

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 1010 final

Brussels, 3 July 1974

Amended Proposal For A

## COUNCIL DIRECTIVE

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

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(Presented by the Commission to the Council  
pursuant to Article 149, second paragraph,  
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

The Commission presents herewith to the Council a proposal for a Directive intended to contribute to the implementation in all Member States of the Community of the principle that men and women should receive equal pay for equal work.

The implementation of this principle, which is contained in Article 119 of the EEC Treaty, is an integral part of the establishment and functioning of the common market. Under the Treaty its application should have been ensured by each of the six original Member States during the first of the three stages of the progressive establishment of the common market and maintained subsequently. However, the latest Report<sup>(1)</sup> of the Commission, on the situation as at 31 December 1972, regarding the application of the principle of equal pay for men and women in the original Member States, forwarded to the Council on 31 July 1973, showed that in spite of undeniable progress there are still wide gaps and inadequacies. Moreover, the additional information<sup>(2)</sup> collected by the Commission from the new Member States also reveals similar gaps, although these States are in duty bound to respect the principle contained in Article 119 of the EEC Treaty since they joined the Community. Given the fact that it is, in the first instance, up to Member States to ensure the application of Article 119 by means of laws, regulations and administrative provisions, the Commission considers it necessary, in order to give full effect to that Article, to approximate those national provisions which directly affect the establishment and functioning of the common market.

Furthermore, whereas Article 119 of the EEC Treaty clearly stated the principle of equal pay, it seemed necessary, almost from the outset, to supplement it in order to specify certain procedures tending to facilitate its implementation. This requirement, which the Commission sought originally to satisfy in its Recommendation of 20 July 1960, was recognised by the representatives of the Member States who, in their Resolution of 30 December 1961, declared themselves to be "mindful of the need harmoniously to implement the principle of equal remuneration for men and women workers and to provide a uniform method of application in all Member States". These are the objectives of this proposal for a Directive.

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(1) Doc. SEC(73) 3000 final, 18 July 1973.

(2) A supplementary report on this subject is being drawn up and will be soon presented to the Council.

This proposal should be viewed in the light of the guidelines already given in the Recommendation of 20 July 1960 and in the Resolution of 30 December 1961. It does not cover the definitions of the concepts of "pay" and of "equal pay without discrimination based on sex" which are contained in Article 119 itself. Neither does it cover the resultant interpretations or precisions in this field particularly in respect of the criteria for professional classification in the aforementioned Recommendation and Resolution.

This proposal for a Directive is intended first of all to generalise certain minimum protection standards, such as those evolving from the already established interpretation of Article 119, which will ensure that legal proceedings can be instituted so that the right to equal pay is respected (Article 2). Similarly, any discrimination, as still exists in certain laws, which affects wages will be eliminated (Article 3). It has also appeared necessary, without calling into question the independence of the two sides of industry, to render ineffective all those provisions of agreements or contracts which are contrary to the principle of equal pay (Article 4), since agreements concluded freely may not derogate from provisions of public policy and since equal rights for men and women obviously constitute a basic principle of any modern state. As the fear of dismissal is a major restraining factor on individual initiatives aimed at earning respect for the right to equal pay, it has seemed necessary to prevent all dismissals which take place as a result of such suits (Article 5). Still in the same context - that of affording increased protection to workers - Article 6 provides for supervision and for penalties for those employers who do not respect the principle of equal pay. Lastly, Article 7 is intended to ensure that workers are better informed as to their rights.

The measures proposed in this Directive are confined to a few specific and essential points concerning the direct responsibility of public bodies. They must take their place in a comprehensive set of measures envisaged by the Commission and comprising, on the one hand, a proposal that both sides of industry negotiate a European framework agreement and, on the other hand, a Community action programme intended to promote the upgrading of female employment and covering fields such as vocational guidance, training and readaptation.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the implementation of the principle that men and women should  
receive equal pay for equal work contained in Article 119 of the EEC  
Treaty is an integral part of the establishment and functioning of the  
common market;

Whereas it is first of all the responsibility of Member States to ensure the  
application of this principle by means of appropriate laws, regulations and  
administrative provisions;

Whereas, in spite of the adoption by the Conference of Member States of  
a Resolution intended to implement harmoniously the principle of equal pay  
and, consequently, to provide for the application of uniform measures in all  
Member States, considerable difference may be observed in the national  
laws regulations and administrative provisions;

Whereas, this being so, it is necessary to remove these differences and,  
consequently, to approximate the national laws, regulations and administrative  
provisions;

Whereas, moreover, even in those States with the most advanced legislation, doubts remain with regard to the practical application of the principle of equality, and whereas it is desirable, in consequence, to reinforce the basic laws by standards aimed at facilitating their practical application in such a way that all workers in the Community may enjoy effective protection in this field;

Whereas, moreover, in order that the growing number of female workers may benefit from the harmonization of the improvement of workers' living and working conditions as part of a balanced socio-economic development of the Community, it is necessary to improve and harmonise the above-mentioned provisions;

HAS ADOPTED THIS DIRECTIVE :

#### Article 1

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

The principle of equal pay involves equal treatment for men and women with regard to all aspects and conditions of remuneration, including assessment criteria without discrimination on the grounds of sex.

#### Article 2

Member States shall introduce into the body of their law such measures as are necessary to enable all persons who consider themselves aggrieved by the non-application of the principle of equal pay to enforce their claims before the courts, after having had the possibility of recourse to other competent bodies.

Article 3

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

Article 4

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

Article 5

Member States shall take the necessary measures to protect employees against dismissals and other sanctions on the part of the employer by way of reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing the observation of the principle of equal pay.

Article 6

Member States shall ensure that the application by undertakings of the principle of equal pay is supervised and that sanctions are taken against all infringements.

Article 7

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

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Article 8

Within 6 months of being notified of this Directive, the Member States shall amend their laws in accordance with the preceding minimum provisions and shall forthwith inform the Commission thereof. Laws thereby amended shall enter into force one year after notification of this Directive or at the latest on 31 December 1975.

Article 9

Within two years from the expiration of the period of one year specified in Article 8 and at the latest on 31 December 1977, the Member States shall forward to the Commission all the information enabling it to draw up a report on the application of this Directive for submission to the Council.

Furthermore, as from the time of notification of this Directive, Member States shall ensure that the Commission is informed, in good time so that it can put forward its comments, of the most important laws, regulations and administrative provisions which it is envisaged will be adopted by them in the field covered by this Directive.

Article 10

This Directive is addressed to the Member States.