COMMISSION OF THE EUROPEAN COMMUNITIES

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MEMORANDUM ON EQUAL PAY FOR WORK OF EQUAL VALUE

INTRODUCTION

The Third medium term Community action Programme for Equal Opportunities between women and men (1991-1995) (1) which was the subject of the Council Resolution of 21 May 1991 (2) provides that the Commission shall

- "adopt a Memorandum to define the scope and concept of equal pay for work of equal value and provide guidance on the criteria to be taken into account in job evaluation and job classification".

The adoption of a Memorandum was recommended as one of the main conclusions arising out of the Forum on Equal Pay Legislation in the Member States organised by the Women's Rights Committee of the European Parliament in March 1992.

The necessity and utility of such a document was emphasised during the Equal Pay Seminar organised by the Belgian Presidency which took place on 25 and 26 October 1993.

This Memorandum is offered for information and consideration to interested parties concerned with or involved in the equal pay issue, such as appropriate government departments, national agencies having the reponsibility to address disputes, social partners, lawyers and consultants. It does not contain formal proposals as such.

CONTENTS

PART I : BACKGROUND

The principle of equal pay for men and women has been enshrined in Community law from its origins. Article 119 of the EC Treaty requires Member States to "ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work".

Article 119 of the EC Treaty was amplified by the Equal Pay Directive 75/117/EEC, which introduced the concept of equal pay for work of equal value.

However, despite the existence of this Community legislation, which all Member States have transposed into their national legislation, the attainment of equal pay for women is not yet a reality. The overall pay gap between women and men in the Community is still wide and, in some cases, still widening due to economic difficulties which have tended to affect women more severely than men.

Although there is an absence of adequate data for accurate wage comparisons between men and women throughout the Community, recent figures indicate that women tend to work in significantly lower paid jobs than men . The differential in pay between men and women throughout the Member States of the European Community in 1990 is indicated in the following Table on the average value placed on women's work (3) :

	Manual (hourly) % of male rate	Non-manual (monthly) % of male rate
Belgium	75.9	64.6
Denmark	-	84.5
France	80.8	66.6
Germany	73.2	66.8
Greece	76.3	69.8
Ireland	68.1	-
Italy	82.7	69.2
Luxembourg	65.1	54.9
Netherlands	75.3	65.5
Portugal	71.6	70.7
Spain	71.9	62.3
UK	68.2	54.2

The increasing participation of women in the labour market (in 1991, women represented 40% of the total working population in Community countries) has not been accompanied by any major diversification as regards the jobs they do and the sectors in which they work. Throughout the Community, both horizontal and vertical segregation remains a dominant feature of the structure of female employment.
The effect of segregation amplified by the undervaluing of female occupations is a major reason for the persistance of significant disparities in wage levels.

Because of occupational segregation, job evaluation or classification schemes rarely compare men and women's work from a common standard. When a typical woman's job is compared with a typical man's job in a classification system, the factors considered and evaluated to calculate the remuneration nearly always result in a higher wage for a typical man's job than for a typical woman's job. Such a result is generally obtained under a pre-established value system where more points are given to i.e. physical strength, responsability vis-à-vis capital investment more than vis-à-vis human beings, training rather than to skills necessary to perform the job, dexterity etc .

Obviously, reclassification of undervalued female work will not address discrimination in all its guises, since the classification of jobs does not ultimately determine pay rates.

The discrepancies between women and men's pay among Member States arise as well from the variations in employment structures and reward systems. Differentials are affected by a number of factors including the extent and nature of atypical work as a proportion of "full-time" employment, governmental wage policies, and arrangements for collective bargaining.

Indeed, collective agreements often perpetuate women's difficulties in getting access to additional payments and benefits through negotiations, particularly at local levels. Additional allowances for unfavourable working conditions and attendance, for example, remain almost exclusively the preserve of male occupations.

In the light of the framework outlined above, horizontal and vertical segregation on the labour market are intrinsically linked to discrimination in pay. In order to break what appears to be a self-perpetuating cycle of discrimination on the labour market, it would appear necessary to develop a strategy to combat both pay discrimination and segregation which are the major obstacles to more flexibility on the labour market. In today's context, the reasons for pursuing such an issue are not only based on equity but on the necessity of ensuring that proper recognition is given to everyone's skills and contribution to a changing economy. In concrete terms, the concept of equal pay for work of equal value means that where a woman undertakes work as demanding as a man's, even though the work is different, she should receive the same pay and benefits unless there is a non-discriminatory explanation for the differential.

The Community's legal provisions on equal pay for work of equal value and the jurisprudence pertaining thereto address questions of a quite complex nature.

There is a clear need for clarification or refinement of the principle of equal pay for work of equal value, so that individuals may rely on it and national courts and tribunals may apply it satisfactorily. This Memorandum is offered as a contribution to that clarification/refinemment process. The core of the document is in Part II, which follows. It comprises an overview of the jurisprudence of the European Court of Justice and covers the meaning of work of equal value, job classification, job evaluation and discrimination and definition of pay. Part III briefly addresses the need for further measures to promote the practical achievement of equal pay for work of equal value and mentions possible elements of a broad strategy towards that end.

PART II : SUMMARY OVERVIEW OF THE JURISPRUDENCE OF THE EUROPEAN COURT OF JUSTICE

Chapter 1 : The Meaning of Work of Equal Value

a) The Nature of Work of Equal Value

The principle of equal pay for work of equal value is intended to redress the undervaluing of jobs undertaken primarily by women, in particular, where they are found to be as demanding as different jobs more usually undertaken by men (4). The concept contemplates the comparison of radically different jobs. Despite the articulation of the principle at Community level in the equal pay directive in 1975 it remains the case that there has been no litigation in this area in a number of Member States (France, Luxembourg, Greece, Italy).

In other Member States, there has been little litigation in which different jobs have actually been compared. The facts of the published cases reveal that the claims often involve the comparison of jobs having different job titles but that the duties are almost identical, save for minor or insignificant differences in tasks.

The legislation of a number of Member States fails to assist in the recognition of the scope of the principle since the laws contain either no definition or no clarification of it (Luxembourg, Italy, Belgium, Spain, Greece, Portugal). In addition, the failure to include the concept of indirect discrimination in the prohibition against dicrimination in legislation (Greece), contributes to a limited perception of the equal pay principle.

The use by some courts in equal pay claims of tests such as "manifestly discriminatory" implies a restriction of the equal pay principle to work which is identical or at least similar.

Such a test was used by courts in Italy, though it remains to be seen whether this will continue to be the case, given the introduction of the concept of indirect discrimination in legislation passed in April 1991.

By contrast, legislation in France, Germany, Ireland, the Netherlands and the United Kingdom contains either definitions of equal value or guidance on how to approach such claims. All of the definitions assess the determination of work of equal value by reference to the nature and demands of actual work. The approach set out in the provisions of these Member States defines the principle of equal pay for work of equal value as contemplated at a European level. The European Court of Justice* has held on several occasions that the determination of equal value involves a comparison of the work of the female and her male comparator by reference to the demands of the work undertaken and the nature of the tasks.

In the infringement proceedings against the United Kingdom (5), the Court considered that the concept of 'equal value' was not too "abstract" to be applied by the Court but held that:

> "the implementation of the Directive implies that the assessment of the "equal value" to be "attributed" to particular work may be effected notwithstanding the employer's wishes, if necessary in the context of adversary proceedings. The Member States must endow an authority with the requisite jurisdiction to decide whether work has the same value as other work, after obtaining such information as may be required".

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*Hereinafter refered to as "the Court"

Addressing a claim concerning the "same work", the Court held in McCarthy Ltd v Wendy Smith (6):

> "in cases of actual discrimination falling within the scope of the direct application of Article 119 of the EC Treaty, comparisons are confined to parallels which may be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service".

In Gisela Rummler v Dato Druck GmbH (7), the Court, in considering whether a classification scheme might be discriminatory on grounds of gender, ruled that the "nature of the tasks involved in the work to be performed" should be capable of measurement by a scheme.

Considering the finding of an Equality Officer in Murphy and others v Bord Telecom Eireann (8), a reference from the High Court in Ireland, the Court held that where the work had been assessed as more onerous and therefore of higher value, Article 119 of the EC Treaty prohibited the payment of lower wages. The jobs compared by the Equality Officer in the Murphy case were different and the mechanism for comparing the jobs was by assessment of the nature of the tasks and the demands made upon the workers in carrying out these tasks such as skill, effort, responsibility etc.

Since it is the nature of the work which is important in assessing whether equal work is undertaken by the woman and the man, other factors will not be relevant to that assessment. The European Court of Justice found, in effect, in Jenkins v Kingsgate (Clothing Productions) LTD (9), that the fact that Ms Jenkins worked part-time did not change the nature of the demands of the job.

Thus, for the period of time the work was undertaken she was entitled to be paid at the same rate as her full-time male comparator unless the difference in pay was attributable to factors which were objectively justified and were in no way related to any discrimination based on sex.

In Nimz v Freie und Hansestadt Hamburg (10), addressing the question of whether seniority could justify a pay differential, the Court held that :

"Article 119 of the EEC Treaty must be interpreted as precluding a collective agreement, entered into within the national public service, from providing for the period of service of employees working at least three-quarters of normal working time to be fully taken into account for reclassification in a higher salary grade, where only one-half of such period of service is taken into account in the case of employees whose working hours are between one-half and three-quarters of those normal working hours and the latter group of employees comprises a considerably smaller percentage of men than women, unless the employer can prove that such a provision is justified by factors whose objectivity depends in particular on the relationship between the nature of the duties performed and the experience afforded by the performance of those duties after a certain number of working hours have been completed."

Member States have different mechanisms for resolving individual claims concerning equal pay for work of equal value. Each of the mechanisms applied includes the consideration of the nature and demands of the different jobs compared to determine whether they are of equal value:

1) In Belgium, France, Italy and Luxembourg many problems are resolved by "work inspectorates". Courts required to resolve a question are "not necessarily bound by the results of job evaluation schemes".
2) In the Netherlands, the question of whether work is of equal value is assessed on the basis of "a reliable system of job evaluation".
3) Under Irish legislation, any dispute on the subject of equal pay can be referred to one of three Equality Officers.

b) The Scope of Comparisons of Work of Equal Value

i. Men and women

One of the fundamental aims of Article 119 of the EC Treaty and of the Equal Pay Directive is "the elimination of all discrimination on grounds of sex". This presupposes comparisons between persons of the opposite sex. Comparisons cannot be made between persons of the same sex. However, Article 119 of the EC Treaty and the Directive do not preclude claims from men though the determining factor in equal pay claims is whether any differential is sex-based.

European law is silent on who is entitled to choose the comparator for the purposes of an equal pay claim. However, it appears that in all Member States, it is the applicant who chooses the comparator. In a case before the Court of Appeal in the Netherlands, this approach did not exclude the court from introducing a further comparator in circumstances where it considered that the applicant had inadvertently omitted a more appropriate comparator and could not be expected to have had the necessary expertise to identify that particular person.

ii. Comparisons can be made by public and private sector workers

Both public and private sector employees can pursue claims in respect of equal pay.

In Defrenne v Sabena II (11) the Court held that :

> "Courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular, as regards those types of discrimination arising directly from legislative provisions and collective labour agreements, as well as in cases in which men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether public or private".

iii. Actual or Hypothetical Comparators

Neither Article 119 of the EC Treaty nor Article 1 of the Equal Pay Directive specify any requirement of an actual comparator of the opposite sex .

In the case of McCarthys Ltd v Wendy Smith (12) , Ms Smith argued that a female worker can rely on Article 119 of the EC Treaty in order to claim the pay to which she would be entitled if she were a man, even if there are or were no male employees in the undertaking or service concerned who perform or performed the same work (the "hypothetical male worker" criterion). She was supported in her arguments by the Commission and by the Advocate-General. However, the Court rejected Ms Smith's arguments on the basis that:

> "in cases of actual discrimination falling within the scope of the direct application of Article 119, comparisons are confined to parallels which may be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service".

Therefore, applying the principle of equal pay found in Article 119 of the EC Treaty, the woman is required to show there is an actual man employed who receives or received more pay than the woman doing equal work for the employer.

McCarthys rules that a hypothetical comparison cannot be made under Article 119 of the EC Treaty, in circumstances where it is alleged that the same work is being undertaken by the woman and the man. However, the Court's reluctance to allow a claim based on the "hypothetical comparator" was, after all, linked to its reluctance to accord direct effect to Article 119 of the EC Treaty in cases of disguised and indirect discrimination . As it has long since abandoned that reluctance, it may perhaps yield, in the future, to the arguments in favour of the "hypothetical male comparator".

It must be pointed out that in another context (13), the Court has already held that in cases of direct discrimination on the basis of the criterion of sex, the requirement for a male comparator to be adduced may even not apply.

iv. Contemporaneous employment

The principle of equal pay for equal work is not confined to a situation where the woman undertakes equal work contemporaneously with the male comparator where it is established that she receives less pay than her predecessor carrying out the equal work (McCarthys v Smith).

v. Are Comparisons Restricted to the Same Establishment?

It is clear that work compared for the purpose of determining whether it is of equal value encompasses diverse jobs.

Defrenne II makes it clear that comparisons for the purpose of determining equal work are at least possible in the "same establishment". It is not clear however that this must be understood as excluding comparisons between different establishments within the same employment structure. Indeed, a restriction of this nature could easily defeat the purpose of the principle of equal pay for work of equal value given that women often work in different plants from men employed by the same company.

In Defrenne II, the Court gave a clear guide to the Member States on the implications of the complete implementation of Article 119 of the EC Treaty and the Directive as it would affect

> "not only..individual undertakings but also entire branches of industry and even of the economic system as a whole, and may in certain cases involve the elaboration of criteria whose implementation necessitates the taking of appropriate measures at Community and national level" (14)

This comment was made specifically in the context of extending the narrow criterion of equal work to encompass the principle of equal pay for work of equal value established by the provisions of Convention N° 100 on equal pay concluded by the International Labour Organisation in 1951.

However, it is not clear whether the approach extends the scope of comparison of the jobs undertaken by women and men to cover the enforcement of the right to equal pay to intra-or-cross industry claims. In Defrenne II, the Court was pointing to the need for more detailed provisions than those contained in Article 119 of the EC Treaty in order for this to be possible. Much therefore depends on the nature of national provisions implementing the principle of equal pay.

Member States in the Defrenne II case recognised the potential financial impact of eliminating gender discrimination in pay systems across all sections of industry.

The United Kingdom submitted that:

> "the cumulative effects of the resulting increases in labour costs would seriously aggravate the problems of controlling inflation. The financial implications vary in terms of the proportion of women doing "equal work" with men, the difference between men's rates and woman's rates for equal work, liquidity problems and the proportion of labour costs to total costs.
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> The footware and food industries, laundries, retail distribution and the clothing industry have a particularly high proportion of women doing equal work. The highest differential between men's rates and women's rates exist in the textile, clothing, footware, biscuit manufacturing and engineering industries. Many firms, in various sectors, have serious cash flow problems.

The proportion of labour costs to total costs is particularly high in the ship building, instrument engineering, clothing, paper and printing and pottery industries.

The clothing industry is thus running a particularly high potential risk. Discrimination in rates of pay between men and women is not limited to any particular type of occupation.

The overall increase in labour costs as a result of introducing equal pay is likely to be of the order of 3.5% of the National Wages and Salaries Bill, which was intended to be spread over five years ending 1975".

Ireland submitted that equal pay:

"would involve extremely heavy financial obligations. As regards the private sector it appears that these obligations cannot be directly estimated. They must, however, affect privately owned companies and small firms, the activities of the textile, clothing and footware, food processing, light engineering and paper and printing industries in particular, as well as sections of the retail trade. In many of the sectors referred to the majority of the work force would have a claim for equal pay.

The average figure for the order of increase in wages and salary bills involved in the immediate implementation of equal pay for men and women in manufacturing industry would be 5%. It would be high in the most sensitive sectors".

In the infringement proceedings against Denmark (15), the Advocate-General set out his view of the full implications of implementing equal pay for work of equal value:

"as appears from the second sentence of Article 1 of the Directive however, a comparison of duties within the same fixed establishment of an undertaking or even within a single undertaking will not always be sufficient. In certain circumstances comparison with work of equal value in other undertakings covered by the collective agreement in question will be necessary.
As is correctly observed in the annual report for 1980 of the Danish Council for Equal Treatment of Men and Women submitted by the Commission as Annex VIII to its application, in sectors with a traditionnally female work force, comparison with other sectors may even be necessary.

In certain circumstances, the additional criterion of the same place of work for work of equal value may therefore place a restriction on the principle of equal pay laid down in Article 119 of the Treaty and amplified in the Directive in question. The mere fact that such a supplementary condition for equal pay which has no foundation in Article 119 or in the Directive has been added must in any event be regarded as a infringement of the Treaty. That supplementary condition limits the scope, governed by the Treaty, of the extension of the principle of equal pay for men and women to activities for equal value".

The Court was not specifically asked to rule on this point since the proceedings concerned only the failure of Denmark to articulate in national law the principle of equal pay for work of equal value at all rather than the extent of comparisons between organisations.

A number of the cases before the Court have concerned the operation of national legislative provisions (Rinner-Kuhn (16) Botel (17)), and national collective agreements (Danfoss (18) Nimz (19), Rummler (20), Kowalska (21)).

Such provisions and agreements clearly span different establishments and, in a number of instances, different industries. This, therefore, has implications for any geographical or regional restrictions on comparisons. The laws in a number of Member States (Germany, Italy and Greece) are silent on the question of whether or not intra-industry comparisons are possible. However, in some cases it appears that such comparisons may not be excluded in circumstances where the applicant and comparator are covered by the same collective agreement.

At the same time there is also on occasions, a restrictive approach to comparisons in the same organisation which preclude comparisons between groups of workers covered by different collective agreements. Such restrictions fail to take account of the segregated nature of the labour market in which men and women will often be covered by separate agreements because of their different occupations.

Very recently, the Court was asked to rule on this point in the case Enderby (22). The Court's ruling was made in a case referred by the Court of Appeal of England and Wales involving a female speech therapist, who brought an action against her employers for sex discrimination.

Mrs Pamela Enderby's rate of pay set by a collective agreement. Her union also negotiated with her employer, under a different collective agreement, on behalf of a group of people including pharmacists and physiotherapists. The latter's pay rates, at the same level of seniority, were significantly greater than Enderby's. She therefore brought an equal pay claim, based on the work of the pharmacist and physiotherapist (largely staffed by men) which is assumed to be of equal value to her own work as a speech therapist (which is overwhelmingly a female profession)..

The Court was asked whether it was sufficient justification for the difference in pay if the rates of pay for the jobs in question had been decided by collective bargaining processes which considered separately have no discriminatory effect.

The Court held that "the fact that the rates of pay at issue are decided by collective bargaining processes conducted separately for each of the two professional groups concerned, without any discrimination effect within each group, does not preclude a finding of prima facie discrimination where the results of those processes show that the two groups with the same employer and the same trade union are treated differently. If the employer could rely on the absence of discrimination within each of the collective bargaining processes taken separately as sufficient justification for the difference in pay, he could easily circumvent the priciple of equal pay by using separate bargaining processes" (23). As in Defrenne II (4), the decision of the Court in Enderby does not deal with the question of intra-or-cross industry claims.

Chapter 2: Job Classification, Job Evaluation and Discrimination

a) Job Classification and Job Evaluation

Job classification tends to be the term used on the mainland of Europe whilst the term job evaluation is used in United Kingdom and in Ireland. Job classification is often a non-analytical process used to categorise jobs. These type of schemes are used extensively throughout Europe. Job evaluation is often perceived to be an analytical means by which the relative job demands are assessed.

Job evaluation or classification is a mechanism which can be used to determine the hierarchy or hierachies of jobs in an organisation or group of undertakings as the basis for explaining a pay system.

It sets out to measure the relative value of jobs, not that of the job holders. Ideally, the performance of the individual should not enter into job evaluation although, in practice, it may be difficult to dissociate individuals from their jobs.

The aim of such schemes is to provide an acceptable rationale for determining the pay of existing hierarchies of jobs. They were and remain a management tool to achieve an acceptable rank order of jobs, implemented unilaterally or with varying degrees of participation by the workforce. Acceptability, consensus and the maintenance of traditional hierarchical structures are essential ingredients of such mechanisms.

Job evaluation schemes do not directly determine rates of pay. The rate for the job or the salary market for a job grade is influenced by a number of factors outside the scope of most schemes. Often, the pay determinants and indeed hierarchies are linked to external market pay rates, the relative bargaining strengths of the negotiating bodies and traditional patterns of pay differentials between jobs. Job evaluation is concerned with relationships, not absolutes.

It cannot measure in definite terms the inherent value of a job to the organisation, it is essentially a comparative process: comparisons with other jobs, comparisons against defined standards or comparisons of the degree to which a common criterion or factor is present in different jobs (24).

Generally, such systems fall into two identified categories; a) analytical or b) non-analytical. In general terms, the distinction between the two categories is that jobs are either broken down into their component elements for the purposes of comparison (analytical) or alternatively, the relative worth of the jobs may be based on a whole job comparison (non-analytical).

The more formal types of schemes, particulary analytical schemes, may be more objective than non-analytical classification of jobs. However, no scheme can ever be fully objective since the whole process is based on a series of judgements made about facts presented to evaluators. These judgements reflect each evaluator's background, experience, and attitudes.

However, analytical schemes can be used to improve the mechanisms by which work is assessed in that they require the collection and analysis of data about the content of work to be consistent. The articulation of criteria and factors means that evaluators may have to justify decisions about the ranking of jobs in a more objective way rather than relying on subjective opinion.

A disadvantage from the point of view of assessing whether different work is of equal value is that many systems for comparing jobs are unable to take account of the diverse content of jobs and are not capable of comparing the very different types of jobs. Generally, they cover only parts of organisations where "families" of jobs of a similar nature can easily be compared for the purpose of ranking eg. Production and production related jobs - unskilled operative, semi-skilled operative, skilled operative , "tradesman", chargehand, supervisor, manager.

Often, different hierarchies of jobs based on different evaluation and classification schemes co-exist in an organisation with no common yardstick from which to measure the relative value of diverse groups of jobs, for example, production and clerical workers. Since it was not perceived as necessary to compare, for example, the relative demands of the job of a secretary with those of a skilled production worker, there is no basis from which to determine whether the traditionally female job of secretary is equally demanding as the often traditionally male job.

It has been argued that job evaluation is inflexible. It sets out to assess only the demands of a range of jobs. It does not take account of market forces or individual performance. Changes in some organisations are leading to the dismantling of hierarchical structures and their replacement with flatter more flexible workforces undertaking interchangeable tasks. Often an analysis of average pay levels, gender and job grades reveals organisations that are in practice less hierarchical than would appear.

These features of traditional job evaluation and classification become significant when attempting to address gender inequality in pay systems. Given the segregation of male and female workers, the relative worth of work needs to be measured by reference to a common standard within one place of employment, within an industry or between industries. Equally, the different elements in female work need to be identified and valued in the same way as those present in male work.

Pay systems based on such schemes may have been in place in organisations for many years and the traditional hierarchies of jobs often predate, without any review, the introduction of legislation on gender equality and the increased participation of women in the workplace. Many of the systems incorporate and legitimate the tradition of paying women less even when they undertake the same jobs as men.

b) Job Evaluation and Classification and European Law

Article 1 of the Equal Pay Directive provides:

"In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on the grounds of sex".

The Directive does not mandate the implementation of job classification by employers to determine pay. However, it prohibits gender discrimination where such systems are used by employers as a basis for determining pay rates. There is no definition in the Directive of the term "a job classification system".

A number of judgments of the Court have contained guidance on the role and nature of job classification and job evaluation.

In Defrenne v Sabena II (25), the European Commission drew the Court's attention "to the diversity of the traditional methods of wage formation and the widely differing systems of job classification" which existed in the Community, in the context of the difficulties of implementing equal pay between women and men.

In McCarthys Ltd v Wendy Smith (26), the Court recognised that, in order to identify indirect and disguised discrimination, there was a need for:

> "comparative studies of entire branches of industry and therefore, as a prerequisite, the elaborating by the Community and national legislative bodies of criteria of assessment".

This would appear to encompass classification and evaluation techniques as well as statistical analyses of pay and gender differences.

In the jurisprudence of the Court, the term "job classification" appears to be used to include any technique which categorises jobs whether formal or informal, analytical or non-analytical. The term covers both classification and evaluation. It does not appear to be used in a technical sense. In the infringement proceedings against the United Kingdom, the respondent government tends to refer throughout its submissions to "job evaluation" and the Court refers in its judgement to "job classification". Neither term is ever defined.

The Court held that the United Kingdom had failed to implement the provisions of Directive 75/117 because:

> "it has not introduced into its national legal system measures necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay for men and women for work to which equal value is attributed and for which no system of job classification exists to obtain recognition of such equivalence (27)".

In coming to this decision it found that:

> "the job classification system is, under the Directive, merely one of several methods for determining pay for work to which equal value is attributed(28)".

The Court found that the UK governement's interpretation of the Directive:

> "amounts to a denial of the very existence of a right to equal pay for work of equal value where no classification has been made. Such a position is not consonant with the general scheme of provisions of the Directive. The preamble to the Directive indicates that its essential purpose is to implement the principle that men and women should receive equal pay contained in Article 119 of the Treaty and that it is primarily the responsability of the Member States to ensure the application of this principle by means of appropriate laws, regulations and administrative provisions in such a way that all employees in the Community can be protected in these matters(29)".

The UK government had argued that there was no provision in the Directive enabling an employee to insist on the determination of pay by a job evaluation system. On that basis, the UK government concluded that the worker cannot insist on a comparative evaluation of different work by a job evaluation method, the introduction of which is at the employer's discretion.

The Court spelt out the role of job classification systems in the context of the principle of equal pay set out in the Directive:

" the principle is defined in the first paragraph of Article 1 so as to include under the term the same work, the case of work to which equal value is attributed and the second paragraph emphasises merely that where a job classification system is used for determining pay it is necessary to ensure that it is based on the same criteria for both men and women and so drawn up to exclude any discrimination on grounds of sex.

It follows that where there is a disagreement as to the application of that concept, a worker must be entitled to claim before an appropriate authority that his work has the same value as other work and if that is found to be the case to have his rights under the Treaty and the Directive acknowledged by a binding decision. Any method which excludes that option prevents the aim of the Directive from being achieved" (30)

The Court held that:

"the implementation of the Directive implied that the assessment of the "equal value" to be attributed to particular work may be effected notwithstanding the employer's wishes, if necessary in the context of adversarial proceedings. The Member States must endow an authority with the requisite juridiction to decide whether work has the same value as other work after obtaining such information as may be required" (31).

In considering alternatives to job classification by means of resolving equal value claims, the Commission set out its view of the obligation of Member States:

"to determine whether two different jobs have an equal value, they must be compared one with the other or evaluated against a common standard. That being so, Member States have a duty to set up a system whereby employees are able to obtain, if necessary by recourse to the courts, equal pay for work of equal value.

This means that it is not necessary to oblige all employers to adopt job evaluation schemes, but at the same time enabling employers to choose whether or not to introduce such schemes without making any provision for equal pay in respect of jobs of equal value where they do not, is inadequate(32)".

The Commission found that in many cases, work of equal value will be compared within the framework of a collective agreement or under a job evaluation scheme or even more informally without any details of the jobs being obtained. As mentioned earlier, various Member States have introduced a variety of mechanisms to determine whether work was of equal value.

In Belgium, France, Italy, Luxembourg and Germany the duty lay with "work inspectorates". In the Netherlands, the question of whether work is of equal value was assessed on the basis of "a reliable system of job evaluation". Under Irish legislation, any dispute on the subject of equal pay could be referred to one of three equality officers.

The UK government emphasised practical considerations and saw that "considerable expense" would be involved in "compulsory evaluation schemes".

It is clear from the United Kingdom case that there is no obligation on employers to introduce job classification or job evaluation schemes. The obligation is that where an organisation uses such a scheme it must not discriminate on grounds of gender. This is to state no more than that legislation, collective agreements and pay systems covering the issue addressed by the Directive must not be discriminatory on grounds of gender.

Where a dispute arises as to whether work is of equal value, the Member States are required to provide a process by which an assessment of value can be made. Such a process appears to involve in all Member States to a greater or lesser extent, some form of comparison based on job evaluation or classification techniques.

In the case of Rummler v Dato Druck GmbH (31), Ms Rummler who was employed by a printing firm, sought reclassification to a higher category in the pay scale. The conditions of the remuneration of the printing industry were governed by a Framework Wage Rate Agreement for Industrial Employees of the Printing Industry in the territory of the Federal Republic of Germany including West Berlin. It provided for seven wage groups, corresponding to the work carried out and determined according to the following factors:

a) Degree of knowledge
b) Concentration
c) Muscular demand or effect
d) Responsibility

Ms Rummler felt she should be classified as wage group 4 not 3 because in particular she was required to pack parcels weighing more than 20 kilogrammes, which for her represented heavy physical work. To be reclassified to wage group 4, the weights had to be more than 50 kilogrammes.

The Arbeitsgericht Oldenburg referred to the Court the question of whether a job classification system based on criteria of muscle demand or muscular effort and the heaviness of work was compatible with the principle of equal pay for men and women.

The Court having determined that the nature of the work should be considered "objectively" held that:

"Where a job classification system is used in determining remuneration, that system must be based on criteria which do not differ according to whether the work is carried out by a man or by a woman and must not be organised as a whole in such a manner that it has the practical effect of discriminating generally against workers of one sex" (34).

The Court laid down three guiding principles following from paragraph 2 of Article 1 of Directive 75/117 that:

a) "The criteria governing pay rate classification must ensure that work which is objectively the same attracts the same rate of pay whether it is performed by a man or a woman.

b) The use of values reflecting the average performance of workers of one sex as a basis for determining the extent to which work makes demands or requires effort or whether it is heavy constitutes a form of discrimination on grounds of sex contrary to the Directive.

c) In order for a job classification system not to be discriminatory as a whole it must, insofar as the nature of the tasks carried out in the undertaking permits, take into account criteria for which workers of each sex may show a particular aptitude (35)".

These guiding principles set out that in the context of a dispute a job classification system under Article 1 paragraph 2 of the Directive must be <u>formal</u>, <u>analytical</u>, <u>factor based and non-discriminatory</u>.

The Danfoss (36) case concerned a system of pay, set out in a collective agreement, according to which all workers of the same category received the same basic salary. Under the collective agreement, however, the employer was allowed to make additional payments to individuals within a grade on the basis of a number of criterion - flexibility, vocational training and seniority.

The Court held that where an undertaking applies a pay system which is totally lacking in transparency, the burden of proof is on the employer to show that his pay practice is not discriminatory where a female worker establishes, by comparison with a relatively large number of employees, that the average payment of female workers is lower than that of male workers.

The concept of transparency articulated in Danfoss is applicable to every element of the determination of a pay system, including any form of classification.

In Danfoss, the work of the women and male comparators was established as equal. This merely confirms that before any system of classification can be considered as a justification for the different grading of jobs, the Court seized of a dispute, must itself, with relevant information, determine the nature and demands of jobs compared for the purposes of equal pay. Job classification and evaluation may be reasons justifying differences in pay but their neutrality and appropriateness for particular jobs must be assessed against a review by the courts of the nature of disputed jobs to comply with the Directive.

Generally, it appears that the laws of Member States provide that grading, classification and evaluation systems are matters to be taken into account in the same way as any other reason put forward by employers to justify a pay differential once the nature and demands of the work compared have been assessed objectively.

However, in the courts of some Member States, when considering such schemes as justifications for pay differentials, there appears to be a reluctance to scrutinise to any great degree the operation of job evaluation or classification schemes to determine whether they are discriminatory.

This is particularly so where the schemes appear to be analytical. There is also little doubt that applicants, their trade union representatives, lawyers, national labour inspectorates and indeed, in some instances specialist agencies themselves are unable to assist the courts in identifying gender discrimination in schemes owing to their own lack of understanding of the topic.

c) The Implementation of Pay Structures

The implementation of modified job evaluation and classification schemes designed to address positively the undervaluing of women's work may be limited by economic constraints. For example, a modified scheme may revalue women's work as equivalent to male work. However, in attaching pay rates to the new system the amount selected may not reflect the male pay rate but rather a lower figure.

In such circumstances, male jobs may remain on protected pay rates as an interim measure. However, the long term effect may be, in reality, the introduction of a pay rate which is in fact the female rate for all employees. This, of course, implies an overall worsening of conditions, which is not the result aimed at by the social provisions of the Treaty.

The principle of "levelling-up" (extension of the more favourable provision to the disadvantaged group in cases where discrimination has been determined) has been enunciated in a number of cases before the Court. In general terms, the Court considers that in the face of a discrimination contrary to Community law, the group set at a disadvantage by that discrimination is entitled to be treated in the same manner, and to have the same rules applied to it, as the others recipients, since those rules remain the only valid point of reference.(37)

Quite recently, in Kowalska v Freie und Hansestadt Hamburg the Court held that:

"where there is indirect discrimination in a clause in a collective wage agreement, the class of persons placed at a disadvantage by reason of that discrimination must be treated in the same way and made subject to the same scheme, proportionately to the number of hours worked, as other workers, such scheme remaining for want of the correct implementation of Article 119 of the EEC Treaty in national law, the only valid system of reference (38)".

In Nimz again, the Court held:

"where there is indirect discrimination in a provision of a collective agreement, the national court is required to set aside that provision, without requesting or awaiting its prior removal by collective negociation or any other procedure, and to apply to members of the group disadvantaged by that discrimination the same arrangements which are applied to other employees, arrangements which failing the correct application of Article 119 of the EEC Treaty in national law, remains the only valid system of reference (39)".

These two judgements merely confirmed an established line of case-law whereby, in the absence of measures to implement Article 4(1) of Directive 79/7 "woman are entitled to be treated in the same manner, and to have the same rules applied to them, as men who are in the same situation" (40).

The legislation of Luxembourg and the UK specifically require the application of the more favourable term to the disfavoured group. However, where the legislation is silent, in Germany and Belgium for example, the courts have not ruled out the non-application of the benefit for all employees.

Chapter 3 : Pay for the Purposes of Article 119 of the EC Treaty

Article 119 of the EC Treaty provides a broad definition of pay:

> "the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment from his employer".

The Court has repeatedly held that the concept of pay within the meaning of the second paragraph of Article 119 of the EC Treaty, encompasses all benefits in cash or in kind, present or future, provided they are paid, albeit indirectly, by the employer to the worker in connection with his employment (41).

a) Basic and additional pay

Individual pay supplements to basic pay (Danfoss) (42) and increments based on seniority (Nimz) (43) in addition to basic and minimum pay fall within the scope Article 119 of the EC Treaty. It would appear therefore that any direct payments supplementing a basic wage are covered.

This would appear to include shift premia, overtime and all forms of merit and performance pay. In the Bötel (44) case, it was held that time off with pay for a part-time employee undertaking Works Council training, constitued pay. Supplements to "heads of households" are included in the concept of pay (European Commission v Luxembourg) (45).

b) Contractual and non-contractual pay

The fact that payments to employees are not governed by the contract of employment does not remove them from the scope of pay in Article 119 of the EC Treaty. Gratuities paid at the discretion of an employer are encompassed (Garland) (46).
Thus pay, whether under a contract, statutory or collective provisions or on a voluntary basis is covered. In Bötel (47), the Court held that the payment of wages during time out for Works Council training constituted pay for the purposes of Article 119 of the EC Treaty and this should be available to a part-time employee irrespective of whether the training was during her normal working hours or not.

Under the UK's Equal Pay Act 1970 as amended, claims for equal pay are restricted to elements of pay which are contractual. Where an applicant seeks to claim the benefit of gratuities this aspect of her claim must be made under the Sex Discrimination Act 1975. This procedural complexity places an added burden on an applicant to identify precisely the nature of the remuneration and the correct legislation before her claim can succeed.

c) Benefits

Benefits calculated in monetary terms, such as sick pay allowances constitute pay (Rinner-Kuhn) (48). In addition the monetary calculation for time off to pursue works council training has been found to constitute pay (Bötel) (49).

d) Deferred Benefits

Pensions, travel facilities obtainable on retirement and severance schemes have all been found to constitute pay (Garland, (50), Barber (51)).
It appears therefore that all forms of occupational pension schemes are covered by Article 119 of the EC Treaty. Only pensions paid by the State acting as such are excluded.

e) Social Security Benefits and pay

In accordance with Article 119 of the EC Treaty, "pay" means not only wages or salary but also "any other consideration, whether in cash or in kind which the worker receives directly or indirectly in respect of his employment from his employer". It is important to know whether benefits under social security schemes have to be considered as pay within the meaning of this Article.

This question was referred to the Court for a preliminary ruling in the Case 80/70 Defrenne v the Belgian State (52). In its judgement of 25 May 1971 in the Defrenne Case (case 80/70), the Court made its position clear; the Court, following the conclusions of the Advocate-General, said that the concept of the considerations paid directly or indirectly in cash or in kind could not encompass schemes directly governed by legislation (statutory schemes) without any element of agreement within the undertaking or the occupational branch concerned which are compulsorily applicable to the general category of workers. The Court noted that for the funding of such schemes workers, employers and the public authorities contribute in a measure determined less by the employment relationship than by considerations of social policy. For these reasons, the Court concluded that "any other, consideration" could not be regarded as encompassing the benefits from statutory social security schemes.

On the other hand, however, this line of reasoning, as the Commission deduced immediately, means that company schemes are included by virtue of the fact that they are not directly governed by legislation. They involve an element of agreement within the undertaking or the branch, they are not compulsory for general categories of workers but for the categories in the undertaking or the branch and are financed by employers or workers who contribute directly, depending on the funding needs of the schemes and not on considerations of a social policy. This approach was confirmed in 1986.

The Court ruled in Case 170/84 Bilka-Kaufhaus v Weber (53) that the exclusion of part-time workers from the benefits of an occupational pension financed solely by the employer was prohibited by Article 119 of the EC Treaty where it could be established that such a measure would mainly affect female workers unless the undertaking showed that the exclusion was based on objectively justified factors unrelated to any discrimination on ground of sex.

It should be borne in mind that the Court's judgement in the Bilka case (see above) came at a moment when negotiations within the Council on the adoption of Directive 86/378/EEC relating to the equality of treatment between men and women in the field of occupational schemes had been terminated and that, when it was adopted, the Commission placed on record its reservations as to the conformity of some provisions of the Directive with the Article 119 of the EC Treaty as the Court had just interpreted it in this case.

With its judgement of 17 May 1990 (54), the Court confirms the Commission's original interpretation and the decision in the Bilka case and no longer leaves any room for doubt; social benefits under the terms of an occupational scheme fall within the concept of pay within the meaning of Article 119 of the EC Treaty.

f) Pay and other Working Conditions

Increasingly, the Court blurs the distinction between "pay" and access to benefits. In a number of cases, it has found that the exclusion from a benefit because of age or hours of work thresholds falls under "pay" for the purposes of Article 119 of the EC Treaty and not under the provisions of the Equal Treatment Directive (Defrenne III (55), Kowalska (55), Bilka (57) and Nimz (58)).

g) Total Pay Package v Identifiable terms

In Barber (59), the Court considered of fundamental importance the concept of "transparency" in relation to "pay" under Article 119 of the EC Treaty.

It decided:

"if the national courts were under an obligation to make an assessment and a comparison of all the various types of consideration granted to men and women, judical review would be difficult and the effectiveness of Article 119 of the EC Treaty would be diminished as a result. Il follows that genuine genuine transparency, permitting an effective review is assured only if the principle of equal pay applies to each of the elements of remuneration granted to men or women (60).

The Court ruled that:

"the application of the principle of equal pay must be ensured in respect of each element of remuneration and not only on the basis of comprehensive assessment of the consideration paid to workers (61)".

Thus, arguments which maintain that it is the total package of pay and benefits between women and men undertaking equal work which must be identical, appear unacceptable.

However, in Ireland and Belgium, the courts have held that the relevant comparison for determining equal pay is the total package of benefits and not the identifiable unfavourable benefit (Belgium - Labour Court of Antwerp - 27.3.84 - and Ireland - Labour Court Lissadell Towels v 56 women). This would appear to be contrary to European law.

The full implications of a complete implementation of Article 119 of the EC Treaty and the Equal Pay Directive mean that where work is found to be of equal value, the favourable elements of terms and conditions apply equally to the female and male jobs.

PART III: THE NEED FOR FURTHER MEASURES TO PROMOTE THE PRACTICAL ACHIEVEMENT OF EQUAL PAY FOR WORK OF EQUAL VALUE

Whilst all Member States have incorporated the fundamental principle of equal pay into their national legislation and the judgement given by the European Court of Justice in the Barber case (62) has considerably clarified the scope of Article 119 of the EC Treaty, there has been little effective progress on achieving the principle of equal pay in practice.

It is imperative that the fundamental right to equal pay under Article 119 of the EC Treaty as amplified by Directive 75/117/EEC is fully implemented at Community level. This is especially important, in view of the fact that the Maastricht Treaty * has reiterated the Community's commitment to this principle.

The Commission believes that, in addition to the purely legislative aspects, any strategy to promote the practical achievement of equal pay for work of equal value has to incorporate other features, which can be articulated around some key ideas :

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* It should be noted that Protocol no. 14 of the Treaty on European Union on social policy and the annexed Agreement on social policy concluded by the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland contains in Article 6 (3) thereof an additional element in relation to equal pay. It provides that :

"This Article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their professional careers."

It might also be noted that the Protocol and the said Agreement are without prejudice to the provisions of the Treaty, "particularly those relating to social policy which constitute an integral part of the acquis communautaire".

1. Improvement of baseline data on women and pay

The need for adequate data for accurate wage comparisons between men and women across broad sectors and occupations throughout the Community has never been greater. There is an increasing demand for up-to-date gender-specific data.

The Commission therefore calls on Member States to undertake and improve the systematic collection of essential data on gender pay and occupational segregation to identify wage discrimination. In appropriate cases, the Commission is prepared to contribute to such an action, either financially or by means of the Statistical Office of the European Communities (EUROSTAT).

2. Improved dissemination of information

The Commission would encourage the organisation of research, seminars and conferences on the characteristics of payment systems and their impact on the gap between men's and women's earnings.

Lack of awareness of significant cases based on Community law is a major disadvantage in progressing equality issues. Therefore, the Commission , in association with the Member States, will try to improve the dissemination of information on significant cases based on Community law, to ensure that these developments can be taken into account in national litigation.

3. Training

The Commission would encourage the organisation of further practical and legal training at both Community level and throughout the Member States on the implementation of equal pay in order to improve the knowledge of the legal provisions and practical ways of addressing equal pay.

4. Legal action

The Commission will continue to have recourse to proceedings under Article 169 of the Treaty where this is considered appropriate.

Green Paper on European Social Policy : Options for the Union (63)

Further action which might be taken at Community level will be considered in the context of the Green Paper on the future European Social Policy presented by the Commission.

Among the options which the Commission considers warrant attention is the possibility of adoption of certain basic principles which could serve as guidelines for joint negotiations on job classification and job evaluation at various levels, without prejudice to the autonomy and individual responsabilities of the social partners.

Some of these guidelines could be used as a basis for a Code of Practice on the implementation of equal pay for work of equal value. The idea of Code of Practice with regard to the treatment of weaker groups of workers has already been floated in the Opinion on an Equitable Wage adopted by the Commisssion on 1 September 1993 (64).

A code of practice on equal pay might include, for example :

- publicising in the workplace the right to equal pay for work of equal value.
- how to monitor the workplace by gender, occupation and pay and benefits in the light of European and national obligations.
- how to analyse monitoring information to determine the existence and extent of wage discrimination.

- explaining the types of strategies that can be adopted to address wage discrimination, eg. revision of flat rate pay, integrating grades and categories of gender segregated workers, developing non-discriminatory job evaluation schemes, redefining educational qualifications, reorganising work.
- providing guidance on developing non-discriminatory job evaluation schemes:- making visible and capturing female work, analysing factors, levels and weighting to exclude discrimination, administration, implementation and maintenance of schemes.
- how to develop a strategy for addressing wage discrimination appropriate to the organisation.
- how to implement the strategy to address wage discrimination, eg, the role of average paylines, modifying pay systems, red-circling.

It is envisaged that such a Code would be directed primarily at the social partners in order to raise awareness, to provide a training resources and to develop confidence to address this complex issue in the context of collective bargaining.

In this context, it is clear that one of the most innovative features of the Social Protocol of the Maastricht Treaty is the increased participation of the social partners both in the formulation and implementation of Community legislation which offers new possibilities in the field of equal pay.

NOTES

1. COM (90) 449 final

2. O.J. C 142, 31 May 1991

3. Eurostat 1991
The absence of comprehensive data prevents wholly accurate wage comparisons between women and men across broad sectors and occupations throughout the European Community.

4. Case 43/75, Gabrielle Defrenne v Society Anonyme belge de navigation aérienne Sabena, (1976) ECR (European Court Reports), page 455

5. Case 61/81, Commission of the European Communities v the United Kingdom of Great Britain and Northern Ireland, (1982) ECR page 2601.

6. Case 129/79, (1980), page 1289 paragraph 15

7. Case 237/85, (1986), ECR page 2101

8. Case 157/86, (1988), ECR page 673

9. Case 96/80, (1981), ECR page 911

10. Case 184/89, (1991) ECR page 322

11. ibid 4 above, page 476, paragraph 40

12. ibid 6 above

13. Case 177/88, Dekker v Stichting Vormingscentrum voor Jonge Volwassenen (1990) ECR page 3941, paragraph 17

14. ibid 4 above page 472, paragraph 19

15. Case 143/83, Commission of the European Communities v Denmark, 1985, ECR page 427

16. Case 171/88, Rinner-Kuhn v FWW Spezial - Gebäudereinigung (1989) ECR page 2743

17. Case 360/90, Arbeiterwohlfahrt der Stadt Berlin v Botel, judgement of 4 June 1992

18. Case 109/88, Handels-OG Kantorfunktionaerernes Forbund i Danmark v Dansk Arbejdsgiverforening (1989), ECR page 3199

19. ibid 10 above

20. ibid 7 above

21. Case 33/89, Kowalska v Freie und Hansestadt Hamburg (1990), ECR page 2591

22. Case 127/92 P.M. Enderby v Frenchay Health Authority (FHA) and Others, judgement of 27 October 1993, ECR (1993) page 5535

23. ibid above, paragraph 22

24. Reward Management, A Handbook of Remuneration Strategy and Practice, Michael Amstrong and Helen Murlis.

25. ibid 4 above

26. ibid 6 above

27. ibid 5 above, page 2617, paragraph 14

28. ibid 5 above, page 2615, paragraph 4

29. ibid 5 above, page 2615, paragraph 7

30. ibid 5 above, page 2616, paragraph 8 - 9

31. ibid 5 above, page 2617, paragraph 13

32. ibid 5 above, page 2612

33. ibid 7 above

34. ibid 7 above, page 2114, paragraph 13

35. ibid 7 above, page 2118 - 2119

36. ibid 18 above

37. Case 102/88, Ruzius-Wilbrik (1989), ECR 4311, paragraph 21

38. ibid 21 above, page 2614

39. ibid 10 above page 322

40. Judgments of 4 December 1986 in Case 71/85 Federatie Nederlandse Vakbeweging (1986) ECR 3855, paragraph 22, of 24 June 1987 in Case 384/85 Borrie Clarke (1987) ECR 2865, paragraph 13; see also the judgments of 24 March 1987 in Case 286/85 Norah McDermott and Ann Cotter (1987) ECR 1453, paragraph 17 and of 8 March 1988 in Case 80/87 A. Dik, A. Menkutos-Demirci and H. G. W. Laar-Vreeman (1988) ECR 1601, paragraph 10

41. Case 262/88, Barber v Guardian Royal Exchange Assurance Group Ltd (1990) ECR page 1949

42. ibid 18 above

43. ibid 10 above

44. ibid 17 above

45. Case 58/81 (1982), ECR page 2175

46. Case 12/81, Eileen Garland v British Rail Engineering Ltd (1982), ECR page 359

47. ibid 17 above

48. ibid 16 above

49. ibid 17 above

50. ibid 44 above

51. ibid 39 above, page 1889

52. Case 80/70, Gabrielle Defrenne v Belgian State, (1971) ECR, page 445

53. Case 170/84, Bilka Kaufhaus GmbH v Karin Weber von Hartz, (1986), ECR, page 1607

54. ibid 39 above

55. Case 149/77 (1978), ECR page 1365

56. ibid 21 above

57. ibid 51 above

58. ibid 10 above

59. ibid 39 above, page 1889

60. ibid 39 above, page 1953, paragraph 34

61. ibid 39 above, page 1954, paragraph 35

62. ibid 39 above

63. COM (93) 551

64. COM (93) 388 final, adopted on 1 September 1993

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