COMMISSON OF THE EUROPEAN COMMUNITIES

COM(80) 832 final

Brussels, 11 February 1981

Report from the Commission to the Council

on the situation at 12 August 1980 with regard to the implementation

of the principle of equal treatment for men and women as regards

-access to employment and promotion

-access to vocational guidance and training

-working conditions

(Council Directive 76/207/EEC of 9 February 1976)

COM(80) 832 final

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INTRODUCTION

The purpose of this report is to establish the extent of the application of Council Directive 76/207 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[1]. It was drawn up in accordance with Article 10 of that Directive.

The report describes the state of the Directive's transposition into national laws; it also gives, where appropriate, the opinion of the Commission on the situations noted; finally, it attempts to define a number of major conclusions drawn from these analyses.

The Commission is aware that progress towards equal treatment is not solely dependent on the development of legal standards but also on the evolution of attitudes, as it has already stated in its 1975 memorandum which accompanied the then proposal for a Directive. These standards, nevertheless, play an important part in efforts to change attitudes.

The Commission is also aware of the distance that can separate such standards from reality. Using other methods available to the Community equal treatment policy, such as the European Social Fund and the other work it has undertaken, it is making every effort to reduce the distance.

The achievement of equal treatment is an objective of society requiring a sustained effort from all the social proponents. A study of its legal aspects must be carried out with two objectives in mind:

- pinpoint the inadequacies in Member countries in relation to the standards laid down by the Directive;
- provide Community impetus in order to remedy these inadequacies or to overcome the underlying difficulties, in particular by disseminating the solutions found in certain countries to problems that at first appeared to be insoluble.

However, as regards certain crucial points where the Directive's objectives allow some flexibility (eg. protective legislation), it is also necessary to work out a Community doctrine which, whilst making allowances for differences in national data, enables a common awareness of the urgent need for solutions to be developed.

These are the concerns which guided the Commission in the preparation of this report.

For the drafting of this report, the Commission prepared and sent a detailed questionnaire to the Governments of the Member States and, through them, to the committees or commissions on women's employment set up at national level in most of the Member States. It was also sent to the European employers' and workers' organisations.[2]

Addressees in each country were asked as far as possible to draft a joint reply. Where this was not possible, the addressees were asked to forward individually the information they wished to make available to the Commission. In the case of Government replies, however, the Commission requested the departments concerned to prepare a joint reply.

The following table shows the list of replies received by the Commission.

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[1] OJ N° L 39, 14 February 1976, pp 40, 41 and 42.

Elsewhere in the body of this document the Directive will be referred to as the "Directive on equal treatment".

[2] European Trade Union Confederation (ETUC), Employers' Liaison Committee (ELC), European Centre of Public Enterprises (CEEP) and Committee of Agricultural Organisations in the EEC (COPA).

Implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Country	Form of reply	Date sent
Belgium	1) Reply by the Government provisionally incorporating the opinion of the Commission on Women's Employment	17 September 1980
Denmark	Reply by the Government	16 September 1980
France	1) Reply by the Government	26 August 1980
	2) Draft opinion of the Committee on Women's Employment	2 September 1980
	3) Opinion of the executive board of the French Employers' Organization	1 April 1980
Ireland	Joint reply by the Government, Irish Trade Union Congress, Employers' Federation, Employment Equality Agency and Association of Irish Farmers **representing the Women's Committee in COPA**	28 August 1980
Italy	1) Reply by the Government (except with regard to vocational training)	12 May 1980
	2) Reply by the Italian Labour Union	5 May 1980
Luxembourg	Reply by the Government, together with opinion of the Committee on Women's Employment	6 October 1980
Netherlands	1) Reply by the Government	17 July 1980
	2) Reply by the Dutch Federation of Labour, National Christian Confederation of Labour, Coordinating Council of Middle and Senior Management, Council of Central Company Organizations	17 July 1980
Germany FR	Reply by the Government	12 June 1980
United Kingdom	1) Provisional joint reply by the Government, Confederation of British Industry and Trade Union Congress	6 May 1980
	2) Reply by the Department of Manpower Services for Northern Ireland	6 May 1980
	3) Reply by the Equal Opportunities Commission (EOC)	6 May 1980
	4) Final joint reply by all the parties concerned.	7 August 1980

2. This report has been drawn up by the Commission on the basis of the replies received and was submitted to a group of government experts on 25.11.1980 and a group of representatives of employers and workers on 26.11.1980.

The report has been amended in line with the observations made at these meetings.

3. The Directive covers three areas :

- access to employment and promotion;
- access to vocational guidance and training;
- working conditions.

It applies to workers in both the public and private sectors and to self-employed workers.

4. The report is divided into seven parts. The first part (A) describes the general legal situation, namely, the type of implementing measures adopted in the Members States and the field of application of these measures.

This section also outlines the measures adopted in the Member States, in accordance with the Directive, to exclude certain occupational activities from the field of application of the implementing measures and to define the areas of positive discrimination authorized by the Directive.

This section also summarizes parliamentary measures taken in the areas covered by the Directive.

The second part (B) describes in detail specific measures relating to each of the three areas covered by the Directive and, in so far as the information is available for each area, the transposition machinery chosen, its effect and the problems remaining.

Lastly, it deals with the problems raised by maintaining "protective" legislation which denies women access to certain jobs or lays down specific working conditions for women in order to protect them and discusses the attitude adopted in this respect in each of the Member States.

The third part (C) outlines the provision for legal remedies in the Member States and the non-judicial machinery set up by some Member States to promote equal treatment for men and women.

The fourth part (D) analyses the measures taken to protect employees who seek to enforce compliance with the principle of equal treatment.

The fifth part (E) lists the measures taken to provide employees and other interested persons with information on the law. The sixth part (F) examines the procedures relating to disputes arising from application of the Directive, namely - infringement proceedings brought by the Commission against Governments in cases where the measures enacted do not comply with the Directives;

- proceedings brought before the Court of Justice of the European Communities;
- individual grievances brought before the Commission.

The seventh and final part (G) contains an overall assessment of the results of the measures taken to implement the Directive, based both on the replies given by the employers' and workers' organizations and the committee or commissions on equality and womens' employment and on the interest shown by the European Parliament, particularly in its written and oral questions.

Lastly, the Commission presents the Conclusions it has drawn from all the information gathered.

A. - THE GENERAL LEGAL SITUATION

I. LIST OF THE MAIN IMPLEMENTING MEASURES ADOPTED OR ALREADY IN FORCE IN THE MEMBER STATES

In four Member States (Belgium, Denmark, Ireland and Italy), laws were passed within the time period laid down by the Directive for its implementation (12 August 1978).

One Member State (the United Kingdom) already had a law which broadly covered the aims of the Directive.

In two other Member States (the Netherlands and Germany), laws were passed after the entry into force of the Directive.

In France, two existing laws dealt with the problem in part, and a number of supplementary laws are currently being drafted. In Luxembourg a draft law has been submitted.

BELGIUM

- Article 6 of the Constitution.
- Title V of the Law of 4 August 1978, concerning equal treatment for men and women as regards working conditions and access to employment, vocational training, career advancement, and access to self-employed occupations or professions.

DENMARK

- Law No 161 of 12 April 1978 on equal treatment for men and women as regards employment and related matters.
- Law No 162 of 12 April 1978 amending various laws to bring them into line with the principle of equal treatment as regards employment.
- Law No164 of 12 April 1978 on the Equal Treatment Commission.

FRANCE

- Preamble to the 1946 Constitution
- Law No 75/625 of 11 July 1975 amending and supplementing the Labour Code regarding the special rules on the employment of women and Article L 298 of the Social Security Code and Articles 187(1) and 416 of the Penal Code
- Law No 75/599 of 10 July 1975 (application of equal treatment to Ordinance 59/244 of 4 June 1959 laying down the general staff regulations for officials).

IRELAND

- Employment Equality Act of 1 June 1977.

ITALY

- Article 37 of the 1947 Constitution
- Law No 903 of 9 December 1977 on equal treatment for male and female workers.

LUXEMBOURG

- There is as yet no legal instrument for the implementation of the Directive.

NETHERLANDS

- Law No 86 of 1 March 1980 on equal treatment for men and women, adapting Dutch legislation in line with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women
- Interim Law No 278 of 25 May 1979 on equal treatment for men and women and for married and unmarried persons in the event of termination of employment, which came into effect backdated to 1 February 1979

- Articles 95 and 96 of Decree No 472 of 1 August 1979 amending the General Regulation on State Officials
- Article 28(3) of the Law on Works Councils
- Law No 384 of 2 July 1980 adapting the Dutch legislation applicable in the civil public sector to the Directives of the Council of the European Communities on equal pay (10 February 1975) and equal treatment (9 February 1976).

FEDERAL REPUBLIC OF GERMANY

- Article 3 (2) and (3) and Article 33 (2) of the Basic Law of 23 May 1949
- Law adapting German legislation to Community labour law of 13 August 1980 on equal treatment for men and women at work and the retention of rights in the event of takeover
- Article 75(1) of the Law of 15 January 1972 on the organization of undertakings
- Article 67(1) of the Law of 15 March 1974 on representation for federal employees
- Law of 25 June 1969 on employment promotion, subsequently amended by the Law of 23 July 1979
- Law of 14 August 1969 on vocational training, subsequently amended by the Law of 14 December 1976.

UNITED KINGDOM

- Sex Discrimination Act of 12 November 1975
- Sex Discrimination (Northern Ireland) Order of 2 July 1976.

II. DEFINITIONS

Definition of the principle of equal treatment

Article 2(1)

"For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly of indirectly by reference in particular to marital or family status".

The principle thus laid down in the Directive is adopted in the laws of 5 Member States :

1. In Belgium and the Netherlands, the definition given in the Directive is adopted in the laws.

2. In Denmark, Article 1 of Law No 161 of 12 August 1978 extends the definition given in the Directive by prohibiting discrimination on grounds of pregnancy, in order to prevent dismissal on this ground.

3. In Ireland, Section 2 of the Act o 1 June 1977 prohibits direct and indirect discrimination on grounds of sex or marital status.

4. In Italy, the elimination of discrimination is referred to both in Article 1 of Law N° 903 and in Article 15 of Law N° 300 of 20 May 1970 (status of workers).

5. In the United Kingdom, the Sex Discrimination Act (SDA) of 12 November 1975[1] and the Sex Discrimination (Northern Ireland) Order of 2 July 1976 both preceded the Directive and therefore do not adopt the definition given in Article 2(1), but Section 1(1) of the SDA and Article 3(1) of the Northern Ireland Order define two types of sex discrimination :

(a) direct discrimination occurs where persons of one sex are treated less favourably than those of the other sex ;

(b) indirect discrimination occurs where a requirement or condition applied to persons of both sexes operates to the detriment of one sex and cannot be shown to be justifiable irrespective of the sex of the person to whom it is applied.

In order to make comparisons between persons of different sex or family status, the law stipulates that the **relevant circumstances in both cases must be the same of not fundamentally different.**

The Government takes the view that the description of the aims of these laws corresponds to the definition put forward in the Directive.

The Equal Opportunities Commission (EOC), however, feels that the SDA and the Northern Ireland Order do not comply with the Directive on this point, since they include provisions for the elimination of certain kinds of inequality which are restricted or permit exceptions. The lack of definition causes problems in some specific instances. The EOC gives some examples concerning the Equal Pay Act.

6. In the other Member States, the legal instruments do not include a definition of the principle :

In France, the laws do not adopt the definition given in the Directive. The preamble to the Constitution guarantees equal rights for men and women in all areas.

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1 Thenceforth this report refers to this Act as "the SDA", to its provisions as "Sections" and to those of the Northern Ireland Order as "Articles".

The Committee on Women's Employment feels the French law should contain a precise, broad definition of discrimination.

In Germany, none of the instruments which the Government regards as giving effect to the Directive adopt the definition of the principle given in the Directive. The Government nevertheless contends that, as the judgements of the Constitutional Court have repeatedly shown, the principle laid down in Article 3(2) of the Basic Law gives practical expression to the general principle of equality and rules out the difference of sex as a legitimate basis for difference in treatment.

In Luxembourg, there is as yet no legal instrument giving effect to the Directive; the law now being drafted adopts the definition used in the Directive.

/Definition of indirect discrimination/

7. The Directive refers specifically to indirect discrimination because, while it is easy to eliminate obvious forms of discrimination in most cases, the process of discrimination continues in situations where it is not obvious.

The problems of implementation are frequently concentrated in this area. It is particularly important, therefore, to make express reference to indirect discrimination in the implementing laws and, where possible, to define the terms. But this is not the case in all the Member States.
The term appears in the laws of 5 Member States : Belgium, Denmark, Ireland, Italy and the Netherlands.

8. Belgium : the law includes no definition of indirect discrimination, but the prohibitions laid down give some idea of what constitutes indirect discrimination. For example, Article 121(1) prohibits the use in job advertisements or notices concerning employment of wording which, although not explicit, indicates or implies the worker's sex, and provides that access to employment may not be denied or blocked implicitly on grounds of sex.

The Belgian parliament has established that it is a form of indirect discrimination to impose criteria, under cover of formal equality, which in fact apply only to workers of one sex, e.g., in job advertisements calling for candidates with physical attributes that in fact apply only to one sex or stipulating that candidates can be of either sex, but must not be liable for military service.

9. Denmark

The law is aimed at eliminating discrimination on grounds of sex, both direct and indirect.

10. France

The laws make no mention of indirect discrimination. In its opinion on the Baudouin Report on discrimination and disparities in women's employment, the Committee on Women's Employment notes that the concept is not found in the substantive law. The Government states that the French authorities take the view that indirect discrimination occurs where regulations or practices which appear to be neutral result in manifest inequalities.[1]

The Committee on Women's Employment would like to see the law extended to include a clear definition of indirect discrimination.

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1 See, however, p. 81.

11. Ireland

The terms are not expressly defined, but Article 2 of the Act bans all forms of discrimination, whether direct or indirect.

The Labour Courts have decided, for example, that a minimum height requirement for bus conductors is discriminatory and that to refuse to promote someone because the demands of the work are contrary to protective legislation is a violation of Article 2.

12. Italy

The Law does not expressly define the terms. However, some of the prohibitions laid down refer to situations which might involve indirect discrimination. For example, Article 2 prohibits discrimination that occurs indirectly, through preselection methods.

13. Luxembourg

The terms are used but not defined either in the proposed law or the explanatory memorandum.

14. Netherlands

The Laws of 1 March and 2 July 1980 use the term "indirectly". One point raised in the debate on Law No 86 was whether the use of the concept of "breadwinner" could constitute indirect discrimination. In its explanatory memorandum, the Government confirmed that it could.

15. Federal Republic of Germany

The legal instruments referred to above make no mention of indirect discrimination. In the German Government's view, the distinction between direct discrimination, which is easily recognized, and indirect discrimination, which is less easy to recognize, is alien to German legal practice. The Constitutional Court and the Federal Labour Court do not attach different legal consequences to direct and indirect forms of discrimination.

16. United Kingdom

The term "indirectly" does not appear in the definition of discrimination given in the Acts. But the terms "direct and indirect" have been clarified in handbooks explaining the Act, and the term "indirect" is in current use to describe the situations referred to by the Act. Section 1(1)(b) states : "a person discriminates against a woman if he applies to her a requirement or condition which he applies or would apply equally to a man but which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and which is to her detriment because she cannot comply with it".

The United Kingdom Government gives some examples of indirect discrimination that are illegal under the SDA :

- excessive height requirements applied to all employees;
- leave entitlement on the basis of number of years' continuous service;
- setting an age limit of 30 for recruitment examinations;
- organization of training courses requiring the participant to live away from home;
- laying down a mobility requirement for all jobs in a company, even those for which it is not necessary;
- requiring qualifications that are more commonly found in workers of one sex, even where they are not needed for the job.

The courts have upheld this position.

In Northern Ireland, the courts regard the imposition of qualifications that are more likely to be found in persons of one sex as indirect discrimination.

The EOC points out that in a number of cases where the Equal Pay Act alone applies, indirect discrimination has been ruled out.

/ Reference to marital or family status /

17. These terms are used in the implementing instruments of four Member States (Belgium, Denmark, Italy and the Netherlands).

2)

18. In Belgium, the terms are used in the definition of the principle of equal treatment (Article 118 of the Law), but no further definition is given. There is still discrimination on the grounds of marital status in the granting of household and residence allowances throughout the public sector[1]. The Government states in its reply that this question is being examined.

19. In Denmark, the law is directed at discrimination on the grounds of civil status or family situation.

20. In France, the Law of 11 July 1975 prohibits discrimination in access to employment and in the event of dismissal on the grounds of "family situation; no mention is made of sex discrimination by reference to marital or family status.

21. In Ireland, the Act is directed at discrimination on the grounds of marital status. The Government feels that Article 2 of the Act has a broader application than Article 2 of the Directive as regards marital status, since it provides that, not only shall a married woman not be treated less favourably than a single woman, but also that a single woman shall not be treated less favourably than a married woman. The section applies equally to married men vis à vis single men and the converse.
The term "family status" is interpreted as meaning family responsibilities, and althouth it is not referred to in the Act, discrimination on the grounds of family responsibilities would be regarded as indirect discrimination (Article 2(c)).

22. In Italy, the terms are also used in the Law without further definition. According to the Italian Labour Union, discrimination on the grounds of marital status is still frequent in direct recruitment.

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1 The Commission has brought infringement proceedings against the Belgian Government pursuant to Directive 75/117 of 10 February 1975.

23. In Luxembourg

The reference exists in the proposed Law, but no further definition is given.

The Government states that marital or family status no longer constitutes an obstacle, in laws or contracts, to the application of the principle of equal treatment for men and women in the areas covered by the Directive.

In connection with this subject, mention could be made of the problem of head-of-household allowances, which was raised in connection with the application of Directive 75/107 (equal pay), has not yet been resolved and is the subject of infringement proceedings brought by the Commission.

24. In the Netherlands, the reference exists in the laws in question, but no further clarification is given, except as regards the concept of "family support", which the Government regards as discriminatory in principle when the principle is applied to recruitment and dismissal. As matters stand, married women are rarely regarded as "supporting the family" (see point 14, p. 10).

25. In the Federal Republic of Germany, the Government feels it is not necessary to refer specifically to marital or family status as grounds for sex discrimination. These concepts are included in the above-mentioned legal instruments. The Government also feels that marital or family status is only one of the possible grounds for discrimination.

26. In the United Kingdom, these terms are not used in the Act, but the Government feels the provisions of the Act are adequate to eliminate this kind of discrimination, since the discrimination it is intended to eliminate automatically includes that related to marital or family status.

For example, any requirement that a woman must resign if she marries or any refusal to consider a married woman for promotion is prohibited.

In Northern Ireland, the Government points out that it is not clear whether spouses may be prevented from working in the same establishment. The EOC is seeking an interpretation of the law on this point.

The EOC points out that, while the SDA contains some references to marital status, there is no reference to family status. The Employment Appeal Tribunal ruled in one case that a pregnant woman was a separate entity from a woman and had no masculine equivalent and thus had no recourse to the SDA in the event of dismissal.

According to the EOC, where access to vocational guidance and training is not a part of the work relationship, only direct or indirect discrimination based on the SDA may be taken into account, and discrimination on the grounds of marital or family status is not covered.

The courts therefore do not automatically include direct or indirect sex discrimination by reference to marital or family status within the scope of the legislation.

In a case currently awaiting judgment on appeal, in which a woman was dismissed because her husband worked for a rival company, it was claimed that the husband - who kept his job - was the family breadwinner.

III. FIELDS OF APPLICATION OF THE IMPLEMENTING MEASURES AS REGARDS SUBJECT MATTER AND PERSONS

Article 1

1. "The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as "the principle of equal treatment".

2. 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".

27. In Belgium

Article 116 of Title V of the Law of 4 August 1978 provides that the principle of equal treatment shall apply to :

(a) access to employment and promotion, including the self-employed occupations,

(b) access to vocational guidance and training, advanced vocational training and retraining.

However, the implementation of the law in this area depends on an implementing decree defining the concepts of vocational guidance and training is adopted, which is now being done.

(c) working conditions and dismissal.

The Law stipulates, however, that it will be applicable to annual leave only after publication of a Royal Decree. The Royal Decree of 8 January 1980 deals with this problem, but it applies for a one-year period[1]. It should be noted that this Decree did not take Article 116 of the Law of 4 August 1978 as its legal basis. The provisions apply to both the public and private sectors.

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1 In its letter of 23 July 1980, the Commission requested the Belgian Government to provide information on this subject.

28. In Denmark, the Laws of 12 April 1978 guarantee the application of the principle of equal treatment, to the extent that it is not already guaranteed under a collective agreement, in relation to :

(a) access to employment and transfer, including the self-employed occupations, and promotion;

(b) access to vocational guidance and training;

(c) working conditions and dismissal.

Employers are bound by these last two points only where they employ both men and women at the same work place[1].

The provisions apply to both the public and private sectors.

29. In France

(a) The Laws of 10 and 11 July 1975 condemn sex discrimination in both the public and private sectors as regards access to employment. In the private sector, reference is made only to refusal to recruit and to dismissals and not to promotion; a law is being drafted to remedy this situation and secure equal treatment for men and women at work by improving existing legislation on access to vocational training and promotion, terms of employment and job requirements. In the civil service, Article 7 of the staff regulations guarantees equality between the sexes for all rights of the staff, arising from the said regulations.

(b) The Government maintains that the provisions now in force, deriving from the Law of 16 July 1971, automatically exclude any possibility of direct discrimination in access to vocational training.
Nevertheless, in the opinion of the Commission, no specific legal instrument is directed towards the elimination of discrimination, but the draft law will remedy this situation.

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1 On 30 July 1980, the Commission gave formal notice to the Danish Government to delete this condition, which clearly restricts the scope of the obligation laid down in the Directive.

(c) With the exception of pay and dismissal, equality as regards terms and conditions of employment is not mentioned in the legal instruments, but the draft law will remedy this situation in the private sector.

Lastly, the Government maintains that the outline legislation on the craft industry is not discriminatory, but that problems might arise with regard to the spouse of the head of an undertaking and that particular laws might lead to de facto inequalities. The Government is also drafting a law to make better provision for a husband and wife working for the same company and for the transfer of companies in the craft industry.

30. In Italy, the Law of 9 December 1977 covers equal treatment in

(a) access to employment and promotion (private and public sectors and self-employed occupations);

(b) access to and content of vocational guidance and training;

(c) pay, age limits and leave of absence to look after a child.

Other terms and conditions of employment are covered by Article 13 of Law N° 903, which extends the scope of Article 15 of Law N° 300 referred to above.

31. In Ireland, the law covers equal treatment in

(a) access to employment and promotion (private and public sectors and self-employed occupations);

(b) access to vocational guidance in undertakings and vocational training for those above the age of compulsory education;

(c) working conditions (private and public sectors).

32. In Luxembourg

The proposed draft law applies to :

(a) conditions of access, including selection criteria, to jobs and vocational training (private and public sectors and self-employed occupations);

(b) access to all types and levels of vocational guidance and training, further training and retraining;

(c) conditions and terms of employment.

The Government states that the draft law applies to employers and workers and to those responsible for public and private educational establishments. The Committee on Women's Employment requested that it should also apply to those who distribute or publish job advertisements and that provision be made for penalties. This proposal was adopted by the Government within the framework of a series of amendments to the draft law under consideration.

In its present form, the draft law does not specify who must comply with the provisions.

For example, in the area of vocational guidance and training, it is not clear whether the law applies to the various authorities responsible for technical and vocational training, as well as to employers.

33. In the Netherlands, the laws cover access to employment and promotion in the private and public sectors and the self-employed occupations; equality of access to vocational guidance and promotion, further training and retraining in the private and public sectors; vocational training in undertakings; vocational guidance; conditions and terms of employment in the private and public sectors; and termination of employment in the private and public sectors.

The emergency Law of 25 May 1979 had already dealt with the elimination of discrimination as regards the dismissal of single persons in the public sector, due account being taken of their position as "family breadwinner".

The laws are applicable to all workers in the private sector, all self-employed persons (and all residents of the Netherlands as far as job offers are concerned) and to workers in the public sector.

34. In the Federal Republic of Germany, the Basic Law covers in principle the three areas referred to in the Directive, some of which are further defined in other legal instruments :

- Article 611(a) of the Civil Code, as amended by the Law adaptating German legislation to Community law, deals with discrimination in the work relationship between employers and workers governed by private law; the ban on discrimination is general and covers the origin and course of the employment relationship (including promotion and further training within undertakings) and its termination.

- The law on promotion of employment deals with the material and personal conditions relating to access to vocational guidance, promotion, further training and retraining, irrespective of sex, but imposes no obligations as regards equal treatment. The Government points out, however, that this law is also subject to the principles of equality laid down in the Basic Law.

- Article 75 of the law on industrial relations at the work place (Betriebsverfassunssgesetz) and Article 67 of the law on the representation of federal employees contain an express provision on equal treatment as regards terms and conditions of employment (private and public sectors).

- Article 33(2) of the Basic Law deals with access to jobs in the public sector.

There is no specific provision prohibiting discrimination in the rules governing the self-employed occupations, nor as regards equal treatment in technical education and vocational training. The Basic Law is regarded as covering the latter areas. In its letter of 25 April 1980, the Commission expressed its doubts on this point to the German Government : since the Government felt it necessary to offer workers in the private sector a clear legal basis for the enforcement of their rights (see the explanatory memorandum to the law), it is equally important to offer the same clear legal basis to self-employed workers and candidates for training courses.

35. In the United Kingdom, the SDA and the Northern Ireland Order cover :

(a) access to employment and promotion;

(b) access to employers' training schemes and to vocational guidance and training and their content (training is defined as including all forms of education or instruction);

(c) (i) access to other benefits, facilities or services provided by employers;

(ii) dismissal or other adverse treatment.

The definition of employment covers self-employed workers who enter into personal employment contracts.

On 29 July 1980, the Commission gave notice to the United Kingdom Government that on this point the law did not fully cover the application of the Directive, since it did not provide for the nullity of clauses contrary /to the rules governing self-employed occupations.

It applies to both the private and public sectors and to full and part-time employment.

36. Although social security constitutes a working condition (condition de travail) within the meaning of the Directive, the latter provides that the gradual implementation of the principle of equal treatment in social security will be determined by subsequent legal instruments[1]. As a general rule, none of the subject areas covered by the Directive are dealt with under social security legislation, with the exception of annual holidays which in Belgium are considered to be a part of social security. As explained above, a Royal Decree dealt with the remaining problems of discrimination in this area in Belgium, at least for a one-year period.

37. The persons to whom the various areas covered by the Directive apply will be determined when each of these areas is examined later in this report.

To conclude this general section, the Directive stipulates that the principle of equal treatment is designed to place women on an equal footing with men and vice versa, subject to certain specific measures to protect pregnant women and positive discrimination in favour of women, which will be analysed later in points VI and VII.

38. Summary

In four Member States, the implementing measures cover the entire subject matter of the Directive, except for a few provisions which will be clarified in Part Two (Belgium, Denmark, Ireland and the Netherlands).

In Italy, Germany and the United Kingdom, there are some subject areas which are not dealt with in the implementing measures.

In France and Luxembourg, no general implementing law has as yet been passed.

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1 An initial Directive has been adopted on the subject : Directive 79/7 of 19 December 1978, OJ No L 6 of 10 January 1979, p. 24.

IV. IMPLEMENTATION - GENERAL REMARKS

Abolition of discriminatory measures, nullity of contrary clauses

39. Articles 3, 4 and 5 of the Directive state that, in the three areas covered by the Directive :

(a) laws, regulations or administrative provisions that are contrary to the principle of equal treatment must be abolished;

(b) provisions contrary to this principle which appear in collective agreements, individual contracts of employment, company rules or the articles of professional associations are either void or may be declared void or amended.

40. In Belgium, Article 130 of the Law of 4 August 1978 provides expressl that : "provisions contrary to the principle of equal treatment are void". The term "provisions" within the meaning of the Law applies to laws, regulations or administrative provisions, individual and collective agreements, employment regulations, statutory and administrative provisions applicable to public service employees and regulations applicable to employees in the State education and subsidized education sectors.

It is not clear whether the Law applies also to the articles of professional associations, since Article 117 defines a self-employed occupation as a professional activity practised by persons not bound by any staff regulations.

Article 153 of the Law stipulates that a number of provisions which bar women from certain public sector jobs will cease to have effect as of 17 August 1979[1].

Any provisions of collective bargaining agreements which are contrary to the principle of equal treatment are void following the Law of 4 August 1978. Article 9 of the Law of 5 December 1968 on collective bargaining agreements states that any provisions of such an agreement which are contrary to the mandatory provisions of a law are void.

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1 See Report p.

41. Denmark

The law stipulates that any contractual provisions, including those set out in collective agreements, company rules and articles of professional associations, that are contrary to the principle of equal treatment are automatically void. The Danish Government has taken steps to ensure that no laws, regulations or administrative provisions run counter to the principle of equal treatment for men and women under the law in question.
In particular, following the introduction of the law on equal treatment, the laws concerning employees, agricultural workers, home helps and seamen were amended in order to comply with the law on equal treatment.

42. France

The Government states that the draft law now being adopted by the French authorities is designed to eliminate existing discrimination in laws, regulations and collective agreements as well as in accepted practices and to prevent any subsequent recurrence, with the exception of those texts which fall within the field of application of Article 2.3. of the Directive.

Collective agreements must comply with the new standards (Law of 11 July 1975), and the authorities refuse to extend any collective agreement which does not comply with these standards.

43. Ireland

All laws, regulations and administrative provisions which are contrary to the principle of equal treatment are repealed automatically.

Any discriminatory provision contrary to the Act contained in an employment contract, a collective agreement or an order governing employment is deemed to be void.

45. Italy

Article 19 of the Law of 9 December 1977 stipulates that any legislative provisions which are contrary to the Law are repealed. Consequently, all internal rules and administrative provisions laid down by the State and other public bodies which are contrary to the Law are null and void.

Any provisions of collective agreements or individual contracts of employment, company rules and articles of professional associations which are contrary to the Law are also void.

The signatories of contractual provisions are bound by the Directive, the Law being the primary legal source.

46. Luxembourg

The proposed draft law provides for the elimination of discrimination in laws, regulations and administrative provisions, articles of professional associations, company rules, collective agreements and individual employment contracts.

47. In the Netherlands, the laws ban discrimination in all areas covered by the Directive; any clauses to the contrary are void.

Some regulations which are still discriminatory are at present being brought into line with this general principle.

The laws also provide for the nullity of company rules, provisions of collective agreements and the articles of professional associations.

48. In the Federal Republic of Germany, laws, regulations, administrative provisions, articles of professional associations, collective agreements and occupational agreements are directly subject to the principle of equal treatment laid down in Article 3(2) of the Basic Law. All provisions to the contrary are therefore void.

Contractual provisions are dealt with under Article 75(1) of the law on industrial relations at the workplace, Article 67(1) of the law on the representation of federal employees and Article 611(a) of the Civil Code as amended by the law adapting legislation to Community law. In the event of infringement, the employee has the right of appeal, and the works councils and staff representatives must ensure that employers comply with the provisions.

Article 611(a) of the Civil Code in conjunction with Article 134 of the Civil Code provide that clauses in individual employment contracts which are contrary to Article 611(a) are void.

49. United Kingdom

The Act itself does not provide for the abolition or nullity of collective agreements, company rules or articles of professional associations[1].

However, the Act provides for the annulment of any condition contained in individual employment contracts which does not comply with its provisions (Section 77 and Article 77).

The EOC points out that there is no provision for the elimination of discrimination in measures taken on the basis of Acts passed before the SDA (Section 51 and Article 52) and that the courts have extended this exception to administrative acts of the local authorities. The Government has not ruled out the possibility of reviewing this situation.

The EOC also notes that, under the Equal Pay Act, the parties to a collective agreement which contains a provision that is applicable only to men or to women may refer it for amendment to the Secretary of State to the Central Arbitration Board (Section 3(1) of the EPA). There is no procedure for amending collective agreements containing provisions that constitute indirect discrimination within the meaning of the SDA or Article 2(1) of the Directive.

The High Court has, however, restricted the practical application of the powers of arbitration.

De facto discrimination

50. The measures adopted to implement the Directive must be directed not only towards formal provisions, as outlined above, but also any discriminatory acts, practices and circumstances in the areas covered by the Directive and in accordance with its provisions.

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1 In its letter of 29 July 1980, the Commission gave notice to the United Kingdom Government to provide for the nullity of collective agreements, company rules and articles of professional associations which do not comply with the principle of equal treatment. This also applies to Northern Ireland.

In other words, the Directive lays down two types of obligation[1] :
"(1) the creation of a general, positive entitlement to non-discrimination which is applicable to de facto discrimination and can thus be invoked before the courts ;
(2) the adoption of various measures to deal with the different subject areas.

We are concerned here with the first of these obligations.

Accordingly, the implementing measures adopted must prohibit de facto discrimination in the areas covered by the Directive and allow any victims of discrimination the right of appeal.

In general, this obligation is expressly mentioned in the laws of the Member States.

The situation in the various Member States is as follows.

51. In Belgium

The Law of 4 August 1978 provides that equal treatment must be ensured in practices carried on within each of the areas covered by the Directive.

Article 117 defines the term "practices" as meaning any isolated or repeated act on the part of a public or private body, employer or person with respect to a person or group of persons. Injured persons have a right of appeal under Article 131.

There are civil and criminal penalties for failure to comply with the Law in this area.

52. In Denmark

The Law applies to both de jure and de facto discrimination, and the penalties in case of discrimination apply in both cases.

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1 See the Report of the Committee of Permanent Representatives to the Council of the European Communities of 28 November 1975 (R 294075, Soc.274).

Victims of de facto discrimination have a right of appeal.

53. In France

Any proven de facto discrimination in the areas covered by existing regulations is banned, namely :

- recruitment, dismissal and all forms of discrimination in which the person practising the discrimination is representative of the authorities or other public official.

Infringements are subject to criminal penalties and civil actions for damages.

54. In Ireland

The Employment Equality Act (1977) prohibits de facto discrimination. Victims of such discrimination have a right of appeal.

Penalties may be provided for infringements.

The Employment Equality Agency set up under the Act is responsible for promoting equal treatment and is empowered to investigate discriminatory conduct[1].

55. In Italy

The Law prohibits all discrimination in the areas it covers. Victims of de facto discrimination have a right of appeal. Article 16 provides for special fines for infringements.

There is still a problem in those areas not covered by the Law, such as conditions and terms of employment other than those listed in the Law.

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1 See p. 194.

56. In Luxembourg

The draft law was initially aimed at prohibiting discrimination in practice (de facto) only as regards access to employment, promotion and working conditions. By process of amendments, the prohibition of all discrimination in actual access to guidance and promotion was added to Article 4 of the draft law in question.

57. In the Netherlands, the laws prohibit all de facto discrimination in the areas covered by the Directive.

Victims of de facto discrimination have a right of appeal, and the court responsible may declare the nullity and illegal nature of the act under the general provisions of the Civil Code. The laws on equal treatment do not provide ror a specific right of appeal.

58. In the Federal Republic of Germany, the Government maintains that the legal instruments referred to ban all forms of discrimination. Victims of discrimination may institute legal proceedings, obtain enforcement of their rights, request that the discrimination be set aside and, where appropriate, claim damages or seek performance of the contract.

59. In the United Kingdom, the Act prohibits de facto discrimination and gives the victims of such discrimination a right of appeal.

/Content of collective agreements/

60. In general, the laws which implement the Directive provide for the nullity of clauses which are contrary to the principle of equal treatment (except in the United Kingdom and those Member States which have not yet passed implementing laws).

But in general, the nullity has to be declared on a case by case basis by the court to which the matter is referred; is is not automatic.

It is therefore essential to determine whether, despite the almost total lack of proceedings brought before the courts, the collective agreements which largely determine working conditions for men and women are in general based on the principle of equal treatment and comply with this principle.

Given the large number of collective agreements, it is difficult to make a judgment on this point except where systematic analyses have been carried out, as in Belgium, France and the Netherlands.

It must be noted that the Governments of the Member States in which no such analysis has been carried out generally state that collective agreements do not include discriminatory clauses, but that, whenever a Member State has carried out an analysis, it has revealed discrimination expressed in either direct or indirect terms.

In some countries, as in Germany, the computerization of the content of collective agreements may reveal nothing unless criteria are adopted which would enable discriminatory clauses to be identified. However, the Government states that sample surveys have not revealed any discrimination.

The analyses carried out in Belgium, France and the Netherlands will be described in the second section, when each of the subject areas covered by the Directive is examined.

It is interesting to note how each of these Member States set about their analyses.

In Belgium, an administrative unit was set up within the department responsible for collective agreements to implement Directive 75(117) [1], at the request of the Commission on Women's Employment. Since then,

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1 See the Report from the Commission to the Council on the situation at 12 February 1978 with regard to implementation of the principle of equal pay for men and women (COM(78)711, p.56).

The analysis of collective agreements has been extended to cover new aspects, some of which relate to the Directive 76(207), such as:

- leave on family grounds;
- occupational classifications;
- piecework rates of pay;
- guarantee funds.

In France

In July 1978 the French National Register of Collective Agreements analysed the clauses relating to women's employment in the collective agreements registered. This analysis points up a number of problems. The clauses analysed which concern the implementation of the Directive are those relating to leave to look after children (sickness, children returning to school, etc.), working hours (part-time work, flexible working time and similar arrangements), public works and equal pay.

In the Netherlands

The Ministry of Social Affairs conducted a survey in each sector of activity of measures which might indicate direct discrimination between men and women in certain collective agreements, for the year 1975-1976.

A list of the provisions which had not been adapted and which were in force in August 1977 was drawn up.

A comparison between 1977 and 1979 shows that a number of contractual provisions have since been adapted to the Directive.

The main forms of discrimination concerned the amount of various allowances (holiday bonuses, and salaries of young heads of household, annual bonuses, overtime and normal working hours).

Another survey was made in August 1978 of contractual provisions relating to breadwinners.

A list was drawn up of the various provisions in the collective agreements which revealed indirect discrimination in their reference to breadwinners. This was a sample survey. A further survey was made in 1979 of provisions which were directly or indirectly contrary to the Directive.

In these three countries, the discriminatory clauses generally relate to occupational classifications, the very concept of collective agreements, or more specifically the vocabulary used which gives the impression that the paid workforce consists only of male workers or employees, and the benefits attached to family status (head of household) or the conception of the woman's role in the family (leave to look after children, etc.).

/Public policy aspect of the implementing provisions/

61. The implementing laws are public policy and therefore have erga omnes effect in Belgium, France (in the subject areas covered), Italy, the Netherlands, Ireland, Denmark and Luxembourg, according to the Government[1].

In Germany, the legal instruments referred to and the Basic Law are public policy; nevertheless, in the opinion of the Commission, the fields covered exclusively by the Basic Law are not always dealt with very clearly, in particular where there is no caselaw.

In the United Kingdom, as we have seen, any discriminatory act or practice which is contrary to the law is void. The concept of public policy is not used in the United Kingdom to denote the mandatory nature of legal instruments. Moreover, the law does not provide for the nullity of contrary collective agreements.

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[1] Although Luxembourg's law provides penal sanctions in respect of only one point.

V. OCCUPATIONAL ACTIVITIES EXCLUDED FROM THE FIELD OF APPLICATION

Article 2(2)

"This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor".

Article 9(2)

"Member States shall periodically assess the occupational activities referred to in Article 2(2) in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment".

62. During the preliminary stages of work on the Directive, it was made clear that this derogation was intended to be interpreted strictly and to cover the entire field of possible exceptions. A broad interpretation of Article 2(2) would defeat the entire purpose of the Directive. The Commission has already initiated infringement proceedings based on its interpretation of Article 2(2), against some of the Member States. It points out that, while Article 2(2) of the Directive authorizes the Member States to exclude "certain occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor", the system of derogation is based on this factor alone, so that no derogation is possible unless, for objective reasons to do with its nature, the job can be carried out either only by a man or only by a woman."

In the light of this interpretation, we examine in the following pages the situation in the Member States and the measures taken in accordance with Article 9 of the Directive to review the list of occupational activities excluded from the scope of the Directive.

63. In Belgium

It should be noted that, in its law of 4 August 1978, Belgium did not make use of the possibility provided by Article 2(2) of the Directive, namely, the exclusion from its field of application of training leading to occupations not open to women.

Article 122 of the Law of 4 August 1978 provides that: "The King may, by Decree debated in the Council of Ministers, decide in which cases the sex of the applicant may be mentioned as a requirement for a post or an occupational activity for which, by reason of its nature or the context in which it is carried out, the sex of the worker constitutes a determining factor."

"The King shall consult the Commission on Women's Employment. He shall also consult, for the private sector, the National Labour Council, and for the public sector, the General Trade Union Consultative Committee.

The bodies consulted shall give their opinions within two months of being requested to do so. After this time limit, their opinion may be disregarded".

Thus, consultation is obligatory, but the political authorities are not obliged to act in accordance with the opinion expressed.

The derogation applies only to the conditions governing recruitment to jobs, and not to other fields such as, for example, admission to training for jobs.

The derogation applies to the following occupations, listed in a Royal Decree of 8 February 1979:

(1) the jobs or occupational activities of:
- actor, actress, male or female singer or performer playing a male or a female role;
- fashion model;
- model for painters, sculptors, photographers, beauty salons.

(2) Jobs or occupational activities carried out abroad in countries that are not members of the EEC where local laws or custom require persons of a particular sex to carry out the job concerned.

Article 153 of the Law of 4 August 1978 maintained some further derogations in the public sector until 17 August 1979, so that the authorities would have time to apply for derogations under the procedures of Article 122.

Derogations under Article 153 covered :

(1) Some jobs in the Finance Ministry (particularly customs and land register jobs);
(2) some jobs in the Prime Minister's department (Comité supérieur de contrôle);
(3) some jobs in the Youth Ministry (prisons, youth care);
(4) civilian employees in the military security department;
(5) some jobs in the Economic Affairs Ministry (skilled laboratory cleaning, open only to women);
(6) some jobs in the Ministry of the Interior (disaster and emergency service)
(7) some jobs restricted by the local authorities (e.g. local police, rural police, firemen, etc).

Since no Decrees have been enacted granting exceptional status for any of these jobs, and since Article 153 lapsed on 17 August 1979, they should all now be open to candidates of either sex; those under (1), (2) and (5) are indeed now available to both men and women, but the Commission on Women's Employment is not satisfied that restrictions have really been lifted on jobs under (7), which are still not freely available. Moreover, the consultation procedure has been initiated in respect of derogation for jobs under points (3) and (4).

This means that these jobs are still not subject to the provisions on equal access. Most jobs in the navy will also remain closed to women until the question of allowing women into the naval academies has been settled. **Training for the occupation of bridge officer has been open to women since school year 1980.**

The Government points out that women's entry to the police is governed by the Royal Decree of 2 April 1979, and their entry to the army by Chapter IV of the Law of 13 July 1976.

The King decides which police and army jobs are open to women, and he may exclude certain dangerous or unhealthy jobs (in particular combat posts).

The status of the Gendarmerie is laid down by the Law of 13 July 1976; no women are recruited.

The Commission on Women's Employment points out that some local police forces do not recruit women.

Reasons given for excluding certain occupational activities

The derogations in Article 1(1) of the Royal Decree of 8 February 1979 were granted on grounds of"authenticity". Article 1(2) allows for the fact that Belgium has no influence over laws and customs in other countries.

The reasons given for maintaining restrictions on the jobs listed in Article 153 include considerations of personal safety, unpleasant working conditions and the violence to which persons in these jobs may be exposed, organizational requirements incompatible with the prohibition on night work, reasons of morality or the special nature of relations with prisoners, for example. The Committee for Women's Employment, in the opinions it has given up to now on applications for derogations, refuses to accept these reasons; it does not think that such derogations can be duly authorized under either the Directive or Belgian law. **It feels, however, that women should continue to be excluded from the occupation of prison warder, although this would only be temporary pending the setting up of mixed teams as an experiment.**

In general, it recommends that recruitment should depend on individual aptitude rather than sex.

Revision procedure

The Government does not think that any of the jobs excluded by the Royal Decree of 8 February 1979 should be removed from the list. On contrary, steps are being taken to supplement the list by adding a number of jobs that have never been open to women, and that could be regarded as occupational activities excluded under Article 2(2) of the Directive; as we have seen, a consultation procedure is provided for with a view to adding further derogations to the list in the Royal Decree of 8 February 1979.

64. In Denmark

Article 11 of the Law on equal treatment authorizes derogations insofar as the sex of the worker constitutes a determining factor for certain occupational activities and the training appertaining thereto.

The Minister within whose sphere of competence the activity in question lies may authorize a derogation after obtaining the opinions of the Minister of Labour and the Equal Treatment Commission, although he is not required to act in accordance with these opinions. Until a decision has been taken, the application of the Law is suspended.

Derogations have been authorized on this basis in the following cases :

- entry to the priesthood (Decree of 10 July 1978);
- sales staff for ladies underwear (provisional derogation for a five-year period);

- staff branches of undertakings based abroad; (As in Belgium, this derogation should be restricted to countries outside the EEC.)
- staff carrying out inspections of prisoners and detention premises, and body-searching of prisoners (search to be carried out by persons of the same sex as the prisoner).

In the army, women cannot be appointed to jobs that involve them in combat. The Ministry of Defence has requested a derogation, but the decision has not yet been taken. The authorities are considering the possibility of recruiting more women to the army in jobs that do not involve combat. This would mean considering only the aptitudes and qualifications of candidates, with no reference to sex. The decision will be taken in 1980.

Since 1 July 1978, the minimum age for recruitment has been 16 for both men and women.

The recruitment arrangements in the police force involve equivalent treatment for both sexes, except as regards height requirements and physical tests.

Reasons given and assessment procedure

Most of the derogations are temporary, so that the suitability of maintaining them may be studied.

The situation is continually reassessed under the consultation procedure.

65. In France

No occupational activities are excluded under Article 2(2) of the Directive in the private sector; but the law of 11 July 1975 amending Article 416 of the Penal Code prohibits the refusal to recruit or dismiss a person for reasons of sex or family situation if they have legitimate grounds for doing so.

The Courts assess the legitimacy of these grounds case by case. In the circumstances, it is impossible to say how far the relevant provisions of the Directive are being duly respected.

In the public sector, Article 7 of the new general regulations for civil servants (Law of 10 July 1975) provides that derogations are still possible when the nature of a job or the conditions in which it is carried out warrant them : the Council of State may therefore decree, after consulting the Higher Council for the Public Service and the Joint Technical Committees, that such jobs may be open only to women or only to men, as the case may be, or in exceptional cases, that separate recruitment procedures and requirements may be adopted for men and women.

French law on derogations from the provisions of the Directive does not include the basic reservation laid down in Article 2(2) that such derogations may be granted only when "the sex of the worker constitutes a determining factor".

Under the Government's interpretation of Article 2(2), this reservation is implicit in Article 7 of the Law of 10 July 1975.

However, it transpires from the practical applications of Article 7 that a number of exceptions authorized under French law are not compatible with the Directive; in a letter dated 30 July 1980, the Commission gave the French Government notice to put an end to this situation.

The Committee on Women's Employment has deplored decisions of the Council of State under Article 7 on several occasions; in its June 1978 Report on women in civil service employment, it requested the abrogation of Article 7, pointing out that recruitment should depend not on the candidate's sex, but on the qualifications that might be required of any candidate in view of the nature of the post, about which precise information should be easily available.

The present situation is as follows :

(1) Recruitment restricted to a particular sex :

Ministry	Jobs concerned	Type of derogation
Justice	Lady supervisors in Legion of Honour educational establishments. Boarding-school teachers in Legion of Honour educational establishments.	Recruitment restricted to women
Interior	Certain officers in the national police force (Commandants and officiers de paix)	Recruitment restricted to men
Post and telecommunications	Lines department : • technical staff • Works supervisors • Heads of Sector • Lines deparment branch of operational staff	

(2) Separate conditions for access :

Ministry	Jobs concerned	Type of derogation
Budget	Customs supervisors (contrôleurs) Customs inspectors (agents de constatation)	The Decree announcing a competitive examination may specify the number of posts for men and women separately, depending on the supervision tasks involved in the posts.
.....	.....	.....
	Assistant officers (préposés)	When this is done, the number of jobs reserved for one sex may not be more than three times the number of jobs reserved for the other. The Decree on the organization of the competitive examination lays down separate conditions for physical tests and requirements.

Education	Primary school teachers	Separate competitive examinations are held for male and female candidates in departments where the percentage of nursery and primary school teachers of one sex or other exceeded 65% of the total on 31 December of the year preceding recruitment.
Interior	Certain officers in the national police force (commissaires, inspecteurs, enquêteurs, gradés, gardiens de la paix)	In the Decree announcing the competitive examination, the number of posts for men and for women are specified separately. The Decree on the organization of the competitive examination lays down separate conditions for physical requirements and tests.
Youth and Sport Justice	Teachers of physical education Assistant teachers of phycical education. Teaching staff in special educational establishments. Prisons administration	The Decree announcing the competitive examination specifies the number of posts to be filled by women depending on the requirements of the service. The Decree on the organization of the competitive examination provides for tests in particular branches of sport, differing in nature and requirements for men and for women.
Post and telecommunications	Supervisors (contrôleurs). Operational staff : (1) General department (2) Transport and delivery - Transport and delivery departments : . Assistants . Transport and delivery supervisors . transfer chief supervisors . checkers	Separate competitions may be held for men and women depending on the requirements of the service.

Reasons given to justify the exceptions

The French Government feels that, for example, the jobs of lady supervisor and boarding-school teacher in Legion of Honour educational establishments must be reserved for women because their essential purpose is to provide substitute mothers for girls who are sometimes very far away from their families and who must live in boarding school at a time of intense physical and psychological change.

The Government does not say who replaces the girl's fathers.

Officials in the lines deparment of the telephone authority, included in the list at Annex I of the Decree of 25 March 1977, are always men because staff work outside, in all weathers and on all types of land, and often have to climb up to telegraph wires. The Ministry of Posts and Telecommunications is, however, trying mixed teams as an experiment. Mixed teams will become the general rule if the experiment works, so that this exception could be abolished.

Where recruitment is separate, the Government thinks that "in many cases" sex is a determining factor. For example, "female physical education teachers cannot be expected to do some of the exercices carried out by boy pupils; what is more, it is sometimes necessary to assess the conditions for carrying out a job not in relation to the individual (obviously male and female primary school teachers may occupy the same job), but in relation to the group within which the job is carried out; it is often essential for this group to include a certain proportion of both men and women."

The Council of State has pointed out the need for a clearer interpretation of the Directive on several occasions : for example, concerning the rule that forbids the promotion of women to the post of inspector of mixed offices in the postal service (CE 2 May 1959).

Midwives' jobs are reserved for women under the Law of 1943, but a draft Law is being prepared to end this discrimination.

The Government does not say under what terms women may be recruited to the army. In the police, women are excluded from the posts of commandant and officiers de paix in the national police force; the posts of commissaire, inspecteur, enquêteur, gradé and gardien de la paix are filled by competitive examination; the number of posts to be filled is set separately for men and women, as a function of the physical qualities required.

Revision procedure

The Government says there is no procedure for periodically reviewing occupational activities that are excluded, in spite of the provisions of Article 9 of the Directive.

66. In Ireland

Section 12 of the Employment Equality Act states that the Act does not apply to employment :

- in the Defence Forces
- in the Gàrda Siochàna (Police)
- in the prison service
- in service in private households.

Moreover, Section 17 of the Act allows for the exclusion of a number of jobs where the sex of person concerned is an occupational qualification. An employer may, on this basis, exclude an applicant of one sex or the other if he can prove that this criterion applies to the job. The sex of a person is considered an occupational qualification :

(i) where, on grounds of physiology (e.g. for fashion models) or authenticity for the purpose of a form of entertainment (e.g. for actors and actresses), the nature of the post requires a member of a particular sex;

(ii) where the nature of the job justifies the employment of persons of a particular sex on grounds of privacy or decency;

(iii) where, because of the nature of the employment, it is necessary to provide sleeping and sanitary accomodation for employees on a communal basis; the employer must prove that it would be unreasonable to expect him to provide separate sleeping and sanitary accommodation. This category covers jobs on small fishing vessels and in lighthouses ;

(iv) where the duties of a post involve personal services and it is necessary to have persons of both sexes engaged in such duties, for example, social welfare or probation work ;

(v) where an establishment is confined to persons of one sex, requiring supervision and special treatment, and where the job concerned involves this treatment, for example in psychiatric hospitals ;

(vi) where the job is likely to involve the performance of duties outside the country concerned, in a place where the laws or customs are such that the duties can only be performed only by a man (or only by a woman).

On 29 July 2980, the Commission gave the Irish Government notice to review the exceptions that conflict with Article 2(2) of the Directive.

In spite of the derogation applying to the armed forces, women are admitted to certain jobs under Law No 2 of 1979; they do not serve in the army. They can be trained in the different military colleges. The recruitment of non-commissioned officers and women privates will begin as soon as women officers have been appointed to command supply services.

Entrance to the police force is also authorized under the same conditions as for men and after the same training, except that the minimum height for women is 1.64 metres, while for men is 1.74 metres.

Men may exercise the occupation of midwife and nurse, but there are some restrictions on access to training.

Reasons given and revision procedure

The Minister may abolish a derogation by Decree, after consulting the parties concerned and the Employment Equality Agency; the Minister is not obliged to abide by their opinions.

The Employment Equality Agency, which is responsible for seeing to the application of the law, may undertake studies on cases which seem likely to develop; it has not yet done so.

67. In Italy

Law No 903 expressly declares that, for occupations in the field of fashion, the arts and theatre, where the nature of the work or the duties require a member of a specific sex, this requirement is not regarded as discriminatory (final paragraph of Article 1).

There are no other exclusions, apart from the armed forces; Law No 903 admits women to the police force. However, the UIL (Italian Labour Union) has pointed out that the female police force set up under Law No 1083 of 7 April 1959 serves the purpose of restricting women to low-paid duties in the police.

As far as the jobs from which women are generally excluded in the other countries are concerned, the Government declares that women are on an equal footing with men in the fire service, the civil guard, the prison service and the customs service.

Revision procedure

There is no provision for any consultations to monitor or review the derogations; the Government does not think that the derogations provided for in Law are liable to require changes.

68. Luxembourg

The draft law provides for the possibility of determining, in the public and private sectors, the cases in which it will be possible to refer to sex in the conditions for access to employment, including, where appropriate, access to training leading to professional activities in respect of which, because of the nature of the activity or the conditions under which it is exercised, sex constitutes a determining factor; before taking its decision the Government will consult the professional organizations and the Committee on Women's Employment; the Government is not obliged to follow their advice.

The activities provisionally excluded according to the draft law are the employment of women in hotels and cabarets, and, as regards the public sector, the recruitment of volunteers for the army, employment of women as sergeants and constables in the police force and the gendarmerie, and of women as officers in the police and gendarmerie.

At the present time, women are admitted to the police force under certain conditions.

The activities which are excluded will be reviewed, taking into account the opinion of the Committee on Women's Employment.

69. In the Netherlands under the laws of 1 March and 2 July 1980, exceptions can be made to the principle of equal treatment "in cases where sex constitutes a determining factor".

The question of whether and on what occasion this provision is applicable must be examined case by case and depends finally on the court's decision.

In the explanatory memorandum accompanying the draft law on the private sector the following examples are quoted :

- male/female singers
- actors/actresses
- male/female examining officers (body searches).

To this is added the point : "The range of the Directive prevents too rapid a conclusion being drawn as to whether sex constitutes a determining factor for the activity in question". A similar exception applies as regards access to vocational guidance and training; this exception is set out in Article 4 and applies to both the public and private sectors; in this connection, the explanatory memorandum contains the following examples : "As regards vocational training thought should also be given to certain religious training systems such as training for the priesthood, given the fact that there are religious proscriptions which limit the exercise of this activity to men".

The present situation in the public sector is not defined by the Government; are women admitted to all those activities from which they are generally excluded in other countries ?

As regards the armed forces and the police, women are admitted, with the exception of the requirement to fulfil military service.

At the same time a number of practical problems emerge, since women cannot be admitted to all activities; thus in the navy women are not admitted until after the results of time spent on a ship at sea become known; in the air force, training as a pilot is not available to women, but this provision will be revised in 1981.

Although since 1 January 1979 all the statutory provisions apply uniformly to men and women in the armed forces, it is not yet possible, at least provisionally, to apply the Directive in full to military personnel. A series of special studies by officials in the Ministry of Defence is at present taking plan listing and examining these problems in depth. These studies will very probably be complete in mid-1980. During the same period pratical experience gained by women in military occupations will have been completed, including a test on board a Royal Navy vessel. The intention is then to go on to formally integrate these projects into a legal and statutory framework.

Reviews procedure

No consultation is planned as regards the problems raised by the occupational activities which are excluded; the Government considers that the question or reviewing the activities excluded, provided for in Article 9 of the Directive, does not apply in the Netherlands.

70. In the Federal Republic of Germany, Article 611(1) of the Civil Code amended by the law adapting German legislation to Community law authorizes differing treatment based on sex where the nature of the activity exercised so requires and where sex constitutes a determining factor for the exercise of this activity; it should be remembered that the law only applies to the private sector.

The Government does not indicate clearly the activities for which it considers itself able to make use of this derogation; it appears that the derogation is directly applicable in individual cases according to the employer's judgment and that the question of determining whether application of the derogation is in accordance with the law is a matter for the courts[1]. Thus, accordingly, it is regarded as being in accordance with the law[2], if warders for a women's prison are recruited from women alone.

Under the Law of 21 December 1938 on Midwives men are excluded from entering this occupation.

The Government does not define the situation in the public sector; are women admitted to all those occupations from which they are excluded in other Member States ?

As regards the army in particular, women cannot perform duties where they are required to be armed (Art. 12 A paragraph 4 of the Basic Law). They are not however, excluded from volunteer service.

At the present time, women are only recruited as officers in the medical corps.

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1 On 25 April 1980, the Commission asked the German Government for clarification on this point.

2 Explanatory memorandum of the Law on adaptation to Community legislation on 13 August 1980.

Conditions in the police are determined by the Länder; women are generally excluded as uniformed officials, except in Hamburg and Berlin, but are admitted as "contractual" employees. Recruitment conditions (minimum height in particular) may differ.

Finally, women are employed in the Federal Criminal Investigation Department, but do not wear uniform.

Reasons put forward for excluding certain occupational activities

According to the judgment of the Constitutional Court, it is permissible to differentiate between the sexes where the biological difference between the sexes affects conditions to such an extent that comparison is made impossible.

Review procedure

This problem is examined by the Federal Minister for Employment and Social Affairs in consultation with the two sides of industry.

However, since no list has been drawn up under Article 2.2 of the Directive it is difficult to form an opinion of the exact scope of this procedure.

71. The United Kingdom

The Sex Discrimination Act excludes from its provisions as regards employment :

(a) employment in private households (Section 6(3)a of the SDA and Article 8(3)a of the Northern Ireland Order)[1];

(b) businesses employing five employees or less (Section 6(3)b and Article 8(3)b)[1];

(c) partnerships containing five or fewer partners (Section 11 and Article 14);

(d) Ministers of religion (Section 19 and Article 21) and those serving in the armed forces including the Navy and the Air Force (Section 85(4) and Article 82(5)).

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1 The Commission gave notice to the United Kingdom Government on 29 July 1980 to remove these two exceptions which are not covered by Article 2.2 of the Directive according to the Commission's interpretation.

However, the persons referred to in points (a) and (b) are protected against discrimination in case of any reprisal measures.

In addition, exceptions can be made to the provisions on employment, under Section 7 of the Act of 1975 and Article 10 of the Order,

- in the case of specific jobs, for an employer, where the fact of belonging to a particular sex constitutes a genuine requirement of the occupation to be carried out (e.g. actor, fashion model, model, singer)
- for reasons of propriety or decency (e.g. staff working in the fitting-rooms of clothing shops)
- in the case of a job where the employee lives in, where it is impossible to provide separate accomodation for male and female workers (e.g. work on ships and on remote building sites)
- jobs in institutions where men and women are segregated by sex and require special care and/or particular attention (e.g. hospitals, prisons, etc.)
- jobs involving travel outside the United Kingdom to countries where the laws or customs are such that the work concerned can only be effectively carried out by a man by a woman
- in certain competitive sports where the physical constitution, or the average strength of a woman, would put her at a disadvantage in relation to the average man (e.g. wrestling, weight lifting and exercises with barbells).

Under the SDA the legal barriers preventing men from being employed as midwives have been removed (Section 20(4) and 5 and Article 22(4)). However, transitional arrangements (Annex 4 of the SDA and Annex 5 of the Order) provide that men should not be trained in this occupation except in specially designated establishments (Annex 4 to the SDA and Annex 5 of the 1976 Order).

The Commission's view was that there was no reason to make special provisions in this connection, and has instituted proceedings in this respect.

In general, the Act does not exclude women from training except in training for the clergy, the armed forces and, as we have seen, the training of men as midwives.

The Government explains that although the armed forces are excluded from the field of application of the law, they have been allocating more and more posts to women during recent years, but there are still some differences as regards the number of posts and the range of opportunities offered to men and to women since women cannot be used as combat troops; in the same way women are not employed on warships, while in the Royal Air Forces some pilots are selected with a view to possibly being used on combat missions; women are required to resign on marriage but not men.

In the Police Force, men and women have the same opportunities as regards employment and conditions and terms of employment; the only exceptions relate to requirements as regards height and the provision of uniform and equipment.

Reasons put forward in justification of the exceptions

According to the Government these various exceptions are justified since in some cases certain relationships are so personal and intimate that the intervention of the law could be ineffective or unacceptable from the political and social point of view (e.g. private households, small firms) while in other cases it would be absurd for the law to intervene (e.g. fashion models); however, the Government offers no justification for excluding women from the armed forces.

Review procedure

According to the law the exceptions set out above (except those relating to the armed forces) can be amended or abolished by an Order approved by the two Houses of Parliament.

The law requires the Government to consult the Equal Opportunities Commission on any proposals for amending the list of exclusions, but it is not required to follow their advice; although it is not required to do so, the Government generally consults the two sides of industry. The Equal Opportunities Commission is required to check on the application of the law and where necessary to propose amendments.

The Trades Union Congress wants the exception relating to small firms removed and the Government does not rule out the possibility of amending this provision, in the light of experience acquired.

As regards the questions concerning decency and morality, public opinion develops slowly and any change requires the approval of the two Houses of Parliament.

Legal decisions

72. In Belgium, Denmark, Ireland, Italy and the Netherlands, there have been no legal decisions concerning the interpretation of occupational activities excluded from the principle of equal treatment.

In France, the Council of State has intervened on several occasions to define the provisions providing for certain exclusions in the public sector; thus the Council has annulled certain decisions barring women from promoted posts or preventing married women from taking jobs or imposing differing requirements for men and for women as regards qualifications.

In the United Kingdom, the industrial tribunals have delivered judgments in a considerable number of cases; in particular they have interpreted the exceptions set out in Section 7 of the SDA, for example the problem of stewardesses on ferries , in view of the limited number of cabins, and the employment of social workers in districts where there are a large number of vagrants.

In the Federal Republic of Germany, there have been no interpretations or opinions presented so far in relation to the new law; but as already pointed out, an exception from the principle of non-discrimination as laid down in the Basic Law is accepted by the courts where the biological difference between the sexes affects conditions to such an extent that no comparable elements can be found.

73. Summary of the situation as regards occupational activities excluded from the legislation

As already pointed out, the range is fairly wide and the positions adopted by the Member States appear to be quite varied.

The summary table on page 60 shows the points at which legislation in the various Member States coincides or differs inso far as the exceptions to the legislation have been defined precisely either in a legal instrument or in practice or in court decisions and to the extent also that existing exceptions have come to the attention of the Commission.

We can distinguish here between those countries which have clearly set out the occupational activities excluded (Belgium, Denmark, United Kingdom, Ireland) and have produced lists, those which exclude certain occupations on the basis of general provisions which are, in the opinion of the Commission, difficult to keep check of (France, Netherlands, Federal Republic of Germany) and finally those that make practically no provisions for any exclusions whatsoever (Italy), at least from a legal point of view.

At the present stage the Commission considers it to be clearly apparent that certain occupational activities which are excluded do not come under Article 2.2 of the Directive. As regards the other occupations the question is being examined in detail as part of a general study of the activities excluded from the legislation and of protective legislation.

This question will be examined in more detail in the conclusions.

Summary table of occupational activities excluded from legislation

X = Activities not covered by the principle of equal treatment and from which either men or women can be excluded or where recruitment can take place on a sex basis.

	B	DK	F	I	IRL	L	NL	D	UK
1st Group									
Actors, singers, artists	x	x	general exception	x			x	general exception	x
Fashion models, models, examining officers (both sexes)	x	x		x	x		x		x
2nd Group									
Jobs in foreign countries	x (non-Comm., EEC)	x			x				x
3rd Group									
Army	x[1]	x[1]	x[1]	x	x[1]	x[1]	x[1]	x[1]	x[1]
Navy	x[1]	x[1]	x	?	?		x[1]		x[1]
Police	x[1]	x[1]	x[1]	x[1]	x[1]	x[1]		x[1]	x[1]
Gendarmerie	x		x[1]			x[1]			
4th Group									
Clergy[2]		x		x	x	x	?		x
5th Group									
Certain jobs in the public sector Firemen	x[1]					x[4]			
Prison warders (by sex)	x[3]	x[3]			x[3]	x[3]		x[3]	x[3]
Certain supervisory and security jobs Customs officials	x		x			x[4]			
Certain technical services (Post Office)			x			x[4]			
6th Group									
Establishments providind care or services to people segregated on a sex basis (e.g. youth care - psychiatric hospitals - teaching - physical education).			x[3]		x[3]		x[5] (nursery schools)		x[3]
Lack of available facilities (cloakrooms, etc.)			x		x				x

[1] Certain activities open to women

[2] Does not count as employment in some countries

[3] Organized on a sex basis

[4] Certain public service jobs (eg. foresters, postmen, customs officers) are reserved for military volunteers at the end of their contracts.

[5] Under revision.

	B	DK	F	I	IRL	L	NL	D	UK
7th Group									
Private households					x				x
Small firms									x
Fitting rooms (clothing businesses)		x			x[3]				x[3]
Cabarets						x			
Midwives[2]			x		x[1]			x	x[1]

[1] Men have access to the training courses under special conditions.

[2] Men excluded

[3] And more generally for reasons of decency and morality.

VI. Protective measures for women which do not conflict with the Directive

Article 2.3

"This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity".

74. Article 2.3 refers only to pregnancy and maternity as in practice, the protective legislation that forbids the access of women to certain work or foresees for them specific working conditions is provided for in Articles 3.2.C. and 5.2.C. of the Directive.[1]
The Commission does not recognise any other protective measures coming within the field covered by the principle of equal treatment.

Consequently, it is clear that this Article should be interpreted strictly and that the provisions taken to grant leave or other advantages for purposes of bringing up children come under Article 5 of the Directive and they should accordingly be applied to workers of both sexes.

Article 2.3 is interpreted in this sense in Belgium, France, the Netherlands, the United Kingdom, and in Luxembourg.

However, in some of these countries discriminatory provisions still apply as regards holidays for purposes of bringing up a child; this will be examined in the Chapter on working conditions.

In contrast, the Governments of Italy and the Federal Republic of Germany regard these latter provisions as coming within the field of application of Article 2.3.

This is the case in Italy as regards Law No 1204 of 30 December 1971 and Article 6 of Law No 903.

These provisions which will be described in more detail in the chapter on working conditions grant special conditions and holidays either to the mother alone or to both the father and the mother, but on unequal terms.

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[1] See page 159 and following, Ch. IV - Protective legislation.

In the Federal Republic of Germany, the Government considers that the following laws come within the field of application of Article 2.3 of the Directive : the Law of 24 January 1952 on the protection of the working mother, as last amended by the Law of 25 June 1979, the Decree of 22 January 1968 ont he protection in the case of motherhood of female civil servants, as last amended by the Decree of 27 June 1979, the corresponding Decrees in the Länder, and the Decree of 22 January 1976 on maternity protection for women health officials, as amended by the Decree of 25 September 1979.

Since certain of the provisions of these laws go beyond the protective provisions in case of maternity and constitute conditions and terms of employment they will be dealt with in the chapter on working conditions.

Finally, the Danish Government considers that this provision covers not only protection in the case of pregnancy and maternity but also specific protection of the health of women of child-bearing age.

This interpretation is incorrect : in fact, these specific protective measures come under Articles 3.2(c) and 5.2(c) of the Directive and are accordingly subject to revision.

VII. "POSITIVE" DISCRIMINATION

Article 2.4

"This 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 in the areas referred to in Article 1(1)."

75. In Belgium, Article 119 of the Law embodies Article 2.4. of the Directive. Following consultation with the bodies already mentioned under V[1], a Royal Decree is to determine the cases in which "positive" discrimination measures may be taken. This Decree has not yet appeared but, in its Opinion No 20, the Commission on Women's Employment advocates among other things, that authorization be given :

(1) in some cases, for specific training to be provided for women leading to a qualification or a minimum level of education which it was impossible for them to attain at school;

(2) for steps to be taken to provide girls with educational and vocational guidance so as to assure them of a vocational qualification and a level of development offering them the same opportunities as regards access to employment and promotion as their male colleagues.

The Government has developed training for unemployed women in traditionally male occupations.

76. Denmark

Article 11, paragraph 2, of the Law on equal treatment empowers the Minister of Labour to authorize derogations in the case of measures designed to promote equal opportunity for men and women, in particular by removing existing inequalities which affect access to employment, vocational training, etc.

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[1] See page 40.

These derogations involving "positive" discrimination are granted following consultation with the Equal Treatment Commission. The following derogations have already been granted :

- different conditions for admission to the police force as regards the height of men and women so as to render the opportunities for recruitment practically identical;
- possibility of retaining a male or female deputy inspector in every school in Copenhagen;
- permission to recruit women exclusively to restore premises intended as a women's centre.

The Government underlines the numerous existing traditional inequalities, especially those involving family responsibilities, borne to a greater extent by women, and the division of the labour market on the basis of sex.

75. In France, the Law does not contain general provisions in this respect; the Government considers the following measures to constitute "positive" discrimination :

1. Access to employment

The temporary measures taken under the Pact to promote youth employment, intended to facilitate the access of women to the labour market by means of specific provisions (paid training schemes, exemption from social security contributions and recruitment premiums), were extended to cover single unemployed women with dependent children.

2. Access to vocational training. Priority granted to single women with dependent children.

In the absence of specific means of financing, the Commission on Women's Employment considers that this provision, quoted as an instance of "positive" discrimination, is purely theoretical - as is the extension to certain categories of women of the provisions of the Pact to promote youth employment - in the absence of specific means of financing. This is clearly shown by the growth in the participation of women farmers in long-term training schemes recorded after 1976, i.e. after the vocational organizations had obtained funds specifically intended to enable women to take part in training schemes of the 200 H type.

(5)

3. Public sector

Since the passing of Law No 79-569 of 7 July 1979, the age limits for access to employment in the public sector are no longer applicable to certain categories of women who are obliged to work (mothers of three or more children, widows or divorced women who have not remarried, legally separated and single women with at least one dependent child).

Moreover, Law No76-617 of 9 July 1976 concerning various measures for the social protection of families made provision for the age limit to be raised to 45 in the case of women bringing up a child or who have brought up at least one child for the recruitment by competition of female civil servants to grade A.

Lastly, Article 2 of Law No 80-490 of 1 July 1980 provides that an administrative order issued within six months of the promulgation of the law will lay down the conditions on which mothers of at least three children, without being subject to requirements regarding qualifications, may take part in any competitions held by the Government, the departments, the towns and communes, by national, departmental and communal public establishments or by any local authority or any establishment under its auspices and any nationalized or semi-nationalized industry.

76. Ireland

Section 15 of the Act states that it is not unlawful to provide training for a specific occupation to persons of one sex if, during the preceding twelve months, either no, or an insignificant number of persons of this sex were engaged in it.

Encouragement to persons of the sex concerned to take up such occupations is also authorized.

In this way, vocational training programmes have been set up with a view to removing the inequalities affecting women as regards access to certain occupations.

Programmes have also been set for women wishing to resume employment.

Plans are being made to extend the range of school subjects open to girls.

Lastly, a scheme for training women for occupations hitherto reserved for men has been introduced.

The Irish Farmers' Association is encouraging women to play a part in the economic organisation of farms.

77. Italy

No measures implementing this provision appear to exist in Italy; the Government and the Unione Italiana del Lavoro (Italian Labour Union) consider that Law No 903 itself contitutes "positive" discrimination.

78. Luxembourg

Article 7 (1) (amended) of the draft Law embodies the principle of excluding measures designed to promote equality of opportunity between men and women without setting out practical steps which could be taken to remedy the existing inequalities affecting the opportunities for women in the areas covered by the Directive.

In the public sector, the Government admits the same number of male and female candidates to the teacher training institute each year so as to promote equality or opportunity as regards access to primary and pre-school education.

The Government points out that the effect of this scheme, whose purpose is to prevent segregation in education, is, depending on the year, to restrict either women's access or men's access since such access is based on the results obtained by each applicant in the "baccalauréat" examination.

79. The Netherlands

Both the Law on the equal treatment of men and women and the Law on public service provide for "positive" discrimination measures (Article 1 of the Law of 1 March 1980 and Article 1, paragraph 4c of the Law of 2 July 1980). However, these Laws do not themselves contain measures which could be considered in this light.

The Netherlands Trade Union Federation has misgivings about this broad provision and fears that it will introduce new types of discrimination.

So far several measures have been taken, particularly in compliance with the motion adopted by the Second Chamber requesting that priority be given to the recruitment of women in the public sector so as to restore the balance.

The policy of the Minister for Education and Science is to give preference to women when filling vacancies in his Ministry. When recruiting (by advertisement) this concern is reflected, notably, by the invitation to women to apply.

A number of collective agreements include provisions on positive discrimination.

80. In the Federal Republic of Germany, the laws do not contain general provisions in this respect. The Government is taking steps to introduce "affirmative action plans", designed to improve conditions for women, based on a voluntary undertaking by private and public employers.

In this way, an attempt is being made to persuade firms to make provision for and make use of more women in planning and recruitment policies than at present in jobs which have hitherto been reserved for men. There is no question of introducing any compulsion on firms to do this, however.

The Law on the promotion of employment specifies the positive measures taken in favour of women, particularly those facilitating their access to employment or resumption of an occupation and advanced vocational training or retraining for women who have been bound by duties relating to the birth or upbringing of a child or household tasks (Articles 2 No 5, 43 paragraph 1, No 3, and 46 paragraph 1).

In this context the authorities provide grants to individuals, in particular for vocational training. The Government has set up pilot schemes for the training of women in technical occupations in industry in which they are not represented (20 schemes involving 1 000 women in 26 training establishments).

Under programmes adopted by the Länder, financial aid (subsidies) can be granted to training establishments pursuing this policy.

Aid is also granted for pilot projects providing vocational training for women with a view to improving their qualifications, particularly in careers other than those hitherto regarded as suitable for women.

In the public sector, the Government decided to offer an equivalent number of training posts to girls and boys respectively, in view of the underrepresentation of women in the public sector.

81. United Kingdom

The law does not lay down general provisions in this respect but empowers employers, the Manpower Services Commission (MSC), the industrial training boards (ITBs) and the vocational training bodies to organize special training schemes for persons of a particular sex where the number of persons of this sex recruited for specific jobs in the preceding twelve months has been low or to encourage persons of this sex to take advantage of opportunities offered them to occupy these jobs (Sections 47 and 48 and Articles 48 and 49).

Bodies responsible for training schemes may organize courses restricted to a single sex for persons wishing to resume work after discharging family or household responsibilities (Section 47 and Article 48).

The Government quotes the following examples of the implementation of these provisions :

- subsidies to employers training girls as technicians and engineering technicians,
- aid for management training for women wishing to become executives, etc.,
- classes for women wishing to resume work after an interruption.

In Northern Ireland, the training centres have been requested to adapt their facilities so as to make them accessible both to men and women.

Posters have been issued to draw the attention of women to the training opportunities and all publicity material has been revised to include references to both sexes.

The employment services have been requested to encourage the admission of women to occupations traditionally reserved for men.

It should be added that differences in minimum height and physical tests required are allowed, particularly in the police force.

The MSC and the ITB are at present considering new "positive" discrimination measures.

A working party has consequently published leaflets explaining the special programmes to be developed to introduce girls into sectors which hitherto did not concern them.

So far there are no measures specially intended for self-employed women.

The EOC states that "positive" discrimination measures apply only to training and not to real access to both employment and training ; it thinks that difficulties may arise where a training course constitutes a de facto offer of employment.

VIII. PARLIAMENTARY ACTIVITY AND PROPOSALS WITHIN THE SCOPE OF THE DIRECTIVE

82. Specific legislation to implement the Directive has been adopted in seven of the nine Member States. In France, where the Directive has only been partially implemented and in Luxembourg where legislation in this area does not yet exist, laws are being drafted, draft laws have been put before the national parliaments or are being debated. It would be worthwhile to ascertain whether, in addition, Government or Parliamentary proposals have been made in the Member States to supplement or amend the basic legislation. Similarly, Parliamentary activity (questions and interpellations) makes it possible to assess the impact of the existing provisions and the interest aroused by them.

Drafts or proposed laws or regulations

83. Belgium

The Government refers to a draft Royal Decree amending the Royal Decree of 30 January 1967 granting household and residence allowances to public service employees (involving a discrimination between married male and female employees in the public sector[1]).

Moreover, several Decrees implementing the Law of 4 August 1978 have yet to be adopted. A proposed law introducing parental leave has been submitted to the Lower House. This proposal and the amendment accompanying it were not well received either by the Commission on Women's Employment or by the National Labour Council, notably because these bodies fear that in practice this leave will mainly be taken by women, thus reinforcing their traditional role. Moreover, the financing of this leave poses unsurmontable problems at the moment.

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[1] On 19 May 1980, the Commission sent the Belgian Government a reasoned opinion on this subject based on Directive 75/117; by 1 September 1980 this problem had still not been solved.

84. Denmark

No proposals within the scope of the Directive are being prepared.

85. In France, several laws are being drafted so as to amend existing legislation to ensure the implementation of the Directive :

1. a draft law to ensure vocational equality of the sexes as regards access to training, promotion, working conditions and conditions of employment ;

2. a draft law to improve the participation of spouses working in the same company ;

3. a draft law now being discussed in Parliament enabling men to become midwives.

86. Ireland

There are no new draft or proposed laws falling within the ambit of the Directive, either directly or indirectly.

87. In Italy, the Governement considers that no new steps need be taken at present.

88. Luxembourg

For the purpose of implementing the Directive at national level, in March 1980, the Government put forward a draft law on equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This draft, laid before the Chamber of Deputies, is to be examined very soon in committee before being put to a vote in full session.

In the light of the comments made on this draft by the Commission[1] and by the newly set up Commission on Women's Employment in its opinion of 15 September 1980, the Government has amended the draft law, taking the comments submitted fully into account. However, the Government has elaborated a draft law which aims to eliminate all discrimination between male and female workers in the public sector as to the granting of allowances to the head of the family.[2]

89. In the Netherlands, a draft law amending the Law on Primary Education (~~Lager-~~ en Kleuteronderwijswet) of 1920, proposing the deletion of Article 29 of this Law, will shortly be put before the Second Chamber. This Article stipulates that as far as possible, the teaching in the initial two years in an ordinary primary school or in schools employing two teachers in the three initial years should be carried out by female primary teachers.

A draft law changing the term "jardinière d'enfants" (nursery school mistress) in the Law on Pre-school Education (Kleuterwet) is being drawn up.

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[1] In a letter of 30 July 1980.

[2] The Commission has sent a reasoned opinion on this matter to the Government of Luxembourg on the 19th May 1980, on the basis of Directive 75/117.

90. In the Federal Republic of Germany and the United Kingdom, there are no proposals in this area for the moment.

Questions and interpellations in Parliament

91. Belgium

Ten or so Parliamentary questions have been asked concerning the implementation of the Law of 4 August 1978, in particular on the following subjects : the problem of discrimination in granting household allowances in the public sector, excluded occupations, failure to comply with the Directive in vacancy notices and advertisements inviting women to take certain training courses, a request for a derogation in respect of supervisory staff in mixed boarding schools, leave in the public sector for the education of a child(which is granted exclusively to female staff), discrimination between male and female staff for recruitment to local police forces, failure to implement provisions of the Law as regards access to vocational guidance and training. In its answers, the Government stated that the questions raised are being considered. Moreover, when the budget for the Ministry for Labour and Employment was being debated, several questions were put orally, particularly as regards the power of the Inspectorate to intervene where discriminatory vacancy notices are concerned. In its answer, the Government specified that the Inspectorate did have real power to intervene in this matter.

92. Denmark

No questions or objections were raised in Parliament on topics within the scope of the Directive or the Danish Law on equal treatment.

93. No Parliamentary activity in France in this field was reported by the French Government.

94. In Ireland

Questions were asked on the following subjects : areas of discrimination other than those covered by the Directive, amendment of legislation or drafting new laws, and the diffusion of information.

In October 1979, Senators Mary Robinson and Justin Keating submitted a motion to the Senate (Upper House) calling on the Government - in view of the urgent nature of the situation - to grant funds which would enable the agency concerned with equal treatment of men and women as regards access to employment to assume important and vital functions for the application of the principles embodied in the 1977 Employment Equality Act. As a result, the appropriations allocated to the agency were slightly increased.

95. In Italy

One question concerns the refusal of the RAI (Radio and television network) to recognize the lenght of service of one of its employees for purposes of statutory pregnancy and maternity leave.

According to the Italian Union of Labour, questions were asked about the drafting of advertisements for public competitions or promotion which in fact excluded women; others were concerned with the annual report on the state of application of the Law. The Government provides no information on these matters.

96. In Luxembourg

At the end of 1978, two Members of Parliament addressed parliamentary questions to the previous Government regarding the implementation of the Directive. The replies given to these questions at the time by the Government were in line with its initial position on the implementation of the Community Directive. It has developed somewhat since the Commission initiated an infringement procedure against Luxembourg.

97. In the Netherlands, numerous questions were asked regarding :

(i) the dismissal policy of private schools;
(ii) the post of bus driver;
(iii) equality of treatment in the public sector;
(iv) a request from the Post Office for recruitment of temporary male auxiliary staff;
(v) retraining for women;
(vi) discrimination in the job offers by the Regional Employment Office.

Furthermore, a motion was adopted by the second Chamber on 17 February 1977 calling on the Government to give preference to female applicants until an equitable share-out of jobs between men and women has been achieved in the public sector.

98. In the Federal Republic of Germany

In 1978, a question was put to the Government on the measures it intended to take to implement the Directive; at that time, the Government was studying the question and, in the meantime, a law bringing German legislation into line with Community legislation was adopted on 13 August 1980. Another question was asked in 1979 asking why the Federal Government had not reported to the Commission on implementing measures within the 30-month period laid down by the Directive; the Federal Government replied that it had in fact informed the Commission in September 1978 that no measure had been promulgated, but that it was preparing a draft law (which was passed on 13 August 1980).

99. In the United Kingdom

Several questions were asked regarding the compatibility of the Sex Discrimination Act with the Directive, particularly in respect of exceptions; the replies are contained in this report. The UK Governement took the view that these questions did not mean that additional measures needed to be taken.

B. - IMPLEMENTATION IN EACH OF THE FIELDS COVERED BY THE DIRECTIVE

I. ACCESS TO EMPLOYMENT AND PROMOTION

Article 3

"1. Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

2. To this end, Member States shall take the measures necessary to ensure that :

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

1. Content and scope

100. In Belgium

Article 121 of the Law of 4 August 1978 lays down that :

"Equality of treatment must be guaranteed in both rules and practice relating to conditions of access and selection, including the selection criteria for jobs or posts and the self-employed occupations, whatever the activity and to all levels of the occupational hierarchy.

It is forbidden to :

(1) refer to the sex of the worker in job offers or in advertisement relating to the job and to promotion or to use in such offers or advertisements of terms which, even though not explicit, indicate or hint at the sex of the worker ;

(2) refer to the sex of the worker in the conditions for access and the selection criteria for jobs or posts, whatever the sector or branch of activity or to include in these conditions or criteria terms which, even though they make no explicit reference to the sex of the worker, amount to discrimination;

(3) refuse or hamper access to employment or to promotion for explicit or implicit reasons based directly on the sex of the worker.

These prohibitions apply likewise to the self-employed occupations."

The prohibition applies to formal provisions of all kinds and to practice; penalties are provided for (see chap. C.IV). It is applicable to employers in the private and public sectors, and to all who disseminate job offers or advertisements relating to employment, promotion or self-employed occupations.

A number of measures banning access for women to certain jobs in the public sector became ineffective on 17 August 1979 pursuant to Article 153 of the Law of 4 August 1978; however, the Commission on Women's Employment reports that in practice some prohibitions of this kind were still being applied[1].

101. In Denmark

Article 2 ot the law on equal treatment lays down that employers must treat men and women equally in the case of recruitment, transfer and promotion.

Article 5 lays down that anyone who adopts a measure or makes a decision relating to access to an independant occupation is likewise required to respect the principle of equal treatment.

The Law applies to employers in the public and private sectors.

Article 6 lays down that an offer of employment may not state that the job is reserved exclusively or preferably for persons of a specific sex.

The law applies both to formal measures and to de facto discrimination.

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[1] See p. 41

102. In France

The law of 1975 forbids employers in the private and public sectors to practice any form of discrimination based on sex when hiring staff, except for legitimate reasons.

The Committee for Women's Work[1] point out that serious problems have arisen in defining the legitimacy of reasons for discrimination; it is up to the employer to use his judgment as to whether his reasons are legitimate and, in the event of a dispute, the competent judge has to decide on the matter. What, the Committee wonders, will be the reaction of a judge where an employer has refused to hire a woman for a typically male job ? The Committee on Women's Work is calling for the elimination of this exemption, so as to reduce the likelihood of women being excluded from certain jobs in the private sector. At the same time, the public employment departments, which are forbidden by Article 107-1 of the penal code to deny any person - because of his or her sex - something on which he or she might have a claim, will be obliged to face up to their responsibilities and will have to interpret the reasons given by an employer as justification for a discriminatory job offer. The county court at Saumur had to judge a case of this nature on 26 January 1980. The bill now being drafted will include measures relating to equal access to promotion in the private sector.

Finally, Article 7 of the staff regulations for civil servants provides for equal access to the civil service and equal treatment in respect of promotion and career prospects, save for a number of exceptions which were referred to earlier[2]. However, the average age limit for A-grade officials is 35. This limit may be higher for certain competitions (in particular, teachers in secondary and higher education). In categories B, C and D, the age limit is generally 45, without prejudice to the upper limits. The statutory obligation applies only in cases where there is a deliberate intention to discriminate; this means that there are no penalties for indirect discrimination. Direct discrimination falling within the scope of the law is subject to penalties.

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[1] Revue informations No 4 - January 1980

[2] See page 44 and seq.

The Government states that the law applies to the self-employed occupations without, however, specifying how it applies.

The bill now being drafted eliminates all formal discrimination as well as discrimination in practice.

At present, the situation is as follows within the context of existing arrangements :

1. Collective agreements

   The extension by ministerial decree of collective agreements is subject to prior verification by the employment departments of the legality of each of their provisions.

2. Work contracts

   Any clause involving a prohibited discrimination involves an employer's civil liability.

3. Internal regulations

   The entry into force of an undertaking's internal regulations is subject to prior control of their legality by the labour inspectorate, which is empowered to order the removal of clauses contrary to the law.

4. Self-employed occupations

   Only in exceptional cases are the self-employed occupations covered by regulations, which in any case do not relate to equal treatment.

   Finally, the law of 11 July 1975 provides penalties for public or private employers or public or private employment which make or disseminate discriminatory offers of employment.

103. In Ireland

Section 3 of the law forbids an employer to apply any discriminatory standards based on sex or marital status when recruiting his staff :

- as regards recruiting methods, for example selection criteria, interview procedure or instructions given to the **private employment agency;**
- as regards the terms and conditions of employment ;
- by refusing or deliberately omitting to offer employment to a person.

These provisions are valid in cases where successful applicants of both sexes would be performing tasks not materially different from each other. The law likewise prohibits any discrimination as regards access to promotion.

Section 5 of the law lays down that a body which is an organization of workers, an organization of employers or a professional or trade organization or which controls entry to a profession or the carrying on of a profession shall not discriminate against a person in relation to membership of such a body (or any benefits provided by it) or in relation to entry to or carrying on of the profession.

Section 7 of the law lays down that **a private employment agency shall** not discriminate in the terms on which it offers to provide any of its services, by refusing or omitting to provide any of its services, or in the manner in which it provides any of its services. **This requirement relates to the provision of career guidance as well as to employment.** These prohibitions apply to formal provisions and to practice, and penalties are provided for. They do not apply to exempted jobs[1], some of which cannot be regarded as covered by Article 2(2) of the Directive.

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[1] See comments on page 49 and seq.

Laws, regulations and administrative provisions running counter to the Act are repealed automatically. Any contrary provision in an employment contract, a collective agreement, an Employment Regulation Order or registered employment agreement is considered as null and void (Section 10).

As from 1 July 1977, all employment contracts must contain an equality clause.

The law lays down that where a woman's employment contract does not contain an equality clause, it will be deemed to include one, unless the employer can prove that the reason for its absence has nothing to do with her sex. The equality clause gives a woman performing work not materially different from that performed by a man the right to be treated as equitably as a man provided they are employed by the same person.

104. In Italy

Article 1 of law 903 lays down that :

"Any discrimination based on sex is forbidden at all levels of the hierarchy as regards access to employment, whatever the conditions of recruitment and whatever the sector of the branch of activity.

Discrimination is forbidden even if exercised indirectly by means of preselection procedures, in a printed form or any other form of advertisement stating that membership of the male or female sex is a condition of recruitment.

Furthermore, Article 3 lays down that : "Any discrimination between male and female workers as regards the attribution of titles or designations and taks, as well as career advancement, is forbidden."

The leave of absence from work provided for under Articles 4 and 5 of law No 1204 of 30 December 1971 is counted as a period of service for promotion purposes, unless collective agreements state otherwise. Derogations are permitted only if the job in question requires the performance of particularly arduous tasks specified in a collective agreement.

The prohibition applies both to formal provisions and to practice, and penalties are provided for (see Chapter C IV). Henceforth, employment agencies are required to put forward applicants in the order of their application regardless of their sex. Ministerial circular No92178 of 28 December 1978 states that strict application of the ban on the attribution of discriminatory titles or designations and tasks requires close surveillance. As regards career advancement, particularly in the private sector, difficulties in application are emerging in the absence of specific and objective criteria enabling a choice based on merit to be made."

The provisions of the law in respect of access to employment are applicable to employers in the public and private sectors and to the self-employed occupations.

They likewise apply to the bodies responsible for disseminating job offers.

In general, all contrary measures have been abrogated. However, the first report on application of the law drawn up by the Minister of Labour and Social Security states that the major difficulties have emerged in respect of interpretation and content of the law, that employers are trying to evade the law, for example by transferring workers from one firm to another so as to bypass the employment offfices, which would make them hire women, or by including in the job offer requirements which women cannot meet, even though such requirements are not necessary for the job.

By the same token, a CGIL report entitled "Progress achieved during the year" reports that in some cases psycho-technical tests are based on requirements which women cannot meet (e.g. physical dimensions for driving vehicles, the seats of which are tailored to the male physique.

The CGIL also reports that some employers, when obliged to hire women, give them the heaviest type of work, so as to induce them to resign of their own accord.

In the public sector problems have emerged in respect of access by women to the tobacco industry, the fire brigade, entrance examinations for the Ministry of Foreign Affairs and the Bank of Italy, and to jobs as gardeners.

The report by the Minister of Labour and Social Security states that there is also a degree of reluctance in respect of access by women to particularly arduous jobs which, under the law, may be exempted only by collective agreement. The Minister was afraid there would be an excessive recourse to this provision for exemption; however, only two collective agreements were concluded in 1978, and twenty in 1979.

A considerable number of interventions by trade union bodies and by the labour inspectorate have made it possible to get women into sectors reserved for men and vice versa (e.g. men into infant schools).

105. Luxembourg

The draft law under consideration expressly prescribes, for all sectors and for the independent occupations and professions, the elimination of discrimination based on sex pursuant to the provisions of Article 3(1) of the Directive.

"It is forbidden to :

1. refer to the sex of the worker in job offers or in advertisements relating to job and to promotion, or to use in these offers or advertisements terms which, even though not explicit, indicate or hint at the sex of the worker;

2. refer to the sex of the worker, salaried or independent, in the conditions for access and the selection criteria for the jobs or posts, whatever the sector or branch of activity or to include in these conditions or criteria terms which, even though they make no explicit reference to the sex of the worker, amount to discrimination;

3. refuse or hamper access to employment or to promotion for explicit or implicit reasons based directly on the sex of the worker".

The draft law contains no special conditions or criteria aimed at enforcing observance of obligations in respect of equal access to promotion, but leaves it to those who feel their rights have been encroached upon to take legal action.

The scope of these obligations is general and is concerned with the elimination of formal and contractual discrimination, as well as discriminatory practices. The Government says its intends to impose them on employers, the independent occupations and professions and, at the request of the Committee on Women's Work, on all those who disseminate or publish job offers or advertisements relating to employment.

According to the Government, there is only one discriminatory measure affecting café waitresses, who have to obtain a permit from the local authorities; abrogation of this measure is under study.
The Committee on Women's Work endorses the comments made by the Chamber of Civil Servants on access for women to certain civil service jobs such as the Woods and Waterways Department, the Customs Service, the Police Force, the Post Office, etc. Under the law these jobs are reserved for Army volunteers. The amended draft law states that those legal provisions are not contrary to the principle of treatment as regards access to employment, as their purpose is to ensure that volunteers are recruited for the force at the disposal of NATO.

106. In the Netherlands, the laws of 1 March and 2 July 1980 lay down that no discrimination may be practised in respect of hiring or promotion either in the private or public sectors or as regards access to the independent occupations and professions and their opportunities for advancement. The same applies to job offers and advertisements and to recruiting procedures for vacant posts. These concepts are not otherwise defined.

Contrary formal provisions are not expressly repealed. A review of all discriminatory provisions still existing is under way in the wake of a systematic compilation of such provisions.

Any clause inconsistent with those prohibitions in agreements statutes or regulations is considered as null and void. The obligation extends to discriminatory pratices; infringements are subject to penalties under Article 1401 of the Civil Code; the laws themselves do not provide for penalties.

The laws apply to private employers and the public authorities, as well as to any person concerned by job offers or advertisements.

The Government states that only provisions regarding access to the army, the navy and the air force have still to be adapted. A circular was sent to all ministries on 11 June 1980 explaining the legal obligations involved.

107. In the Federal Republic of Germany, equal access to employment is covered by Article 33(2) of the Basic Law in respect of the public sector and by Article 611 (a) § 1 of the Civil Code amended by the law adapting it to Community law for the private sector; there is no instrument governing equal access to the independent occupations, and professions.

Article 611 (a) of the Civil Code covers conditions of access, including selection criteria.

In addition, equal access to promotion is guaranteed by the first sentence of Article 75 § 1 of the law on the organization of undertakings, which is concerned with the private sector, and the first sentence of Article 67 § 1 of the law on the representation of federal personnel, which is concerned with the public sector.

A circular has been sent out calling on Employment Offices to ensure equal treatment.

A special provision of the law adapting German legislation to Community law calls on employers, in the case of employment contracts governed by private law, not to publish job offers restricted either to men or to women inside or outside undertakings, except in the case of exceptions authorized by the law.

According to the Federal Government, there are absolutely no formal provisions (laws, regulations, ministerial circulars, etc.) which conflict with the principle of equal treatment and there is therefore no need for action to abrogate such provisions. In any case, the Government argues, Article 3(2) of the Basic Law would render any conflicting provisions null and void. The blanket protection provided by the Basic Law is not, however, sufficient in itself to allay all fears in this connection. The laws mentioned above cover de facto discrimination and discriminatory practices as regards access to employment and promotion.

108. In the United Kingdom, Section 6 of the Act and Article 8 of the Order make it unlawful for an employer to apply discriminatory selection criteria or to refuse or deliberately omit to offer employment to a person on grounds of sex or marital status. Discrimination as regards access to opportunities for promotion or transfer is similarly prohibited.

Partners and potential partners are also protected against discrimination (Section 11 and Article 14), as are workers contracted out to third parties (Section 9 and Article 12).

The Sex Discrimination (Northern Ireland) Order makes it unlawful for any person officially authorized to select or recruit employees on behalf of another to practice discrimination.

Both public and private employment agencies are prohibited from discriminating against women in the way they provide any of their services (Section 15 and Article 18). It is further prohibited to publish any advertisement which indicates, or might reasonably be understood as indicating, an intention to discriminate unlawfully (Section 38 and Article 39). Finally, it is unlawful to practise discrimination with respect to the granting of any authorization or qualification needed for engagement in a particular profession or trade (Section 13 and Article 16).

Such prohibitions as were in force at the time when the Act was being drawn up (notably those excluding men from employment as governors of women's prisons and from the midwifery profession) have been abolished. It should, however, be borne in mind that the Act provides for certain exceptions which cannot be regarded as coming within the scope of Article 2(2) of the Directive.[1]

All provisions conflicting with the Act are in principle null and void; some may, however, continue to operate undetected until such time as a complaint is presented to an industrial tribunal by a private individual. There has been no formal abrogation of conflicting provisions.

Administrative provisions have also been revised. To take an example, the Head Office of the Employment Service Division of the Manpower Services Commission (which manages the placement offices) sent instructions to all its local offices in December 1975 informing them of the requirements imposed by the 1975 Sex Discrimination Act and of the latter's implications for the public employment services. Amongst other things, local offices were instructed to cease to separate either the files on applicants or vacancies according to sex and to amalgamate the sections for men and women. Guidance was also given concerning the approach to be adopted in negotiations with employers attempting to practise unlawful discrimination in connection with the notification of vacancies.

2. Provisions of collective agreements concerning access to employment and promotion

109. Whilst collective agreements rarely touch on the question of access to employment, the fact remains that the measures adopted in order to comply with the Directive in this respect should also cover collective agreements and that the latter have a major role to play in the implementation of the principle of equal treatment.

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[1] See page 55 and seq.

Thus the existence of "equality clauses" in collective agreements can help to promote awareness of the problem within the industries concerned. Similarly, indipedently of steps taken to render null and void provisions which are inconsistent with the Directive doing to the fact that the law constitutes the primary source of the individual's rights, every care must be taken to ensure that all discriminatory clauses in collective agreements are eradicated in practice It is on these two areas that we will concentrate.

110. a) Equality clauses

These are relatively uncommon : As regards the situation in Belgium, the Government cites as one of the very few examples a clause in force in the banking sector (collective agreement of 17 February 1977) which not only asserts the principle of equal treatment but also aspires to encourage the entry of women into jobs hitherto regarded as a male preserve.

The Italian Government seems to indicate in its reply that the law purely and simply refers to the collective agreements.

The Luxembourg Government argues that, since collective agreements cover the employees of private firms, the question of equality clauses does not arise (?).

In France, equality clauses are to be found in some of the collective agreements concluded at sectoral level (the frequency being one in six as regards access to employment and one in twelve as regards promotion opportunities). Agreements containing such clauses include those for the following sectors : pathology laboratories, technical consultancy offices, publishing, wholesale distribution, the clock and watch industry, the jewellery trade and the motor vehicle repair trade.

In Ireland, as we have already seen, all contracts of employment are deemed to include an equality clause to the effect that when the individual concerned is employed in circumstances where his/her work is not materially different from that being done by a person of the other sex in the same employment, he/she shall be entitled to equally favourable treatment.

The Government was unable to supply information on equality clauses in collective agreements, which in any case are not very pertinent here owing to the principle of the implicit equality clause.

Furthermore, in Denmark neither the Government nor the Labour market organisations are cognizant of any collective agreements which contain discriminatory provisions as regards access to employment, selection criteria, promotion etc.

Collective agreements in the Netherlands do not generally include equality clauses. The Federatie van Nederlandse Vakverenigingen (Netherlands Trade Union Federation) is planning to recommend the introduction of a "no discrimination clause" to the effect that "the parties to the agreement undertake to pursue actively a policy of promoting equal treatment as regards access to employment and conditions of employment, irrespective of sex, sexual tendencies, marital status, religion, colour race or ethnic origin, nationality or political convictions".

It should also be pointed out that the law of works councils assigns a role to the latter in the detection and prevention of discrimination.

The Government of the Federal Republic of Germany considers that the question is not pertinent since the question of access to employment and promotion opportunities is in its view not one of the matters covered by collective agreements.

In the United Kingdom, equality clauses have been included in collective agreements for a number of industries. The Confederation of British Industry has sent a statement to its members in this connection, together with a guide to the whole question of equal opportunity, and a standard clause drawn up by the Trades Union Congress has found its way into numerous collective agreements.

This clause commits the parties to take positive steps to promote equality for all, irrespective of sex, màrital status, creed, race or ethnic origin. Equal treatment in this context extends to all the matters covered by the Directive. Management undertakes to provide information to all workers in this connection and both parties agree to review progress at regular intervals. This clause may be binding on both parties if they so agree in writing.

111. (b) Discriminatory clauses

Generally speaking, it is fair to say that collective agreements now contain few if any directly discriminatory provisions. Where the provisions of agreements have been investigated, however, clauses with an indirectly discriminatory effect have been discovered. In relation to Belgium, for instance, an official study[1] has pointed out that certain of the evaluation criteria underlying existing job classifications may indirectly constitute an obstacle to equal opportunity as regards access to employment and promotion.

Cases in point are the hotel and catering trade, the textiles and knitted goods industries and the food industry, where the jobs titles are either strictly masculine or strictly feminine - which suggests that the jobs in question are in practice reserved either for men or for women.

In one particular sub-sector - the meat processing industry - there are two separate job classification schemes for manual workers, one for men comprising four categories ranging from "unskilled worker" to "tradesman" and another for women comprising only two categories : "unskilled workers" and "skilled workers".

In these industries, therefore, certain jobs are in practice open only to persons of a particular sex and this necessarily entails inequalities as regards access to employment and promotion.

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[1] See page 36.

Turning to a different facet of the problem, collective agreements sometimes cite heavy physical effort as one of the factors to be taken into account in the evaluation of jobs. This factor is frequently assigned considerable weight, to the extent of being placed on the same level as factors such as technical expertise or experience, whereas jobs demanding little physical effort but considerable dexterity or a high degree of concentration are generally rated lower.

According to the Government, "it is clear from investigations of existing job classification schemes that renegotiation by management and labour of the criteria applied for the evaluation of jobs is a prerequisite for upgrading the occupational status of women".

As regards the situation in France, the Government believes instances of collective agreements containing discriminatory provisions in connection with access to employment to be extremely rare, though it is not in a position to carry out an exhaustive investigation into this matter.

At all events, the authorities refuse as a matter of standard policy to extend the application of such clauses to entire indutries. Thus a Ministerial Order extending the printing and allied trades agreement to cover the whole industry specifically excluded a clause whose aim was to ensure that only men gained access to certain jobs.

The Irish Government was unable to supply information on discriminatory clauses in collective agreements, which in any case are not very pertinent here owing to the principle of the implicit equality clause.

As far as the situation in Italy is concerned, neither the Government nor the two sides of industry have supplied any information in this connection.

In the Netherlands, collective agreements do not as a rule contain any specific provisions concerning promotion and selection criteria. These two matters form elements of the firm's personnel and welfare policies.

It would appear from the investigations already mentioned that, by and large, there are no discriminatory provisions as regards access to employement.

In the event of an agreement containing such clauses, it could not be made legally binding.

Feminine equivalents have not been systematically provided for job titles and designations specified in collective agreements. **Efforts are being made in the educational sector where a working party is attempting to devise feminine versions of job titles.**

As has already been indicated, the Government of the Federal Republic believes this matter to be outside the areas covered by collective agreements. **(See paragraph 110).**

The Luxembourg Government has reported no discriminatory clauses. Agreements between employers and workers are said to make no distinction between men and women in relation to job classification schemes.

The Government has given no indication, for example, as to what action if any has been taken to ensure that it becomes standard practice for such job titles as are specified in collective agreements to be given in both masculine and feminine forms.

The Danish Government reports that men wishing to work part-time may have difficulty in doing so because of the existence of separate agreements for members of the male manual workers' union on the one hand and the female manual workers' union on the other.

If the agreement concluded with a particular firm for male workers makes no provisions for part-time employment, the men wishing to work on this basis will be unable to do so.

A case is currently before the courts in this connection.

As regards job titles, a considerable amount of work has, the Government reports, been done with a view to finding neutral terms.

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[1] See page 127.

In the United Kingdom, there are, so far as the Government and the two sides of industry are aware, no discriminatory clauses in collective agreements. However, the EOC draws attention its report on protective legislation[1] to the existence of provisions excluding women from certain jobs/occupations because these involve night or shift work.

The Trades Union Congress regards agreements including protection for women in relation to night or shift work as entirely in line with TUC policy, whose aim is to promote the safety and welfare of workers rather than to reduce the level of protection so that women can work nights. The TUC advocates on the contrary that protection should be extended to men and to those categories of women not at present covered.

3. Detailed consideration of two areas

(a) Vacancy notices and job advertisements

112. Vacancy notices and job advertisements (which are generally in writing) provide the best measure of the efforts undertaken by Member States with a view to eliminating explicit discrimination in connection with access to employment. It is to this visible evidence that we must look for clues as to both the of public and private sector employers and the (still significant) role played by the stereotypes which restrict women to a small number of occupations and sectors of employment.

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[1] See page 185.

[2] See page 169.

As has already been stated, discrimination in this field is prohibited law throughout the Community except as regards the civil service in the Federal Republic of Germany.

113. Belgium

It is unlawful for persons publishing or issuing vacancy notices or job advertisements either to make any reference to the sex of applicants or to use in a notice/advertisement any element which, though involving no explicit reference to the sex of the worker, leads to discrimintation (Article 122).

The law thus applies to both public and private sector employers, the professions, public and private placement services, all persons publicizing vacancies and the media - newspapers and other publications, radio and television.

The question has been posed as to whether failure to observe this provision would constitute an infringement of the press laws, in which case liability could be passed on under the principle of "responsabilité en cascade". This will, however, rarely be the case unless, for example, the vacancy notice can be regarded as "contra bonos mores".

As we have already seen, both civil and criminal law sanctions are available under the law on equal treatment.

With the assistance of the Commission of Women's Employment, the Ministry of Employment and Labour has produced and circulated widely a brochure entitled "How to draw up a non-discriminatory vacancy notice".

A survey conducted on behalf of the Ministry by two lawyers (one Flemish-speaking and one French-speaking) with a view to ascertaining the extent to which a number of public and private sector employers were observing the law in their vacancy notices has enabled progress to be achieved in improving the standard of compliance, particularly as regards vacancy notices for jobs in the public sector.

(7)

One of the aims of the brochure mentioned above is to encourage changes in the terminology used in vacancy notices, though this is not one of the requirements imposed by the law. In particular, it advocates the addition of feminine equivalents for jobs titles where these have hitherto rarely been used. There is some evidence that employers are beginning to change their practices in response to this advice.

According to two surveys conducted by the Centre for Adult Education for Women, (Centre féminin d'éducation permanente), the first in 1978 and the second in 1979, some 25 % of the job adverstisements published in daily newspapers were in conformity with the law in 1979 as against 9 % in 1978.

In many cases, newspapers simply print the relevant legal provision at the top of the advertisements page whilst continuing to allow discriminatory statements to appear in the advertisements themselves. The Social Legislation Inspectorate is fully aware of the situation but has yet to institute proceedings against any of the offenders.

114. Denmark

As indicated earlier, the law on equal treatment prohibits discriminatory advertisements. This prohibition applies not only to all public and private sector employers but also to all other persons/bodies issuing vacancy notices, including placement services, and to notices/advertisements relating to work in a self-employed capacity. Infringements are punishable by fine.

With the cooperation of the press, a great deal has been done to find neutral job titles. There now remain very few titles associated with a particular sex and it is unlawful to use these without indicating that the recruitment opportunities are the same for both sexes. For practical reasons, this may be done by simply adding the abbreviation m/k (= male/female).

115. France

Under the law of 11 July 1975 (Articles 416 and 187(1) of the Penal Code) vacancy notices and job advertisements must be drawn up without regard to sex.

1. Article 416 of the Penal Code is a general provision applying to all employers in both the public and the private sectors.

Public and private placement services are liable to the same penalties as the originators of a vacancy notice if they are found guilty of complicity.

According to the Government, prosecutions for infringements against Article 416 are very rare and there have as yet been no convictions whatsoever for complicity. It is indeed difficult to tell as matters stand precisely what the courts would regard in practice as contituting complicity.

Amongst the provisions to be introduced under legislation now being drawn up is a clause requiring all persons/bodies publishing vacancy notices to reiterate in each series of advertisements (whether printed, presented in audio-visual form or displayed on a notice board, etc.) the principle of no discrimination on grounds of sex or family situation.

Such a provision would not, in the opinion of the Commission, be sufficient to give full effect to the Directive in this regard.

2. Article 187(1) of the Penal Code is a more specific provision applying to the whole of the public sector and more particularly to the National Employment Agency (ANPE), which is responsible for the public placement service.

Failure to comply with the above Articles is punishable under criminal law.

The various advertising offices/services and the Bureau de Vérification de la publicité (Advertising Standards Authority) have informed advertisers of their legal obligations. Finally, the employment service (ANPE) has been given instructions as to the handling of vacancies in relation to which the employer claims that there are legitimate grounds for requiring a worker of a particular sex.

The problems which this restriction on entitlement to equal treatment raises in relation to the obligations imposed by Community law have already mentioned[1].

A televised information campaign has been launched in support of efforts to ensure that all occupations are opened up to women.

In the opinion of the Government, the French language does not readily lend itself to the production of parallel masculine and feminine versions of job titles.

As a rule, the masculine gender is used in laws and regulations to cover all workers, whatever their sex. In those cases where doubt might arise (notably in relation to parental rights), care is taken to specify whether the provisions in question are intended to apply to one sex only or to both.

Collective agreements also tend to use the masculine gender alone, except in relation to jobs traditionally regarded as a female preserve (receptionist, welfare officer, etc.). Where an attempt is made at neutrality, this is done by putting job titles and the like into masculine forms - thus "hôtesse d'accueil" (receptionist) becomes "agent d'accueil".

It should be pointed out that this practice is not consistent with the Community rules and that the authorities in another country where French is also used as an official language (Belgium) have, on the contrary, recommended that masculine and feminine forms of job titles be used in conjunction so as to ensure that vacancy notices are totally neutral in this respect.

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[1] See page 44.

116. Ireland

Under Section 8 of the Act, it is illegal to publish advertisements relating to employment which are worded in such a way that the reader might conclude that there was an intention to discriminate. Advertisements relating to activities not covered by the Act those which stipulate that an applicant's sex is a genuine qualification for the job, or those which stipulate that the law prohibits the employment of women for the job in question[1], are legal.

Advertisements of vacancies for jobs such as "waiter", "salesgirl", "postman", or "bricklayer" which are of a kind previously carried on by one sex only are regarded as discriminatory unless they specify that the job is accessible to men and women alike. The Act covers the publication or posting of job vacancies in all media.

The provisions of the Act apply both to the public and to the private sector.

The Act applies not only to the person who has published the advertisement but also to its author. Anyone making a statement which he knows to be false with a view to securing publication of a discriminatory job advertisement is guilty of an offence. If the court finds him guilty, the author of the notice is liable to a fine not exceeding IRL 200 (Section 8(3) of the law).

The Employment Equality Agency, which was set up under the Act, is responsible for implementing the provisions governing discriminatory advertisements and has the right to take legal action in cases of persistent infringement.

The Agency has conducted a successful campaign against discriminatory advertising and continues to monitor the publication of job vacancies. It has issued guidelines aimed at eliminating discrimination in the advertising of job vacancies.

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[1] But see remarks on page 49 et seq.

117. Italy

The law applies to public and private employers and to all persons issuing vacancy notices. It does not concern private employment agencies of which there are none in Italy. Penalties under civil law and criminal law are provided for.

The Government considered it unnecessary to adopt practical measures or to amend the vocabulary relating to discrimination in employment.

In Italy, vacancies must be filled through official placement offices which are obliged to respect the order in which job seeke s are registered, irrespective of sex.

However, in the case of jobs for which people may be recruited directly, the newspapers print the provisions of the law at the top of the advertisements column but still publish discriminatory vacancy notices underneath; this is obvious from an examination of the Italian daily press.

118. Luxembourg

Article 3 of the amended draft law (according to the opinion of the Committee on Women's Employment) stipulates that employers and any other persons circulating or publishing job vacancies or advertisements relating to jobs may not refer to the applicant's sex or word such vacancy notices or advertisements in such a way that even without being explicit, they indicate or imply the sex of the person sought.

These provisions apply to employers in the public and private sectors, and to the liberal professions and to any other persons circulating job vacancies or advertisements concerning employment, i.e. official placement offices or public employment agencies, private placement offices and the mass media.

Infringements are liable to penalties under criminal law; this is the only case in which criminal law penalties apply.

The Governement considers that, since collective agreements apply indiscriminately to men and women, there was no need to amend the job descriptions nor the classification of occupations.

However, the Committee on Women's Employment has expressed its willingness, following the adoption of the law, to draw up a handbook and, at the same time, to propose amendments to the terms used to describe certain occupations hitherto associated with one sex only.

119. The Netherlands

The law applies to all persons concerned in the public and private sectors. The Government has taken the view that no specific measures need to be taken in respect of the public sector. Since 1973, the Government has systematically upheld the principle of equality of access determing the qualifications required for in civil service posts. This means that each time requirements are set for a job they must be looked at critically to see whether the principle of equal access for men and women is not infringed without due cause. Where persons of a specific sex are required, reasons must be supplied. At present, the Government claims practically 100 % of vacant posts are open to men and women alike.

In case of infringement, any person
practice illegal; furthermore, in the public sector, the National Department of Psychological Research, which is responsible for publishing job vacancies, ensures that the law is observed, except where it is established that the duties to be performed do not require absolute equality. It may declare illegal recruitment invalid.

Once the law entered into force, leaflets were circulated by the authorities for the information of employers and workers.

In addition to detailed information in the press concerning the entry into force of the law, texts of advertisements were published in women's magazines and staff newsletters.

At the same time, a television campaign which took the form of a brief publicity announcement, drew the general public's attention to the new law.

Finally, a working party was set up to examine the terms used to designate certain jobs; its task was to propose a nomenclature of occupations which would be free of sex-based discrimination.

The wording of job advertisements and notices in the daily press in the Netherlands indicates a favourable trend.

120. The Federal Republic of Germany

In the Federal Republic the law requests employers in the private sector to advertise job vacancies free of sex-based discrimination; this provision is not accompanied by any penalties nor subject to any controls; consequently, it is doubtful how successful any legal action might be.

The official employment offices must ensure, when job vacancy notices are submitted, that the only criteria applied are the applicant's aptitude and qualifications. But the circular of 14 December 1979 issued by the Federal Labour Office authorizes the registration of job vacancies for men and women or for women, for men separately. Where an employer does not specify the sex of the person required, the job is regarded as open to both.

Directives on recruitment recommend to employers that they should take account of the labour market when advertising jobs for instance where both women and men are available for a post. In the public sector, although there is no legal obligation, the Government claims to ensure that male and female candidates are equally informed, to avoid any "impression" that female candidates are discouraged.

The Government gives no information as regards the professions.

The Federal Labour Offices has informed its staff fully on the various laws; it encourages employers to draft vacancy notices in such a way that men and women both feel they are concerned.

Via an information campaign under the title "Women and the working world" the Federal Labour Office tried to open up new occupations to women.

121. United Kingdom

As said earlier, the Act prohibits anyone from publishing or causing to be published an advertisement which indicates or might be understood as indicating an intention to discriminate. Vacancy notices must state clearly that the job is accessible to men and women alike (Section 38 and Article 39).

Employers and employment exchanges must not practice discrimination when proposing employement.

All the categories of persons already listed in the replies from the other Member States are required to comply with the Act. The Equal Opportunities Commissions in the United Kingdom and Northern Ireland have prerogatives and special duties in this field. Complaints against infringements of the law may only be brought before the court by these bodies. refer such cases an industrial tribunal. To guard against any further infringements, they may ask a county court to issue an infunction or a court order suspending the discriminatory advertisement. Official guide lines have been published. In addition, the Equal Opportunities Commission has published a brochure entitled : 'Guidance on Employment Advertising Practise" containing guidance on the interpretation of the law and advice on the presentation of vacancy notices. The EOC for Northern Ireland has published a similar brochure. These brochures stress that the law does not require any amendment of the names of occupations but that, where an occupation is generally acknowledged as typically male or female, the advertisement must be worded in such a way as to indicate clearly that it is accessible to both men and women.

In Northern Ireland, seminars have been organized for persons advertising vacancies; the Government reports that the result has been a real change in the drafting of vacancy notices.

In the employment offices, the vacancies are listed under "Man or Woman" in order to encourage applicants for jobs to consider the widest possible range of vacancies.

The Manpower Services Commission and its employment and training divisions ensure that the content of presentation of brochures and posters published by it are not discriminatory.

Summary

Legal obligations regarding vacancy notices are observed to a greater or lesser extent in the Member States, depending on the following :

- whether the law specifies the obligations in detail;
- whether the handbooks indicate clearly how to draft a non-discriminatory vacancy notice;
- whether the placement offices can intervene to amend any discriminatory notices submitted by employers;
- whether a campaign has been conducted among those publishing advertisements to ensure that they do more than publish a simple reminder of legal obligations at the head of a page of discriminatory advertisements;
- whether there is any control over compliance with legal obligations.

If none of these conditions is met, the legal obligation has virtually no effect.

(b) Equality between (pregnant) women and men as regards access to employment

122. An enquiry into the situation of pregnant women as regards access to employment seemed necessary because it is a field in which sex-based discrimination is flagrant.

Such discrimination is covered by the laws in France, Italy, Denmark, the Netherlands and, to a certain extent, the Federal Republic of Germany.

Belgium

Women are not required to state that they are pregnant, but employers can insist on a medical examination before recruitment, and are then free to decide.

For the army, however, the law of 13 July 1976 lays down that pregnant women may not apply for posts.

Denmark

The law prohibits discrimination on grounds of pregnancy. If an employer refuses to employ a woman because she is pregnant, he is guilty of an offence and may be liable for a penalty (under civil and criminal law).

Women are not required to tell their employers, they are pregnant but women in employment must notify the date from which they intend to take maternity leave, not later than three months before the presumed birthdate.. This provision carries no penalty.

France

1. Private sector

Under Article L 122-25 of the Labour Code, employers may not use pregnancy as a ground for refusing employment to a woman and it is therefore illegal for them to seek information in this connection either directly or indirectly.

Women are not required to state that they are pregnant unless they wish to benefit from the provisions relating to pregnant women.

Failure to comply with these provisions is an offence liable, as such, to penalties under criminal law. Furthermore, it may give rise to the award of damages to the woman concerned.

2. Public sector

The conditions governing access to posts in the civil service are laid down in Articles 7 and 16 of the general terms of employment of civil servants : it is stipulated that pregnancy may in no case constitute a reason for the rejection of applications.

Furthermore, equality of access to employment, and prohibition of the dismissal of pregnant women are regarded by the Council of State as a general principle of the law applicable to all women employees (PEYNET Judgment of 8 May 1973). This judgment is interpreted as also prohibiting discrimination in matters of recruitment.

Ireland

The Act makes no provision on this point; however, if, on grounds of sex or marital status, a person is obliged to meet certain requirements which are not essential to the job and which a significantly greater proportion of men or unmarried women can meet, discrimination may be recognized.

Under the Unfair dismissals Act, employers do not have the right to dismiss an employee because she is pregnant, except where :

(i) the employee is unable to carry out her work satisfactorily, or,
(ii) continuation of work give rise to infringement of a legal obligation and where the employer has no suitable vacant post to offer, or,
(iii) the employee has rejected another offer of employment appropriate to her condition.

Women are not required to declare that they are pregnant to their prospective employers.

Italy

The first Article of Law No 903 prohibits discrimination in matters of employment on the grounds of pregnancy; consequently any inquiry prior to recruitment is prohibited. The trend of case law, based on labour law and the law on the protection of motherhood, already points in this direction.

Luxembourg

A woman refused employment on grounds of pregnancy may submit an appeal against the employer's decision.

However, she is required to inform the employer of her condition and any false statements in this connection may be regarded as a serious offence.

Netherlands

Although the law contains no provisions on this point, the Government considers that since discrimination on grounds of sex is prohibited, employers may not use a condition particular to women as a reason for deciding whether or not to recruit someone. In principle, the employer may not seek information on this point.

Federal Republic of Germany

The refusal by an employer to employ a woman on grounds of pregnancy may be contrary to the prohibition of discrimination in Article 611 (a) paragraph 1 of the Civil Code amended by the Law adapting legislation to Community law. The law makes no provision as regards the declaration of pregnancy. According to the case law of the labour tribunals, employers may ask women workers whether they are pregnant; if the woman knows she is pregnant she must say so; if she thinks so only, she need not say anything. She is not obliged to declare her condition spontaneously, except where her pregnancy prevents her from performing her job.

United Kingdom

Women are not required to declare that they are pregnant, but the law makes no provision for cases where an employer refuses to employ a woman on grounds of pregnancy.

II. ACCESS TO VOCATIONAL GUIDANCE AND TRAINING

Article 4

"Application of the principle of equal treatment with regard to access to all types, and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining, means that Member States shall take all necessary measures to ensure that :

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) without prejudice to the freedom granted in certain Member States to certain private training establishments, vocational guidance, vocational training, advanced vocational training and retraining shall be accessible on the basis of the same criteria and at the same levels without any discrimination on grounds of sex.

1. What the Directive covers

The Directive is intended to cover vocational guidance and training. It does not define what is meant training, but the provisions of Article 4 together with the work done in preparation make it possible to identify the types of training which would have to be covered by implementing measures. These are :

- vocational training in secondary and higher education; the Statements contained in the annex to the minutes of the Council meeting of 9 February 1976 make it clear that general education is

not covered by the Directive, but the Council stressed the close links between general education and vocational training and recalled that the problem of equal opportunity in the context of full access to all forms of education was currently being studied;

- training and apprenticeship in the liberal professions and the self-employed sector ;
- continuous training ;
- advanced training and retraining organized by services or employers ;
- training and advancement schemes within state or private business undertakings.

The Directive allows Member States to make exceptions for private vocational guidance and training establishments in their implementing legislation. The Council minutes cited above do call on the Member States, however, to encourage equal access, without discrimination on grounds of sex, to private vocational training establishments. Private establishments are understood in this case to mean teaching establishments and not private business undertakings.

After this introduction, the situation in the various Member States can be summarized as follows.

123. Belgium

The Law of 4 August 1978 covers vocational guidance and training, apprenticeships, advanced training and retraining, and social advancement schemes (Article 125). However, the Law has not yet come into effect because it provides for a Royal Decree to define what is understood by vocational guidance and training, following consultation with the organizing bodies concerned. The Commission on women at work has submitted

an opinion to the Government recommending that the terms should cover vocational guidance, all kinds of general and vocational training and the various types of training listed above under (Government and private employers, educational establishments, apprenticeships, training centre of the job placement service, continuing training). The implementing Decree has not yet been promulgated, placing the Government in contravention of the Directive in this respect[1].

The Law introduces obligations on "all persons in positions of responsibility at whatever level", so that no distinction is made between State and private educational establishments; penalties are also provided for.

The Government has stated that the Law has not yet been put into effect "precisely because it includes private establishments; most of the single-sex schools remaining are in fact in the subsidized sector, especially the independent denominational technical and vocational colleges".

The Government adds that the Commissions set up by the Ministers of Education ("Commissions to ensure equal opportunities for boys and girls in education") for the French-speaking and Flemish-speaking sectors, are in the process of drawing up implementing Decrees which will define the elements outlined above.

124. Denmark

The Law on equal treatment for men and women provides that State and private employers employing men and women at the same workplace[2] must treat them equally in respect of vocational guidance and initial training, advanced training and retraining, whether the training is provided by the employers themselves or on their behalf.

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[1] The Belgian Government was given notice by the Commission on 30 July 1980 to take the necessary measures.

[2] The Danish Government was given notice by the Commission on 30 July 1980 to rectify this ; see p. 22

Persons with responsibility for training in the independant occupations and professions are subject to the same obligations, as are all other persons concerned with training.

The Law also applies to vocational training in State and private educational establishments.

125. France

The Law does not provide for the implementation of the Directive in the following areas.

The legislation and regulations dealing with access to all types and levels of vocational guidance, basic vocational training, advanced training and retraining do not contain provisions contrary to equal treatment but nor do they specifically require it. The French authorities are currently preparing a bill aimed at abolishing all forms of discrimination in continuing vocational training.

On the school side, the Law of 11 July 1975 on education seeks to ensure equal opportunities for boys and girls. It contains specific provisions to give equal access to different types and levels of school education on the basis of ability and without discrimination on grounds of sex.

The Government does not define the position of private educational establishments.

In the public service field, the Government states that there is no discrimination against women civil servants in respect of the right to continuing training, promotion via internal competitions and selection boards. Applications for training are considered in the light of needs, an applicant's qualifications and the requirements of the service and without discrimination.

The French authorities state that for more than ten years they have pursued a policiy of encouraging young women to choose occupations traditionally considered as male preserves and thus to move into technical branches of education, especially in the industrial sections of vocational colleges. Task forces will be set up very soon in each of the regions to develop this policy.

126. Italy

127. Ireland

Section 6(i) of the relevant Act prohibits any person or organization providing vocational training courses for pupils beyond the age of compulsory education from discriminating on the grounds of sex or marital status (whether the discrimination is encouraged by an employer, trade union, employers' or trade union association, etc.)

Under the Act, vocational training is understood to mean any system of institution enabling the person taught to acquire or retain, bring up to date or perfect the knowledge and technical capacity required for the exercise of an occupational activity and which can be considered as designed exclusively as a preparation for such an activity.

The definition of "vocational training" excludes courses in general education from the purview of the Act.

By contrast, technical and vocational education at secondary, higher and university education levels is covered. Equal access to vocational guidance organized by business undertakings is also covered.

The Act applies to all types of training establishments and to public and private sector employers.

The Act also covers the content of material taught and the manner in which it is taught. **Educational establishments are not required to be mixed; the Government of Ireland states, however, that these establishments are purely general education establishments which do not cover any form of vocational training. Thus, they are not covered by the scope of the Directive.**

128. Luxembourg

The obligations laid down by the Directive are to be covered by a planned bill which will deal with the types of training listed under 122.

The Government states, however, that the Law of 21 May 1979 on the organization of vocational training and secondary technical education and on the organization of continuing vocational training already provides for equal access to State and private establishments.

Agricultural training and extension courses have now been made co-educational.

129. The Netherlands

The Law of 1 March 1980, in accordance with its Article 4, applies to vocational education and training, advanced training, refreshes courses and retraining in both State and private establishments and, under Article 1, to training provided by business undertakings.

Private establishments are included in the area covered by the Law; however, it does allow exceptions for special education establishments, **in particular where the special nature of a body under private law or its ideological or religious character prevent compliance, e.g. training schools for priests or nuns.**

The obligations provided for in the Law are placed on all persons and legal entities dealing with matters covered by the Directive.

130. Federal Republic of Germany

The Federal Government considers that Article 3(2) and (3) of the Basic Law (Constitution) makes men and women equal in law (although there is no legal instrument providing for equal treatment) and that legally women have equal access to vocational guidance and initial training, advanced training and retraining unless employment protection provisions state otherwise.

In a letter already referred to, on 25 April 1980, the Commission called on the German Government to clarify this point. While the German Government has evidently thought it necessary to provide

a legal framework as regards job access and working conditions for private sector employees, a clear legislative basis should be provided for, which is independent of the fundamental law, in the field of equal access to vocational guidance and training. As regards access to private vocational training schools or training within an undertaking, equal treatment is provided for in Article 611(a) of the Civil Code amended by the law on adjustment to Community labour law.

131. United Kingdom

The Sex Discrimination Act covers training courses organized by employers (Sect. 6 and Article 8) and all State and private training bodies (Sections 14 and 29, Articles 17 and 30). Employment agencies are bound by legal obligations. Educational establishments are also covered; the Act defines training as including all forms of education and instruction.

In Northern Ireland it is specifically stated that "vocational training" is to be understood, in cases brought before a court, to include technical and vocational training provided at secondary, pre-university and university levels.

Private establishments are bound by the provisions of the Act. There is, however, one important exception to the requirement to give equal access to educational establishments; single-sex establishments are not bound to admit pupils of the opposite sex. The Government of the United Kingdom states, however, that those establishments are purely general education establishments which do not cover any form of vocational training. Thus, they are not covered by the scope of the Directive.

2. Implementing measures

132. It is prohibited under Belgian law :

"(1) to refer to the sex of persons in conditions or rules covering guidance, training, apprenticeship, advanced vocational training or retraining, or courses for the purpose of general social advancement, or to use in these conditions or rules working which, without making explicit reference to the sex of persons, results in discrimination;

(2) to present in information or advertising, guidance, training, apprenticeship, advanced vocational training or retraining or courses for general social advancement as being more suitable for one sex or the other;

(3) to refuse or hinder access to guidance, training, apprenticeship, vocational training or retraining or courses for general social advancement for implicit or explicit reasons related directly or indirectly to sex;

(4) to introduce any differentiation linked to sex in the conditions governing the award of any type of diploma or certificate."

This law is not yet in force[1]

The Government states that no legal or administrative provision imposes any discrimination based on sex as regards access to study courses, whatever the level and type of teaching. The Government has notified a few scattered provisions that explicitly specify equality of treatment. These are :

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[1] See page 112.

(1) Article 58 of the Compendium of laws and regulations on the conferring of university degrees and the programme of university examinations:

"Women may take university degrees. They may enjoy all the rights pertaining to these degrees, except as otherwise results from the legal or administrative provisions applying to the civil service".

(2) The Royal Decree of 22 September 1970 amending the Royal Decree of 10 June 1963 on the organization of studies in State establishments of secondary education, which officially introduced co-education. Article 7 specifies that both boys and girls will be admitted to secondary schools of royal foundation and State secondary schools.

In the context of continuous training for tradesmen and artisans, the Government states that in practice mixed classes are held in the training centres, which organize basic and advanced training, and vocational retraining courses (see, however, figures on page 134).

In the civil service, training of grade 1 probationers and seminars for advanced training of officials are accessible to men and women without discrimination.

The Minister of Education (Dutch-speaking section) distributed a circular to the appropriate bodies on 12 June 1980 urging them to make full use of all possibilities for affording equality of opportunities to girls in secondary and higher education. His French-speaking colleagues had already tackled the question of co-education in a circular of 9 August 1977. The Equal Opportunities Commission, mentioned above, also deals with these measures. The Commission on Women's Employment has, for its part, described in its opinions 17 and 19 the action it considers necessary to achieve a proper balance between men and women students.

The Government recognises however that the specific obligations of the law on equality are still to be implemented.

On collective agreements, the Government states that it knows no examples of sector agreements laying down rules on access to vocational guidance and training.

It should, however, be pointed out that in view of the supremacy of legislative provisions, since the law provides for equality of treatment with regard to access to vocational guidance and training there is no need to incorporate clauses in collective agreements giving effect to this principle.

Apprenticeship contracts in the context of training schemes for tradesmen and artisans follow a standard model containing no clauses prejudicial to equality of treatment as between men and women.

An accelerated appeals procedure for cases of discrimination is available under Article 134 of the Law of 4 August 1978[1].

133. Denmark

The meaning of the legal obligation is that no establishment providing training and no undertaking can refuse to admit a trainee on grounds of sex. A fine is imposed for failure to observe this provision and the injured party can obtain compensation.

Although fewer women than men attend training courses for skilled trades or supplementary courses for skilled workers, and prefer to seek training in the traditional areas, the Government thinks that even in "masculine" sectors the proportion of women attending training courses exceeds the proportion already employed in the branches concerned.

It is stiil too soon to draw any conclusions regarding the influence of this silvation on the employment mix in these branches, however.

Discrimination in advertisements offering training courses is prohibited. The law makes no reference to the content of the training.

The Equal Treatment Commission has proposed that the balance of the appropriations be used for training reserved for women and that jobs appropriate to their qualifications should be found for skilled women workers. The employment offices have been asked to take appropriate steps.

It has also requested that practical introductory courses be set up and additional places created for apprentices and trainees allocated proportionally between men and women.

The Government has not indicated what action is to be taken in response to these requests.

134. In France, the booklets prepared by the agencies responsible for guidance contain nothing discriminatory; on the contrary, in accordance with the policy already described above, they inform girls of the opportunities offered to them in traditionally masculine occupations.

Instructions have been given to vocational training establishments to enrol young women and provide satisfactory conditions for them. New establishments are constructed so as to be suitable for co-education.

The draft law being prepared will regulate the various points covered.

According to the Government there are at present no laws, regulations or administrative provisions contrary to the principle of equality of treatment in the areas covered by Article 4 of the Directive.

The situation described above also applies in the case of collective agreements.

The draft law under preparation will encourage both sides of industry to revise any discriminatory clauses in collective agreements before the end of the period covered by the VIIIth Plan (1985).

The Government states that certain collective agreements already contain equality clauses; these include the national agreements for the porcelain industry, the rubber industry and the retail food and household supplies sector.

135. Ireland

In accordance with Section 6(i) of the Act all persons to whom it applies are prohibited from practising discrimination :

(a) in the terms on which any course or related facility is offered;

(b) by refusing or omitting to afford access to any course or facility;

(c) in the manner in which any course or facility is provided.

All persons or bodies, public or private, and employers are bound by these provisions.

Section 8(1) of the Act prohibits discrimination in job advertisements and imposes penalties for infringements. This provision also covers discriminatory advertisements relating to training.

The Employment Equality Agency is responsible for ensuring that the provisions on discriminatory advertising are respected and may institute proceedings in cases of persistent infringements.

The Agency pointed out to the Industrial Development Authority that it was hardly desirable from thepoint of view of social planning for industries employing labour of predominantly one sex or the other to be established, especially in rural areas, since this would upset the balance between the sexes.

Any person who considers that he has been discriminated against may refer the matter to the courts. Thus, for example, the court found in favour of a student who had been refused a place in a school of physiotherapy because entry to the courses was retricted to women.

All training is in theory open to either sex. Courses in fishing were opened to women in 1978 but there are few applicants for places and a problem of access to employment could arise in the case of small fishing vessels (lack of toilet facilities).

Adverses clauses in collective agreements are considered as null and void (see above). Since there is no body responsible for checking these agreements, the Government can make no comment on their contents.

136. Italy : the Government states that for equality of access to be made effective specific action is required, which was launched with assistance from the European Social Fund, in order to encourage the training of women for non-traditional occupations.

137. Luxembourg

The draft law under consideration prohibits :

"(1) any reference to sex in the conditions or criteria for access to vocational guidance, training, advanced training or retraining courses or the incorporation in these conditions of clauses which, although not making explicit reference to sex, amount to or imply discrimination;

(2) the presentation of training courses, particularly in advertisements or information put out by the establishments or bodies running the courses, as being more suitable for one sex or the other;

(3) refusal of access in one of the areas specified under (1) for reasons linked directly of indirectly to the sex of the person concerned;

(4) differentiation by sex of conditions for the award of any type of diploma or certificate".

Any refusal of access on grounds not consistent with the principle of equality is void.

The Ministry of Education has given instructions for eliminating discrimination in information and publicity on the different types and levels of vocational guidance and training or the related establishments.

Administrative penalties can be imposed where these instructions are not respected.

Under draft law, contrary clauses in collective agreements will be null and void. Provisions contrary to the Law of 21 May 1979 have been repealed.

138. The Netherlands

Article 4(2) of the Law on equal treatment for men and women prohibits persons and establishments (both public and private) providing vocational training, advanced training or retraining from discriminating between men and women unless the training is for an occupation

in which sex is a determining factor or where a body under private law is involved whose specific nature - especially if ideological or religions - was counter to this requirement. Finally, an exception is made under Article 4(c) of the Directive (freedom of private training establishment) for special tuition when the nature of the establishment (e.g. for retarded or handicapped persons) stands in the way of application of the principle of equality.

The policy aim, however, is to promote the integration into groups of specialized vocational training establishments.

The non-discrimination obligation implies that each establishment or undertaking is obliged to admit any trainee meeting the conditions for admission irrespective of sex.

Under Article 4(3) of the Law on equal treatment for men and women any provision contrary to the prohibition is void. It should be noted that the conditions laid down by the Government for admission to State-subsidized training courses contain no discriminatory clauses. As an additional penalty, the subsidy may be with drawn.

Any partiality shown in information as a consequence of the traditional distribution of teaching jobs is now offset, the Government believes by publicity (films, publications) on the transformation of conventional roles. Specifically feminine designations in staff rules for teachers will be abolished.

Other actions has been taken in this area :

- creation of a working group to discuss the nomenclature of occupations to eliminate all discrimination on grounds of sex;
- a more active campaign aimed at girls and women giving them greater accessibility to vocational information seo as to remove imaginancy barriers;

- the RCO (employers' organization) notifies efforts to diversify guidance on apprenticeships for both girls and boys.

The tradesmens' and farmers' organizations are encouraging the wives of self-employed persons and women farmers who work with their husbands to take part in courses for developing management skills.

Lastly, the attention of officials responsible for vocational guidance is being drawn to the fact that their attitude could possibly reinforce traditional attitudes to the role of women.

As has already been seen, contrary provisions in agreements are void; however, very few provisions on vocational training exist in collective agreements in the Netherlands.

A number of discriminatory Legislative provisions have still to be abolished : e.g. provisions regulating women's authorisation to teach, which require an examining board composed uniquely of women, and also the law on education costs, which is to be adjusted so as to impose the same obligations and responsibilities on the father and mother of the pupil.

Where discrimination still exists, the matter can be referred to the courts.

139. Federal Republic of Germany

- Employers are prohibited under Article 611 (a)(1) of the Civil Code, amended by the law adapting it to Community law, to practise discrimination in connection with the training they give their staff.

- In the sphere of guidance, information is being provided with the aim of widening the range of possibilities open to women ;

- The Government has decided that all occupations for which an apprenticeship is required and which are open to women should have both masculine and feminine designations. This principle is also to be observed in all information material prepared by the Federal Labour Office for school-leavers and their parents.

- According to the Government there are no laws, regulations or administrative provisions inconsistent with the principle of equality of access to guidance and vocational training, nor do such provisions exist in collective agreements, individual work contracts, company staff rules, or codes of the self-employed occupations. Any that existed would be null and void under Article 3(2) of the basic law **and the law on adjustment to Community labour law, which is applicable.**
- It should be noted that the principle of equality of treatment in access to training given by technical and vocational training establishments follows only from Article 3(2) of the basic law.

140. United Kingdom

- Employers may not exercise any discrimination in the conditions for access to training offered to their employees or refuse or deliberately omit to afford access to this training (Section 6 and Article 8). The law prohibits all public or private bodies providing vocational training (for example the Manpower Services Commission) from discriminating in access to guidance and vocational training; the effect can be seen in the content of the training given (Sections 14 and 29 and Articles 17 and 20).

- Discrimination in access to benefits, facilities or services including training, whether provided directly or by third parties, is prohibited.

- Discrimination in advertisements relating to guidance or training is prohibited. The EOC monitors conformity with this requirement as it does for job advertisements (Section 38 and Article 39).

- As a general rule the law covers training for occupations which in some cases are themselves excluded from its field of application. It does not, however, apply to the training of clergymen, members of the armed forces and midwives.

  Similarly, when a protective law prohibits employers from recruiting women for particular work (e.g. night work and work requiring the use of lead) the training for this work proposed by an employer can be excluded from the scope of the law.

- Collective agreements, company staff rules and codes governing self-employed occupations containing discriminatory clauses on training are not themselves affected by the law but any discrimination resulting in practice is contrary to it[1].

  Under the law, however, contrary clauses in individual labour contracts are considered as null and void.

- Discrimination in collective agreements might be eliminated by the introduction of a complaint or by an inquiry by the Equal Opportunities Commission.

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[1] See page 32.

3. Equality as regards the content of training

141. This subject is dealt with only for information purposes and to introduce another area in which equal treatment must be achieved.

If there is to be equality of opportunity is is important for the content of the proposed subjects to be based on principles of equality.

A brief survey of the relevant legal provisions reveals the following :

Belgium and Denmark

No obligation imposed.

France and the Federal Republic of Germany

The Government states that the content of the subjects taught is the same for both boys and girls, which does not mean that it is based on principles of equality.

Ireland, Netherlands and the United Kingdom

The laws apply equally to content and subjects.

Luxembourg

The Government states that the Law of 21 May 1979 guarantees equal treatment as regards subjects and content.

4. Segregation in practice

142. A study of the statistics supplied by national governments makes it possible to measure the persistence of segregation in the various areas of vocational training covered by the Directive.

So as not to overburden the report, a few examples will be given from those Member States which replied to the questionnaire in the correct order and gave the information required. This does not mean that the situation is any different in the other Member States.

(a) In technical and vocational education there is clear segregation between boys and girls in the sectors for which figures were requested.

In Belgium, in the final years of technical and vocational education (type I, French-language) the situation was as follows in 1978/79 :

	Girls	Boys
Engineering	38	3.076
Electrical trades	49	4.214
Tailoring and dressmaking	1.545	23
Carpentry and joinery	20	1.842
Interior decorating	184	61
Secretarial work	2.677	526
Horticulture	31	344

In Luxembourg there are no girls learning the electrical trades, engineering or horticulture; there is one girl learning woodwork while 479 out of 630 pupils learning secretarial skills and 18 out of 18 learning tailoring and dressmaking are girls.

In France the situation was as follows in 1980 in schools coming under the Ministry of Education (producing skilled manual and non-manual workers) :

	Public		Private	
	Girls	Boys	Girls	Boys
Engineering	406	42.668	19	6.293
Electrical trades	185	21.810	6	4.351
Tailoring and dress-making, use of fabrics	10.679	302	2.754	52
Carpentry and joinery	22	8.067	9	1.762
Secretarial work	22.605	150	13.599	106
Arts and crafts	64	180	125	145
Horticulture[1]	37	241	11	11

Ireland

Number of boys and girls receiving technical and vocational education on 30 June 1980

Occupation	Number of female students	Number of male students	Total number of students
Electrical trades	6	3.144	3.150
Carpentry and joinery	4	3.482	3.486
Interior decorating	21	514	535
Secretarial work	125	12	137
Tailoring	355	17	372
Dressmaking	826	91	917
Engineering	numbers not known		
Horticulture	33	43	76

Netherlands

In the 1978/79 school year the number of boys and girls in the final year of vocational education (State, local authority and private grant-aided schools) broke down as follows :

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[1] Not including centres run by the Ministry of Agriculture

	Advanced level		Intermediate level	
	Girls	Boys	Girls	Boys
Engineering	33	14.345	-	-
Electrical trades	18	9.747	-	-
Tailoring and dressmaking	-	-	1.157	3
Carpentry and joinery	14	5.508	-	-
Interior decorating	10	1.587	-	-
Secretarial work	6.318	4.658	-	-
Horticulture	-	-	196	586

b) The situation is no better with regard to apprenticeships to the above trades.

In Belgium :

the number of certificates issued to apprentices who had passed their final examination was :

Boys 1.162

Girls 603

of which

	Boys	Girls
Electrical trades	127	0
Engineering	317	0
Tailoring and dressmaking	1	16
Carpentry and joinery	94	0

In the United Kingdom, the percentage of apprentices entering employment, by industry and sex, was as follows in 1978, taking two sectors as an example :

	Girls	Boys
Mechanical engineering	1,1 or 18	11,1 or 812
Electrical engineering	1,2 or 13	4,4 or 321

In the Federal Republic of Germany in 1978 the numbers of apprentices in training were as follows :

	Girls	Boys
Electrical engineering	760	112.231
Mechanical engineering	1.050	252.873
Mechanics (including tradesmen)	691	134.246
Textile trades	21.145	850
Carpenters and joiners	696	40.973
Technicians and clerical workers	115.973	37.103
Horticulturists	10.311	11.242

c) The number of women attending training courses for civil servants is not proportional to the number of women employed in the civil service, which is high in all Member States. However, the proportion is higher than in other types of training.

In Belgium women account for about 25% of attendance at training courses organised by the State for its employees.

In France there were 24 women enrolled at the National School of Administration in 1979/80 compared with 135 men, and 411 women at the regional institutes of administration compared with 504 men.

In the Federal Republic of Germany the number of apprentices in the whole of the civil service, by occupation, was as follows :

Apprentices in the civil service in 1978, by occupation

Occupation	Federal Government-Länder		Communes and associations of communes	
	Apprentices		Total	% girls
	Boys	Girls		
Telecommunications engineers	11.888	259	12.147	2 %
Hydraulic engineering	199	-	199	0 %
Road building	25	5	30	16,6 %
Water board technicians	77	18	95	18 %
Town planning technicians	3	-	3	0 %
Surveyors	2.185	574	2.759	20 %
Plant health technicians	-	4	4	100 %
Cartographers	48	76	124	61 %
Water board draughtsmen	6	11	17	64 %
Savings bank employees	1.061	1.243	2.304	53 %
Road maintenance	606	-	606	0 %
Young postmen	6.834	1.877	8.711	21 %
Employees of the Federal Institute of Labour (Bundesanstalt für Arbeit)	881	1.047	1.928	54 %

Employees of the departments dealing with disabled ex-servicemen and handicapped persons	17	13	30	43 %
Clerks of the court	351	2.777	3.128	69 %
Social Security officials	3.134	2.950	6.084	48 %
Employees in the administration of trade organizations	37	140	177	
Employees in church administration (State recognized churches)	73	181	254	
Local government employees, communes and Länder (internal administration)	4.296	6.865	11.161	
Shorthand typists, clerical assistants	-	406	406	
Assistant librarians	31	330	361	
Assistant lifeguards	875	311	1.186	

Ireland

Attendance at the civil service training centre for executive and administrative grades was as follows in 1979/80 :

Girls : 159 Boys : 718

For Luxembourg, no breakdown of the figures by sex is available.

d) Lastly, the situation is as follows with regard to training or retraining provided at training centres run by the employment services :

France

At vocational training centres for adults, 19% of the trainees are women.

For every 100 men and women trained the picture is as follows :

Construction : 3.2 women and 40 men

Metallurgy : 3.2 women and 33.4 men

Electromechanical engineering and radio, electricity and electronics :
1.2 women and 7.7 men

Clerical work, commerce and data processing :
62.2 women and 2.5 men.

On courses organized under training agreements with firms, there are 12 000 women out of a total of 223 602 trainees.

In the agricultural sector, taking all levels together, 16 969 out of 53 832 trainees are women.

For the United Kingdom, the Manpower Services Commission gave the following statistics for 1978/79 :

	Women	Men
Metallurgy and engineering	145	12 449
Electrical trades	51	2 782
Construction	24	3 627
Clerical	7 427	1 401
Shorthand and typing	13 785	226
Carpentry and joinery	17	2 411

Federal Republic of Germany

En 1971, 21.9 % of persons receiving training and retraining were women; in 1979 the percentage was 31.4 %.

In the Netherlands in 1979, women made up 1.6 % of all persons (2.558) trained at adult training centres and 8 % of all persons (4 104) trained in collaboration with firms.

On the other hand, 35 % of all persons (9.750) whose study expenses were reimbursed were women (mainly for courses in administration).

Belgium

On 1979, 44 % of all workers who attended courses at centres run by the National Labour Office were women; on other training courses organized in schools, at approved centres and in firms the percentage was 41 %.

In Luxembourg the situation as regards retraining was as follows in 1977/78 :

Type of training	M	F	Total
- Advanced secondary education	73	63	136
- Secondary education	36	1	37
- Technical education	38	0	38
- Language courses	1.370	2.860	4.230
- Commercial courses	724	1.067	1.791
- Other courses	1.187	1.095	2.282

III. EQUAL TREATMENT IN WORKING CONDITIONS AND TERMS OF EMPLOYMENT

"Article 5.

1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that :

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision.

1. The expression "working conditions" (conditions de travail)

143. The Directive does not define this term; during preparatory work in the Council[1], a representative of the Commission's legal service pointed out that, under Article 48(2) of the EEC Treaty and other Community instruments referring to this concept, it should be interpreted in the widest sense.
The term does cover social security, but Article 1(2) stipulates that compliance with the principle of equal treatment in this field is to be ensured by other Community instruments[2].

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[1] See p.140

[2] See p.140

Pay is, of course, also a "working condition", but the principle of equal pay is already covered by **Article 119 of the EEC Treaty and by Directive 75/117, and in most of the Member States the instruments implementing Directive 76/207 do not cover equal pay.**

Few Member States have defined the expression "working conditions"; the scope of the implementing instruments is as follows :

144. The Belgian Law (Article 128) covers dismissal and working conditions. "Working conditions" (conditions de travail) means arrangements and practices relating to :

(i) the contract of employment, the various administrative-law systems for the employment of government servants, the systems for government teaching staff and for staff working in subsidized education;

(ii) apprenticeship contracts;

(iii) collective agreements;

(iv) working time and schedules;

(v) public holidays;

(vi) Sunday rest;

(vii) night work;

(viii) staff rules;

(ix) workers' health and safety, and the salubrity of tasks and workplaces;

(x) employment of young people;

(xi) works council, committees for safety, health protection and improved appearance of workplaces, trade union representation and staff committees in public service departments;

(xii) the enhancement of work and the advancement of workers;

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[1] Doc. Council 463/75 (Soc.64) 10 April 1975

[2] See Directive 79/7.

(xiii) pay and the protection of pay;

(xiv) paid time off for training and social advancement allowances;

(xv) annual holidays;

(xvi) and in general practices relating to physical, ethical and psychological working conditions.

Additions may be made to this list by royal decree."

145. The Danish Law gives no definition.

However, the explanatory memorandum states that the terms must be interpreted very widely, since it concerns all conditions in which the work is carried out (including dismissal), whether such conditions are fixed under collective agreements or imposed unilaterally by the employer.

There is a special law on equal pay.

146. At present, the French Law does not guarantee equal treatment in respect of all conditions of employment; consequently the definitions of "working conditions" (conditions de travail) given in other laws are not relevant here.

Only recruitment and dismissal are at present the subject of special protection for the private sector (Article 416 of the Penal Code). It should, however, be recalled that if the employer has a good reason, to be assessed by the courts in the last instance, he may in certain circumstances dismiss an employee on grounds of sex.

The draft law now being prepared provides for the extension of protection to all conditions of employment.

The Government states that there is no discrimination in the public sector with regard to dismissal.

147. The Irish Act gives no definition; Section 3 prohibits discrimination with regard to conditions of employment overtime, jobs, disciplinary measures, dismissals, lay-offs, redundancies, short-time working, etc.

148. The Italian Law gives no specific definition, it being understood that the expression covers all aspects of the employment relationship explicity mentioned in the Law, in respect of which discrimination is prohibited.

These are :
(i) pay (Article 2)
(ii) grading (Article 2)
(iii) age of retirement (Article 4)
(iv) adoption (leave) (Article 6)
(v) Parental leave (Law No. 1204)
(vi) industrial accidents and occupational diseases (Article 10)
(vii) social security
(viii) right of representation of self-employed workers (Article 14)
(ix) dismissal (Article 13).

Consequently, the provisions of Article 5 of the Directive are not fully reflected in Italian national law and discrimination against male or female workers comes within the scope of Law No 902 (penalties, recours to the courts, nullity of conflicting clauses) only in respect of certain conditions of employment[1]

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[1] On 29 July 1980 the Commission called upon the Italian Government to make the appropriate changes.

149. Luxembourg

The law now being drafted will ensure equal conditions of employment for men and women, including conditions of dismissal.

The draft contains no definition of the expression "working conditions" (conditions de travail).

The Government gives no details as to the content of the term in Luxembourg's social legislation; however, it apparently does not take the view that, the term covers all conditions, or even all of those not covered by other regulations (e.g. part-time work, see point 153).

150. In the Netherlands, the expression "working conditions" (conditions de travail) is not defined in legal instruments.

It is generally taken to mean all those rules compliance with which the worker may, under his employment contract, claim from his or her employer. It therefore includes not only the pecuniary counterpart of the work to be carried out (pay in the broad sense) but also, for example, rules concerning holidays, early retirement, etc.). This definition is not given in the Law on equal treatment, as the concept is deemed to be a familiar one. **For the sake of clarity, however, as pensions and retirement age can be regarded as working conditions, they have been excluded as they are not covered by Directive N° 76/207.** The unions (CNV and FNV) disagree : the FNV points out that problems connected with the age of joining the scheme - or drawing a pension - undoubtedly relate to the conditions of employment.

Thus :

(a) a male worker can join a pension fund at the age of 25, but a woman only at 30; in the man's case, the employer's contribution amounts to discrimination in pay.

(b) The lower retirement age for women affects clauses on the expiry of contracts. Women should therefore be entitled to work until 65 years of age.

151. In the Federal Republic of Germany, no definition is given to the expression "working conditions" (conditions de travail) in legislation or collective agreements. It is taken to mean the entire field of employment relationships. Article 611(a) of the Civil Code as amended extends equal treatment requirement to any such relationship from its beginning until its end, including its content.

This obligation concerns only those work relationships that are governed by Private law; with regard to the Civil service, the Government does not state how the expression should be interpreted, for example for the purposes of the application of the law on the representation of Federal staff.

152. In the United Kingdom, the expression is not defined in the Act; the Government states that it covers in general all conditions other than pay. The Act requires equal treatment in the areas not covered by the employment contract and which are not covered by the Equal Pay Act. Equal Pay is covered by the Equal Pay Act.

153. Examples

To obtain a clearer view of the scope of the equal treatment principle, a comparative table is given below showing how the laws apply to a number of specific and typical situations.

ARE THE LAWS ON EQUAL TREATMENT APPLICABLE TO THE FOLLOWING CASES?

	B	DK	FR	IRL	I	LUX	N	D	UK
Leave for sickness of child	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
Leave for education of a child	No (public Sector)	Yes	Yes (private) No (public)	Yes	Yes[3]	No	Does not exist	No	Yes
Trade-union representation of staff	No	No	No	No	No	Yes	Not covered by law	Yes[1]	No
Part-time work	Yes	Yes[3]	No	No	No	No	Yes[2]	Yes	Yes
Pace of work	Yes	Yes	No	No	No	No	Yes	Yes[4]	Yes
Apprenticeship contracts	Yes	Yes	No	No	?	?	Yes	Yes	Yes

[1] Law on worker representation in undertakings, Article 15(2) : the sexes must be represented proportionately on the works council.

[2] See, however, page 148.

[3] Partly.

[4] According to Government.

2. Implementation

154. In Belgium, under Article 127 of the Law,

"Equal treatment must be ensured for workers in all the arrangements relating to conditions of employment and dismissals.

This rule includes prohibition of the following :

1. Any reference to the sex of the worker in the conditions of employment and in the conditions, criteria or reasons for dismissal, or the incorporation in these conditions, criteria or reasons of factors which, even without explicit reference to the sex of the worker, in fact entail discrimination;
2. the establishment or application of conditions, criteria or reasons in a discriminatory manner in relation to the sex of the worker".

As a result, employment and dismissal conditions are equal for workers of either sex in both the public and the private sector.

The Law covers all forms of discrimination, whether embodied in provisions or in practice; it covers both public and private employers. The mechanism of the law with regard to collective agreements has already been described.

As for the content of collective agreements, the Government has noted, since the adoption of the Law, that the parties to new agreements are making visible efforts to eliminate any trace of discrimination, even indirect.

This tendency is discernible, for one thing, in the habit which employers and workers have recently adopted of expressing the scope of agreements as covering workers of both sexes. The wordings which have become commonest are :

"The present agreement shall apply to male and female workers ..."
"... the expression "workers" means male and female workers ...".

Secondly, anomalies in the determination of pay are gradually being eliminated, partly as a result of the report drafted in 1976 by the administrative unit mentioned above on the compliance of collective agreements with the principle of equal pay (at any rate in respect of direct discrimination).

Thus, until 1977, separate wage scales were applied to men and women, in each grade, in four sub-sectors, of the foodstuffs industry. In 1978, these discriminatory rules were deleted from the texts[1].

It should be noted, however, that in collective agreements relating to social security funds, the granting of higher allowances to workers who are "heads of family" may constitute indirect discrimination based on family responsibilities. The concept of "head of family" has now disappeared from Belgian civil law. A study of piecework rates under collective agreements carried out by the same unit also notes that this kind of remuneration is quite often used in industries employing a high proportion of women (clothing, tailoring and dressmaking, laundry and dry cleaning, food, textiles, butchery, tobacco, furs and skins, glass).

It should also be noted that in the public sector and in education, only women are entitled to two years' (unpaid) leave to attend to the upbringing their own young children or of adopted children (Royal Decree of 26 May 1975). **The implementing decrees are currently being drafted.**

Similar arrangements to those in the Royal Decree of 26 May 1975 have been adopted for regional and local government and for education.

The Minister for National Education and Dutch culture, replying to a question in Parliament on this subject, conceded that "these provisions are not in accordance with the Law of 4 August 1978 (and consequently the Directive)" and stated that, in his own field (education), he had asked his staff to draft revised texts.
No changes having been made, the Commission called upon the Government, on 30 July 1980, to terminate this discrimination.

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[1] Although this matter concerns Directive 75/117, it is referred to here because is is closely linked with conditions of employment as a whole.

155. Denmark

The Law on equal treatment applies to both the public and private sectors.

Article 4 stipulates that wherever men and women are employed at the same workplace, their employer must treat them equally as regards conditions of employment and dismissal.

The explanatory memorandum states that it is difficult to define the necessary, adequate criteria of comparison which would make it possible to establish whether discrimination exists. Consequently, discrimination between the sexes may be permissible where different undertakings are involved.

An employer could not, it continues, curcumvent the law by establishing his production sites in different locations if they constitutes a single entity from the management standpoint.

The explanatory memorandum also emphasises that equal work is a factor to be borne in mind, along with the other circumstances of employment, particularly where differences in treatment are reflected in remuneration and other economic conditions[1]; on the other hand, the Governement accepts that the principle of equal work is less important the more general these conditions are.

Defined in this way, the principle contains important restrictions which the Commission asked the Danish Government to remove in a letter of formal notice dated 30 July 1980.

According to the Government, there are no longer any laws, regulations or administrative provisions contrary to this principle and, the same is virtually true of collective agreements.

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[1] The Danish Government has adopted the same position as regards the implementation of Directive 75/117/EEC; it has been formally requested to extend its legislation in this area to cover "work of equal value".

It should be pointed out that the law does not apply if compliance with the principle of equal treatment as regards working conditions is already required by a collective agreement, and that any agreements to the contrary are null and void.

In this connection, the explanatory memorandum emphasises that a problem may arise from the fact that some collective agreements, which apply to men only or to women only, contain different provisions in respect of conditions of employment.

The explanatory memorandum states that these two types of agreement should be amended so as to be rendered non-discriminatory.

On this question, the Government has referred to a pending case involving a man who was refused part-time work because his conditions of employment made no provision for this , unlike the corresponding agreement relating to women.

The practice of concluding separate collective agreements for each sex raises a problem of compatibility with the principle of equal treatment.

156. In France, the relevant statutory provisions do not cover all conditions of employment.

Discrimination exists in several sectors. For example, Law N° 76.617 of 9 July 1976 relating to the public service restricts adoption leave to female staff and only grants fathers three days' leave. In the private sector, the father is entitled to adoption leave. This right is restricted in practice because he is not entitled to the two-year credit in respect of pension contributions per dependent child.

Moreover, priority is given to the mother as regards this leave, which is only granted to the father if the mother forgoes her entitlement; thus the mother and father do not enjoy an equal choice. Lastly, women under 21 years of age are entitled to two additional days leave for each dependent child living at home.

In addition, women employees in the public sector may be granted leave of absence to care for a sick child. Fathers may be granted such leave if they are the sole person on whom the family depends.

The study referred to on page 37 identifies a number of cases of discrimination in collective agreements.

This situation is emphasised by the Conseil National du Patronat Français (French employers' organization), in what it regards as the correct interpretation of Article 2.3 of the Directive.

Thus, mothers only are granted additional leave to care for sick children, or at the beginning of the school year, leave for the purpose of child care may or may not be paid and can last from five days to three months.

Some collective agreements also provide for additional annual leave of 1-2 days per dependent child, which is granted to mothers only.

Some agreements provide for part-time employment for women only.

Lastly, some agreements grant rest periods to women only, in order to mitigate the adverse effects on their health of certain working environments. These rest periods last from 30 to 60 minutes.

The Committee on Women's Employment stresses that these provisions were drawn up on the basis of traditional attitudes to male and female roles and are at variance with the development of national law.

In this connection, the Committee wishes to avoid a situation in which men, in turn, are penalized by being granted certain rights associated with parental duties so far reserved to mothers; it has proposed that the enactment of 3 January 1975 introducing a pension contribution credit scheme for mothers should be extended to cover fathers who take leave in order to educate a young child pursuant to the provision introducing two years parental education leave (Law of 12 July 1977) and the rules governing post-natal leave in the public service (Law of 17 July 1978).

157. Ireland

The Law applies to both the public and private sectors, with the exception of some occupations which are expressly excluded[1]

Laws and regulations contrary to the principle of equal treatment have been repealed; at all events, the law stipulates that an equality clause must be inserted in any woman's employment contract which does not contain such a provision, unless the employer can establish that any difference in conditions of employment is not based on grounds of sex. The Anti-Discrimination (Pay) Act, 1974, was amended to provide for a "broader interpretation" of "dismissal" to include circumstances whereby a woman would be entitled to terminate her own contract, even without prior notice to the employer.

Administrative provisions to the contrary have, in principle, been abolished; nevertheless, a complaint made by a group of female civil servants indicates that such discriminatory provisions continue to be applied. The Employment Equality Agency considered the complaint justified and referred the matter to the Labour Court. The Government has not indicated which provisions are at issue.

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[1] See page 49 for comments on this subject.

The Employment Equality Agency examines all proposals submitted for the purpose of preparing the "Employment Regulation Orders", which fix minimum salary levels and working conditions for employees in certain industries.

Supervision by the Agency ensures that the principles of equality are observed when these orders are drawn up. Nevertheless, in the Government's opinion, only a minority of workers are covered by this system.

As has already been seen, any discriminatory provision in a collective agreement, contract of employment or order governing employment concluded or issued after 1 July 1977 is deemed null and void.

The Government is unable to provide any information concerning the content of collective agreements in this field; the Employment Equality Agency does, however, exercise a certain control over the proposals of the Joint labour Committees, which are submitted prior to the drafting of orders governing employment conditions.

Individuals who have experienced discrimination in their conditions of employment or dismissal can refer the matter to the courts.

158. Italy

The Government considers that there are still some problems to be resolved. The Government is to forward a report dealing with these problems to the Parliament.

The Government states, however, that a few small categories of workers are not covered by collective agreements.

The machinery governing collective agreements was described above.

The law applies to all employers in the public and private sectors and to all employees.

The Unione Italiana del Lavoro (trade union federation) points out, however, that since there has been no national census of outworkers, the latter do not enjoy the complete protection of the law.

It also feels that greater involvement by the trade unions would help to ensure the full implementation of Law No 903.

Lastly, it points out that it is not possible to monitor effectively the forms of discrimination to which women in self-employed occupations are subject.

It has come to the Commission's attention that some provisions of Law No 1204 of 30 December 1971 lay down conditions in respect of leave for the education of a child and absence during the first year of a child's life which apply to mothers only. These provisions, which constitute "working conditions" within the meaning of the Directive, should apply equally to working fathers and mothers. Mothers are entitled to six month's leave after the birth of a child, when they retain their job and receive 30 % of their normal remuneration, and during the illness of a child under the age of three. Adoptive working mothers are entitled to "settling-in" leave, equal in length to maternity leave, and to the above mentioned six month's leave if the child is under three years of age. Lastly, during her child's first year of life, a working mother may take two daily rest periods of one hour, consecutively if necessary, during which she may leave the company premises. If a child is cared for on the company premises, this period of absence is reduced by half.

Article 7 of Law No 903 grants fathers the right to six month's leave during their child's first year of life or in cases of adoption and to leave on grounds of child sickness, but only if the fathers is acting as a substitute for the mother and on the basis of a statement by the latter waiving her rights. Moreover, the father only enjoys this right if the mother is an employed person.

These provisions do not grant fathers and mothers an equal choice and the father is not entitled to "settling-in" leave. In addition, men are not entitled to two hour's absence per day during working time in the first year after the birth of a child. In a letter of formal notice dated 30 July 1980, the Italian Government was requested to put an end to one of these forms of discrimination, namely the granting of "settling-in" leave following adoption to mothers only. **It is appropriate to mention that within the Member States of the EEC, paid parental leave exists only in Italy.**

159. Luxembourg

The draft law provides for the removal of discrimination in respect of conditions of employment and the conditions, criteria or grounds for dismissal and prohibits the inclusion in these conditions, criteria or grounds of any matter which, without explicity referring to the sex of the worker, is discriminatory in effect; it also prohibits any form of discrimination in the drafting or application of these conditions, criteria or grounds.

This requirement applies to laws, regulations and explicit administrative provisions, the codes of the self-employed occupations and company staff regulations as well as to provisions of all types in agreements, and to practices; any clauses to the contrary are null and void.

The ban on covert discrimination only entails penalties if the victim of such discrimination succeeds in the action which he or she is entitled to bring before the courts.

The proposed obligations apply to employers in both the public and private sectors.

The Government has stated that, with the exception of protective legislation[1], there are no longer any provisions contrary to the principle of equality.

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[1] It should, however, be noted that the problem of family allowances in the public sector, raised in connection with the application of Directive 75/117/EEC, has still not been settled.

160. The Netherlands

The law prohibits any discrimination on grounds of sex in drawing up the conditions, criteria or grounds for dismissal and in conditions of employment.

At the same time, in connection with cases of dismissal, applications made to the directors of the regional placement offices are checked on the basis of this requirement pursuant to Article 6 BBA (Special order on conditions of employment), except in the case of women employees engaged in domestic work in private households, whose position will be reviewed.

Moreover, provisions contrary to the Directive are, in principle, null and void pursuant to the Law on equal treatment if they relate to "undertakings in the private sector".

As far as the Government is aware, all laws, regulations and administrative provisions contrary to the principle of equal treatment in the public sector have been repealed.

Nevertheless, a transitional provision (Art. 7 of Law of 1 March 1980) provides that a higher salary may continue to be paid to young breadwinners under 23 years of age who are entitled to these benefits when the law in question entered into force.

It has been suggested that this might be an instance of indirect discrimination (opinion of the CNV - Federation of Christian Trade Unions), insofar as it is usually young men who are regarded as heads of households.

The Law relates to both provisions and practices.

In general, not all collective agreements, individual contracts of employment, company staff regulations, etc., contain clauses guaranteeing equal treatment in working conditions.

As has already been stated, it is generally accepted that provisions contained in agreements or company staff regulations, are similarly applicable to male and female employees.

If a different interpretation is placed on the provisions of agreements, individual workers have the opportunity already referred to of appealing against its validity or legality before the courts.

As has laready been seen, the Government has undertaken extensive measures to analyse collective agreements, as a result of which the two sides of industry have been invited to examine the cases of discrimination recorded.

161. Federal Republic of Germany

Article 75 of the Law on the organization of undertakings, Article 67 of the Law relating to the representation of Federal employees and Article 611 of the Law adapting national legislation to Community Law contain an explicit requirement concerning equal treatment in respect of conditions of employment, including dismissal. This obligation applies to both the public and private sectors.

In principle, explicit provisions to the contrary are null and void in accordance with the Basic Law; the ban on discrimination applies to discriminatory practices in connection with conditions of employment.

The legal machinery relating to collective agreements has been described above.

Collective agreements do not contain any clause guaranteeing equal treatment in conditions of employment; in the opinion of the Government, this is not necessary since any agreement which contained a discriminatory clause would be automatically null and void. The same is true of agreements at company level and concluded on behalf of employees in the public sector.

In addition, the principle of equal treatment is guaranteed to all workers governed by private law, by the mandatory requirements of the law adapting national legislation to Community Law and the resultant legal protection conferred.

Under certain provisions of the laws relating to maternity protection, which apply to both the private and public sector (Law of 24 May 1968, as last amended on 25 June 1979; Order of 22 January 1968, as last amended on 27 June 1979), the right to take additional leave, after maternity leave, can last until the child reaches the age of six months; the loss in salary is compensated by the public federal treasury, up to the limit of 750 DM per month. The beneficiary cannot be dismissed during this period. This constitutes an instance of discrimination within the meaning of Article 5 of the Directive.

162. United Kingdom

The Law covers discrimination both in provisions and in practice and applies to employers in the public and private sectors.

The legal machinery relating to collective agreements has already been described above.

Section 6 of the Act of 1975 and Article 8 of the Order of 1976 (N I) forbid employers to discriminate in respect of the terms of employment or conditions of dismissal, and in access to benefits, facilities or services or to subject women employees to any other detriment. Section 11 (1) of the Act and Section 14 (1) of the Order also prohibit partnerships from discriminating against women partners or potential partners.

A person may not discriminate in affording access to benefits, facilities or services, etc., whether those are provided by that person or by a third party.

The Equal Opportunities Commission points out that some collective agreements and wage orders may contain discriminatory clauses in respect of part-time employees. As was seen above, these agreements may be submitted to the Central Arbitration Committee for amendment, only if the agreement makes a specific reference to the sex of the worker.

The guide drawn up by the TUC for part-time worker's union encourages the latter to have the agreements reviewed in an effort to obtain the same conditions of employment as those enjoyed by full-time workers.

IV. PROTECTIVE LEGISLATION

Article 3.2(c)

1. "Application of the principle of equal treatment means that there shall be no discrimination whatsover on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

2. To this end, Member States shall take the measures necessary to ensure that :

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

Article 5.2(c)

1. "Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that :

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

Article 9.1, second paragraph

"However, as regards the first part of Article 3(2)(c) and the first part of Article 5(2)(c), Member States shall carry out a first examination and if necessary a first revision of the laws, regulations and administrative provisions referred to therein within four years of notification of this Directive."

163. The "protective" legislation covered by Articles 3.2(c) and 5.2(c) is that which excludes women from certain occupations, ostensibly for their protection, or stipulates that they should be entitled to special working conditions.

In theory, this legislation is contrary to the principle of equal treatment. The Directive takes account of the fact that since this legislation was adopted, technological and social developments have been such that its amendment or repeal can be envisaged: this is already the case in certain countries (Italy).

The Directive therefore provides for the repeal of this legislation when the concern for protection which originally inspired it is no longer well founded; for the same reason, labour and management should be requested to carry out any desirable revision.

Pursuant to Article 9, Member States were to carry out "a first examination and if necessary, a first revision", by 12 February 1980.

The Commission is responsible for examining in what cases the concern for protection is no longer well founded, within the meaning of the Directive.

It may be recalled that the Commission asked a consultant, assisted by experts from the nine Member States, to carry out a full, critical analysis of this legislation, to enable him to reach a conclusion with full knowledge of the facts and, if necessary, to propose amendments at Community level.

Existing protective legislation governing access to employment (Article 3.2(c)) is examined in the first chapter, and protective legislation relating to specific "working conditions" (conditions de travail) (Article 5.2(c)) in the second.

After listing provisions of this type still in effect, the paper examines the results of investigations which the Member States were required to carry out, together with any ensuing amendments or abrogations.

It is not possible to provide a detailed account of the scope and machinery of the protective legislation in this report. Moreover, the chief characteristic of this legislation is its complexity. It was adopted on a "step-by-step" basis in line with technical development and the emergence of specific problems, such as the economic necessity for night work in a given sector, or the appearance of new types of nuisance.

It would not be appropriate to draw up a comprehensive table of exemptions in this report in respect of the particular area of night work; a very general survey is adequate.

At all events, the overall impression is that there are no common, permanent requirements concerning the specific protection of women which have proved imperative in all countries in identical circumstances but, on the contrary, that a mosaic of extremely varied and highly specific regulations exists, the reasons for which are often not clearly defined.

The following lists are not exhaustive since comprehensive information was not provided by all Member States.

Some legislation is classified by certain countries under the heading of "prohibited tasks" and by others under the heading of "special working conditions" (e.g. legislation relating to lead).

It was not possible to ascertain the precise position on this point.

1. Ban on access to employment

164. List of types of jobs to which women are refused access and of the Member States where this ban applies

1. Underground work in mines, open-cast mines and quarries

- Belgium (law of 16 March 1971, Article 8);
- France (Article L 711.3 of the Code du Travail);
- Ireland (Law of 1965) (women are, however, allowed to administer treatment);
- Luxembourg (Law of 10 February 1958);
- Netherlans (Law of 1903 - Regulation of 1964);
- Federal Republic of Germany (Law of 30 April 1938);
- United Kingdom (Act of 1954) (women may, however, be employed in work which does not require prolonged presence underground, e.g. as doctors, geologists).

2. Painting, involving the use of ceruse, lead sulphate or any product containing these pigments

- Belgium (Royal Decree of 24 December 1968);
- Luxembourg (Grand-Ducal Decree of 30 March 1932);
- United Kingdom (Factories Act of 1961).

3. Manufacture of paints and colorants

- United Kingdom (Regulation of 1907).

4. Work involving the manual lifting of loads

- Belgium (Royal Decree of 24 December 1969 - this permits the occasional lifting of loads not exceeding 27 kg and the regular lifting of loads not exceeding 15 kg);
- Ireland (1972, loads not exceeding 16 kg);
- France (Article R 234.6 of the Labour Code);
- United Kingdom (Law of 1961, heavy loads).

5. Manual work involving the digging, trenching and excavation of soil

- Belgium (Royal Decree of 24 December 1968).

6. Building and construction work (certain activities)

- Federal Republic of Germany (Decree of 12 December 1938).

7. Driving of vehicles comprising more than 8 seats or weighing more than 35 tonnes

- Federal Republic of Germany (subject to medical examination - Decree of 8 December 1971).

8. Manual work in compressed-air caissons

- Belgium (Royal Decree of 24 December 1968) (female workers only);
- France (Articles R 234.9 and R 234.10 of the Labour Code);
- United Kingdom (since the legislation only relates to male employees, a ban is assumed to exist on female employment).

9. Work involving the emanation of solid dust particles

- France (Articles 234.9 and 234.10 of the Labour Code);
- United Kingdom (as under 8).

10. Preparation and treatment of theophosphoric esters

- France (Articles 234.9 and 234.10 of the Labour Code).

11. Carroting in the hide-cutting industry

- France (Articles 234.9 and 234.10 of the Labour Code);
- United Kingdom (as under 8).

12. Work involving exposure to aromatic hydrocarbons

- France (Articles 234.9 and 234.10 of the Labour Code).

13. Lead manufacture

- Ireland (certain activities - Law of 1975);
- United Kingdom (certain activities - Factories Act of 1961, section 74 and, as regards premises other than factories, section 128).

14. Use of lead compounds orlead processing

- Denmark
- Ireland (all processes involving the use of lead);
- United Kingdom (Factories Act of 1961 - section 75).

15. Manufacture of paints and colorants

- United Kingdom (Regulation S R & O 1907, No 17).

16. Electric accumulators

- United Kingdom (Regulation of 1925, No 28).
- **Denmark**

17. Pottery

- Ireland (Regulation of 1976);
- United Kingdom (Regulation of 1950, No 65).
- **Denmark**

18. Zinc manufacture

- Ireland (Law of 1955).

19. Glassmaking

- Ireland (Law of 1955) (young female employees).

20. Dockers

- Ireland (Law of 1944);
- France (Law of 1944);
- Netherlands : ?

21. Transport of raw and other materials in all types of structures

- Federal Republic of Germany (Law of 30 April 1938).

22. Employment as an operative in blast furnaces; foundries, rolling mills, presses, forges and work with iron, steel and other metals which are not subjected to cold treatment

- Federal Republic of Germany (Decree of 12 December 1938, No 20).

23. All forms of industrial work

- Ireland : possibility of exclusion or fixing of a quota on the number of females granted access (Laws of 1936 and 1944).

24. Inland shipping (particularly provisions relating to accomodation)

- Federal Republic of Germany (Decree concerning shipping on the Rhine - 26 March 1976 ; Decree concerning inland shipping - 14 January 1977);
- Other countries bordering the Rhine[1] ?

25. Cargo-stowing activities (employment prohibited)

- Netherlands (Article 4 of the Law on Employment).

26. Stripping of industrial furnaces having refractory materials containing free silica

- France (Article R 234.9).

2. Protective legislation in respect of conditions and terms of employment

165. List of legislative measures granting women special conditions and terms of employment with a view to their protection

1. Provision of seats in businesses, shops, etc.

- France (Article R.232.30 of the Labour Code);

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[1] On the basis of the Regulation of 1st April 1976 concerning the inspection of Rhine vessels.

- Ireland (Law of 1938);
- United Kingdom ?

2. Ban of work on goods displays and stalls after 2200 hrs or during cold weather

- France (Articles R 234.4, R 234.5 and R 234.6 of the Labour Code);

3. Ban on certain types of transport and imposition of differing workloads depending on sex

- France (Article R 234.6 of the Labour Code);
- Federal Republic of Germany (Law on sea transport).

4. Duration of rest periods (breaks) during working hours

- France : minimum daily rest period of 1 hour (Article L 212.9 - 212.11 and rural code);
- Federal Republic of Germany : longer rest periods for women (60 minutes) than for men (30 minutes) (Article 18(1) of the AZO (regulations governing working hours);
- United Kingdom (Regulation of 1938, particularly as regards meal breaks).

5. Total working day

- France:10 hours maximum (Articles L 212.9 - 212.11 and rural code);
- Netherlands : 10 hours maximum (Article 28 - Law on Employment);
- Federal Republic of Germany :; 10 hours maximum (Article 17(2) of the AZO) (may be longer for men in certain cases);
- United Kingdom (Factories Act of 1961).

6. Restriction of weekly working hours

- Netherlands (53 hours for women);
- United Kingdom (54 hours for women).

7. Organization of shift and team work

- France (prohibited for women in certain establishments and occupations - Article L 212.11);
- United Kingdom : order of 1936.

8. Preparatory or supplementary work

- Federal Republic of Germany (maximum of one hour per day for women - two hours for men - Article 17(1) of the AZO).

9. Ban on holiday working

- Ireland (Laws of 1936 and 1944);
- France : Article L 222.2 (relating to women and minors in industry);
- Federal Republic of Germany (AZO, Articles 17(2) and 19(1) applicable from 1700 hrs on the preceding evening; moreover, the preceding working day may not exceed 8 hours);
- United Kingdom (Factories Act of 1961).

10. Ban on Sunday working

- France (Labour Code, Article L 222.2);
- Ireland (Laws of 1936 and 1944);
- Netherlands (Article 22 of the Law on Employment);
- Federal Republic of Germany (AZO, Articles 17(2) and 19(1) applicable from 1700 hrs on Saturdays; moreover, women may not work for more than 8 hours on Saturdays);
- United Kingdom (Factories Act of 1961).

11. Special regulations governing overtime

- Netherlands (a number of regulations);
- United Kingdom (a number of rules);
- Federal Republic of Germany **(only in relation to items 5 and 8 above)**

12. Seafaress

- Federal Republic of Germany (Law relating to Seafaress, Article 93); special rest periods for women : ½ h for every 4½ h worked; uninterrupted rest periods of at least 10 hours for women (8 hours for men); overtime restricted to 60 hours per month for women, 90 hours for men.
- Other countries ?

13. Tin-plating of metal articles, iron drums and harness furniture

- United Kingdom (Regulation of 1909).

14. Bronzing

- Denmark
- Ireland
- United Kingdom

} specific protective measures.

15. Ban on the inspection, lubrication and supervision of machines

- Ireland (1955).

16. Ban on the cleaning of moving machinery

- Ireland (1955).

17. Lead and use of lead compounds or substances containing lead

- Ireland (specific protective measures);
- Federal Republic of Germany (Women of child-bearing age[1]);
- Other countries ?

18. Ionizing radiation

- Ireland (Regulation of 1972);
- Federal Republic of Germany :
  - Law on protection against ionizing radiation (1976);
  - Decree relating to X-rays (1973);
  - Increased protection for women of child-bearing age;
- United Kingdom (Law of 1969);
- Other countries ? Attention should be paid to the protective provisions contained in Euratom Directive 76/579/EEC of 1 June 1976.
- Netherlands: the Decree on protection against ionizing radiation (Art. 5, point 3) provides that a woman may not work in an area in which she is subjected to high levels of radiation during pregnancy and breastfeeding.

19. Women on ships

Federal Republic of Germany (Law on Sea Transport, paragraph 92).

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[1] Between 48 and 52 years of age.

166. Ban on night work

The provisions prohibiting or restricting night work by women in some countries generally derive from International Labour Convention No 89 on night work (Belgium, France, Ireland, Italy, Luxembourg).

It should be pointed out that several Member States are experiencing difficulty in complying with the provisions of Conventions No89; in Italy, for example, the law is no longer in conformity with this Convention since it no longer requires a ban on night work for eleven consecutive hours. This was also true of Luxembourg until recently, where women were allowed to work on night shifts in some industrial undertakings.

So far, only the Netherlands, which had ratified this Convention, has abrogated it.

Night work is a "working condition"; as a result, provisions on this subject may not entail a ban on day shift working.

This is the interpretation given in Belgium (explanatory memorandum to the Law of 4 August 1978)[1], Italy (circular from the Ministry of Employment and Labour of 28 December 1978, No 92/78) and the Netherlands (Article 33(2) of the Order on Working time).

In the United Kingdom, on the other hand, a ban on night work is deemed to entail an automatic ban on access to the job concerned; this also seems to be the position of the Luxembourg Government[2].

The situation in the Member States varies greatly. The undermentioned provisions indicate how opinions as to the need for, and scope of special protection differ from one Member State to another.

For example, it seems that in the majority of Member States night work is considered harmful to female manual workers, but not to salaried employees, nurses and supervisory staff.

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[1] It should, however, be noted that this interpretation is ignored to a great extent, e.g. in job offers notified by the SNCB (Belgian railways).

[2] See page 52.

167. Belgium

Night work, i.e. work done between 20.00 and 06.00 hrs, is prohibited for women (manual workers and salaried staff) by Articles 35 and 36 of the Law of 16 March 1971.

This period is, however, amended to 22.00 and 05.00 hrs or 23.00 and 06.00 hrs in the case of female shift workers or those engaged in work which, by its very nature, cannot be interrupted and to 23.00 and 05.00 hrs or 24.00 and 06.00 hrs in the case of shift work under certain conditions.

In addition, night work is permitted on a limited scale subject to the following conditions :

1. in certain areas of activity, undertakings or professions (e.g. travel agencies, food processing, the catering industry, entertainment and the film industry);
2. in the performance of certain activities (e.g. the preparation of balance sheets, agriculture, cleaning, teaching, air crews and sea-going personnel, paramedical staff, supervisory staff in boarding schools);
3. for certain categories of female employee (domestic servants, sales representatives, managers and those in a position of responsibility, doctors, journalists).

It should be pointed out that although, in principle, night work is also prohibited for men, there are far more exceptions in their case; in addition, only women are entitled to a break of at least eleven consecutive hours between periods of work.

168. Denmark

There are no longer any specific provisions prohibiting night work by women. Neither the Government not the two sides of industry have commented on this situation.

169. France

Ban on night work (Article L 213.1-5 of the Labour Code).

All night work is prohibited between 22.00 and 05.00 hrs for female employees in factories, mines, quarries, on work sites and in workshops and their outbuildings (in the public or private sectors, whether secular or religious) as well as in establishment relating to the self-employed occupations, private companies, or trade organizations and associations of any type. In addition, the overnight break for women between two working days must last for at least eleven consecutive hours.

Nevertheless, since the introduction of Law No 79-3 on 2 January 1979, this ban no longer applies to women occupying managerial or technical posts which involve a degree or responsibility, or to women employed in health and welfare services who are not normally required to perform manual work.

170. Ireland

The working day may not start before 08.00 hrs or continue after 22.00 hrs; the Law (1936) relates only to industry.

Young women are not allowed to work after 20.00 hrs.

Although exceptions are provided for, these are relatively limited; work after midnight is in any case never permitted.

171. Italy

Article 5 of the Law prohibits the employment of female workers between midnight and 06.00 hrs in industrial undertakings, including craft industries. This ban does not apply to women engaged in managerial activities or those employed in company health services.

This ban can be amended or waived by appropriate provisions included in collective or company agreements, in line with specific production requirements and in view of specific conditions and the organization of departments. Theparties to such agreements are jointly obliged to inform the labour inspectorate of such provisions, stating the number of female workers affected.

It should be noted that the Law has abolished the compulsory rest period of 11 hours and applies only to industrial undertakings, whereas previously it also applied to the services sector.

Neither the Government nor the two sides of industry have provided any information on the present status of company agreements in this respect.

It appears that night work has in fact been broadly authorized under company agreements.

According to the Circular of 28 December 1978, certain difficulties still remain over the interpretation of the term "industrial undertakings" and as regards the procedures for informing the labour inspectorate.

172. In Luxembourg

The Grand-ducal Decree of 30 March 1932 bans women from nightwork in public and private industrial establishments and their dependent premises, except for transport undertakings.

Night is construed as the period between 22.00 hours and 05.00 hours; the overnight rest period must comprise 11 consecutive hours.

The Decree provides for derogations to be authorized in the event of force majeure or in order to save perishable substances.

Certain dispensations are also given for seasonal businesses.

173. In the Netherlands

Article 30(2)(a) of the Law on employment makes it illegal for women of 18 years of age and over to engage in night work in factories and workshops. An overnight rest period of at least 11 hours, seven hours of which must be situated between 22.00 hours and 06.00 hours, is compulsory.

As has already been stated, women can under certain circumstances work both shifts, in pursuance of Article 33(2) of the Decree on working time. The derogations apply in particular in certain typical sectors (cheese manufacture and the herring industry).

As an experimental measure, women have been allowed to engage in night work, in anticipation of an amendment to the Law on employment: the experiments have, in the Government's opinion, been positive.

174. In the Federal Republic of Germany, women manual workers cannot engage in night work between 20.00 hours and 06.00 hours (Article 19(1) of the Regulation on working time).

Derogations are authorized up to 23.00 or 24.00 hours under certain circumstances in undertakings where work is organized on a shift basis and in certain sectors (e.g. hospitals).

In addition, in certain cases workers cannot begin work before 05.00 hours.

175. In the United Kingdom

The working hours in industry for women aged over 18 (and of minors) are regulated by the Acts 1920, the Industries Act 1961 and the Hours of Work Act 1936; these Acts ban night work for women, generally speaking between 20.00 and 07.00 hours.

General derogations from this ban are authorized in particular in the case of women in posts of responsibility or management. Dispensations requiring notification of specific authorization are provided for in a number of jobs sectors where circumstances so require and provided safety and protection conditions are sufficient, for example :

- floristry (overtime) (Order 1938);
- industry (overtime) (Order 1938);
- chocolate and confectionery manufacturing (overtime) (Order 1938);
- biscuit manufacturing (overtime) (Order 1938);
- bread, confectionery and sausage manufacturing (Order 1939);
- food packing and canning (Order 1939);
- dyeing and dry cleaning (Order 1939);
- ice cream manufacture (Order 1939);
- beer bottling (Order 1940);
- milk and cheese industry (Order 1949);
- wood working in industry (Order 1950);
- poultry dressing (1958 Order);
- range and special features of overtime worked by women (Order 1965).

The working time of men and minors in the baking industry are regulated by the Baking Industry (Hours of Work) Act 1954.

3. Revision and repeal of protective legislation

176. Several Member States (Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, the Netherlands and the United Kingdom) have initiated procedures for the revision of protective legislation; no revision procedure has, however, been initiated in France and Luxembourg before the date provided for by the Directive (12 February 1980).

Provisions have been repealed in a number of Member States. The situation is as follows.

177. In Belgium

No provisions have been repealed since the Directive entered into force.

On 12 January 1979, the Minister for Labour and Employment requested the opinion of the Commission on Women's Employment and of the National Labour Council. The National Labour Council delivered its opinion on 27 April 1979. The Commission on Women's Employment delivered two opinions :

- one on the prohibition of the access of women to certain jobs (Opinion No 18/1 of 16 February 1979);
- the other on specific measures relating to health at work (Opinion No 18/2 of 26 March 1979). In regard to the latter, the Commission on Women's Employment and the National Labour Council consider that measures making separate cloakrooms and toilets compulsory can be maintained since they are not discriminatory; they request, however, that outdated provisions of the General regulations for the protection of labour requiring separate canteens for men and women should be repealed.

Management and labour are full members of these two bodies; they therefore took part in the preparation of the opinions. Both bodies request that studies be conducted to check whether provisions baning women from access to certain jobs are justified, in order to determine to what extent special protection, distinct from that provided for men is still necessary.

These opinions are currently being examined by the competent authorities, in particular the Health and Safety Commission.

The revision of provisions relating to night work is currently being negotiated within a Joint Committee set up by the National Labour Council and the Commission on Women's Employment.

Belgium has, however, hitherto been bound as regards night work by the provisions of the International Labour Organization Convention No 89. The revocation of this Convention is nevertheless being considered but could not take place under the ILO Constitution before 1982.

178. In Denmark

The Government does not indicate the existence of any protective legislation, except for provisions barring women of childbearing age from certain jobs (for example, those involving ionizing radiation); it has not transmitted a list of these provisions.

The Commission is studying the problem created by this type of provision, which will be discussed in the conclusions of this report.

The Government does not consider it necessary to consult the two sides of industry on this type of provision, which is of a general nature.

As we have already seen, the Danish Government is mistaken in considering that these provisions fall within the scope of Article 2(3) of the Directive (Provisions concerning the protection of women to which the Directive is without prejudice).

From the moment practically all female workers are concerned, whether they be pregnant or not, it is in fact no longer a question of protecting pregnancy and maternity, but rather the health of the general public in a much wider sense.

The Government states that since the Directive was adopted, Decree No 61 of 18 February 1980 has repealed the provisions prohibiting young women aged under 18 from working after 20.00 hours in the catering sector and has established full equality between workers of both sexes as regards evening and night work.

179. In France

No provision has been repealed since the Directive entered into force.

The Government reports that it has not carried out the examination stipulated in Article 9 of the Directive and that the two sides of industry have not been consulted; it has, however, recently referred the matter to the joint body (the Executive Council for the Prevention of Occupational Hazards).

It will invite the two sides of industry to review discriminatory provisions.

The Committee on Women's Employment is in favour of this consultation procedure and would like it to be backed up by scientific studies on the effects of certain working conditions on men as well as women.

The Committee is in favour in principle of the protection given to female workers in certain areas (night work and shift work) being extended to male workers, with the authorities granting aids in specific cases to facilitate improvements in the workplace and working conditions.

It is in favour of Article R 232.30 (sittings) being repealed and divided on the question of whether to revoke Articles R 234.4 (work on goods displays after 22.00 hours) and 234.6 (loads), since it is concerned about the consequences for the health and safety of casual workers that would thus be deprived of medical supervision.

180. In Ireland

No provisions have been repealed since the Directive entered into force.

Certain regulations have, nevertheless, been prepared authorizing the employment of women in mines for the purposes of treating sick and injured workers.

Furthermore, in pursuance of the Safety in Industry Act 1980, certain protective provisions of the 1955 Factories Act will be repealed as soon as the Minister of Labour has adopted the necessary orders.

Section 38 of the Employment Equality Act 1977 stipulates that the Employment Equality Agency is empowered, either on its own initiative or at the request of the Minister of Labour, to examine certain protective provisions and to make recommendations for their amendment.

On 24 November 1977 the Minister invited the Agency to examine the provisions of the Conditions of Employment Act 1936 barring women from night work in industry. **The Minister has accepted the findings of the Agency that the employment of women in industrial work at night are discriminatory and should be lifted. He has announced his intention of working to this end.**

Management and Labour were represented on the subcommittee on protective legislation that was set up under the Employment Equality Agency. This subcommittee reviewed :

(i) the conditions of Employment Act 1936, which restricts the Employment of women for night work in industry;

(ii) the relevant provisions of the 1955 Factories Act and the others adopted in implementation thereof, which ban women workers from lifting weights exceeding a permissible maximum.

181. In Italy

In accordance with Article 19 of Law No 903, all contrary provisions have been repealed: it must therefore be assumed that there no longer exists any kind of protective legislation.

The Law does, however, provide that derogations may be granted if the job in question involves the performance of particularly arduous tasks, as specified in a collective agreement.

No information is given on the practical application of this provision on the existence of collective agreements.

Circular No 92/78 of 28 December 1978 stipulates that the following instruments, inter alia, are repealed :

- Law No 653/34 on the protection of women in employment;
- Article 48 of Presidential Decree No 164/54 banning women from working on suspension bridges in the construction industry;
- Article 33 of Presidential Decree No 321/56 prohibiting women from working in pneumatic caissons and in decompression chambers used in paramedical services;
- Article 4 of Law No 370/34 on Sunday and weekly rest time of adult women;
- in addition, contrary provisions in collective agreements and administrative acts no longer apply;
- lastly, provisions relating to minors remain applicable, but the distinction made between girls and boys as regards the minimum age for the access to certain jobs (16/18 years) has henceforth been abolished , the provisions in question apply up to the age of 16 years for both sexes.

182. In Luxembourg

Protective provisions have not yet been examined; this will shortly be undertaken by the Committee on Women's Employment, which will submit to the Government a proposal for the relevant provisions to be either maintained or repealed.

The two sides of industry are represented on this Committee.

When it has taken a decision, the Government will if necessary invite the two sides of industry to review the relevant provisions of collective agreements.

183. In the Netherlands

The 1920 employment Decree (Arbeidsbesluit) contains specific provisions for the protection of women workers :

(a) the provisions of this Decree remain in force only in the case of women workers employed in shops, chemist's shops, offices and artistic or recreational undertakings;

(b) female workers employed in factories or workshops are covered by the provisions of the Law on safety and health at work (Veiligheidswet) and the decrees based thereon, in which no distinction is made between men and women;

(c) in the case of workers in sectors other than industry, agriculture and inland navigation, a decree rendering these provisions null and void is being prepared.

Article 1 of the 1920 Decree bars women from performing any work that either manifestly or in the opinion of the Regional Director of the Labour Inspectorate requires excessively strenuous effort or is harmful to health for any other reason. This Article is included, reworded to apply to all workers, in the draft law on working conditions, which is at present under discussion in the lowerhouse of the Dutch Parliament.

The provisions protecting women workers were submitted in June 1978 to the Economic and Social Council and the National Advisory Committee on Emancipation for opinion. The latter delivered its opinion in July 1979; the Economic and Social Council, for its part, gave its opinion in June 1980. These opinions will make it possible in the short term to work out a programme on how the inequalities between men and women workers mentioned in points 164, 165 and 173 are to be abolished.

In the Netherlands, all sides concur that the principle of equal treatment for men and women has to be embodied in its entirety in labour legislation. There is, however, disagreement on the way in which this should be done : whether by repealing specific provisions relating to women, by extending to men the provisions in force for women, or by adopting entirely new provisions for both men and women.

The RCO (employer's organization) considers that protective measures (except for those relating to maternity) should rapidly be abolished, since it is these measures that are preventing firms from offering women the same opportunities as their male colleagues.

In Autumn 1976, after the Directive on equal treatment was adopted, the Government invited trade unions and employers to give due regard to its provisions.

Worker's and employer's organizations have from the outset been associated in adaptating the provisions of Dutch law to the Directive. Many discriminatory provisions have thus already been removed from collective agreements.

184. In the Federal Republic of Germany

No protective provisions (laws) have been repealed since 12 August 1978.

Existing provisions are under permanent review by the Government so that they can be replaced whenever possible by specific protective measures applying to both men and women, as for example, in the handling of dangerous substances. The approach adopted is that emphasis should be placed on personal aptitude - in particular physical fitness and state of health - rather than on sex. More than 30 decrees were repealed in 1975 with this approach in mind.

Possibilities for revoking measures are examined in consultation with the two sides of industry; the Government states that they will be heard as soon as a draft has been prepared.

The provisions prohibiting the employment of women under 45 years of age in the manufacture and use of lead will be maintained in view of the effect of this substance on foetal life.

On the other hand, the abolition of the bans on the employment of women in quarries and pottery and tile works is being considered[1], since they cover duties that have nowadays become extremely rare.

Lastly, in 1976 the Federal Government started reviewing the ban on the employment of women in the building industry and invited the employers' organizations and trade unions to submit their opinions.

The employers' organizations are calling for this prohibition to be abolished; the trade unions are opposed to abolition since they consider that despite progress achieved, the work remains arduous and certain activities still exceed the capacities and physical strength of women.

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[1] It appears that this has been done.

The Bundesrat (Upper House) has proposed that access to these jobs be authorized while applying protective provisions (for example, a ban on lifting heavy loads). The Government does not, however, consider this solution satisfactory since heavy loads have to be lifted in most of the building trades.

The Federal Government considers that at the moment, those trades that do not require such effort (painter, electrician, glazier and carpenter) are open to women. As far as the others are concerned, it is continuing its efforts.

The employment of women as heavy goods lorry and coach drivers has been authorized since 2 December 1971, subject to a medical examination.

As regards provisions relating to working conditions that impose specific protection for women, the Government is supporting efforts to adapt legislation to existing conditions, but does not intend to revoke provisions that are justified; it does not rule out the possibility of introducing measures to protect tha health of night workers rather than authorizing women to perform night work.

At the time the legislation was introduced the ban on night work on Sundays and public holidays was justified by the fact that the working week was 48 hours; now that the working week has been reduced to 40 hours and five days, the lifting of these bans is being condidered.

Proposals are being submitted in order to extend to male workers the provisions relating to the maximum duration of preparatory and additional work and breaks during the working day.

185. In the United Kingdom

No protective provisions have been amended or repealed since the Directive entered into force.

When the Sex Discrimination Act (SDA) was drafted, the provisions laid down in acts and orders then in force were revised. Section 18(2) of the SDA removed the ban on men becoming governors of women's prisons. Section 20 of the Act and Article 22 of the Northern Ireland Order waived the ban on men becoming midwives.

Section 21 of the Act and Article 23 of the Northern Ireland Order amended the Mines and Quarries Acts 1954 and 1969 in order to abolish the blanket prohibition on the employment of women in mines, but replaced the latter with a provision authorizing women employees to work in mines provided that this work does not involve long periods underground.

In pursuance of Section 55 of the SDA, the Equal Opportunities Commission (EOC) has the task of investigating "protective" provisions in collaboration with the Health and Safety Commission.

In March 1976, the Secretary of State for Employment invited the EOC to examine these provisions and submit a report including recommendations before the end of 1978.

In collaboration with the two sides of industry, the EOC has compiled the opinions of a large number of bodies and has had a nationwide opinion poll conducted among women.

The EOC's report, entitled "Health and Safety Legislation: Should we distinguish between men and women ?" and including a set of recommendations, was submitted to the Secretary of State and published in March 1979. The Secretary of State requested the Health and Safety Commission to examine the amendments made necessary in the light of the EOC's recommendations and the reaction of public opinion; the Commission has not yet submitted its proposals.

The Northern Ireland Equal Opportunities Commission has also prepared a study on all existing protective provisions and has transmitted it to the parties concerned.

Some of the EOC's proposals are mentioned below for guidance.

As regards hours of work, the EOC recommends that provisions relating specifically to women be repealed and provisions applying to both men and women be drawn up on the basis of health and safety considerations. The same applies to night work, although the EOC was not unanimous in adopting this proposal. **The trade union organisations, in particular, are opposed to revision of the legislation covering night work.**

As regards ionising radiation, the EOC considers that the same standards should apply to men and women except where it is necessary to protect the foetus: in this connection, it proposes that a distinction be made between women capable of having children and those that are not (fertility and childbearing age).

As regards the ban on access to certain jobs (involving the use of lead), the EOC recommends that a scientific study be conducted, in view of the risks that men also incur as prospective fathers.

Lastly, as regards weight limits, new regulations are being studied in order to establish a non-discriminatory approach; the Health and Safety Commission is already working on this question.

As a general rule, the EOC is seeking to limit the tendency of employers to avoid recruiting women on grounds of inadequate sanitary facilities.

C. LEGAL REMEDIES

I. THEIR EFFECT ON THE IMPLEMENTATION OF THE DIRECTIVE

Article 6

"Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Article 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities".

186. In Belgium, legal remedy is provided by Article 131 of the Law of 4 August 1978, in pursuance of which any person who considers himself aggrieved may bring an action before the competent court or tribunal. Furthermore, a procedure is established under Article 134 of the Law providing for rapid handling of complaints against refusal of admission to vocational training, to avoid the candidate losing an academic year. Nevertheless, since this provision of the Law has not entered into force[1], the procedure has never been initiated.

Article 135 provides that the King may appoint committees with the task of delivering opinions to the competent courts or tribunals on disputes relating to the application of the Law; however, no such committee has yet been appointed.

Action to seek legal remedy may be brought by any individual who considers himself aggrieved and, equally, in accordance with Article 132, employers' organizations, trade unions in the public and private sectors and organizations representing self-employed workers are also able to do so.

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[1] See pages 21 and 121.

In principle, the burden of proof lies with the injured party, but Article 136(2) provides for the burden of proof to be reversed and imputed to the employer where the worker is dismissed or the terms of employment are unilaterally amended during the 12 months following the lodging of a complaint, in the case of dismissal or the institution of legal proceedings up to three months after the sentence has acquired the force of res judicata.

187. In Denmark

Any employee who has been exposed to discriminatory treatment may take legal proceedings in the ordinary courts. The action may be brought by the employee concerned or by his organisation.

Where the employee in question is covered by a collective agreement which includes a provision to ensure equal treatment, he should inform his trade union which will then take the matter before the competent industrial authority.

Self-employed persons and applicants who are not already employees, but who want to undergo vocational training, may - if exposed to discriminatory treatment - take the matter before the ordinary courts of law.

In accordance with the general procedural rules which apply under Danish law, cases concerning equal treatment are subject to the rule that it is at the discretion of the judges to consider any evidence submitted by the parties.

188. In France

1) Private sector

Any employee who considers himself discriminated against may, provided that such discrimination is prohibited, lodge a complaint before a criminal or civil court (magistrates' court or conciliation board).

Trade unions may also institute civil proceedings in respect of the same acts in order to defend the interests of an occupation as a whole.

The burden of proof lies with the complainant in accordance with the general principles of Franch Law.

For the record, the legislation does not cover the entire field of application of the Directive.

2) Public sector

Two types of action in particular may be brought before the administrative tribunals and the Council of State :

- an action where the court has unlimited jurisdiction, which aims at imposing a fine on the administration;
- an ultra vires action, which aims at having an illegal administrative decision quashed.

The action may be brought by the person concerned or a group defending the collective interest that the complainant considers to be injured.

The inquisitorial nature of the procedure enables the administrative judge to lighten the burden of proof when the complainant, with whom it normally lies, has difficulties in establishing proof.

189. In Ireland

The right of redress is granted to all persons, except in the case of excluded occupations.[1] The Commission gave notice to the Irish Government on 29 July 1980 to abolish these exceptions, since the Directive stipulates that the right of redress shall be granted to all persons who consider themselves wronged.

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[1] See page 49.

Cases are brought before the Labour Court (Section 19), which endeavours to settle the matter by conciliation or submits it to the Equality Officer; the Equality Officer conducts an investigation and draws up a recommendation which he conveys to the parties concerned and the Court.

The parties may introduce an appeal either against this recommandation or on the grounds that it has not been implemented (Section 21).

The Court then delivers a ruling :
- establishing whether or not discrimination has taken place;
- recommending a course of action;
- or awarding compensation where necessary.

An appeal against the decision on a point of law may be made to the High Court.

An employer who does not implement a Labour Court ruling is liable to a fine.

The Employment Equality Act 1977 has set up an Employment Equality Agency, which has certain powers (Sections 34 and 35).

The Agency is empowered to apply for a High Court injunction in cases of persistent discrimination. It can institute proceedings in certain cases and conduct investigations.

The burden of proof lies with the complainant, except in the case of unfair dismissal, in which it is for the employer to convince the Court that the employee was not dismissed because he or she wished to assert her rights. This does not apply as regards social security. The right to claim redress is an individual right, but this does not prevent the Court, after having duly investigated the case, from deciding that all or a number of women are entitled to equal treatment in compliance with the provisions of the Act and that the ruling applying to one of the members of the group also applies to all or certain other members of that group.

Action to claim legal redress can therefore be brought by individuals or groups.

Trade unions and employers' organizations can claim redress on behalf of the injured party.

190. In Italy, a person who has been been subjected to discrimination is entitled, in pursuance of Article 15 of the Law, to claim redress before the magistrate competent for the place where the offence was committed.

For the record, the legislation does not cover the entire field of application of the Directive. Action to claim legal remedy may be brought by the workers concerned or, by subrogation, by the trade unions in the sector concerned.

Workers in the private sector, the self-employed and candidates for private training courses are entitled to claim legal remedy and must bring their case before the local magistrate (pretore) - acting as a labour magistrate - in the ordinary courts. Public servants must, on the other hand, bring their case before the administrative tribunals.

The burden of proof lies with the employer, as in all aspects of labour relations.

191. In Luxembourg

The right to petition for legal remedy is provided for in Article 7 of the draft law and is extended to any person who considers himself to have been subjected to discrimination in the areas covered by the Directive.

The right to claim redress is individual; nevertheless, if the complaint concerns the application of the principle of equal treatment under a collective agreement, the trade unions that are party to the agreement may take part in the proceedings since the outcome of the case may effect the collective interest of their membership.

The burden of proof that there has been discrimination lies with the complainant.

192. In the Netherlands, legal remedy is not expressly provided for in the legislation on equal treatment; persons who consider themselves to have been wronged can, however, introduce an appeal for annulment before the competent court or request the court to rule, on the basis of an article of the Civil Code, that the act in question is illegal.

These rights are granted to employees in the private and public sectors, self-employed workers and persons undergoing training.

The right to petition for legal remedy is an individual right but in the case of job advertisements the action can be brought by legal persons that enjoy legal capacity and represent those who could otherwise avail themselves of the provisions of the law.

The burden of proof lies with the complainant.

The CNV considers that the trade unions should, in all instances of application of the Directive that concern employers, be able to introduce a claim for redress.

193. In the Federal Republic of Germany

There is a procedure enabling the worker who has been subjected to discrimination to put his case to a member of the works council so that the latter may seek to find a solution with the worker's superior (Article 84(1) of the Law on industrial relations at the workplace).

Workers in the private and public sectors
can institute proceedings before the labour court for breach of the Law adaptating legislation to Community law. Workers in the private sector can also bring actions before the industrial tribunals for violation of the Law on industrial relations and workers in the public sector can claim redress before the administrative tribunals for infringement of the Law on the representation of public service staff.

Furthermore, in pursuance of the general guarantee of legal defence provided by Article 19(4) of the Constitution, any citizen may, in accordance with the Law on the promotion of employment, bring an action before the courts to claim redress for alleged discrimination in the decisions of the employment authorities.

The right to petition for remedy is individual and trade unions and employers' organizations cannot exercise it on behalf of the injured party. Workers who are members of a trade union can, however, call upon a representative of their trade union to assert their rights before the industrial tribunals.

The burden of proof lies in principle with the party that institutes the proceedings; the Law adaptating legislation to Community law, however, reverses the burden of proof (Article 611(a)(1): it is for the employer to prove that different treatment is justified by material considerations other than sex or that a particular sex constitutes an essential requirement for the performance of an activity from which the worker is excluded - in the latter's opinion, through discrimination on grounds of sex.

There is a similar provision regarding equal pay (Article 612(3)). Legal remedy in respect of matters that are not covered by a detailed legal instrument can be claimed in pursuance of Article 3(2) of the Constitution.

For the record, the legislation does not cover the entire field of application of the Directive.

194. In the United Kingdom

Section 63 of the Act and Article 63 of the Order stipulate that any person who considers himself the victim of discrimination on the grounds of sex or marital status in the sphere of employment, including training, has the right to bring an action to claim redress before an industrial court.

This right is extended to all individuals in the public and private sectors, the self-employed and candidates for training.

A conciliation procedure is provided for.

In the other fields covered by the Act that do not relate to employment proper, such as training in schools, complaints are introduced before the county courts in England, Wales and Northern-Ireland and the sheriff courts in Scotland. Only individuals have the right to claim redress, which cannot be exercised collectively.

The complainant may be represented at the hearing by a person of his choice, for example a trade union representative or a barrister. The burden of proof lies with the complainant; however, in cases of unfair dismissal, as soon as the complainant has established that the dismissal has taken place, the burden of proof is reversed.

When the complainant has submitted sufficient proof, the respondant must submit proof in refutation.

In cases of indirect discrimination, when the complainant has submitted sufficient proof, the respondent must prove that the condition or requirement is justified on grounds other than sex.

The Trades Union Congress considers that the burden of proof should be reversed in all cases of discrimination on grounds of sex and that it should be for the respondent to establish that the complainant has not been the victim of discrimination; the Confederation of British Industry is, for its part, of the opinion that the present situation is satisfactory.

In view of the difficulties an individual might encounter in formulating a complaint, forms have been drawn up which the complainant may use, in pursuance of Section 74 of the Act and Article 74 of the Order, in order to challenge in writing the person he accuses of discrimination; this system can help the person who considers he has been subjected to discrimination to decide whether to institute legal proceedings and if so, enable him to formulate and put his case as effectively as possible. These forms are available to the public, the questions and answers can be admitted as evidence in the legal proceedings, and the absence of an answer or an evasive answer can be construed as indicating that a breach of the Act may have taken place.

The form made available to those concerned constitutes a valuable aid; is is clearly drafted and the questionnaire is very comprehensive.

II. INTERVENTION OF THE EQUAL OPPORTUNITIES COMMISSIONS IN LEGAL REMEDY PROCEEDINGS

195. The Commission on Women's Employment in Belgium and the Committee on Women's Employment in France cannot intervene in the proceedings. In Luxembourg, the question of whether or not to let the Committee intervene will be considered after the Law has been adopted. No Committee of this type exists in Italy or the Federal Republic of Germany.

196. In Ireland

The Employment Equality Agency has the power to conduct an official investigation in the employment sector when it discovers a practice in breach of the Employment Equality Act 1977 or the Anti-discrimination (Pay) Act 1974 on the one hand and to serve non-discrimination notices ordering certain discriminatory practices to be discontinued and ensuring enforcement of the Acts on the other hand (Sections 39-46).

The Agency can refer a case to the Labour Court :

1) Where it has been established that, even if no complaint has been made, persons have been subjected to discrimination in a general manner; or

2) on behalf of an individual where it proves unreasonnable to consider that the individual concerned is capable of instituting proceedings (Sections 20 and 36).

The Agency is empowered to seek a High Court injunction in cases of persistent discrimination.
It can institute proceedings in the following cases :

- discriminatory advertisements;
- pressure exerted on individuals;
- general policy of discrimination.

197. In the Netherlands

A special commission on equal treatment in employment has been set up; it includes representatives of the administration, employers and employees and is chaired by an official.

Its business is to :

(1) inform anyone who wishes to know whether he or she has been the object of illegal discrimination or whether he or she is guilty of such discrimination or whether he or she has been actively discriminated against or discrimination has resulted through a lack of action. Unless it takes the view that a request for an opinion seems obviously without foundation, the commission is empowered to open an enquiry. If a case involving a presumed discrimination has already been brought before a court, the commission may acquaint the individual appointed to settle the dispute with its opinion.

(2) If the commission is requested to make its opinion public in respect of a discrimination, it informs the person making the request and the person accused of discrimination. If the commission considers, on the basis of an investigation, that the discrimination may be freely discussed, it also informs the Ministries concerned.
If the commission deems it necessary, and after giving the individual alleged to have practised the discrimination an opportunity to give his or her opinion on the matter, can also inform the employers' and workers' organizations concerned or the professional organizations, as well as the works council or councils concerned.

(3) The commission may, on its own initiative, request the Minister for Social Affairs to initiate an enquiry to determine whether any of the prohibited discriminations referred to by the law have been practised.

(4) The commission sends an annual operations report to the Ministers concerned, who may publish all or part of it.

(5) To carry out its task, the commission may call on the assistance of one or more officials, assigned for that purpose by the Minister of Social Affairs, to obtain whatever information it deems useful.

Everyone is required to provide these officials with whatever complete and specific information and whatever documents they regard as desirable. If the information and the documents requested are withheld, the Minister of Social Affairs may demand them for the commission's use.

By the I July 1980, forty-two applications had been made to the commission.

The commission replies to specific questions which cannot be considered as requests for an opinion. In three cases, however, applications were received in the form of a request for an opinion and were treated as such.

A commission similar to that for the private sector was set up for the public sector by the law of 2 July 1980.

198. In the United Kingdom

Section 75 of the Sex Discrimination Act and Article 75 of the Sex Discrimination (Northern Ireland) Order lay down that the Equal Opportunities Commissions may assist actual or prospective complainants where complaints raise a question of principle or where it is unreasonable to expect the complainant to deal with the case unaided.

Assistance may include :

(a) giving advice;
(b) procuring or attempting to procure the settlement of any matter in dispute;
(c) arranging for the giving of advice or assistance by a solicitor or counsel ;
(d) arranging for legal representation;
(e) all other forms of assistance.

There has been considerable recourse to the Equal Opportunities Commission; so far it has recorded requests for assistance.

Section 57 of the Sex Discrimination Act and Article 59 of the Sex Discrimination Order lay down that the Commissions are empowered to conduct formal investigations for any purpose connected with the carrying out of their duties. If they become convinced that there has been a breach of the law, they are empowered to serve a "non-discrimination notice" on the person responsible (Section 67 of the 1975 Act and 67 of the 1976 Order).

This notice requires the person in question to comply with the law and inform the Commission that he has effected the changes deemed necessary. The non-discrimination notice may lay its recipient open to legal action by the Commission to obtain a court injunction or order within the next five years, if he continues to flout the law. A register of non-discrimination notices must be kept by the Commission and be open for inspection.

199. In Denmark

The Equal Treatment Commission must be consulted on all matters concerning equal treatment. It issues recommendations when it believes there have been breaches of the law and reports the cases which need to be referred to the courts.

The Commission has not yet been able to compute the number of applications which have been made to it, but it seems to be a large one.

III. CASES BROUGHT TO COURT

200. Little information is available for Belgium, Italy and the Federal Republic of Germany on this subject, but their Governments state that there has been little recourse to the courts.

In France, the authorities report that five cases have been brought before the courts since the law came into force on 11 July 1975; in the Netherlands, two cases have been recorded, one of which revolved around the fact that the inland revenue authorities were employing women only for part-time work.

The small number of cases brought before the courts is generally regarded as being due to the fact that the laws in question came into force only recently; furthermore, in France and the Netherlands (in the latter case, in respect of the public sector), the Governments claim that it is due to the low rate of discrimination.

In a comment on the law, the Italian trade union organizations attribute the lack of recourse to the courts, to the fact that the trade union organizations have not yet been sufficiently active in this field : "it is difficult, after having regarded women as a secondary factor, to consider their right to work on an equal footing".

The Belgian Commission on Women's Employment believes that the absence or small number of court cases so far may be attributable to other reasons, such as that :

(i) working women themselves are not always aware of discriminations to which they are subjected; it is up to them to prove that they have been discriminated against in comparison with male workers;

(ii) in many cases, actual or prospective female workers (see case of access to employment) are afraid to put their grievances before a court because they are discouraged either by the slowness of the courts or because they do not expect much help from the court's

ruling, for, while a judge may impose civil or administrative penalties, he cannot oblige the employer to hire a woman applicant who has been discriminated against;

(iii) as regard access to vocational training, the emergency procedure has not yet been applied for lack of an implementing ordinance determining exactly to whom it applies;

(iv) where discriminatory situations arise, the trade union organizations prefer to follow the customary procedure; this means that disputes are solved by negotiation rather than by direct recourse to the courts.

In the Member States where the equal treatment commissions intervene, far more cases are brought before the courts.

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In Ireland, a total of 50 cases have been brought before the courts since the law was passed, four of which were settled by conciliation, 45 were submitted to the Equality Officers; these have already issued 26 recommendations, 13 cases have been appealed, nine decisions have been taken by the Labour Court, while eight cases have been withdrawn.

The number of cases brought before the courts is gradually growing as people become more aware of their rights.

In the United Kingdom, where the Sex Discrimination Act preceded the Directive, the number of cases brought before the courts is the largest and a study is being carried out on this matter. As this is the only Member State where the number of cases brought before the courts is fairly high, it is worth taking note of the statistics provided on this matter. Between 1976 and 1979, there were 821 applications to the industrial tribunals; in the same period there were 47 such applications in Northern Ireland. One fourth of the applications were made by men and two thirds of the disputes were settled by conciliation. Between 1976 and 1979, 49 cases were appealed, four of them in Northern Ireland.

One cannot be but struck by the fact that litigation has developed only in the United Kingdom; the assistance given by the Equal Opportunities Commission undoubtedly has something to do with this. Nevertheless, despite the large number of cases dealt with, the EOC believes that many complainants are prevented or dissuaded from taking action for the following reasons:

(i) the complexity of the Act and in particular the concept of indirect discrimination;
(ii) the fact that the numerous exemption clauses have been interpreted rather generously by the courts;
(iii) reluctance to make a public appearance in court;
(iv) the inadequacy of the measures which can be taken: for example, reinstatement cannot be ordered, compensation for prejudice suffered is minimal and there is no compensation for indirect discrimination unless it was intentional;
(v) the difficulty of proving discrimination when the burden of proof falls on the victim.

The EOC for Northern Ireland adds to the above: lack of self-confidence on the part of women, the pressures exerted by others and the failure of some of the action taken.

In Denmark, the number of cases brought before the courts is likewise fairly large.

For example, a court found in favour of a woman who had all the necessary qualifications for employment as a sailor, but had been turned down on the grounds that the ship stopped over in foreign countries; in another case, the Supreme Court found against an employer who pointed out that his vessel lacked adequate sanitary facilities, even though an earlier regulation laid down that women could not be employed on board ships unless there were special sanitary facilities for them. There was thus a contradiction between this regulation and the equal treatment legislation - which in this case prevailed over the regulation.

In addition, a plaintiff who was dismissed on account of illness in connection with pregnancy was awarded compensation by a court of first instance which held that it was a violation of the provisions of the Act on Equal Treatment.

There were a number of verdicts concerning discriminatory job offers. For example, an advertisement for a "woman office worker (male or female)" was declared illegal.

IV. PENALTIES

201. Although the Directive does not oblige the Member States to provide for penalties to back up their implementing measures, most Member States have in fact done so :

(i) penal : in Belgium (in some cases), in France (in some cases), in Italy, Denmark and the United Kingdom (in some cases) and in Ireland (in some cases);

(ii) civil : (compensation for victims of discrimination) in Belgium, Ireland, France, the Federal Republic of Germany (though not in all cases), the United Kingdom, the Netherlands (general recourse for illegality) and Denmark;

(iii) administrative : (administrative fines) in Belgium.

Furthermore, the Belgian law empowers judges to issue injunctions, so as to end - within whatever period of time they may set -situations regarded as discriminatory. For civil servants, however, the courts can only guarantee subjective rights, though the Council of State can annul a disputed administrative measure.

In the United Kingdom, in the employment field, industrial tribunals may make an order declaring the rights of the parties, may award compensation, and may make a recommendation that the defendant take particular action to do away with or reduce the discrimination in question. Where a recommendation is not complied with, compensation may be awarded or increased.

In Italy, the law empowers a judge who concludes that the Law has been broken to issue an immediately executable order, giving grounds, calling on the culprit to comply with the law and make up for the effects of his breach of it; in the event of non-compliance, penal sanctions may be applied.

The draft law in Luxembourg provides for penal sanctions both for employers and publishers and distributors of job offers.

D. PROTECTION AGAINST DISMISSAL

Article 7

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

202. Where there has been recourse to the courts, there is no doubt that the extent of protection against dismissal as a reaction to the lodging of a complaint would be a major feature of the system; however, such is not the case except in three Member States. This protection is organized as follows in the Member States.

203. In Belgium, Article 136 of the law of 4 August 1978 provides for a specific system of protection; the employer may not dismiss a worker or unilaterally change the working conditions of a worker who has registered a complaint within the undertaking or with the social inspectorate or who has initiated legal proceedings under equal treatment legislation. If an employee is nevertheless dismissed or if his or her working conditions are changed, there is a procedure by which he or she can seek reinstatement.

In place of reinstatement, the employer can be sentenced to pay either flat-rate compensation amounting to six months's pay or compensation amounting to the prejudice actually suffered. This protection applies to workers in both the public and private sectors.

204. In Denmark

The law on equal treatment lays down that employers must compensate employees whom they dismiss for demanding equal treatment.

The compensation may not exceed 26 weeks's pay. The amount is fixed on the basis of the employee's length of service and the circumstances involved.

Since there is no precedent in Danish law for compensation in kind in the employment field, there is no provision for reinstatement.

205. In France

(1) Private sector

Any dismissal for this reason would be a breach of the law and would entitle the dismissed person to damages.

Furthermore, the French authorities are drafting a law providing for additional measures aimed at protecting workers against reprisals by their employers. The present system already enables trade unions to initiate civil proceedings to defend the collective interests of an occupation or group.

(2) Public sector

Compliance with the principle of equal treatment is ensured by the administrative tribunals and the Conseil d'Etat (Court of Appeal), to which two forms of appeal may be submitted:

- an appeal to obtain financial penalty from the Administration,
- an appeal for the purpose of annulling an illegal administrative decision, which has exceeded its competency.

Proceedings may be instituted from the inside or by a group defending a collective interest that the claimant considers has been injured. The inquisitorial nature of the procedure enables the courts to lighten the burden of proof when it is difficult for the claimant to establish such proof.

206. In Ireland, an employer who dismisses a worker who has initiated action in this field on behalf of himself or others is liable to a fine; in this case the burden of proof is reversed.

The dismissed worker may either have his case examined by the Labour Court or bring his case before a regular court; if he chooses the latter option, he can no longer apply to the Labour Court.

The dismissed individual may be resinstated in his job or employed in another job acceptable to him, or receive reasonable compensation (not exceeding the equivalent of 104 working weeks).

207. In Italy, there is no specific protection in the law on equality; however, the general protection provided by Law N° 300 of 20 March 1970 against illegal dismissal may be invoked in the case of discrimination based on sex.

208. In Luxembourg

Luxembourg's draft law provides for protection against any dismissal "the main reason for which is based on the employer's reaction to:

(i) a reasoned complaint made either within the undertaking or private or public department which employs the worker or to the Inspectorate of Labour and Mines;
(ii) an intervention by the Inspectorate of Labour and Mines;
(iii) legal proceedings

aimed at enforcing compliance with the principle of equal treatment in the sectors referred to in this law."

The worker may be awarded damages, but the Luxembourg draft law does not provide for reinstatement.

209. In the Netherlands

The law on equal treatment of men and women lays down that termination of employment by an employer because a worker (male or female) has availed himself or herself of his or her right to complain through legal or other channels against a presumed discrimination is null and void.

The worker may claim his dismissal to be invalid by notifying the employer within two months of termination, where the employer has terminated his employment by means other than legal notice (?).

The employer is not liable to pay compensation. This protection applies only to workers in the private sector. The employer may not dismiss the worker and must pay him his wages; such protection applies to workers in the private sector (Law of 1 March 1980) and in the public sector (Art. 2 of the Law of 2 July 1980).

210. In the Federal Republic of Germany

Under Article 612(a) of the Civil Code (law adapting German legislation to Community law), an employer may not discriminate against a worker in any agreement or any measure because the worker exercises his rights of legal recourse. This prohibition also implies a ban on dismissal. Under Article 84(3) of the Law on industrial relations at the place of work, a worker must no suffer any prejudice because he or she has registered a complaint.

Furthermore, the law on protection against dismissal provides protection for such employees.

Any action taken by the employer contrary to the prohibition is rendered null and void by Article 134 of the Civil Code; a dismissal which is not justified socially within the meaning of the law on protection against dismissal is without legal validity. Furthermore, an infringement by the employer may entitle the worker to damages, depending on the case. This protection applies only to workers in the private sector.

211. In the United Kingdom

Reprisals against a person who, for example, has initiated legal proceedings as provided by the law, has provided proof or information in connection with proceedings initiated by others or has accused someone of breaking the law, are considered to be discriminatory acts (Section 4 and Article 6). Furthermore, protection against retaliatory dismissal is provided for persons working no less than 16 hours per week by the Employment Protection (Consolidation) Act of 1978 and, in Northern Ireland, by the Industrial Relations Order of 1976.

E. INFORMING WORKERS

Article 8

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

212. In Belgium, the law contains no provision for this; the following information has been widely disseminated, mainly by the employers' organizations, the trade unions and the mass media :

(i) a practical guide to drafting a non-discriminatory job offer or advertisement;
(ii) a pamphlet explaining the law of 4 August 1978 in simple terms;
(iii) radio and television spots;
(iv) information meetings for social inspectors;
(v) posters in numerous public places, schools, and employment offices calling on women to broaden their choice of occupations.

Generally speaking, this information was drafted by the Commission on Women's Employment or in collaboration with the secretariat of that body.

213. In Denmark

The law contains no provision for this.

When the law was passed, the public was informed by articles in the daily newspapers.

Furthermore, the Ministry of Labour and the Equal Treatment Commission have published pamphlets explaining the law in simple terms.

These documents have been widely disseminated, particularly in libraries, employment offices, etc.

214. In France

(1) Private sector

The law which is being drafted provides for information at the workplace. The National Employment Agency also informs employees and job-seekers about the ban on discrimination.

(2) Public sector

The provisions applying to this sector are brought to the attention of the persons concerned by means of the Official Journal, bulletins published by civil service departments and circulars sent round all the ministries.

215. In Ireland

The law contains no provision regarding information.

The provisions of the law of 1977 have been and will continue to be made widely known to the public through the mass media and brought home to both workers and employers by a widespread distribution of explanatory pamphlets.

The Ministry of Labour has published an explanatory booklet for employers and workers, giving general advice about the provisions of the law. This booklet has been distributed to all Government ministries, public bodies, the Irish Congress of Trade Unions, the Irish Federated Union of Employers and other employers' associations, as well as individual trade unions with a large number of women members. In addition, this literature is available free of charge at offices of the National Manpower Service (public placement and guidance service) throughout the country.

The Employment Equality Agency, which began its work on 1 October 1977, has published a number of pamphlets on the 1977 Employment Equality Act and on legislation concerned with equal pay. These pamphlets deal with the following subjects :

(i) equal opportunities (a guide for employers);
(ii) equal opportunities (a guide for employees);
(iii) guidelines on equal pay for women;
(iv) an equal pay index for the use of employers;
(v) the Employment Equality Agency - its role and functions.

The Agency has distributed these pamphlets widely among the public and all the bodies mentioned in the paragraph above. It has likewise conducted radio and television campaigns, put up posters in public transport, organized seminars and set up information centres in the main towns.

216. In Italy, the law contains no provision regarding information. A circular has been distributed in the public sector by the Government.

The Italian Union of Labour also reports that the trade union organizations have published a booklet on the scope of Law No 903.

Furthermore, when the collective agreements were renewed, the principle of an information system covering all levels was introduced. In its report on application of the law in 1978, the Ministry of Labour and Social Security notes that this requires the compilation at all levels of information on the situation and prospects on the labour market with specific reference to women and the factors required for an active vocational training policy; this applies in particular to the machinery manufacturing sector, the public chemical sector and the textiles sector. In the textiles sector, a joint examination has been scheduled on employment structure, breakdown by sex, foreseeable developments and the application of Law No 903.

217. In the Netherlands

Since the law came into force, the authorities have distributed pamphlets informing both employers and workers. At the same time, attention was drawn to the new law via advertising spots on television.

A working party has been set up to think about the naming of certain occupations; its purpose is to propose an occupational nomenclature which is free of discrimination based on sex.

As regards the public sector, in so far as existing legislation applies to it, the Interior Minister has drafted a circular intended for his colleagues and the decentralized public-law organizations which sets out the contents of the law and lists the existing administrative provisions which continue to be discriminatory.

218. In the Federal Republic of Germany

The law adapting German legislation to the Directive received a great deal of publicity, the draft law and the accompanying communiqués having been published in the social policy bulletin of the Ministry of Labour and Social Affairs and in the Federal Labour Gazette (Bundesarbeitsblatt). The media also gave considerable coverage to thismatter.

As regards the dissemination of information to workers, the law provides that German employers must post a copy of the law at an appropriate place in the undertaking or make the text of the law available to theirs workers.

219. In the United Kingdom

The Act contains no provision on this matter. Guides and pamphlets published by Government misnistries have been widely distributed and the aims of the Act have been popularized by the media.

The EOC has published a series of guides, reports, statistics and studies on education and training and protective legislation, as well as periodical bulletins. The EOC in Northern Ireland has also published posters. A number of seminars on this subject were also organised in Northern Ireland for various interested groups. The TUC has distributed pamphlets to its members.

The mass media have been widely used for information purposes.

F. PROCEEDINGS AT COMMUNITY LEVEL IN CONNECTION WITH THE APPLICATION OF THE DIRECTIVE

I. INFRINGEMENT PROCEEDINGS

200. In addition to the proceedings instituted with a view to persuading three Member States to adopt the necessary implementing measures, the Commission has since instituted proceedings against six Member States in connection with specific points arising from a preliminary analysis of the measures adopted pursuant to the Directive. The Commission reserves the right, however, to take such other steps as it may see fit especially; in the light of the findings of this Report.

(a) Failure to implement the Directive

1. Luxembourg :

   Formal notice to adopt specific measures implementing the Directive : 19 July 1979.

   Reply indicating that the Government had no plans to introduce such measures : 30 October 1979.

   Reasoned opinion : 26 March 1980.

   Reply with notification of a draft law : 25 April 1980.

   Request for additional information and comments by the Commission : 23 July 1980.

   As matters stood on 30 September 1980, the draft law has still to be adopted.

2. Netherlands :

   Formal notice to adopt specific measures implementing the Directive : 10 May 1979.

   Reply with notification of a draft law : 4 July 1979.

   Adoption of two laws : Law No 86 (private sector) on 1 March 1980
   Law No 384 (public sector) on 2 July 1980.

3. Federal Republic of Germany :

Formal notice to adopt specific measures implementing the Directive : 10 May 1979.

Reply with notification of a draft law : 9 July 1979.

Law adopted on 13 August 1980 **(all work relationships governed by private law).**

(b) Infringement proceedings in connection with specific points

1. Belgium : formal notice : 30 July 1980.

Grounds :

(a) Failure to give effect to Article 4 of the Directive (equal treatment as regards access to vocational guidance and training)

(b) Leave for bringing up children granted only to female employees in the public sector.

2. Denmark : **Royal Decrees are currently being drafted.**

Grounds :

(a) Principle of equal treatment only applies in respect of men and women employed at the same workplace.

(b) Some restrictions on equal treatment as regards access to vocational training.

3. France : formal notice : 30 July 1980.

Scope within the public service for the recruitment of either men or women alone in some cases and for separate recruitment with different requirements for the two sexes in others.

4. Ireland : formal notice : 29 July 1980.

(a) Midwifery profession open only to women.

(b) Restrictions on the right of legal redress.

(c) Certain types of employement excluded from the application of the principle of equal treatment.

5. Italy : formal notice : 30 July 1980.
   (a) Equal treatment only compulsory in relation to certain aspects of conditions of employment.
   (b) Only women entitled to three months' leave following the adoption of a child.

6. United Kingdom : formal notice : 29 July 1980.
   (a) Discriminatory provisions contained in collective agreements and rules governing access to trades/professions not rendered null and void by law.
   (b) Employment in private households and small businesses excluded.
   (c) Certain restrictions on access to the midwifery profession for men.
   (d) Northern Ireland : same objections.

II. CASES BROUGHT BEFORE THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

221. In Case 68/90 (Susan Jan Worringham and Margaret Humphreys v. Lloyds Bank), referred to the Court of Justice on 21 February 1980, the Court of Appeal, London, requested a preliminary ruling on the following questions :

1. Are :

(a) contributions paid by an employer to a retirement benefits scheme or

(b) rights and benefits of a worker under such a scheme "pay" within the meaning of Article 119 of the EEC Treaty ?

2. Are :

(a) contributions paid by an employer to a retirement benefits scheme or

(b) rights and benefits of a worker under such a scheme "remuneration" within the meaning of Article 1 of Council Directive 75/117/EEC of 10 February 1975 ?

3. If the answer to question 1 or 2 is in the affirmative, does Article 119 of the EEC Treaty or Article 1 of the said Directive, as the case may be, have direct effect in the Member States so as to confer enforceable Community rights upon individuals in the circumstances of the present case ?

4. If the answers to questions 1 and 2 are in the negative :

(i) are

(a) contributions paid by an employer to a retirement benefits scheme; or

(b) rights and benefits of a worker under such a scheme within the scope of the principle of equal treatment for men and women as regards "wording conditions" contained in Article 1(1) and Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 ?

(ii) if so, does the said principle have direct effect in Member States so as to confer enforceable Community rights upon individuals in the circumstances of the present case ?

As matters stood on 31 August 1980, the Court had still to give a ruling in this case.

III. COMPLAINTS SUBMITTED TO THE COMMISSION

222. In addition to numerous requests for information, the Commission has received several complaints; two of these are now under investigation, whilst it has been decided to take no further action in the other two cases.

Under investigation

- Complaint No 87/80 brought on 26 June 1980, by Mr E. Glinne, Member of the European Parliament, in connection with the refusal on the part of the Collège of Nautical Strudies in Antwerp (Belgium) to admit girls.

- Complaint No 60/80 brought on 16 March 1980 be a man refused admission to a school for midwives (France). **A law is being discussed by Parliament in order to end this discrimination.**

No further action

- Complaint No 168/79 brought on 12 September 1979 by a man refused admission to a school for beauticians (France). The Commission was unable to investigate because of the complainant's failure to supply the necessary details.

- Complaint No 20/79 brought on 27 July 1979 in conjunction with a written question by Mrs Hoff and others concerning discrimination against women employed by the British Army in the Federal Republic. In reply to the Commission's inquiries, the United Kingdom Government denied the complainant's allegation that there was a regulation requiring the dismissal of any female employee marrying a German.

G. OVERALL ASSESSMENT

223. This chapter outlines such assessments of the situation as have been communicated to the Commission by national governments,[1] the two sides of industry and equal opportunities commissions and reviews the activities of the European Parliament in connection with the implementation of the Directive.

224. Progress achieved

The adoption of laws on equal pay in almost all the Member States constitutes, it is generally agreed, the essential foundation for the promotion of equal opportunity.

The publicity accompanying the adoption and implementation of these laws, the sometimes heated debate and above all the efforts undertaken with a view to making equal pay a reality (which have been substantial, particularly in those countries where equal opportunities commission have been established) have undoubtedly created, throughout the Community, a general awareness of the need to ensure in future that women are treated equally in relation to employment.

Several Member States stress the extent to which the public consciousness has awoken to the problem.

Real progress has been achieved since the adoption of the Directive, notably as regards access to employment and vocational training and the introduction of machinery for the revision of protective legislation, some of which has been rendered obsolete by changes in technology and attitudes.

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[1] See table on page 5.

In some countries, the two sides of industry have recognized the need for action within the individual firm to promote equality of opportunity.

In several Member States (B, IRL, DK, N) a vigorous campaign has been conducted with perceptible though sometimes modest results, against discrimination in job offers.

In some countries, projects specifically directed towards achieving greater diversification in the employment and vocational training of women have been carried out with the support - in the case of projects relating to training - of the European Social Fund and the European Centre for the Development of Vocational Training (B, FR, IRL, UK, D).

The authorities in certain Member States have taken concerted steps to open up to women those public sector jobs hitherto reserved for men. Their efforts in this connection are beginning to bear fruit, though progress is very slow (B, I, D, NL, DK).

Efforts are also being made in parallel to achieve similar results in the private sector, via either premiums to employers (NL, D, DK) or the political will to provide jobs in proportion to the number of men and women (NL).

The Directive has also had an impact on secondary education. The question of improving careers guidance for girls with a view, in particular, to ensuring that they are not simply directed towards traditionally female occupations has been raised in B, FR, D and NL.

Finally, certain discriminatory practices have been eliminated (e.g. NL : the practice of making redundant first those workers without families to support).

It should be pointed out that men are also using the Directive, and more particularly the provisions regarding legal remedies, as a means of gaining access to the few types of employment previously closed to them (nursery school teacher, midwife) or obtaining benefits previously granted exclusively to women in connection with family responsibilities (leave to bring up a child).

225. Adverse effects

The answer of the Governments, the social partners and Committees/ Commissions of equality give rise to the belief that the Directive has had only positive effect.

It is, however, felt in certain quarters that special efforts/ attention are still needed in some areas and concern has been expressed about the possible effects of an egalitarian attitude on the part of the employment services (UK).

Similarly, the Unione Italiana del Lavoro (one of the Italian trade union federations) points out that there is a tendency for women to find employment only at the lowest levels in those sectors previously closed to them.

226. Difficulties and outlook

Generally speaking, the problem is not so much one of adverse effects as of obstacles still to be overcome.

In order to avoid making this report more unwieldy than is necessary, a brief resumé only will be given here, since much work has been done in this field and the findings are already well known[1].

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[1] See, for example, the proceedings of the High Level Conference on the Employment of Women organized in April 1980 by the OECD.

- Attitudes : All concerned are agreed that it will take a long time to bring about the necessary changes in attitudes and that this task will necessitate a fully coordinated campaign far beyond anything hitherto attempted in the Member States. Plans are, however, under consideration with this aim in view.

- In its report on progress achieved during the first year in force of the new law, the Italian Ministry of Labour and National Insurance draws attention to the tensions and difficulties encountered in the course of attempts to open up to women sectors of employment from which they have hitherto been excluded. Aside from objections raised by employers along the lines that female labour is expensive, liable to absenteeism, etc., problems have been caused both by male workers who feel themselves threatened and, indeed, by the marked reluctance of women themselves to take jobs traditionally reserved for men. Similar points are made, at some length, by the Equal Opportunities Commission.

  The Unione Italiana del Lavoro reports that trade organizations have shown little enthusiasm for promoting equal treatment because of a socially conditioned emotional reaction against the idea of women performing what are regarded as "men's jobs".

  The Equal Opportunities Commission drawns attention to the repercussions of the economic crisis, which has led management and labour to concentrate their efforts on preserving jobs, thereby impeding attempts to modify patterns of employment.

  In a pamphlet mentioned[1], the Italian unions draw attention to the need for a fundamental change of attitude on the part of the trade union movement in general, which has hitherto regarded women as of purely secondary importance on the labour market and has effectively ensured their exclusion from the negotiation of conditions of employment in all countries by failing to appoint female union officials.

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[1] La legge di parità : bilancio del 1° anno, C.G.I.L. Februari 1979.

On its comments on a study on discrimination[1], the French Government concludes that "the elimination of discrimination in employment entails a reassessment of the organization of society and a redistribution of parental tasks between husband and wife".

The Belgian, Danish and German Governments, the Dutch trade union and the Belgian Commission on Women's Employment all stress the difficulties arising in connection with the care of children under the age of 3 and, indeed, the fact that family responsibilities in general continue to represent a very heavy burden on women.

One of the Dutch trade union federations emphasizes the difficulty of changing male attitudes to family responsibilities. The idea that the man is the head of the family remains firmly entrenched, a fact which explains a number of discriminatory provisions in, for instance, collective agreements.

Several bodies feel that greater impetus needs to be given to the campaign to promote equality of opportunity.

The Irish Employment Equality Agency stresses the need to place adequate funds at the disposal of the bodies responsible for promoting equal treatment.

Women working in agriculture have also made their voices heard via COPA, arguing that the special nature of their problems calls, as a rule, for special action. They stress in particular the situation of farmers' wives, whose work is not recognized as an occupation and whose training continues to be biased towards traditional roles.

The report is made to deal specifically with the different aspects of achieving equal pay for this important category of female workers, since the replies to the Commission's questionnaire were not received in time to be taken into account in this document.

A variety of plans and schemes are being considered in the Member States with a view to resolving the outstanding problems. Thus, the authorities in a number of countries deem it essential, after cataloguing the various forms of discrimination and analysing patterns of employment over the economy as a whole, to put forward positive measures aimed at complementing the legal provisions.

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[1] P. 14.

Quota arrangements and financial assistance to either employers or female workers are under consideration in several countries (DK, D, NL) as possible ways of encouraging access to employment or the diversification of training.

Certain governments (B, DK, FR) have indicated that, given the decisive role which education plays in conditioning attitudes, they plan to tackle the problem at its roots - in schools, teacher training, educational curricula, etc.

In several countries, the trade union organizations have undertaken to draw up programmes designed to bring their structures and attitudes into line with the principle of equal treatment.

The Danish authorities are planning to create a number of posts for "equality officers" within the placement services. These equality officers will be responsible on the one hand for coordinating and encouraging activities aimed at improving the situation of women and on the other for discouraging discriminatory practices.

The majority of those taking part in the Manchester Conference called on the Commission to put forward a Community line on "positive action" to end the segregation of jobs and training and to make equality of opportunity a reality.

In a working paper recently presented to the European Parliament's "Ad Hoc" Committe on Women's Rights the Commission stresses that :

"At the present stage of progress towards equality between men and women it is important, in parallel with legislative action, to seek out ways of giving more emphasis to and implementing, "indirect" strategies to achieve equal opportunity. Such strategies are based on the assumption that discrimination is inherent in the very operation of systems related to the Labour Market, or is perpetuated by

obstacles ancilliary to the labour market and which prevent the translation into fact of equal opportunity in employment : for example, the insignificant number of women in responsible posts, the lack of training for certain jobs, domestic and family responsibilities.

It therefore seems necessary to continue to promote and expand "positive" actions (to supplement existing systems of legal recourses and penalties) already under way in the ESF framework and the education and information policy. Above all, new areas of action must be identified in close cooperation with the national structures specifically responsible for implementing the principle of equal treatment for men and women (committees on women's employment, equality, etc.) together with the authorities and the two sides of industry."

227. The Directive and the European Parliament

The Members of the European Parliament have shown a lively interest in the application of this Directive, one expression of this being their efforts to obtain information via the "Ad Hoc" Committee on Women's Rights regarding the implementation of the Directive in the individual Member States - a question which forms the subject of a report submitted to the Committee by Ms May-Weggen[1].

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[1] Doc. EP 67.021 of 25 August 1980.

Members of the European Parliament have also tabled a large number of questions relating either to the application of the Directive itself or to the themes on which it touches.

Taking 1979 and 1980 alone, questions have been asked on the following points[1]:

- No 15/79 (21 March 1979) by Ms Krouwel-Vlam and Mr Albers : possibility of introducing Community rules for night work with a view to improving the integration of women in the work porcess.
- No 290/79 (27 July 1979) by Ms Lizin : need to follow up the provisions of Directive 76/207 concerning equal treatment as regards access to vocational training by a Directive aimed at eliminating discrimination throughout the educational system.
- No 310/79 (27 July 1979) by Ms Hoff and others : regulation entailing discrimination on grounds of marital status against women employed by the British Army[2].
- No 319/79 (31 July 1979) by Ms Lizin : conflict between arguments put forward in a study on unemployment produced by the Commission and the latter's public statements on the question of equal treatment for men and women.
- No 528/79 (17 September 1979) by Mr O'Leary : extent of improvement brought about by equality legislation enacted in the Member States (pursuant to the Directive).
- No 529/79 (17 September 1979) by Mr O'Leary : Commission's intentions as regards consultation with trade unions and women's organizations with a view to ensuring that equality legislation is observed.
- No 590/79 (27 September 1979) by Ms Cresson : infringement proceedings for failure to apply the Directive.
- No 918/79 (24 October 1979) by Ms Roudy and others : application by the Member States of the (three) Directives on equal treatment for men and women in the field of employment.

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[1] Several of these questions also relate to Directive 75/117 (equal pay).

[2] It transpired on investigation that there was no regulation in force which would entail discrimination along the lines alleged.

- No 1128/79 (15 November 1979) by Ms Wieczorek-Zeul : onus of proof in cases where discrimination against women contrary to one of the (three) Directives is alleged.
- No 1311/79 (11 December 1979) by Mr Albers : practical application of the Directive by the Commission in relation to its own staff.
- No 1359/79 (12 December 1979) by Mr Albers and Ms Krouwel-Vlam : incompatibility between the regulation on the manning of vessels using the Rhine and the EEC Directives on equal treatment.
- No 1397/79 (18 December 1979) by Mr Seal : compatibility of immigration rules proposed by the United Kingdom with the principle of equal treatment for men and women.
- No 1428/79 (21 December 1979) by Ms Lizin : application of the Directive in the Member States as regards offers of employment.
- No 1455/79 (3 January 1980) by Ms Lizin : failure on the part of Belgium to apply the provisions of the Directive as regards access to vocational guidance and training.
- No 1589/79 (23 January 1980) by Mr Glinne : statistics available in connection with the application of the Directive in the Member States.
- No 1706/79 (11 February 1980) by Ms Lizin : compatibility of the proposed Directive on the protection of workers from harmful exposure to metallic lead, which lays down different standards for men and women, with Directive 76/207.
- No 1914/79 (6 March 1980) by Ms Clwyd : discrimination against women in the Commission and the Council.
- No 24/80 (March 1980) by Ms Lizin : compatibility of the Directive on the right of establishment and equivalence of diplomas for midwives with Directive 76/207.
- No 458/80 (6 May 1980) by Mr Glinne : refusal on the part of the College of Nautical Studies in Antwerp (Belgium), contrary to Directive 76/207, to admit girls.
- No 623/80 (3 July 1980) by Ms Roudy : (idem 1706/79).
- No 905/80 (21 July 1980) by Ms Hoff and others : adequacy of the law adopted on 25 June 1980 in the Federal Republic to give effect to Directive 75/117 and 76/207.
- No 1204/80 (14 August 1980) by Ms Lizin : compatibility of legislation banning women from underground work in coal mines whatever their qualifications with Directive 76/207.

CONCLUSIONS

1. The production of this report has given the Commission the opportunity of noting with pleasure the importance attached by Member States to Community action to improve women's integration in the working world. The Commission is aware, however, that although Directive N° 76/207 provides the legal framework for a series of measures to provide equal treatment for both sexes, it also has its limitations. It was for this purpose that it organized the Manchester Conference in May 1980 which convened women's equal opportunities committees and commissions from all the Member States. The objective was indeed to assess results obtained, pinpoint inadequacies of Community instruments and identify obstacles encountered, in order to define the guidelines for future action.
Needless to say, the information gained through this report will contribute to the Commission's role as an instigator of action.

   The Commission's aim in producing this report has been to assemble as much information as possible with a view to assessing the situation with respect to the transposition into national law in the nine Member States of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions.

   The information on which this report is based comes from a number of sources. To begin with, the Governments of the Member States by and large produced detailed replies to the Commission's questionnaire. Secondly, the various commissions on women's employment and equal opportunities gave detailed critical evaluations of various aspects of the application of the Directive and finally, some information was supplied by the two sides of industry. The latter's contribution was, however, essentially confined to those cases where they were involved in the preparation of the Government's reply (IR, NL, UK). In the case of the other Member States, though the opinions of the two sides of industry had been solicited via the European employers' and workers' organisations, only the Unione Italiana del Lavoro (one of the Italian union federations) and the Conseil National du Patronat Français (the French employers' organisation) made their views known to the Commission.

   The data collected refer, in general, to the period prior to 12 August 1980, the deadline for the forwarding of the data to the Commission. The time available for the preparation of the report has prevented more recent information on recent developments from being incorporated, despite their obvious value.

2. Any attempt to reiterate all the Commission's findings in this concluding chapter would be impractical. Essentially, these reveal that, whilst very substantial efforts have been made to give effect to the Directive, considerable areas of uncertainty remain and some elements of the Directive have only been implemented in part.

   The Commission does, however, wish to highlight the main points emerging from the report. These can be subsumed under the following headings:

A. Scope of general implementing provisions

B. ~~Scope~~ of derogations:

1. Occupational activities excluded;
2. Protective legislation;
3. Protection of women, particularly as regards pregnancy and maternity;
4. Positive discrimination (Art. 2(3)).

C. The role of collective agreements

D. Weak points:

1. Job offers;
2. Access to employment for pregnant women;
3. Access to vocational education;
4. Family responsibilities and "working conditions" (conditions de travail).

E. Application in law and in practice:

Essential stages in the achievement of equality.

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A. Scope of general implementing provisions

3. The first point to be made here is that there are general legislative provisions aimed specifically at implementing the principle of equal treatment as regards access to employment/vocational training and conditions of employment in seven Member States (the exceptions being France and Luxembourg).

It should, however, be noted that:

- the Belgian law has yet to be implemented as far as access to vocational guidance and training is concerned (1);
- under the Danish law, men and women are only entitled to demand equal treatment as regards access to vocational training and conditions of employment when they are employed at the same workplace. In certain cases, indeed, the law is interpreted as applying only to men and women performing the same tasks;
- under the Italian law, the principle of equal treatment only applies with respect to certain aspects of conditions of employment (2);
- the German laws do not fully cover equal treatment in the self-employed occupations or in vocational education. In addition, the arrangements adopted to implement the Directive differ between the private and public sectors;
- the United Kingdom legislation does not fully cover equal treatment in relation to the trades/professions (2);
- French legislation covers no more than a few aspects of the Directive and
- Luxembourg has adopted no implementing measures; draft laws are, however, being drawn up in these two countries with a view to the proper implementation of the Directive.

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(1) The Commission gave the Belgian Government formal notice to comply with the Directive in this respect in a letter dated 30 July 1980.

(2) The Commission gave these Member States formal notice to comply with the relevant provisions of the Directive in letters dated either 29 or 30 July 1980.

4. The Directive stipulates that "the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status". Problems of interpretation have arisen in some Member States where this enunciation of the principle of equal treatment is entirely (F, FRG) or partially (IR, UK) absent from the national legislation.

There must be no room for doubt that the principle as defined above applies to all the fields covered by the Directive.

It has become evident that the lack of a general definition leaves the way open for the adoption of restrictive interpretations in certain cases (UK) and that the omission of any reference to marital or family status throws doubt on the location of the boundaries between work and family responsibilities. Thus certain Member States regard the latter as falling normally to the woman with all the consequences that this entails as regards conditions of employment (eg. leave for education of a child or to take care of a sick child not granted on an equal basis to working mothers and fathers) (F, FRG). Specific reference to marital/family status is also vital to the elimination of discrimination arising from the fact that the man is still frequently regarded as the family "breadwinner" and hence enjoys a number of advantages such as greater job security or more advantageous conditions of employment.

B. Scope of derogations

5. Application of the principle of equal treatment in the various areas covered by the Directive is tempered by a number of provisions designed either to limit or to accelerate movement towards equality between men and women.

Analysis of the measures adopted to implement the Directive shows that the Member States have made copious use of the first type of measure. There is, on the other hand, also clear evidence of a desire on the part of some Member States to promote the achievement of the goals of the Directive by introducing measures of the second type - i.e., by positive discrimination.

We will concentrate here on those measures which restrict the application of the principle of equal treatment, the aim being to determine whether the Member States have acted properly in this respect and to open the way for the definition of Community guidelines.

1. Occupational activities excluded (Art. 2(2))

6. The length of the list of occupational activities which have, in one country or another, been excluded from the application of the implementing measures (1) bears witness to the great diverstity of the positions adopted by the Member States.

There are a number of cases, primarily in the public sector, of major departments employing large numbers of people, remaining entirely closed to women (or in rare instances, men).

In some Member States (IR, LUX, UK), certain types of private sector employment are also excluded.

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(1) See points 62 to 71 of the Report.

The Commission stands by the strict interpretation of Article 2(2), which it has already had occasion to outline in certain of the letters of formal notice sent to Member States in connection with the commencement of infringement proceedings (1) :"Article 2 (2) of the Directive ... provides that exclusions from the principle of equal treatment are only justified for occupational activities where the sex of the worker constitutes a determining factor". This is the very essence of the provision in question and it means that a derogation can only be permitted in cases where, for objective reasons inherent in the nature of the job, a worker of a particular sex is required. "Wetnurse" and "soprano singer" were the two examples cited most frequently during negotiations prior to the adoption of the Directive as justifying the additon of this provision, which did not form part of the Commission's original proposal.

A glance at the list of activities excluded suffices to show that some Member States are observing Article 2 (2) relatively closely (B, DK, I), though even here certain exceptions to the line adopted continue to be tolerated (B). Other Member States have drawn up long lists of exclusions (IR, UK), whilst yet others have simply laid down a general criterion, thus leaving it up to the individual private (and in some cases public) sector employer or, in the event of a dispute, the courts, to judge whether a particular job should be exempt (F, NL, FRG), though this has not prevented them from prescribing by law a series of exclusions in relation to public sector employment.

It is abundantly clear that Article 2 (2) cannot be regarded as a valid basis for some of the exclusions allowed in the Member States (e.g. small firms, nursery school teachers, post office and telephone technicians, customs officers, midwives and waitresses), whilst general clauses must be regarded as incompatible with the Directive. Article 9 (2) stipulates that "Member States shall periodically assess the occupational activities referred to in Article 2 (2) in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment". It is evident from this that a clear, restrictive enumeration of all occupational activities is called for.

Work has begun in some Member States on the reassessment of exclusions (B, DK, FRG, IR, UK), but in no case would a systematic and detailed review of all the jobs excluded appear to have been undertaken.

Other Member States (F,I,LUX, NL) have not applied the provisions of Article 9 (1) at all. In certain cases, it is claimed that no occupational activities are excluded (I), but such an assertion by itself is insufficient assurance that women can now genuinely compete on an equal footing for all public sector jobs.

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(1) Letters of 29 and 30 July (IR, FR, UK).

As part of a study which it is conducting with the assistance of independent experts from the nine Member States, the Commission is now reviewing the occupational activities excluded with a view, if necessary, to laying down Community guidelines in this connection.

2. Protective Legislation:

7. One beneficial effect of the Directive has undoubtedly been to open up for debate the whole question of protective legislation. The process of reviewing this legislation has begun in five Member States (B, IR, NL, FRG, UK) - the two sides of industry and, in those countries where such a body exists, the equal opportunities commision, have been asked to put forward their views and, in some cases, have already done so. Decisions have, indeed, been taken with regard to certain protective provisions.

In France and Luxembourg, on the other hand, no steps were taken to re-examine protective legislation by the date set by the Directive (12 February 1980).

Finally, the Danish and Italian Governments claim that such legislation is, to all intents, no longer a feature of their systems. (1)

It should be recalled that Article 9 (1) of the Directive requires Member States to carry out a first examination and, if necessary, a first revision of protective legislation before 12 February 1980.

The list of protective provisions either excluding women from certain jobs (2) or specifying conditions of employment different from those applicable to men (3) is impressive in both length and diversity : 26 different types of work are closed to women and in a further 20 cases special conditions of employment are specified. However, none of these prohibitions/special conditons apply in all nine Member States, a fact which makes it clear that they do not derive from universally accepted, unchanging criteria based on an objedtive assessment of the needs of women.

It should be pointed out that the Directive draws a clear distinction between the two types of protective provision : the first type, prohibiting access to certain types of employment, is covered by Article 3 (2) (c), whilst the second, relating to conditions of employment only, is covered by Article 5 (2) (c). A degree of confusion has arisen here in several Member States, notably as regards the prohibition of night work : in these countries women are excluded from jobs which may involve night work (B in certain cases (4), LUX, UK).

Similarly, there is considerable uncertainty as regards the problem of sanitary facilities. Whilst Denmark takes the line that firms (or vessels) must provide adequate sanitary facilities for both sexes, in Ireland the absence of special facilities is regarded as sufficient grounds for excluding women from a particular job. The majority of other Member States have yet to define their attitude. This question, which is a matter of some importance, will be amongst those considered by the independent experts mentioned above.

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(1) In Italy,however, exceptions may be provided for by collective agreement in the case of arduous or dangerous work.

(2) See point 164 of the Report.

(3) See point 165 of the Report.

(4) See footnote 1 to point 166 of the Report.

In those countries where the process of re-examining protective legislation has been set in motion as required by the Directive, divergences of opinion have emerged on the whole question of abolishing such legislation :

1. In relation to provisions excluding women from certain types of employment, a number of equal opportunities commissions and trade organizations argue that these should be replaced by criteria for access to employment based exclusively on job content and the abilities of applicants irrespective of sex.

   Generally speaking, the trade unions are afraid that certain protective provisions which they regard as beneficial to workers will be abolished without serious consideration of the risks involved and the harmful effects of the jobs concerned on men as well as women.

   Certain prohibitions which are considered to have outlived their usefulness are already in the course of being abolished (e.g. those relating to employment on board ship and in the building industry) and others (e.g. those relating to the lifting of heavy loads) are under investigation.

2. Opinions are also divided as regards conditions of employment, and more particularly night work. In Denmark, women are placed on exactly the same footing in this respect as men and in Italy the conditions governing night work have been very substantially relaxed. Elsewhere, efforts are being made to devise ways of checking the need for night work more rigorously.

   There would no longer appear to be any justification for certain types of protective provision applicable only to women. Cases in point are different rules as regards breaks, public holidays, Sunday work and overtime, rules requiring the provision of seating in shops for female staff only and rules prohibiting women from inspecting and lubricating machinery.

   The Commission plans to propose Community guidelines in relation to all these problems on the basis of the findings emerging from the study mentioned earlier, which is, of course, being conducted with the proper scientific rigour. It also plans to study whether women should continue to be given specific protection.

3. Protection of women, particularly as regards pregnancy and maternity

8. The aim of Article 2 (3) of the Directive is to protect pregnant women and mothers; it may not be used to extend the area to which the principle of equal treatment does not apply.

   It is interpreted in this way by six Member States; the Italian and German Governments, on the other hand, include within the scope of this Article measures for protecting the family, which are not concerned with pregnancy and maternity, but with the education of children which, under the Directive, is the business of father and mother.

   The result is that provisions for granting leave of absence or other facilities connected with the education of children constitute terms of employment covered by the principle of equal treatment and are not subject to derogation.

4. Positive discrimination (Article 2 (4))

9. Some Member States define in law the limits of so-called positive discrimination measures, which are intended to offset de facto inequalities; others have not done so. However, it appears necessary to define certain criteria, which - if they were not differentiated according to sex - would amount to indirect discrimination (e.g. height). This has been done in Denmark.

In most Member States, measures promoting the diversification of vocational training or the training of women who wish to go back to work after an interruption are regarded as positive discrimination within the meaning of Article 2 (4) of the Directive.

C. THE ROLE OF COLLECTIVE AGREEMENTS

10. As a general rule (UK excepted), national legislation implementing the Directive provides for the nullification of contrary clauses in collective agreements.

However, as a general rule, this nullification must be ordered, case by case, by a court before which anti-discrimination proceedings have been instituted. In some cases, there are procedures for exempting some workers from the obligations of a collective agreement, the extension of which is requested, if the agreement contains a discriminatory clause.

However, these measures do not prevent the persistence of a number of forms of discrimination in collective agreements, which do not come to the attention of Governments or interested parties unless systematic analyses of their contents are made from the viewpoint of formal and actual equality of treatment.

Such analyses have been carried out in some Member States (B, F, N) either at the instigation of the Government or of a research organisation or at the request of the relevant equal opportunities commissions. This procedure should be followed in all the Member States, for it makes it possible to establish the conditions necessary for change.

These analyses revealed that vocational classifications, either by an unconscious use of vocabulary or by a downgrading of the vocations generally performed by women, frequently tend to uphold the existing segregation of the labour market.

Furthermore, they sometimes reveal a specific concept of women's role in the family and in society (leave of absence and facilities in respect of working hours granted to women only for the bringing up of children, pecuniary advantages linked to the status of "head of household" - a concept which persists in social law, though it is being dropped in civil law)(1).

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(1) See Report, points 60, 110, 111.

They also reveal that women are often treated as marginals on the labour market through the downgrading of their specific qualities and the use of systems of remuneration giving a feeling of inferiority (payment by the hour, piece rates, low wage rates).

Finally, in the opinion of the Commission, the practice of concluding agreements by sex (DK) could be incompatible with equality of treatment.

Apart from these facts, it has become evident, in writing the report, that management and labour could both play a far larger part than they are at present playing in promoting equal opportunities for women, for example by drawing up joint equality programmes at undertaking or sectoral level.

The Commission believes that these areas should be explored at Community level on a joint basis and will make proposals on this matter at a later date.

D. WEAK POINTS

11. The report describes the various measures taken by the Member States to embody in their national legislation the principle of equal treatment as regards access to employment, vocational guidance and training, and terms of employment.

The infringements have been stressed in the body of the report and there is little point in going over them again in detail in the conclusions; it is more meaningful to highlight certain specific aspects of the efforts to put equality of treatment into effect, which reveal the difficulties in all fields of correctly implementing principles which are not in themselves disputed.

1. Job Offers : (1)

12. As the visible manifestations of discrimination in respect of access to employment, job offers are an index of the overall attitudes of public and private employers and reveal the still major role of stereotypes, the effect of which is to confine women to a small number of vocations, despite the existence of legal prohibitions.

It would obviously be pointless to believe that job offers formally devoid of all references to the sex of applicants would mean an open labour market; but it is the first stage in a process of achieving an even mix on the labour market - one factor in the elimination of discrimination.

In addition to the legal measures that have already been adopted in most countries, major efforts have been made in several Member States (B, DK, IR, N, UK); they have still to be made in the others.

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(1) See Report, points 112 to 121.

The salient fact which emerges is that legal obligations in this field are observed with varying degrees of scrupulousness in the Member States, depending on whether :

(i) the law precisely defines these obligations;

(ii) there are guides clearly setting out how to draw up a non-discriminatory job offer;

(iii) placement agencies may take action to amend any discriminatory job offers submitted to them by employers;

(iv) advertising and the press have been fully informed about the law;

(v) compliance with legal obligations is being monitored.

2. Access to employment for pregnant women

The Directive does not provide for protection of pregnant women and mothers (Article 2 (3)); this does not, however, mean that it excludes pregnant women form the scope of application of equality in access to employment.

However, in only five Member States (DK, F, I, N, G) does the law formally prohibit discrimination based on pregnancy.

3. Equal access to vocational education

The report stresses that, despite legislation on equality, educational and vocational guidance for women is still generally dominated by traditional concepts regarding the jobs which are "suitable for women". (1)

In some Member States, no measures have been taken in this respect (IR, LUX). In Belgium, the law covering this point has not yet been implemented.

Some laws (DK, G) cover only training organised by employers.

Furthermore, in certain countries, the distinction between general education and vocational education is not clear (IR, UK).

The upshot is that, while genuine efforts are being made in undertakings and training centres run by employment departments, in some Member States at least schools continue to uphold and prepare segregation in employment. The figures cited in the report (2) are eloquent on this subject.

Governments should step up their efforts in this vital area where women's occupational futures are moulded.

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(1) See Report, points 129 to 142.

(2) See Report, point 142.

4."Working Conditions" (Conditions de Travail) and family responsibilities

13. The report describes the uncertainty existing in some Member States regarding the concept of "working conditions".

As we have seen, some Member States have adopted no implementing measures in this field (LUX) or have only partially done so (DK, F, I).

A small test (3) shows that, despite affirmatory statements by Governments, equality in respect of conditions of employment has been only partly achieved as yet, even at the legislative level.

The main forms of discrimination are to be found in the area of conditions of employment linked to family status and, in particular, to the concept which some Member States have of women as being solely responsible for bringing up children (B, F, I, G).

In the Netherlands, the advantages attached to the status of "family breadwinner" are being phased out.

In some Member States, collective agreements are likewise discriminatory in this area.

It will be recalled that the Commission has already initiated infringement procedures for this reason against Belgium and Italy.

It appears that no Member State has thought it necessary to introduce legislative measures to guarantee the proportional representation of women on joint bodies in undertakings.

E. APPLICATION IN LAW AND PRACTICE

14. Concluding this review, the Commission notes that advances have been made in most Member States on the basis of the Directive; it feels bound to say that, while the position of women in working life has not improved, mainly because of the economic crisis, recognition of the principle of equal treatment under law has, nevertheless, made appreciable progress at all levels.

However, as the Commission stresses in a report which it put before the European Parliament's Ad Hoc Committee on Women's Rights, "although legislation to eliminate discrimination is essential, it is but one step on the way to achieving equality in practice between men and women at work".

Legislation will never come close to being applied in real situations, despite the provisions for recourse to the courts, unless it is backed up by a well-defined policy.

"At the present stage of progress towards equality between men and women, it is important, in parallel with legislative action, to seek out ways of giving more emphasis to and implementing 'indirect' strategies to achieve equal opportunity.

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(3) See Report, Point 153.

Such strategies are based on the assumption that discrimination is inherent in the very operation of systems related to the labour market, or is perpetuated by obstacles ancillary to the labour market and which prevent the translation into fact of equal opportunity in employment: for example, the insignificant number of women in responsible posts, the lack of training for certain jobs, domestic and family responsibilities".

The Commission feels it necessary to express reservations about the practical application of the principles defined in the Directive.

In consequence, the Commission, taking account of the comments, guidelines, and recommendations set out in the report and the conclusions relating to a strengthening of the role of the national public authorities, both sides of industry and the equal opportunities committees or commissions and not forgetting the cooperation it may obtain from the Council, the European Parliament, particularly the Ad Hoc Committee on Women's Rights, and the Enconomic and Social Committee, intends to take cohesive and resolute action based on all the instruments and means that are available or will be developed if necessary.

To this end, it plans to:

(1) encourage the Member States which have not yet fully applied Directive 76/207, as can be seen from the report and the conclusions, to take the necessary measures. Should there be no follow-up to the report, the Commission would be compelled, pursuant to Article 169 of the EEC-Treaty, to institute further infringement proceedings against the Member States in question;

(2) call on employers' and workers' organisations to meet at European level in an effort - without prejudice to their autonomy and their responsibilities - to find ways and means of doing away with discrimination and, above all, jointly to define equal treatment programmes;

(3) define, at Community level, a line of conduct as regards the vocational activities which may be excluded from the implementing measures and as regards protective legislation which should be abrogated or revised (1);

(4) continue and expand "positive" actions (complementing procedures for registering complaints and imposing penalties) already under way under the auspices of the ESF and forming part of the Commission's education and information policy, but above all to define new action sectors in cooperation with the national bodies specifically responsible for achieving equal treatment of men and women (Commission on Women's Employment, Equal Opportunities Commission etc.), the national authorities and both sides of industry.

The Commission, wishing to fulfill a task not made any easier by the general economic situation will, for its part, study the measures most likely to solve the problems of women in employment with a view to presenting suitable proposals. Its particular objectives are the desegregation of the labour market and jobs, preparation of women for the introduction of new technologies in the working world and the actual sharing of family responsibilities.

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(1) See report, points 163 to 185.