection of private individuals require an unambiguous formulation to enable the persons concerned to know their rights and obligations in a clear and precise way and to enable courts or tribunals to ensure their respect.

" In this case, it appears that the wording of the Danish law does not meet these conditions in so far as the principle of equal pay contained in it is more restricted in scope than that contained in the Directive in that it does not mention work of equal value".

CONCLUSION

20. Some short remarks may be made in conclusion.

First of all, legal measures transposing Community legislation relating to equal pay into national law now exist in all Member States of the Community, even if there is still room for improvement, with at the same time the possibility of direct application of Article 119 of the Treaty.

As from 1 January 1986, Article 119 and Directive 75/117 will also apply in the new Member States, Spain and Portugal, since the Acts of Accession provide for no special implementation delay. The first task of the Commission will therefore be to draw up, using the traditional method of detailed questionnaires, a report to the Council on the exact state of implementation in these two countries of the principle of equal pay. On the basis of this in-depth analysis, the Commission will decide whether it is necessary to initiate possible infringement procedures for nonconformity with Community legislation.

In addition, even though it took some time to bring the matter of equal pay before the Court of Justice of the European Communities, a large body of case law has now been developed which sheds light on various and often delicate aspects of the area and ensures common interpretation of Community legislation in this area. Three new requests for preliminary rulings are currently pending before the Court<sup>(1)</sup> and it is to be hoped in particular that national courts, faced with an increasing number of appeals to national law, will continue to make it possible to enrich Community jurisprudence in this area.

Jean BOUDARD

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- (1) - Case 170/84, Firma Bilka-Kaufhaus GmbH v. Karin Weber von Hartz (equality of remuneration and part-time worker's access to an undertaking's professional retirement system).
- Case 192/85, Georges Noël Newstead v. 1) Department of Transport and 2) H.M. Treasury (widows pension contributions imposed on unmarried male officials).
  - Case 237/85, Gisela Rummler v/ the Dato-Druck company (Directive 75/117 and job classification's systems taking into consideration degrees of effort or of muscular fatigue).



EQUAL TREATMENT IN MATTERS OF SOCIAL SECURITY (1)

The purpose of social security is to assure the economic security of the individual; it is a guarantee of economic security offered by the community to cover a certain number of risks. But what kind of security? In what circumstances? By what means? And who should benefit? Those are the questions calling for answers.

1. Let me look first of all at the contingencies. I.L.O. Convention No. 102 of 1952 laid down nine risks, now considered as standard, to which social security is applicable. They are:

- sickness (health care)
- sickness (cash benefits)
- maternity
- unemployment
- invalidity
- old age
- death
- employment injuries and occupational diseases, and
- family expenses.

2. What sort of economic security should be provided by a social security system to cover such contingencies?

It may be either of two kinds, depending on the type of system or model adopted by national legislation.

- Type 1: guarantees the maintenance of the whole or part of the last income level
- Type 2: protection is limited to the bare or social minimum; in other words, what is considered the individual's basic entitlement to enable him to subsist.

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(1) Condensed version of an address to the European Conference on "Equality in Law between Men and Women in the European Community, organized at Louvain-la-Neuve, 22-23-24 May 1985.

The level of benefit paid will clearly be determined to a very great extent by the type of system or model operated: namely, a percentage of previous income, or an amount equal to the bare minimum.

3. Two trends also emerge in the way the population covered by this form of community assurance is defined:

- Firstly: workers in the broad meaning of the word - those in a paid occupation, whether employed or self-employed; in other words, the working population
- Secondly: the community as a whole.

The distinction is a fairly logical one, since where a system rests on the individual's right to a guaranteed portion of his previous income, clearly the right must attach to an individual exercising a remunerated occupation. Where, however, the right is to a subsistence amount, it must be accorded to all without distinction since the relational link with income and occupation has ceased to exist.

4. How is social security financed? Largely, of course, by contributions from employers and employees, but also partly by State grants.

One exception to this general rule is Denmark, where the situation is reversed: here, the system is principally funded from general taxation, with contributions counting for relatively little.

5. The final important aspect is that the 'safety net' is provided first and foremost by the law, with the organisation of statutory systems of protection, but can also come from other schemes, referred to variously as occupational, private, voluntary or complementary and which 'top-up', as it were, the statutory guarantees.

This brief introduction clearly only skates over what is a subject of enormous complexity. But what is striking about it, irrespective of which system or model you take, is the presence of discrimination based on sex, either overtly or by reference to marital status.

Our social security systems are beginning to creak with age - social insurance schemes originated in West Germany more than a century ago - and the underlying sociological constructs are based on traditional typifications of the respective roles of the spouses in a marriage. The man is regarded as "head of the household", the breadwinner, whilst the wife, the housebound homemaker, remains economically dependent on her partner.

But not all Member States take that view of things to the same degree; some have chosen to take a more individualist approach in which the marital or familial context has little or no bearing on the protection accorded to the insured individual. The present inequities in the provision of social security must therefore be traced back primarily to a particular view of the husband/wife nexus; perhaps the most flagrant examples being, as you are well aware, the survivor's pension, which is frequently attributable only to the wife (as being economically reliant on her husband), and the differences in the legal retirement age.

That being so, it was only natural that the Community instruments on equal treatment should eventually address themselves to the question of social security. To all appearances, Directive 79/7/EEC on equal treatment in matters of social security derives directly from the preceding Directive on equality of access to employment (76/207/EEC). The reality of the matter is somewhat different. Historically and conceptually the social security Directive derives not from Directive 76/207/EEC, but rather from Directive 75/117/EEC on equal pay.

Article 119 of the EEC Treaty extends the definition of "pay" to include not only the ordinary 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". At the time of drafting Directive 75/117/EEC, the question arose as to whether or not "any other consideration" did not also encompass benefits and contributions relating to occupational schemes, i.e., company or private benefit plans.

In the first Defrenne Case, the Court of Justice held that statutory social security schemes did not constitute an emolument arising indirectly out of employment. Concurring with the conclusions of the Advocate General the Court ruled that the concept of 'any other consideration, whether in cash or kind, received...directly or indirectly' could not be extended to schemes or benefits directly governed by legislation without any element of agreement within the undertaking - or the occupational branch concerned - which are obligatorily applicable to general categories of workers, since the schemes were financed out of contributions by employees, employers, and the State to an extent dictated less by the contractual relationship between employer and employee than by social policy considerations. For these reasons, the Court concluded, the notion of 'indirect consideration' could not be construed to include benefits acquired under legal social security schemes.

A contrario - and this is the gloss which the Commission immediately put on the decision - the effect of the Court's reasoning, logically construed, was to bring company schemes within the definition, precisely because they were not statutorily regulated. They implied an element of agreement within the company or occupational branch; they were not compulsorily applicable to general categories of workers, but only to such as the company intended or falling within the branch concerned; and they were financed by contributions from employers and employees directly related to the financing requirements of the scheme itself irrespective of all social policy considerations.

However, in view of the problems of attempting to legislate for equal treatment in occupational schemes without taking comparable action on the statutory schemes (insofar as they are intended to complement one another), it was deemed preferable to exclude occupational schemes from the scope of Directive 75/117.

Let us now turn briefly to the substance of Directive 79/7/EEC.

The Commission's original proposal made the Directive generally applicable to all social security schemes, statutory and occupational, public and private. It also provided for certain limited but important exceptions: one in respect of survivors, the other regarding retirement age. Implementation of the provisions was also deferred for a period of two years for statutory schemes, three years for additional allowances for dependant relatives and four years for occupational schemes.

The Directive as it stands, however, is more restricted in scope than the Commission's proposals. Firstly, because the Council decided to limit its application to statutory schemes only. Secondly, because of the matters excluded even from statutory schemes: survivors' benefits and family allowances. Thirdly, the list of exceptions was extended. And finally, and very exceptionally for a Directive of such limited scope, implementation was deferred for six years.

For the remainder, the Directive follows its predecessor in defining the principle of equal treatment, which fundamentally implies that there should be no discrimination whatsoever on the basis of sex, either directly or indirectly, by reference in particular to marital or family status. This is equally applicable to contributions and benefits. It is expressly provided that the principle of equal treatment is not to prejudice the provisions relating to the protection of women on the ground of maternity. Five exceptions are provided:

Exception No. 1: fixing the retirement age for the award of an old-age or retirement pension and the resultant consequences that will have for benefits

Exception No. 2: old-age insurance benefits to people bringing up children. This means that where national legislation provides supplementary pension rights to mothers for the years spent rearing their children, it is under no obligation to extend the same right to men.

Exceptions No. 3 and 4: overlap to a very great extent. They concern increases in long-term benefits (old-age and invalidity pensions and pensions for accidents at work) for dependent spouses. Member States may reserve such increases solely for the male worker in respect of his dependent spouse.

Exception No. 5: is specific to the United Kingdom, and deals only with the since-abolished right of the married women to 'contract out' of the scheme.

For all its limited scope, this Directive was the source of major legal problems well before it even came into effect in December 1984.

1. Problem No. 1 : The transitional period

With a transitional period of six years, the problems arising with any transitional period are thrown into sharp relief. One of the most insistent questions concerned the effect of the Directive during the implementation period. Were the Member States free to do as they chose? Had they not contracted an immediate obligation? Were they entitled simply to sit back, do nothing and wait for the implementation date to arrive.

The Commission's position, based on a series of rulings from the Court of Justice, is that the Directive imposes a dual obligation on Member States during that period: to refrain from all acts likely to hinder the furtherance or achievement of the ultimate objective; and to make the necessary adaptations and adjustments to Community rules.

Failure to comply with the former of these two obligations (to refrain from acts likely to hinder attainment of the objective) could constitute grounds for infringement proceedings for violation of article 5 paragraph 2 of the Treaty, requiring that Member States "shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty". In the view of the Court of Justice, that applies equally to Community legal provisions imposing a positive duty to be discharged and to legal provisions made contingent on the expiry of a period, as is the case with the present Directive.

As a final word on this aspect, the Court of Justice has ruled that the Commission may entertain a complaint on these grounds during the transitional period, but that they may not be used to found an action by an individual against a Member State in proceedings before a national court.

## 2. Problem No. 2 : The concept of indirect discrimination

The Commission had been seised of a complaint against the Belgian Government on the grounds that the position of persons not classified as heads of households with regard to unemployment insurance had been made worse during the transitional period. Since, statistically-speaking, in more than 90% of cases the head of the household is a man (with a spouse not working outside the home), the measure complained of predominantly affected women, but in an indirect way.

The Commission was therefore called on to consider the concept of indirect discrimination defined in article 4 of the Directive, stating that the principle of equal treatment implies no discrimination whatsoever on the basis of sex, either directly or indirectly, by reference in particular to marital or family status. Here again, the Commission sought guidance in the precedent established by the Court of Justice.

The Court distinguishes between positive discrimination - where comparable situations are treated in different ways - and negative discrimination - in which different situations are treated in the same way. In the case in point, we are concerned with the former type of discrimination: treating different situations in the same way.

Positive discrimination may be either direct or indirect. It is direct where persons of either sex are clearly treated less favourably than persons of the opposite sex. It is indirect where the difference in treatment does not appear as based directly on sex, but where an apparently neutral measure has an effect equivalent to discrimination based on sex, resulting in the workers of a given sex receiving less favourable treatment.

In the Jenkins case, the Court held that a difference in pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 unless it is in reality merely an indirect way of reducing the pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women. What this tells us is that the measure need not necessarily discriminate against all the members of a given sex as long as it affects predominantly that sex. And, again according to the Court, "predominantly" does not necessarily refer only to absolute numerical strength, but may be assessed on a proportional basis.

Basing itself on the Jenkins ruling, which appears to uphold a statistical approach to proving the existence of discrimination, the Commission, in its interim report on the application of Directive 79/7/EEC, suggested that a presumption of indirect discrimination might be raised whenever an apparently neutral measure in reality affected predominantly the workers of one sex. The presumption may be rebutted, however, where the perpetrator of the alleged discriminatory measure can adduce evidence to show that the measure is justified on objective grounds unconnected with any discrimination on the basis of sex.

This interpretation raises two problems. One is the question of how to collect the necessary statistical data proving that a measure affects the members of one sex more than another; the other is to determine exactly what constitutes "objective grounds" unconnected with any discrimination on the basis of sex. The first of these problems presents a formidable obstacle only to proceedings instituted by individuals before national courts. In complaint proceedings, however, the Commission when examining the papers in the case will request the State concerned to furnish it with statistics tending to establish that the complaint is groundless.

In contrast, the problem of defining the objective grounds which will rebut the "statistical" presumption raises the thorniest questions of appraisal. In the case of additional allowances for dependent spouses, for example, can a policy of offsetting family allowances be



considered objective grounds unconnected with any discrimination on the basis of sex? Does it, in every case, run counter to the principle of equal treatment? Would it not rather be more appropriate to maintain some kind of proportional relationship between the offsetting of family allowances and the implementation of equal treatment for men and women? The Commission believes so, and proposes to distinguish between additional allowances for dependent spouses (generally awarded to the husband in respect of his non-working wife), according to whether the increases apply to minimum benefits or income-related benefits. In the former case, the Commission considers that fixing the minimum with reference to actual needs can be objectively justified. In the latter, since the benefits are effectively a substitute for a lost wage which was not fixed by reference to the composition of the family, the Commission again sees no grounds taking the level of benefit into account.

3. Another legal problem was narrowly averted in Holland when, at the end of 1984, the Dutch Government introduced a Bill to extend to married men the provisions of existing Dutch unemployment insurance legislation which at the time discriminated only against married women.

In the event - fortunately for the Dutch, but unfortunately for the legal profession - Parliament did rejected the Government's proposals and the Bill was withdrawn. But had it not been withdrawn, it would have made a first-rate test-case on exactly how the principle of equal treatment is to be implemented. As part of an on-going process or at a given moment in time? And as part of a 'progressive improvement' or in a more purely 'mechanical' manner?

The Court of Justice has ruled that the principle of equal treatment is one of the fundamental principles of the Treaty; but the improvement of living and working conditions is no less so. Must not both be observed; that is, should we not seek to attain equal treatment along with improvement and progress. But then, what do we mean by social progress? Each complex question raises another of even greater complexity.

4. Finally, there is one further major problem pending before the Court of Justice. And that is: what is the position where a Member State has failed to adopt the necessary measures by the date the Directive enters into force?

In such conditions, does not the Directive have direct effect? And will not the court before which proceedings are brought be obliged to find that a measure which contravenes the Directive can no longer be invoked or relied on as against the individual? Such is the question now before the Court of Justice.

#### CONCLUSION

I shall be brief: we are faced with an absolute need for fresh Community initiatives. Directive 79/7/EEC has gone only a very small way to achieving equal treatment in matters of social security. The Commission has already put forward proposals for extending the principle of equal treatment to occupational schemes, and its proposal for a Directive is currently under discussion in the Council.

However, even when the occupational schemes have been regulated, there will still remain the loose ends of exclusions and exceptions to tie up: essentially the problem of survivors, family allowances or benefits, the vast problem of retirement age and the minor problems stemming from other exceptions. A preliminary study has been made of these in an attempt to delimit the various provisions falling within the scope of these exclusions and exceptions and to determine in which direction the solutions should go.

The study must prepare the ground for a third (and final) Directive which, once adopted, will provide a comprehensive and decisive solution.

But when? If the experience of Directive 79/7/EEC is anything to go by, we would be well advised not to hold our collective breath.

André LAURENT

## SOME EXAMPLES OF COMMISSION INTERVENTION ON EQUALITY

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The rule of Community law and correct implementation of it by Member States are discreetly but constantly leading towards improved European integration. Knowledge of how it works is a sign of feeling European. The very word "integration" calls to mind citizens' Europe.

The Treaty which set up the European Economic Community entrusts the Commission with ensuring the provisions of the Treaty and those taken by the institutions in pursuance of the latter are implemented.

Under the terms of Article 169 of the EEC Treaty "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on this matter, after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."

It has become common to say that Community laws influence national laws. One only has to think that each Community directive and regulation is going to influence national laws. At conferences, concrete examples are often given and the public is eager for information. Admittedly, specialists could refer to the Reports of Court decisions for ample information on the Commission's role in protecting Community law. However, the following examples are on another level. They occur prior to and after the Court's judgments and attempt to answer the question, "What does the Commission do to safeguard Community regulations on equality?"

We shall not be including the judgments themselves in our field of research<sup>(1)</sup>. Neither will current cases be mentioned.

Although the intervention of Commission departments as a matter of course - in its analysis of how the national statute books comply with European legislation - is the first source of detection of possible infringements, complaints can point the Commission to infringements the Community departments might be unaware of. A third source of detection of infringements are parliamentary questions which, if the nature of the question lends itself to it, should be treated either as complaints or in cases detected as a matter of course as suspected infringements.

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<sup>(1)</sup> See above the analysis of J. BOUDARD and G. ZORBAS, "An overview of the problems already raised by the transfer of the Directive on Equality of Treatment between men and women to relations at work", EUROPE SOCIALE, September 1985, n°3, pp.58-65.

I. INTERVENTION AS A MATTER OF COURSE

It is by analyzing the Belgian law of 4 August 1978, transposing Directive 76/207/EEC that the Commission departments noticed the inadequacy of the measures taken by this State.

According to Article 124 of the Law of 4 August 1978 (Moniteur, 17 August), the "King shall determine, by a decree debated by the Council of Ministers, the meaning of vocational guidance and training."

Fully effective implementation of Section 2 of Chapter II of Part V of the Law of 4 August 1978, which concerned access to vocational training, therefore depended on adoption of this executive decree.

The Commission therefore took the view that the non-adoption of this decree constituted an infringement of Article 4 of Directive 76/207/EEC. This provision lays down that Member States should take the necessary measures to ensure "guidance, training, follow-up training and retraining, subject to the autonomy accorded in some Member States to certain private training institutions, are available according to the same criteria and at the same levels with no discrimination based on sex" (Article 4c).

The infringement alleged by the Commission has persisted in spite of the formal notice forwarded on 8 August 1980 and the reasoned opinion delivered on 30 April 1981.

It is true that the directive does not define what the concept of "vocational guidance and training" covers. Nonetheless, both the objectives set out in the directive and the contents of Article 4 clearly show that the two concepts should be understood in the wide sense of the words.

The measures necessary for the implementation of equal treatment should, under Article 4 of the Directive, cover:

- school, secondary and higher vocational training. Although general education is not referred to in the directive, attention should be paid to the possible implications of the Gravier decision of 13 February 1985 (Case 293/83)
- training and apprenticeship in the independent professions;
- in-service training;
- further training and re-training organized by public services and employers;
- training and promotion in public and private companies.

The only exception comes from the reservation in Article 4, section c), which covers the respect due to the autonomy accorded in some Member States to certain private training institutions. Naturally, only school institutions and not private companies, are affected by this reservation.

So the infringement alleged by the Commission went beyond the formal transposition of the directive. In the opinion of the Commission, it was not enough to make a legislative provision to transpose a directive. The directive should really be implemented. Since the royal decree necessary for application of the law was lacking, the Commission brought the matter before the Court of Justice in May 1982 (Case 164/82, not published in the Reports) but withdrew the matter in August 1983.

The reason for this was that during the proceedings, Belgium promulgated three decrees:

- the Decree of the Flemish Executive of 29 September 1982

which laid down the meaning, for the Flemish Community and for the Flemish Region, in view of equality of treatment for men and women, of vocational guidance and training as referred to in Article 124 of the Law on Economic Reorientation of 4 August 1978 (Moniteur Belge of 1 December 1982, p. 13.793);

- the Decree of the Executive of the French Community, of 29 October 1982, which defined vocational guidance and training for the purposes of implementation of Article 124 of the Law of 4 August 1978 on Economic Reorientation (Moniteur Belge of 18 December 1982, p. 14.800);
- the Royal Decree of 29 June 1983 concerning equality of treatment between men and women as regards access to vocational training provided in teaching institutions, based on Articles 124 and 125 of the Law of 4 August 1978 on economic reorientation, and which came into force on 1st July 1983.

Henceforth, there was no longer sufficient reason for the Commission to continue its proceedings against Belgium and it withdrew the case.

In its analysis of the national texts, the Commission noted that a Royal Decree of 26 May 1985 relative to prolonged absences justified by family reasons (Moniteur, 29 May) only granted female State employees the right to be absent for a maximum period of two years to devote themselves to their children and was still effective in spite of Article 127 of the Law of 4 August 1978. However, the explanatory memorandum of this law was clear: "Those measures which, in the public sector, only grant benefits to female workers so that they are able to exercise their family responsibilities should (...) in accordance with the directive be henceforth applicable to men and women without discrimination."

The Commission took the view that by not extending the benefits

provided for by the 1975 Royal Decree to male employees, Belgium was failing to fulfil its obligations under Article 5 of the directive on this matter.

The effect of the formal notice delivered by the Commission in August 1980 was that the Minister of the Civil Service drew up a bill which, when submitted to the General Committee for Trade Union Consultation (Comité général de Consultation syndicale) on 1st October 1980 received a unanimous favourable opinion. This was approved on 28 January 1981 by the Ministerial Committee for the Condition of Women before being approved by the Council of Ministers and submitted for the royal signature.

Since the Commission was not obliged to be satisfied with the existence of a bill, on 30 April 1981 it delivered a reasoned opinion.

In September 1981, the Belgian authorities forwarded to the Commission the Royal Decree of 27 July 1981, which amended the royal decree in question. A second royal decree, of the same date, amended the royal decree of 2 October 1937 concerning the status of State employees by inserting a "recital" which stated "all discrimination based on sex should be removed from the statutory provisions." These royal decrees, (Moniteur, 27 August 1981) came into force on 1st September 1981.

It can be seen, then, that Commission intervention has benefited all men and women, with State employee status without the matter having had to be brought before the Court of Justice.

An analysis of Danish Law N° 161 of 12 August 1978 on equality of treatment of men and women in employment showed the Commission that the law had not been drafted in accordance with Articles 4 and 5 of Directive 76/207/EEC.



Article 3.1 of Danish law states that employers of men and women in the same place of work are required to treat them on an equal footing, as regards access to guidance, training, further training and occupational rehabilitation and according to Article 4, this requirement applies to conditions of employment and terms of dismissal.

Articles 4 or 5 of Directive 76/207/EEC set out a general obligation which is applicable not only to employers employing workers in the same place of work, but also in all situations relating to access to vocational guidance or training and work conditions, taking the form of laws, regulations or administrative provisions or collective agreements or de facto situations which might go beyond the framework of a place of work and the responsibility of just one employer. This would be the case, for example, of a rule or an agreement laying down for several companies, or for all workers, a specific training system or specific working conditions, with differences for male and female workers; this would also be the case of female workers who were in a discriminatory situation in a company only employing women.

The Commission brought the matter before the Court of Justice (Case 149/83) but it was withdrawn since the Danish authorities agreed to amend the article at issue by withdrawing the existing restriction from the legal text.

The Commission opened a second round of proceedings against the Kingdom of Denmark on the grounds that the Danish Law of 4 February 1976 on equal wages only applies to the "same work" and not to "work which is attributed an equal value" and that there was no statutory provision for nullity of collectively agreed discriminatory clauses. Of the Member States Denmark was the only State that did not have laws in compliance with the directive on equal pay. This was noted by the Court in its judgment of 30 January 1985 (Case 143/83). The Commission is currently waiting

for Denmark to amend its laws.

Entry into the Civil Service in France gave rise to differing interpretations between the Commission and France of the the relevant French law and the extent to which it complies with Directive 76/207/EEC.

There are five stages in the development of entry into the French Civil Service, from the viewpoint of the the principle of equal treatment.

1. The Law of 19 October 1946 granted Civil Servants a general status for the first time. Article 7 of this law states that "no distinction should be made between men and women." However, this law left judges a large scope for subjective judgment as regards derogations from this principle.
2. The Order of 4 February 1959 completely recast the provisions concerning the general status of civil servants. The exceptional nature of derogations was henceforth accepted. The criterion to be used was based on the nature of the job .
3. The third stage is characterized by the amendments to the status under the Law of 1st July 1975:
  - derogations were no longer just limited to recruitment
  - derogations were henceforth only authorized for entry into those groups appearing on a limited list drawn up by the Decree of 15 March 1977 by the Council of State following an opinion from the Civil Service High Council (Conseil Supérieur de la Fonction Publique) and the Joint Technical Committees (Comités Techniques Paritaires).

The quota systems and separate, exclusive recruitment methods

whose use was henceforth authorized were to be a major obstacle to equal access to employment. This 1975 law extended the provisions in the text to cover local authorities, public institutions and some public companies whose staff are governed by staff regulations.

4. The fourth phase of development took concrete form with the Law of 7 May 1982 and the Decree of 15 October 1982 which accompanies it.

This law stipulated that it was forbidden to reserve entry into a Civil Service body to applicants of a particular sex.

Recourse to the separate recruitment of men and women was only authorized when the conditions of exercise of the job made being of a particular sex a determining condition for the carrying out of the tasks involved.

The number of bodies with differential recruitment was reduced to 15.

5. The fifth stage took the form of a recent law of 11 January 1984.

The new law used the wording, on this matter, of the Law of 7 May 1982.

Article 21 of law n° 84-16 of 11 January 1984 rules that:

"For certain bodies whose list is drawn up by decree of the Council of State, following the opinion of the State Civil Service High Council and of the Joint Technical Committees, separate recruitment for men and women shall

be carried out if belonging to a particular sex is a determining condition for the exercise of the tasks carried out by the members of these bodies. The recruitment methods shall be determined following consultation with the Joint Technical Committees."

The Decree of 15 October 1982 (which provides for distinction

in recruitment for 15 bodies) will be kept in force until August 1985, when a new decree shall be adopted reducing to 12 the number of bodies for which there are dispensations.

Directive 76/207/EEC, which came into force on 12 August 1978, undoubtedly influenced implementation of the principle of equal treatment in the Civil Service in France.

The formal notice and reasoned opinions forwarded by the Commission to the French authorities, between the third legislative stage in France (law of 10 July 1975) and the fourth (law of 7 May 1982) were taken account of by the authorities.

The Goldet report considered it useful to reproduce the reasoned opinion of the Commission<sup>(2)</sup> and French legal authors were able to write that the national authorities were obliged to comply with Community obligations and, following the reasoned opinion, to reform the laws (P.Auvret, "L'égalité des sexes dans la fonction publique", Revue du droit public, 1983, p. 1584).

An examination of the explanatory memorandum preceding the law of 7 May 1982 clearly shows that the French executive accepts without reservation the Commission's version when it points out that it was necessary to eliminate the possibility "of basing the introduction of separate recruitment, depending on the sex of the applicants, on the nature of the job". The amendment of the laws proposed therefore involves abandoning the heavily subjective notion of the nature of the job which, beforehand, was able to serve as the basis for exceptions to

(2) Écile GOLDET, report made on behalf of the Commission on Constitutional Laws, Regulation Legislation and General Administration on the bill amending Article 7 of the order of 4 February 1959 relative to the status of civil servants (n°92, 1st ordinary session of 1981-1982).

Cf. also the explanatory memorandum of the bill (n° 24, Senate, 1st ordinary session of 1981-1982, annex to the minutes of the meeting of 15 October 1981).

the principle of sex equality."

Moreover, the explanatory memorandum also states that "the very noticeable fall in the number of bodies exempted from the principle of equal entry for men and women into the Civil Service, would be accompanied by a progressive change which in the medium term would lead to all the Civil Servants' bodies being completely mixed."

If the Member States took the view they had to exclude certain jobs, it should be proved that the reasons put forward correspond to those in the directive, namely that sex must be the determining condition for getting such a job.

The effect of Commission intervention is that the French authorities have reduced the list of bodies able to operate a separate recruitment system. The number fell from 26 bodies to 15.

The French government has never really contested the Commission's argument but the Commission would like its political measures on the principle of equality to be evolutive, and each Commission measure has had the effect of accelerating this evolution without however making mixed employment the basic principle.

In other words, although "the Parliament and the Government made use of it to reconsider the problem" by taking the view that "the aim was towards mixed employment", they "thought that it could not be reached in one stage. Laws should therefore be evolutive.(P. Auvret, ibid., p. 1584).

But, for the Commission, the progressive change should have been made when directive 76/207/EEC came into force.

Although the decree accompanying the law of 11 January 1984 shortened the list even more by doing away with separate

recruitment for the three Customs bodies, the Commission still believes that as long as there are derogations outside

the meaning of Article 2.2 of the directive, there will be possible discrimination with regard to the principle of equality which should govern entry into employment (Article 3 of Directive 76/207/EEC). This is why a fresh action, which effectively extends the previous litigation, is being undertaken by the Commission. A formal notice was forwarded on 7 August 1984 and it was decided to send a reasoned opinion in October 1985.

On 20 September 1978, in accordance with Article 9 of Directive 76/207/EEC, Ireland forwarded the law transforming the Community text into Irish law to the Commission. An analysis of the Employment Equality Act, 1977 had shown that several of its provisions did not comply with the provisions of Directive 76/207/EEC.

On 24 October 1985, the Commission closed the proceedings brought against this State after it had amended all the provisions called into question by the Commission.

There were two stages to these long proceedings. Through a formal notice forwarded on 29 July 1980 and a reasoned opinion of 30 September 1981, the Commission made it known that Articles 11(2) and 17(2) (c) and (d) of the Irish law were contrary to the Directive.

Under Article 11(2) it was possible to reserve entry to training and employment for midwives and public health nurses to persons of one sex.

Paragraph 1 of Article 17 excluded those activities for which the sex of the person was a determining factor from the scope of the law. The second article of the paragraph, however, included a series of exclusions which were considered by the Commission

as going beyond the scope of Article 2.2 of Directive 76/207/EEC.

Under this article, jobs in institutions designed to provide specific care to persons of a particular sex when the jobs for the determined sex were related either with the nature of the institution, or with the type of care and supervision provided there (Art. 17(2) (c)) were excluded from the scope of the law.

A first change in the law came into force on 30 September 1982 following the "European Communities (Employment Equality) regulations."

Through a second procedure (formal notice and reasoned opinion forwarded on 8 March and 15 March 1984 respectively) the Commission attacked the provisions of Article 12 of the Employment Equality Act. This article made exemptions for jobs in the armed forces, the police, prisons and jobs carried out, either in private residences, or with close relations.

Although the Commission is convinced that the directives on equality apply to the armed forces, a part of the civil service, it did not consider it useful to deal with this Irish provision in isolation.

The provisions were basically attacked because they were drawn up in such a way that they could be interpreted in a wide sense. The Commission takes the view that any exception to the principle of equality should be interpreted in the narrow sense and that a State could not exclude a whole series of jobs "en masse".

On 2 October 1985 the Ministry of Labour signed the so-called "European Communities (Employment Equality) Regulation 1985" thereby amending Article 12 of the law in response to the reasoned opinion delivered by the Commission.

And so ended a long procedure.

A legal change made following action resulting from a case of irregularity undertaken by the Commission against a Member State can have large financial repercussions.

The example below clearly shows the financial consequences of a decision of the Court following a case of irregularity brought by the Commission against the Grand-Duchy of Luxembourg (case 58/81, above, article J. BOUDARD).

The Commission's action, based on Article 169 of the EEC Treaty, concerned the head of household allowance which was only paid to married female civil servants in restrictive conditions not applied to male civil servants.

Strengthened by the decision of the Court of Justice, female civil servants took the matter to the national courts.

In its judgment of 8 July 1982 (Mersch judgment), the Luxembourg Council of State established the discriminatory nature of this allowance. Its decision was confirmed by the Decree of 21.11.1984 (Bellion and company vs. the Ministry for the Civil Service).

According to the Luxembourg reporter, Mr G. Thomas, a member of the group of experts responsible for supervising implementation of the directives on equality, "the Government Council decided during the February 1985 to pay (finally) the former head of household allowances to all civil servants who had made a request in connection with this, to be backdated 5 years from the date the request was submitted. The Government Council's decision is applicable not only to the civil service, but also to the related sector, with the exception of the hospital sector, where a commission was set up with, among other aims, that of assessing the financial impact on the sector."

As regards the local sector, the Ministry of the Interior gave



the go-ahead so that local authorities and public institutions placed under the supervision of the local authorities and trade unions made the back-payment. "The retroactivity may not exceed five years starting from the day the request for family allowance, previously called head of household allowance, for female local civil servants was made. The following two conditions should be met: they should make or have made the request and the spouse of the claimants should not be or have been in receipt of the the head of household allowance or an allowance in lieu of it." (Circular n° 956 of 14 March).

On 10 May 1985, a decision was returned by the arbitration court of Luxembourg (Mimler and others vs Centre hospitalier de Luxembourg) relative to the granting to female employees of the household allowance as stipulated in the hospital sector collective agreement for married men.

According to the additional report of the Luxembourg expert of 2 December 1985 "around fifty judgments were given by the Esch-sur-Alzette Industrial Tribunal (for workers) and by the Esch-sur-Alzette Arbitration Tribunal (white-collar employees). These judgments recognized the right of workers and white-collar employees to the head of household allowance, backdated five years, and even in instances where the spouses also received a similar head of household allowance or a similar household allowance.

The judgments in question were given on 5 and 7 October 1985. There are currently 150 cases pending before the various labour courts of Luxembourg, Esch-sur-Alzette and Diekirch.

At its meeting on 22 November 1985, the Council of Government has just decided to grant a 150 to 200 million francs subsidy to the Luxembourg Hospitals, which was a signatory of the discriminatory collective agreement, so it could meet the retroactive payment of the head of household allowances, whose total value is estimated to be 400 million francs .

## II. INTERVENTION FOLLOWING A COMPLAINT

On 22 October 1981, the "Women's Liaison Committee", a Belgian association, made a complaint to the Commission that the Royal Decree of 24 December 1980 relative to employment and unemployment and the ministerial decree responsible for its implementation were against Community law in that these decrees provided for higher unemployment benefit rates for workers who were heads of household than for workers who were not heads.

According to the complainants, Belgian regulations constituted indirect discrimination based on the marital or family status under the provisions of Directives 76/207/EEC and 79/7/EEC.

The Royal Decree of 24 December 1980, which amended Article 261 of the Royal Decree of 20 December 1963 relative to employment and unemployment (Moniteur, 31 December 1980, p. 14.650) lays down in Article 3 that the unemployed shall be classified in three categories for the purposes of setting unemployment benefit rates : workers who are heads of families, workers who live alone and other workers. For the first category, the daily unemployment benefit rate is set at 60% of their average daily income whilst for the two other categories, although it is initially set at 60% as above, it falls to 40% when they have been unemployed for over a year.

The Ministerial Decree of 24 December 1980 which amended the Ministerial Decree of 4 June 1964 relative to unemployment has replaced former Article 83c as follows:

"For the purposes of setting unemployment benefit, the following workers are deemed to be household heads:

1. Those married workers living together with a spouse who are not in receipt of an occupational income or a substitute

- income;
2. Workers living with a person of the opposite sex who are not in receipt of an occupational income or an substitute income.
  3. Workers living exclusively together with one or several of the persons listed below:
    - a) children in respect of whom they are entitled to family allowances and whose occupational income does not exceed BF 4,761 per month;
    - b) relatives, including relatives of the second degree, and father-in-law, mother-in-law, son-in-law, daughter-in-law, not in receipt of a occupational income, nor a substitute income."

Beforehand, the head of household-worker was defined as a worker whose spouse or partner of the opposite sex with whom he lived exclusively carried out the household tasks.

Although Directive 79/7 of 19 December 1978 had only been in force since 22 December 1984, the Commission took the view it should intervene. On 5 July 1983 the Commission issued its first formal notice which it supplemented with a second one on 7 September 1984 and a supplementary formal notice on 18 June 1985. In the meantime, Directive 79/7 had come into force.

According to the Belgian argument, Article 83c is drawn up in neutral terms. The reason is that to get the higher rates of unemployment benefit, all one had to do was to prove one's position as household head, which applied to men and women alike.

It is true that the domestic provision at issue is not directly discriminatory. However, it should not be forgotten that Article 4 of Directive 79/7 also covers indirect discrimination (see COM(83) 793, Interim Report on the Implementation of Directive 79/7). Discrimination is indirect when it leads to the same

de facto results as direct discrimination. In accordance with its judgment of 31 March 1981 (Case 96/80; Jenkins v. Kingsgate, (1981) E C R 911) the Court of Justice states that different pay (per hour) between full-time and part-time workers is only discrimination prohibited by Article 119 of the Treaty when it is really only an indirect method of lowering pay for part-time workers on the grounds that this group of workers is totally or mainly made up of female workers.

In the recitals, however, the Court pointed out that a difference in pay of this type can be explained by the intervention of factors which can be objectively justified and are totally unrelated to any idea of discrimination. To ascertain whether there is any discrimination or not, one should therefore examine if these factors exist, "by taking into account the de facto circumstances, precedents and employers' motives."

It therefore seems that in this context, and given the present state of the question, the consideration that a measure affects persons of a determined sex plays an important role, whether this measure only affects them or mainly does so.

This "statistical" consideration can even prove to be decisive in the absence of other elements capable of justifying the measure with objective reasons. In this case, indeed, the result obtained reflects the objective.

The Commission therefore takes the view - according to its current thinking - that suspected indirect discrimination can be proven once a measure, which is seemingly neutral, mainly affects de facto, workers of a determined sex without it being necessary to establish the discriminatory intention. On the other hand, it is up to the author of the suspected discriminatory elements to provide the elements of proof that the measure was based on reasons objectively justified, totally unrelated to any idea of discrimination.

Moreover, the Commission takes the view that it is impossible to define the notion of household head in neutral terms. Consequently, this notion is incompatible with the principle of equality of treatment.

This is one of the reasons why Directive 79/9 did not take the concept of household head into consideration; it only mentioned spouses and dependents and authorizes, only in the case of long-term benefits, derogations as regards the rights derived from the spouse or dependent spouse.

Moreover, the "head of household" concept no longer corresponds to a sociological reality, nor to the provisions of civil law. In addition, the report of the Royal Commission on social security reform clearly states that this idea should be dismissed together with the system of dividing beneficiaries into three categories.

Indirect discrimination is difficult to prove. However, the Commission has the advantage over private individuals of being able to insist that a Member State forwards to it all information useful for the efficient exercise of its role as a guardian of the treaties. Article 5 of the EEC Treaty sets forth an express obligation of Member States to help the Commission.

In the case in point, the statistical element is essential. Although statistics can support legal arguments, they must be considered by the judge carefully. It has to be pointed out that Belgian statistics show that only 5% of unemployed can claim the status of household head/worker (M.ANDRE, "Unemployment and economic policy", a symposium organized by the Institut des Sciences du Travail, Louvain-la-Neuve, February-March 1982).

If the proceedings brought by the Commission lead to a change in Belgian laws, through abolition of the notion of household

head, a review should also be made of the practice resulting from the administrative directives (National Employment Office, instructions to regional unemployment inspectors, 10.4.1981) according to which priority should be given to the examination of dossiers of unemployed people who are not heads of families with a view to their exclusion, based on Article 143 of the Royal Decree of 20 December 1963, from unemployment benefit. The effect of this wording is the exclusion, as a matter of priority, of women.

During these proceedings, the same Belgian organization made a complaint to the Commission in February 1984 that Royal Decree N° 255, which amended Royal Decree N° 25 of 24 March 1982, creating a job promotion programme in the non-commercial sector (Moniteur, 21.1.1984) was contrary to Directive 76/207/EEC.

According to Royal Decree N° 255, passed as part of the struggle to combat unemployment, there are two categories of unemployed which are particularly difficult to re-integrate in the employment market and who could be employed in what is known, in Belgium, as the "third employment circuit."

The first category of unemployed comprises full-time unemployed persons receiving benefit, at least 45 years of age and regarded as heads of household. The second category able to occupy a job in the non-commercial sector comprises full-time unemployed persons not receiving unemployment benefit, as the income from their household is sufficient, at least 45 years of age and regarded as head of household/workers.

The head of household concept is used here to give priority for access to certain jobs.

In the first proceedings, the Commission questioned the drafting of this royal decree and took the view that it was contrary

to Directive 76/207.

In the case in question, there is no doubt that the Belgian State did not intend to discriminate. The reason this concept was used was due to the government's basic concern for guaranteeing families a minimum income. In addition, the Council of State's legislative division, which was twice called upon to express its opinion on the bill submitted to it, did not find it discriminatory, and as a result, in contradiction either to Community law or the Law of 4 August 1978 which transposes Directive 76/207/EEC.

It had stated that the bill "only called for comments as to its form."

This example leads us to make a few remarks : firstly, it is difficult to detect indirect discrimination. Secondly, a simple complaint from a private organisation can lead to action by the Commission. In addition, although, before initiating proceedings, the Commission has to gather all the relevant information and take all the necessary precautions, it is not bound by the points of view expressed by the national organs no matter what their seniority. Nor is the Commission bound by the legal arguments or the legal grounds put forward in support of the complaint.

Commission action in the case above did not require Court intervention since the good faith of the State and the excellent cooperation between the Commission and national departments led to the text of this royal decree being amended along non-discriminatory lines.

In the explanatory memorandum of the law amending the royal decree in question, it is stated that the amendment "is designed to eradicate reference to the "head of household" concept." Indeed, this concept is contrary to the principles of Community law relative to equality of treatment between men and women with regard to access to employment; it also leads to indirect

discrimination against families in receipt of two unemployment benefits since in this case the recipients are both considered as living together. In order to prevent any objection on the grounds that it did not comply with Community law, no account was taken of the presence of a spouse in the home (House of Representatives, 1194 (1984-1985) N° 1). Henceforth, the situation will be subject to Article 131 of the Law on social provisions of 1 August 1985 (Moniteur 6.8.1985, p. 11346).



### III. INTERVENTION FOLLOWING A PARLIAMENTARY QUESTION

The following example is typical of a parliamentary question alleging a situation liable to constitute a breach of the rules of Community law.

To the question posed to the Commission in May 1980 by M.GLINNE, Member of the European Parliament, whether "it was aware that the Antwerp Ecole Supérieure de Navigation (Naval Training College) refused entry to girls applying for admission to this course", the Commission replied "no" (OJ C 236/24 of 15 September 1980). The Commission, however, made an undertaking to examine the situation. A few months later, Belgium informed the Commission that women would be admitted as of the 1980-1981 academic year for training and for the career of deck officer, including sea captain (OJ C 73/1 of 2 April 1981).

On the other hand, women were still unable to enter the "engine" section on the grounds that admission to this section had to be preceded by a practical course on board, which involved activities women are forbidden to carry out under Article 10 of the Work Act (dangerous and insalubrious work) and Article 1 of Royal Decree n° 40 of 24 December 1968 which laid down the measures for the implementation of Royal Decree n° 40 of 24 October 1967 on women's work (painting work including the use of ceruse or lead compounds - work comprising the carrying of loads over 27 kg by hand.)

According to the Minister responsible "women are unable to acquire the necessary practical experience (eg getting accustomed to the sea involves jobs women are forbidden to carry out) to gain admission to the "engine" section of the Naval Training College" (Senate, Q.R. 29.9.1981, p. 1815).

The Commission pointed out that Article 3.2c of Directive 76/207

made provision for "the revision of the laws, regulations and administrative provisions contrary to the principle of equality of treatment whose original basis, namely the concern to provide protection, was no longer well founded."

It was, therefore, necessary to examine if it was still justifiable to forbid women from taking part in the practical training course which precedes the theoretical training on the grounds that the course involved activities women were forbidden to carry out and was absolutely certain to lead to access to this training being forbidden to women.

As a result it was necessary to ascertain the exact share accounted for by the forbidden tasks (painting work involving the use of ceruse or lead components, and work involving the carrying of loads by hand) and set them against all the work carried out on this course in order to ascertain whether they were a justifiable basis for barring access to all the practical and theoretical training.

Not having received the information required, the Commission forwarded a formal notice on 27 May 1983.

Although the Commission's activities are within the framework of Community-Member State relations, it should not be forgotten that these activities often involve the intervention and coordination of various ministries or bodies, which complicates the situation. In the area of equality, the existence of a national body responsible for the promotion of equality plays an important role for correct implementation both of Community and national law. In the case in point, the agreement of the Ministry of Communications, the Ministry of Education (Flemish sector), the Ministry of National Education, the Management Committee of the Sailors' pool of the Merchant Navy, the National Labour Council and the Ministry for Employment and Work was necessary.

The latter entrusted the Womens' Work Advisory Committee with examining the whole problem. This Committee firstly pointed out that the law of 4 August 1978, which transferred Directive 76/207/EEC, made no provision for exceptions on the basis of sex, as regards access to vocational training.

It also pointed out that ceruse is hardly used any more in the engine room given that the painters no longer make up the paint and no longer use powdered ceruse. As for the argument that carrying out the job of mechanical officer requires the carrying by hand of loads over 27 kg, the Womens' Work Committee took the view that these situations were very rare.

In July 1983, Belgium informed the Commission that access to the "engine" section for women was henceforth guaranteed.

## CONCLUSION

The previous pages illustrate the extent to which the Commission carries out its role as Guardian of the Treaties. In spite of the long procedures under Article 169 of the EEC Treaty, the Commission operates effectively and discreetly. Perhaps too discreetly because, in our opinion, the public has a right to know increasingly more about this role of the Commission which is so essential for European integration.

The examples cited were nearly all resolved without the need for the Court of Justice to hand down a judgment. The first remark that needs to be made, and is perhaps the most important one, is that the disputes have basically been resolved due to a continual dialogue between the Commission departments and the departments of the ministries responsible. From this dialogue and the confrontation of views and legal arguments the rule of law emerges victorious.

Community regulations on equality, transposed into each national legal order must be respected by all national bodies whether they be part of the executive, legislature or the judiciary. Industrial conciliators, work inspectors, magistrates, should rigourously apply the principle of equality, one of the fundamental principles of our society. National lawmakers should take account of European legislation. But as O. QUINTIN points out in her article on the Medium-Term Community Programme (see above), the Commission has noticed "increased recourse to the Community institutions by the bodies, groups and associations concerned whether it be for legal or political initiatives or in search of support for specific activities."

Even though real monitoring of the transposition of Community directives on equality ought to be the ideal, the Commission's increasing role (which adequately demonstrates its importance) should not

become so great as to push the responsibilities of national, regional and local bodies into the background.

The finest legislation in the world is only effective if it is applied. Article 155 of the EEC Treaty also refers to the application of Community law.

For the Court to establish that it has not been complied with is one thing.

Ensuring that it is implemented is another. Cooperation between Member States, not only under the terms of Article 5 of the EEC Treaty, but also because adoption of the Directives on equality was a unanimous decision, is indispensable.

In the example concerning the Antwerp Naval Training College (see above), the Minister of Education replied to Parliament that it was up to "the inspectorate of social laws to judge whether the departures from Articles 123 and 129 were invoked with just cause to bar women from going into the "engine" section. The formal notice issued by the Commission is only effective if the principle of genuine monitoring is accepted. For all that was needed was to point out that prohibiting entry to officer training was against the Law of 4 August 1978.

Through the formal notice, the Commission intervened to give full effect to Directive 76/207 which had, however, been correctly transposed into the Belgian statute books by the Law of 4 August 1978. However, one of its provisions had failed to be implemented by a vocational training institution.

By so doing, the Commission ensured "implementation of the provisions taken by the institutions under the terms of the Treaty." The aim of its intervention in all the examples cited, and that of the procedure provided for in Article 169, was not primarily to seise the Court of an infringement, but to regularize a particular situation in a Member State which was out of line with the balance of European legal integration.









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