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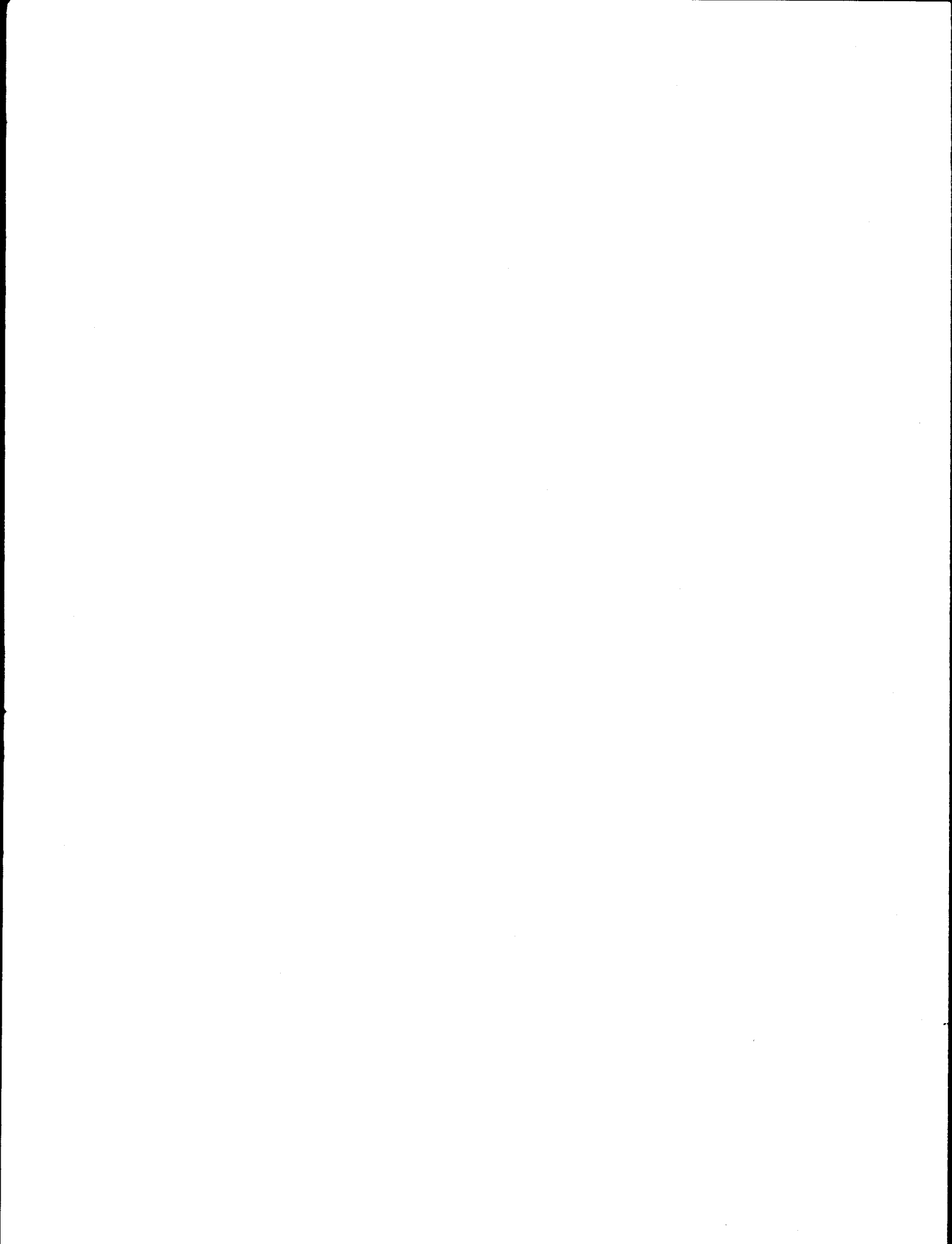
DOCUMENT 21/74/rev.

Report

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

on the proposal from the Commission of the European Communities to the Council (Doc. 262/73) for a directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty

Rapporteur: Mr K. HÄRZSCHEL



By letter of 30 November 1973 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty.

On 10 December 1973 the President of the European Parliament referred this proposal to the Committee on Social Affairs and Employment.

The committee appointed Mr HÄRZSCHEL rapporteur on 22 January 1974. It discussed the proposal at its meetings of 19 February and 8 March 1974 and unanimously adopted the motion for a resolution and explanatory statement on 8 March 1974.

The following were present : Mr BERTRAND, chairman; Mr HÄRZSCHEL, rapporteur; Sir Douglas DODDS-PARKER, Lady ELLES, Mr FREHSEE, Mr GIRARDIN, Mr van der GUN, Mr MARRAS, Mr MURSCH, Sir John PEEL, Mr PISONI, Mr VERMEYLEN and Mr YEATS;

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty

The European Parliament,

- having regard to the proposal from the Commission to the Council,¹
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 262/73),
- having regard to the report by the Committee on Social Affairs and Employment (Doc. 21/74/rev.),

1. Notes with satisfaction that

- the principles laid down in Article 119 of the EEC Treaty are to be further implemented;
- the possibility of enforcing claims to equal pay must be uniformly embodied in national legislation (Articles 2 and 5);
- the Member States are required to render ineffective any discrimination arising from laws, regulations, administrative provisions, collective agreements, wage scales, wage agreements or individual contracts of employment (Articles 3 and 4);
- the application of the principle of equal pay is to be supervised at the level of the undertaking and that all infringements are to be sanctioned (Article 6);
- provisions adopted in pursuance of this Directive and those already in force in this connection must be brought to the attention of employees (Article 7);

¹ OJ No C114 of 27.12.73, p.46

2. Views with growing impatience, however, the fact that
 - Article 119 has been legally binding for 16 years in six Member States without having achieved any real significance beyond formal application,
 - the demand for the right to enforce claims before the national courts has also been made on many occasions,
 - other forms of discrimination such as the 'light-work' wage groups created specifically for women, as well as payment at above agreed rates and the one-sided exploitation of collectively agreed rates in the case of men, have since become far more serious than those caused by collective agreements,
 - discrimination continues in job evaluation with less importance attached to skill, speed and concentration than to muscle power although more equitable methods have been known for many years;
3. Demands therefore the progressive abolition of wage groups to which women are predominantly or exclusively assigned;
4. Accuses the national governmental and administrative authorities of discrimination by operating a system of different wage rates and promotion prospects for men and women; endorses therefore the Commission's demand for the application of the principle of equal treatment in a sector for which the governments are directly responsible (Article 3);
5. Calls for greater efforts to improve the vocational training of those women who are at present employed as under-privileged unskilled workers and urges that early action be taken on this question;
6. Considers that differences in retirement pensions as a result of previous wage and other forms of discrimination are in urgent need of review.
7. Regards the problem of the frequent interruption of work and subsequent resumption by many women at a later date as an obstacle to genuine equality for women in society; stresses therefore that all concerned, not least women themselves, must have the will to overcome the difficulties that exist in order to ensure that women are satisfactorily re-employed, and that the governments in particular must be called upon to introduce measures ensuring the continuous vocational and further training of women and to provide the financial support for such training;

8. Views with concern the fact that although men and women largely enjoy equal treatment on a purely formal basis, real equality has not yet been achieved, this being clearly illustrated by a comparison of the small number of women in managerial positions in all sectors with the number of women in the population as a whole and their educational achievement; expects therefore all legal and de facto restrictions on admission to various professions to be gradually eliminated;

9. Urges that the cultivation in education of the idea of set roles for the two sexes in society be replaced by a generally emancipatory form of education so as to satisfy the democratic demand for men and women to be equally free to shape their lives as they choose;

10. Requests the Commission to take all the above considerations into account in the specific programme it is at present drawing up as part of the Social Action Programme concerning the need to ensure equality of men and women as regards eligibility for employment, vocational training and promotion, working conditions and various social security benefits;

11. Considers it necessary for the institutions of the European Community to continue to focus their attention on these problems and to promote uniform development within the Community by means of research and by coordinating national activities;

12. Reiterates the hope that the social partners will, by joint consultation, arrive at a European agreement on equal pay for men and women;

13. Urges the Member States to incorporate the provisions of the directive in their national legislation without delay, and in any case not later than the stipulated date of 31 December 1975, and, failing this, expects the Commission to use every legal means, e.g. as afforded by Article 169 of the EEC Treaty, to ensure that Member States implement this directive in such a way as to achieve the objectives it is desired to obtain;

14. Approves the Commission's proposal in principle, but requests the Commission to make the following amendments to it pursuant to Article 149(2) of the EEC Treaty, and calls on the Council to adopt the directive without delay;

15. Asks its committee responsible to keep a close watch on whether the Commission modifies its proposal in accordance with the amendments proposed by the European Parliament and, if necessary, to report back to Parliament;

16. Instructs its President to forward this resolution and the report of its Committee to the Council and Commission of the European Communities.

Proposal for a Council directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty

Preamble and recitals unchanged

Article 1

This Directive is intended to approximate the laws, regulations and administrative provisions concerning the application of the principle that men and women should receive equal pay for equal work, contained in Article 119 of the Treaty establishing the European Economic Community and hereinafter called 'the principle of equal pay'.

Article 2

Article 3

Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions affecting wages, particularly as regards the public and similar services, the legal minimum wage and statutory wage-related allowances or benefits other than those falling within social security systems which are directly regulated by law.

Article 4

1. Member States shall take all necessary measures to render ineffective any provisions contrary to the principle of equal pay which appear in collective agreements, wage scales, wage agreements or individual contracts of employment.

Article 5

Member States shall take the necessary measures to prevent any dismissals which might be construed as an employer's reaction to a complaint at the level of the undertaking or to suits tending to ensure that the principle of equal pay is respected.

Article 1

This Directive is intended to establish the standards by which the laws, regulations and administrative provisions concerning terms and conditions of employment shall be assessed and revised wherever necessary to ensure the application of the principle that men and women should receive equal pay for equal work, contained in Article 119 of the Treaty establishing the European Economic Community and hereinafter called 'the principle of equal pay'.

unchanged

Article 3

Member States shall abolish all discrimination between men and women contrary to the principle of equal pay which arises from laws, regulations or administrative provisions, particularly as regards the public and similar services, the legal minimum wage and statutory wage-related allowances or benefits other than those falling within social security systems which are directly regulated by law.

Article 4

1. unchanged
2. In this connection any occupational category that is based on a distinction between male or female duties or posts shall be prohibited. The same shall apply to offers of employment seeking to exclude one or other sex.

Article 5

~~Member~~ States shall take the necessary measures to provide an effective sanction against dismissals which might be construed as an employer's reaction to a complaint at the level of the undertaking or to suits tending to ensure that the principle of equal pay is respected.

¹ For complete text see OJ No C 114 of 27.12.73, p. 46

Article 6

Member States shall ensure that the application of the principle of equal pay is supervised at the level of the undertaking and that all infringements are punished.

Article 7

Provisions adopted in pursuance of this Directive and those already in force in this connection shall be brought to the attention of workers in any appropriate manner at their places of work.

Articles 8 to 10

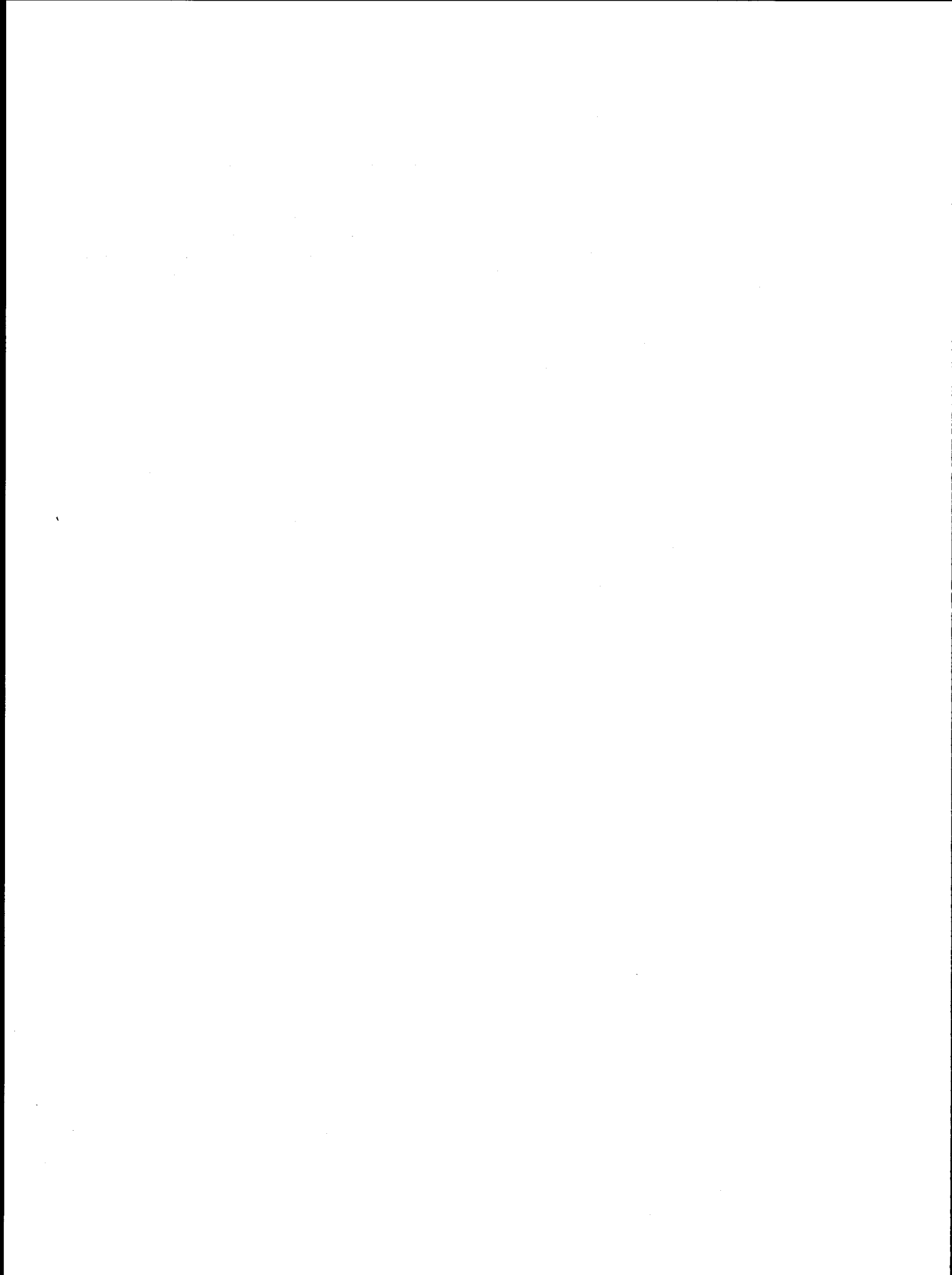
Article 6

Member States shall ensure that the application of the principle of equal pay is supervised at the level of the undertaking and that all infringements are sanctioned.

Article 7

Provisions adopted in pursuance of this Directive and those already in force in this connection shall be brought to the attention of workers in any appropriate manner at their places of work, in employment agencies and at other suitable places accessible to the public.

unchanged



EXPLANATORY STATEMENT

1. Although Article 119 of the EEC Treaty, on which the Commission's proposal for a directive¹ and the Report of the Commission to the Council on the application of the principle of equal pay for men and women - Situation on 31 December 1973 (Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States of 30 December 1961)² are based, has now been in force for 16 years, it must be emphasized that it has still not been implemented in full. This situation can only be described as incomprehensible for the many different reasons outlined below. Consequently, the European Parliament has repeatedly felt compelled since 1963 to draw up reports and opinions on this subject.³ There is therefore no need to go over the historical background once again.

2. A survey conducted at European level on the initiative of European women's magazines by the 'Centre National de Sociologie du Droit' at the Free University in Brussels reveals that the position of the working woman is essentially the same everywhere. They are underpaid, their training is usually poor and they have little chance of promotion. In none of the six Member States do women have the same professional opportunities as men. The sociologist Helga Pross⁴ attempts to clarify the question of whether this development is logically related to our economic system by analysing data on the USSR and GDR. The situation in these two countries is, however, not far different; there, too, although employed in larger numbers, women form the lowest echelons. The position in the USSR is comparatively better, with some women occupying 'upper-middle' management posts after appropriate training, but they rarely reach the top. In East and West, therefore, women are second-class workers.

¹ Doc. 262/73

² Doc. SEC (73) 3000 final

³ Annex 1

⁴ Helga Pross: 'Gleichberechtigung im Beruf?', Athenäum Frankfurt

3. The Federal Republic of Germany, which has the largest proportion of women to men in the overall labour force, is comparable to the other Member States as regards government activity in this field.

The Federal Government's activity to date has largely consisted in setting up a commission to establish new criteria for the evaluation of women's work. The commission was formed in 1955, met a few times and then adjourned when agreement could not be reached on a questionnaire. It again met in 1969 when convened by Mr ARENDT, but appears to have floundered on the same problem - the failure of employers and trade unions to agree - even though there have been accepted scientific methods of performance appraisal¹ for a number of years. In spite of considerable effort the German trade unions have not yet succeeded in achieving equal treatment for the working woman, not even in the field of information. This is proved, for example, by the fact that only 17 per cent of female workers are familiar with the contents of their collective agreements. At times of economic crisis women are the first to be affected by dismissals. The Federal Republic of Germany, for instance, has still not honoured the commitment it made 16 years ago as a member of ILO (International Labour Organization).

4. Mention should above all be made of the division of working women into two streams according to their level of training. There is a tendency to attribute the lower positions and pay of female workers and lowranking salary-earners to a lack of training. On the other hand, a university education would appear too high for employment at a commensurate level. A female graduate in chemistry, for example, earns far less and is offered comparatively less interesting positions, i.e. those involving no responsibility with little chance of promotion (staff rather than line activities), than male applicants.² While 47% of the female employees at the various ministries in Bonn, for instance, have Mittlere Reife (intermediate school-leaving certificate) or Abitur (higher school-leaving certificate) compared with 36% of the male employees, only 8.9 per cent of these women, against 24 per cent of the men, are classified as upper-level employees and paid accordingly even though there are twice as many women as men.

¹ The criteria used in these methods are no longer simply length of training and calorie consumption, but also include the effect of monotony, pressure of work and environmental factors (heat, dirt, noise etc.) on the senses and nerves.

² Dr Margot Vogelmann : survey of 300 female graduate chemists in 1972; men receive up to 22% more salary.

The situation in the public sector generally is no better. Although 26.6% of all civil servants and 59.1 per cent of all other salaried employees in the Public Sector are women, only 14% of school principals, 5.3% of Regierungsamtmänner (governmental administrators) and 1.4% of Amtsräte (executives) are women, there being at this executive level of the Public Sector only one woman to 137 men. The position is similar in all the Member States of the Community, and the administrative institutions of the European Community are no exception.

The justification for discrimination changes to suit the circumstances. If the argument that women lack muscle power is not sufficient to keep women out of professions where this qualification has never been relevant to men, irrational concepts of the role of women are advanced.

5. It is against this background that the existence of 'light-work' wage groups, i.e. wage groups specifically created for women doing certain types of work, giving them only 92% of a male unskilled worker's wage, should be seen. As this is usually a subsistence level wage (less than DM 600), 70% of female workers have to take up piecework, i.e. they produce an above-average performance, which is detrimental to their health and in turn means rising costs for the general public as a result of a higher incidence of illness, as evidenced by

- (a) twice as many miscarriages,
- (b) early incapacity four times as frequent,
- (c) average life expectancy of 68.5 years for working women, as compared with 75.9 years for working men (the reverse otherwise being the case).

6. Light-work Wage Groups I and II shown in German collective agreements are almost entirely a female domain. Negligible differences in the work process are taken as an excuse to grade male and female workers in different wage groups.

Low wages of this type are paid to 1.5 million women¹ on the grounds that they lack a man's strength. Strangely, however, brute strength is very unsuitable for the type of work concerned; nor is it easy, since apart from skill and precision, stamina and monotonous concentration are required.

1	Hourly Wage Men	Hourly Wage Women	Annual Difference
Unskilled	DM 6.20	DM 4.92	DM 2,902
Semi-skilled	DM 6.92	DM 5.12	DM 4,100
Skilled	DM 7.74	DM 5.48	DM 5,206

Other types of wage discrimination are the following:

- (a) Men and women in the same wage group with the same basic wage, but the men paid at a rate above that collectively agreed;
- (b) Men and women doing the same work, but in a different sequence or with slightly different materials;
- (c) Men promoted more quickly than women (one-sided exploitation of collectively agreed rates).

Approximately 4 million salary-earners in offices and businesses are graded into performance groups. Although there is clear wage discrimination here, it is impossible to discover how far it extends. In 1971 the average salary of a man was DM 1,591 and that of a woman DM 1,035.¹

C. CONCLUSIONS

7. A comparison of all the Member States² shows that the same problems arise again and again - although in varying intensity. On the surface the Federal Republic of Germany comes off well, but in comparison with France it still has too few kindergartens. A lack of training hinders the working woman in all Member States.

Considerable differences between men's and women's pay are to be found in the Federal Republic, Italy and the Netherlands. The Commission's proposal for a new directive contains on this subject a very positive suggestion that effective controls be introduced at undertaking level to ensure observance of the principle of equal pay for equal work. In addition, it provides for the possibility to enforce claims to equal pay before the national courts, with protection against dismissal during such legal proceedings.

¹ Performance Group V: women DM 790, men DM 1,035; Performance Group IV: women DM 919, men DM 1,159; Performance Group III: men DM 1,561, women DM 1,269; Performance Group II, men DM 2,081, women DM 1,658

² Annex II

8. At a joint meeting of the relevant working party of the Commission and representatives of the social partners at European level on 29 October 1973, the proposals were approved by the representatives of the trade unions but rejected by the employers on the grounds that female workers lacked vocational training.

The employers, however, have their reasons for adopting this attitude, and they reveal some of the causes of the dilemma:

- (a) Women interrupt their working lives (usually at the most favourable time from a career point of view);
- (b) Women are usually younger and begin working at an earlier age (one quarter of those included in the survey in the Federal Republic began work at 14 and two-thirds before they were 16) and frequently stop working for family reasons a short time later;
- (c) A high incidence of part-time work (Federal Republic 26%, Netherlands 45%). Women seldom work more than 40 hours a week and 90% of women in all six Member States seldom or never work overtime. 90% do not work at the weekend;
- (d) Seventy-five per cent of all women in Italy and 50% in the Federal Republic receive no more training than that provided during their compulsory schooling. Twenty-three per cent of all women in France and 42% in Luxembourg do not complete their training.

9. Considerable importance must therefore be attached to the question of training, which should comprise several phases and areas: on the one hand, basic training when work begins, on the other on-going training during the phase in which family life becomes all-important and which is today usually followed by the third phase, a return to work. If the abovementioned conditions are not met, however, this return to work is not satisfactory for either side. The national governments should therefore develop ideas for a comprehensive training programme, provided with the necessary finance, to facilitate the reintegration process.

10. This again shows that unequal pay is merely the superficial expression of an old problem under new social and economic conditions and that its elimination will not solve the problem.

The division of labour in society continues, with the woman working in the home and the man primarily outside, an idea which finds support in the earlier mentioned concept of the woman's role and leads to 'split loyalties' (Helga Pross) that reduce the woman's work to the level of a sideline. The family and, above all, children then provide the best excuse for the recurring arguments advanced by employers (marriage, children, ill too often) when faced with the question of providing fitting employment for a woman.

The economy needs working women but they must not be limited to certain types of work or underpaid and they must have the same chance of promotion.

11. As, however, the vast majority of women are themselves undoubtedly inactive and scarcely aware of their own position and as the economic situation is such that the richer countries of the Community need not and the poorer Member States cannot change the status quo, all political groups should be called on to work effectively towards the primary social objective of creating greater equality of opportunity and greater freedom of choice for women in shaping their lives, this after all being the crux of the matter, with women at the same time being urged to make their contribution towards the attainment of their goals.

Previous action by the European Parliament regarding the application of Art. 119 of the EEC Treaty

<u>Commission's Proposal</u>	<u>Committee Reports</u>	<u>Rapporteur</u>	<u>Document</u>	<u>Date</u>
Report of the Commission to the Council on the application of the principle of equal pay for men and women - situation on 30 December 1968	Report on behalf of the Committee on Social Affairs and Health on the application of the principle of equal pay for men and women - situation on 31 December 1968	Miss LULLING	Doc.21/71	19.4.71
Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States on 30 December 1961)	Report on behalf of the Committee on Social Affairs and Health on equal pay for men and women	Mr BERKHOUWER	Doc.26	8.5.68
EC (70) 2338 Journal of 18 June (70)	Draft opinion for the Committee on Social Affairs and Health on the unrestricted application and maintenance of the principle of equal pay for men and women	Mr DITTRICH	PE 19.268	1.3.68

Commission's
Proposal

Committee Reports

Rapporteur

Document

Date

Report on behalf of the
Social Committee on the
application of Article 119
of the EEC Treaty

Mr BERKHOUWER

Doc. 85

27.6.66

Interim report on behalf
of the Social Committee on
the application of
Article 119 of the EEC
Treaty - situation on
30 June 1963

Mr BERKHOUWER

Doc. 22

5.6.64

Interim report on behalf
of the Social Committee on
the application of
Article 119 of the EEC
Treaty (equal pay for equal
work for men and women) in
the various Member States -
situation on 30 June 1962

Mrs SCHOUWENAAR-FRANSSSEN

Doc. 46

25.6.63

Comparative table of the position with regard to the application of Article 119 of the EEC Treaty (based on the Commission's report of 18 July 1973 (SEC (73) 3000 final))

A. Basic remarks on the applicability of Article 119

As Article 119 of the EEC Treaty - unlike Article 85 (freedom of competition) - directly commits only the Member States and does not therefore apply directly to relations between private individuals, it does not provide justification for any rights of private individuals which must be protected by the national courts (decision of the Court of Justice).

The legal significance of Article 119 is consolidated by the Resolution of the Conference of the Member States on 30 December 1961 and by the ILO Convention No. 100, which the six Member States have ratified.

B. Belgium	Federal Republic of Germany	France	Italy	Luxembourg	Netherlands
<p>Royal Decree No. 40 of 24.10.67 allows enforcement of right to equal pay (replaced by law of 16.3.71). Law of 5.12.68 gave trade unions right to take legal action on behalf of members (even against worker's wish). Collective agreements can be repealed; such repeal being 'generally binding'.</p>	<p>1945 Constitution of several Länder and Article 3 of 1949 Constitution of Federal Republic stipulate equal rights. Positive legal standard according to Federal labour Tribunal. Laws on organization of companies of 11.10.52 and 19.1.72 and law on staff representation of 5.8.55 prohibit discrimination. Infringement may lead to invalidity of collective agreement. No official control.</p>	<p>1946 decrees on fixing of wages by authorities cancelled provisions on lower rates for female workers. From 1950 (return to wage freedom) principle that minimum legal rates (SMIG) and minimum rates for particular occupations should be respected. Collective agreements have to provide for 'equal wages for equal work'. These provisions strengthened by law of 13.7.71. If right to equal wage not laid down by collective agreement, general legal principle expressed in preamble of 1946 constitution (confirmed 1958) on equality of sexes before the law can constitute basis for court proceedings.</p> <p>(No ruling yet given). Law of 22.12.72 gives precise juridical base.</p>	<p>Article 37 of Constitution (in force since 1.1.48) stipulates equal rights and equal pay for equal work (binding). Has direct bearing on individuals (personal right to wage equality, which can be appealed to in law). Specific provisions for certain professions and civil service. Inspectors of labour have supervisory function.</p>	<p>Law of 23.6.63 confirmed principle of non-discrimination for workers in public sector. Law of 12.6.65 (Article 4) governs collective work agreements. Luxembourg interpretation is that all female workers thus entitled to appeal before legal authorities. Commission doubts whether female workers not covered by a collective agreement have this right. Work inspectors (as in France) responsible for control.</p>	<p>No general legal or statutory provisions on implementation of principle of equality. Right to equal wages results solely from collective agreements or individual work contracts. In 1972 Economic and Social Committee was asked for opinion. Only country to stipulate collective agreements must be 'erga omnes'. No official controls.</p>

Belgium

Federal Republic
of Germany

France

Italy

Luxembourg

Netherlands

Possibility of
sanctions and repeal
of agreement in cases
of infraction.
Procedure laid down
by decree of 27.3.73.
Definition of role
of inspector of
labour. Fines for
deliberate
infringement by
employer.

Application in practice

Belgium	Federal Republic of Germany	France	Italy	Luxembourg	Netherlands
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Minimum wage (1 November 1972)

-	-	(SMIG) 4.55 FF/hr (lower rates under 18 years)	-	8,306 FB per month with exception of domestic staff and farming. Lower rates for young people up to 18. 20% supplement for skilled workers. Since 1963 same rate for men and women.	On 1.7.72 198.60 guilders per week. Lower rates for persons up to 23, 65 and above and those who work only one-third of normal working hours.
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Female workers not covered by collective agreements

Very low	Between 500,000 and 1,000,000 distributed amongst several branches.	Gaps in liberal professions, small businesses, food industry and agriculture in 13 departments.	Gaps in case of domestic staff and craftsmen.	Gaps in wood-working and food industries.	20-25% of wage-earning population (1964: 17%).
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Direct discrimination

Difference	None	Publishing	'Work at home' (1 million women)	None	Bakeries 10-22% clothing industry 8%, footwear industry 5%, textile industry 9.5-11.5%, laundry industry 3.5%, ceramics 10%
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Indirect discrimination (resulting from the job classification system)

Belgium	Federal Republic of Germany	France	Italy	Luxembourg	Netherlands
me food ubsectors	'Light-work' wage groups (see note)	Law of 22.12.72 stipulates same classification and evaluation	'Light-work' wage groups (new evalua- tion system)	Same criteria	Objective classifica- tion system.

