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BRIEFING
ON
NON-DISCRIMINATION ON SEXUAL GROUNDS

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These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC 96 agenda.

Briefings will be updated as negotiations proceed.

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- 1 The Court of Justice**
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**BRIEFING
ON
NON-DISCRIMINATION ON SEXUAL GROUNDS**

Brief overview of the position of the Institutions and Member States

The following table gives an overview of the position of the Member States and institutions on the issue of non-discrimination on sexual grounds prior to the 1996 Intergovernmental Conference (IGC). Member States have given an indication of their views on a number of issues although in many cases the official position will be agreed upon when public debate has reached a more advanced stage.

The priority of the equality issue has varied in importance from Member State to Member State. This paper will give a brief summary of the views as they have been expressed to date by the institutions and the Member States concerning non-discrimination on sexual grounds. Existing legislation is detailed in an attached Annex.

Institution / Country	Attitude on Non-Discrimination	In favour of Fundamental Rights
European Parliament	inclusion of an explicit Treaty reference	accession of EU to Convention on Human Rights and Fundamental Freedoms (ECHR)
European Commission	clarity on equality	greater protection of fundamental rights
Economic and Social Committee	no specific reference	no specific reference
Committee of the Regions	no specific reference	calls for clarification of TEU and basic text defining rights
Austria	no specific reference	basic rights of Union citizens ought to be guaranteed
Belgium	no specific reference	-increase in number of citizens' rights -EU's accession to ECHR
Denmark	no specific reference	provisions of the Protocol on Social Policy to be transferred to TEU

Institution / Country	Attitude on Non-Discrimination	In favour of Fundamental Rights
Finland	- need concrete Treaty provision - extend powers of Ombudsman to include equality principle	clearer definition in TEU would ensure respect for human rights are observed at European level
France	no specific reference	no specific reference
Germany	no specific reference	list of fundamental rights in European law
Greece	- promotion of equality - regulations for part-time and pregnant workers	'communitarization' of procedures for protection of human rights
Ireland	no specific reference	increase powers of Ombudsman
Italy	no specific reference	lis of rights at European level
Luxembourg	explicit reference on equality	specific reference needed in Preamble
The Netherlands	no specific reference	safeguard the existing rights in TEU
Portugal	- equal rights in a citizens charter	citizens' charter
Spain	no specific reference	either (i) extension of the existing catalogue of rights; or (ii) charter of fundamental rights
Sweden	must be a prime consideration in all Community activities	accession of European Community to ECHR
United Kingdom	national provisions sufficient	best protected at national level

European Parliament

Resolution on the Functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference (Bourlanges/Martin, Doc. A4-0102/95 of 17 May 1995)

Resolution on (i) Parliament's opinion on the convening of the IGC; and (ii) evaluation of the work of Reflection Group and definition of the political priorities of the European Parliament with a view to the IGC (Dury / Maij-Weggen report 13 March 1996, A4-0068/96).

The European Parliament recognises as one of the challenges for the future the growing relevance of equality between women and men. In an effort to fully implement its new responsibilities, the Union should grant more rights for EU citizens and improved protection of the fundamental rights of all EU residents.

Paragraph 7 of the resolution suggests that greater substance should be provided for the concept of EU citizenship through the development of special rights linked to EU citizenship, notably by means of the inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion. Furthermore, the application of the provisions in the Treaty on equal rights should not only extend to economic rights but to all aspects of equality for women.

The need for more effective policy-making in a number of key areas is expressed including the necessity of reinforcing the principle of economic and social cohesion in the Treaty. This includes incorporating the Social Charter as an area of EU competence and ending the United Kingdoms opt-out. Equal opportunities policy should be improved through a redrafting of Article 119 of the Treaty according to the resolution, thereby broadening its scope to cover all aspects of employment and social security.

Regarding the clarification of competence, the European Parliament is of the opinion that the establishment of a fixed list of EU and Member States competencies would be too rigid and too difficult to achieve¹. Additionally, the EP believes that Article 235 should be retained, but only used as a last resort and after the assent of the EP. Article 235 was used as the legal basis for the Fourth Action Programme on Equal Opportunities due to a lack of an adequate legal basis in the Treaty itself dealing specifically with equality between men and women.

An improved definition of European citizenship is identified as one of the key priorities for the future of Europe in the EP resolution of March 1996. Greater respect for human rights through the extension of specific rights within the Treaty is also advocated. These rights plus the strengthening of fundamental human rights and the principles of equal treatment and non-discrimination should be clearly

1 European Parliament Resolution of 17 May 1995 on 1996 IGC, p.7, paragraph 12 (ii).

defined within one chapter on European citizenship.

The most recent resolution following the Dury/Maij-Weggen report states that the EU should accede to the European Convention on Human Rights and Fundamental Freedoms so that human rights laid down in the Convention not only have legal applicability at European Union level, but can also be capable of review by the European Court of Human Rights.

A special chapter should be included on the principle of equal treatment and non-discrimination regardless, in particular, of race, gender, sexual orientation, age, religion or handicap.

"Equal treatment of women and men should be recognized as a fundamental right in the revised Treaty; the substance of Article 119 of the Treaty should be maintained but should be extended to all aspects of equal opportunities in all areas, notably economic, social and family life, with explicit reference being made to affirmative action" (EP Resolution A4-0068/96, paragraph 4.7).

European Commission

Reinforcing Political Union and Preparing for Enlargement, February 1996.

The Commission in its opinion on the IGC recognises that Europe is built on democratic values shared by all its Member States. "These values include the access for all members of society to universal services of general benefit, thus contributing to solidarity and equal treatment".

Moreover, the Member States of the Union are defenders of human rights with the Union itself in its decisions and actions abiding with the European Convention for the protection of Human Rights and Fundamental Freedoms.

It is stressed, however, that the Union should clarify its support for these values either directly in the Treaty or in signing the Convention. Further expansion of the Union makes such a step all the more necessary. The Commission holds the view that the "Conference should also incorporate in the Treaty provisions banning discrimination of any kind - particularly on the basis of sex, thereby extending the provisions on equal pay - and condemning racism and xenophobia".

Economic and Social Committee of the European Communities

Opinion on the 1996 IGC-Role of the Committee

The ESC has made a firm commitment to promoting the Citizens' Europe, while calling for it to be underpinned by a transparent legal framework, and for specific measures to be taken to achieve it. No direct reference is made to the principle of non-discrimination, however, the ESC advocates a higher profile role for the EP in the field of Justice and Home Affairs since these policies have a significant impact on citizens, European society and its constituent organizations.

Committee of the Regions

Opinion of the Committee of the Regions on the Revision of the Treaty on European Union, April 1995

The Opinion does not specifically refer to non-discrimination. In its resolution it urges that the revision of the Treaty be seen as an opportunity to clarify for ordinary citizens the responsibilities and powers exercised within the EU and urges that this will lead to the adoption of a basic text defining:

- the fundamental rights of European citizens;
- the objectives of the European Union;
- the bodies of the European Union;
- the powers of these bodies.

Reflection Group's Report, December 1995

The Reflection Group gave recognition to the promotion of equality between men and women as an important goal of the Union². A Europe of greater relevance to the citizen should be a primary objective of the IGC. To achieve this, a better balance must be achieved between the economic and social aspects of Europe. Greater emphasis on equal opportunity issues can contribute to this objective.

Furthermore, the Reflection Group proposed the formulation of a principle of equality between men and women in a positive way with some members of the Group holding the opinion that the Treaty should refer to the integration of a gender perspective in all Union policies and programmes.³

Austria

Guidelines (of the Austrian Government) on the subjects likely to be dealt with at the 1996 IGC

The guidelines were drawn up by the Federal Chancellery and the Foreign Affairs Ministry in co-operation with the Länder and the social partners.

Although no specific reference is made to the principle of non-discrimination, basic rights of Union citizens is identified as being an area which ought to be guaranteed.

Austria stresses that the United Kingdom has secured unwarranted competitive advantages and should be brought within the Community framework and harmonised by including the protocol and agreement on social policy in the first pillar.

2 Some would point out that the Reflection Group was composed of male members except for one woman observer representing the European Parliament.

3 Reflection Group's Report, p. 13, paragraph 39.

In the context of Union enlargement, consolidating and strengthening the Community's capacity to act and the efficiency of the action in the field of economic and social policy is thought to be one of the primary challenges facing the European Union.

Belgium

Belgian policy paper to the Belgian Parliament on the 1996 IGC, October 1995

This document is merely an initial expression of the Belgian position and will be adjusted and corrected accordingly as negotiations proceed in close co-operation with the Belgian Parliament, Communities and Regions.

To date no specific reference has been made in reference to non-discrimination on sexual grounds. However, the Belgian government does advocate an increase in the number of citizens rights in the Treaty, the EU's accession to the European Convention for the Protection of Human Rights and other conventions which define fundamental rights and freedoms including the Social Charter, and incorporation in the Treaty of a list of fundamental rights and freedoms. One can infer from this that non-discrimination on sexual grounds is to be included. Furthermore, in situations where Member States do fulfil their obligations with regard to democratic freedoms and human rights, Belgium favours introducing a mechanism to impose penalties, including the suspension of membership.

Consolidation of the Union is considered as the guiding objective of the 1996 IGC. This involves the expansion of the Internal Market by introducing common minimum standards in social, fiscal and environmental fields, areas in which harmonisation should be achieved by qualified majority voting.

Article 235 ought to be maintained in order to safeguard the dynamic and evolving nature of European integration. Common minimum thresholds should be set for social security and taxation and a effort must be embarked upon to fight poverty and social exclusion.

Regarding the division of powers, powers should be delimited to make EU more efficient, transparent and democratic but a 'catalogue of powers' would be hard to reconcile with the dynamics of European integration.

Belgium argues that integration on Community basis rather than intergovernmental basis is a preferable way of reconciling efficiency through majority decision making with effective protection against the abuse of power.

Memorandum of Belgium, Luxembourg and the Netherlands on the IGC, March 1996

In a recent memorandum the Benelux countries outlined their updated position on the main issues to be discussed during the IGC.

In the event of human rights violations by a Member State of the Union, Treaty

provisions should be made for the suspension of certain rights attached to membership for the offending State.

The Benelux share the opinion that explicit reference to the protection of human rights and fundamental freedoms of European citizens, fundamental social rights as well as equality between men and women and the struggle against racism and xenophobia should be inserted into the Treaty.

Denmark

Dagsorden for Europa, Regeringskonference 1996

Danish Ministry of Foreign Affairs, August 1995

Denmark is fully aware of the importance of public debate and active participation in the run up to the 1996 IGC and published the 'Dagsorden for Europa' as a preliminary platform for discussion. Therefore, the discussion on the IGC in Denmark is focused around the fundamental question "What are our aspirations for future European cooperation?"

Three principle issues have been identified: democracy, enlargement and security. Denmark has not made any direct reference to the principle of equality between men and women. Nonetheless, it has suggested that the provisions of the Protocol on Social Policy be transferred to the European Union Treaty, thereby further enhancing the legal protection of employees under the existing legislation. The purpose of the 'social dimension' is to prevent the Single Market from providing a platform for competition against a backdrop of poor pay and working conditions.

Denmark is opposed to the competitive advantage of companies as a result of the UK opt-out of the Social Chapter and believes that by incorporating the provisions of the Social Policy Protocol into the treaty the UK would be forced to co-operate unless it decided not to participate. European co-operation under the auspices of the EU should be more democratic, more transparent and closer to the citizen.

The Danish Government is not going to announce its official stance until the public debate has reached a more advanced stage.

Finland

Memorandum concerning Finnish points of view with regard to the 1996 Intergovernmental conference of the European Union

Ministry of Foreign Affairs, September 1995

Finnish proposals for the Intergovernmental Conference makes specific reference to non-discrimination. The fact that the principle of equality is not mentioned in primary Union law as a general legal principle is noted. Finland recognises the importance of writing a concrete provision into the Treaties and suggests that there ought to be active work undertaken in order to achieve this.

The Finnish memorandum advocates that sexual equality should extend to every sphere of life and to ensure that it is implemented, it should be possible to have

any disputes concerning it within the sphere of the Community law referred to the European Court of Justice. It is also proposed that the duties of the Union's parliamentary ombudsman be reviewed in order to extend his competence to include supervising the implementation of the equality principle.

The European Union's role in promoting equality between the sexes should be enhanced through the IGC. One means of achieving this is to inscribe the principle of equality into the treaty and to ensure that it is comprehensively applied throughout the Member States.

France

Even though the French Government has not yet presented an official document on the Intergovernmental Conference, the new Prime Minister, Alain Juppé, addressing the National Assembly on 23 May 1995 in his first statement on general policy also spoke on his government's position vis-à-vis the IGC. No specific reference was made to non-discrimination on sexual grounds.

On 6 December 1995 in the course of the Franco-German summit in Baden-Baden, the President of the French Republic, Jacques Chirac, and the Chancellor of the Federal Republic of Germany, Helmut Kohl addressed a letter to the President of the European Council, Mr. Felipe Gonzalez, setting out the priority objectives of their Governments for the European Council in Madrid in December 1995.

France recognises that the overall unifying framework would be provided by 'reinforced forms of solidarity' open to all those willing to take part and not confined to 'hard-core' states.

The joint letter identified four priority objectives for review in the 1996 IGC: a Common Foreign and Security Policy; creation of a homogeneous area where freedom of movement is guaranteed by common provisions; improving the efficiency of EU institutions, and; consolidating a democratic Europe by bringing it closer to its citizens.

Germany

In the Government declaration delivered by Chancellor Kohl in November 1994, the consolidation of the Union through consistent application of the EU Treaty and further developing it at home and abroad was referred to as one of the tasks of Germany's policy on Europe.

Similarly, Mr. Klaus Kinkel, Foreign Minister, said on 21 February 1995 that the IGC must be based on the principle of proximity of European decisions to individual citizens, transparency of procedures and democratic control. The Federal Government also supports participation by all Member States in the agreement on Social Policy. With regard to the implementation of framework legislation on social policy, the Federal Government will not tolerate any watering down of German social standards. For this reason, and with a view to further development of the

common social policy, the Federal Government calls for the harmonization of minimum social standards.

Greece

Towards a citizens Europe- democracy and development: memorandum for the 1996 IGC.

January 1995

Greece identifies three priority issues for the IGC; the democratic reform of the European institutions; enhancement of democratic legitimacy in Community decision-making and enlargement.

The idea of a citizens Europe is promoted by Greece and opposes a two or three speed Europe.

The principle of non-discrimination is directly touched upon in the Greek initial position paper. Specific reference is made concerning the promotion of equality between men and women. Also, specific regulations ought to be introduced for part-time workers and pregnant women. Greece suggests that a model be devised respecting differences in national education policies incorporating vocational training and the social dimension.

According to the Greek government, the 1996 IGC should be oriented towards the basic priority of the social, economic and political cohesion of the European Union. Secondly, ties within the EU must be further strengthened, not loosened. Thirdly, the principle of Community solidarity must prevail at all levels.

Greece rejects a multi-speed Europe. A 'communitarization' of procedures could be an answer to questions concerning safeguarding the rule of law and protection of Human rights.

Ireland

White Paper on Foreign Policy: Challenges and Opportunities Abroad March 1996.

Ireland makes reference to non-discrimination although its interpretation is rather limited.

"The issue of a *non-discrimination* clause, covering matters as disability, is likely to be considered by the IGC. The implication of such a clause will be examined at European and national level. The Government will seek to identify Treaty amendments in this area, with a view to initiating a Treaty change in the course of the IGC. The purpose of such a Treaty change would be to reflect in an appropriate way the rights and needs of people with a disability." (3.209)

Ireland recognises that future enlargement is inevitable although Mr. Spring, deputy Prime Minister and Minister for Foreign Affairs stressed that regarding a 'hard-core', Ireland had always been in favour of a unified approach to European Integration and would assess any kind of multi-speed or hard-core system in the light of its national interests.

The White Paper did however, recognise the role of the Ombudsman and suggested that this could also be extended to include an increase of powers in the field of transparency.

Mr. Gay Mitchell, Secretary of State for Foreign Affairs and the Irish member of the Reflection Group said in a speech on 6 June 1995 that the Commission should retain the exclusive right of initiative. Additionally, each Member State should continue to nominate a Commissioner regardless of its size. Also, the role of the European Parliament ought to be increased.

Italy

Italian Government Statement of 23 February on Foreign policy guidelines

The Italian Government is calling for the Treaty provisions to be organised according to a new technical and legal system in order that the citizen can readily comprehend the process and for certain essential constitutional principles to be spelt out explicitly, one such being the basic rights of European citizens which must be properly protected and subject to review by the European Court of Justice.

Opt-out clauses and permanent exceptions should not be permitted.

A second statement issued on 23 May 1995 on the 1996 IGC to review the Maastricht Treaty advocates two basic responses to the challenge of diversity

- i) some of the EU's operating rules must be changed;
- ii) the concept of differentiated integration needs to be properly defined.

The Italian government draws attention to the fact that the challenge of democratisation means that broader legislative powers should be given to the European Parliament.

Flexible use should be made of the subsidiarity principle which could be more clearly defined so as to avoid an excessive amount of regulation not only in the Union but also in Member States. However, it is not advisable to draw up a list of exclusive competencies with regard to the 'people's Europe'. The Italian Government proposes that a full list of fundamental rights and freedoms should be drawn up so that the idea of European citizenship would include all forms of expression, association, activity and free movement of citizens with reference to particular rights, relations with the institutions, education, employment and the family. Italy recommends that instruments for upholding and protecting these rights vis-à-vis the institutions should be strengthened and extended particularly as regards the ECJ.

Joint Declaration of 15 July 1995 by the German and Italian Foreign Ministers regarding the 1996 IGC.

This statement proposed that the fundamental duties and freedoms should be codified and responsibility for safeguarding them entrusted the ECJ.

Luxembourg

Luxembourg Government memorandum of 30 June 1995 on the 1996 Intergovernmental Conference

This memorandum sets out the initial position of the Luxembourg Government based on the twin concern of securing realistic progress towards European integration while at the same time safeguarding the country's vital interests. The deepening of the Union by means of Community integration must be one of the main concerns for the IGC and that extends to issues such as the fight against social exclusion and preserving the social model enshrined in the Treaty on European Union.

On the question of the social dimension, the memorandum stresses that Luxembourg is deeply attached to the principles of the social charter and the social dialogue, and to the drawing up of a list of minimum social rights, and it calls for special attention to be paid to the encouragement of sustainable growth that will generate employment.

No further powers are required by the Union when the Treaty is reviewed. Nonetheless, the Luxembourg Government would like the preamble to the new Treaty to include explicit reference to equality between men and women, measures to combat racism and xenophobia and the protection of human rights and fundamental freedoms.

The Netherlands

The Netherlands Government has published four documents each focusing on a specific area; enlargement, Common Foreign and Security Policy, Justice and Home Affairs and Institutional Reform of the EU.

The 'Note on the Enlargement of the EU: the opportunities and obstacles' makes reference to the fact that future accession negotiations should be guided by the objective of safeguarding democratic principles and democratic rights set out in the Union treaty. Apart from this general guideline no specific reference was made to the principle of non-discrimination on sexual grounds.

Portugal

No official position of the Portuguese government has yet been published. Nonetheless, from debates held in the Committee on European Affairs of the Assembly of the Republic, it is evident that Portugal is likely to forward the strengthening of economic and social cohesion between Member States and to ensure comparable living and working conditions for its inhabitants.

In an interview published in the newspaper 'Publico' on 4 June 1995, Mr. Anibal A. Cavaco Silva expressed the opinion that reform should focus above all on the problems of European citizens. Also, he proposed that the EU should draw up a genuine citizens' charter for all Europeans, establishing an area without frontiers with equal rights and opportunities.

Spain

Document on the 1996 Intergovernmental Conference: starting-points for a discussion.

This document lists the problems and alternatives that will be discussed at the IGC. With regard to policy areas falling outside the purely economic sphere, such as education, health and culture, Spain is in favour of strengthening Community action. On the subject of Union citizenship and fundamental rights, the text puts forward two practical alternatives; either the extension of the existing catalogue of rights in the chapter on 'Citizenship of the Union'; or there should be a charter of fundamental rights of the citizens' of the Union, including all the rights considered as basic in the context of the *acquis communautaire*, which would thus receive protection from both the Union institutions and the Member States.

Sweden

Government report on the 1996 IGC, Ministry of Foreign Affairs, November 1995.

The Swedish Government holds the view that the primary task of the 1996 IGC will be to review the fundamental treaties in the light of the Union's objectives. Sweden has been active in pursuing equality issues and has made a substantial contribution to the inclusion of these questions on the agenda of the Cannes summit and has actively promoted equality between the sexes. As with the fight against unemployment, equality between women and men must be a prime objective for the EU and for its member countries.

Sweden, therefore, intends to work towards strengthening the relevant sections of the Treaty of Rome relating to equality. This includes, among other things, making equality a crucial objective for the EU and to explicitly state that the equality aspect must be taken into account in all Community activities.

United Kingdom

A partnership of Nations - The British Approach to the European Union 1996 IGC, March 1996.

The British government supports the rights of citizenship as enshrined in the existing Treaty: the right to move and reside freely within the territory of Member States; the right to vote and stand as a candidate in another Member State; to be protected in third countries by the diplomatic or consular authorities of another Member State where a citizen's own State is not represented; to petition the European Parliament; and to apply to the Ombudsman.

On the question of equality the British government is explicit in defining the parameter of the EU's competence.

"It (the British government) does not consider, however, that the European Union is the right context for the protection of fundamental human rights, or for a general clause, as some partners have advocated, prohibiting discrimination for example on grounds of gender; sexual orientation, race, religion, age or disability" (paragraph 55).

The report continues:

"Fundamental human rights are already protected by the European Convention on Human Rights (ECHR) to which all Member States are party, and which the Union too is bound to respect, under Articles F and K.2 of the Maastricht Treaty. These rights are enforceable through the Commission and Court established by the ECHR. Duplicating the ECHR in the Treaty would serve no useful purpose and might confuse the jurisdictions of the ECJ and the European Court of Human Rights" (paragraph 56).

Paragraph 57 deals specifically with discrimination.

"As for the question of discrimination, the Government is proud of its national record, and convinced of the adequacy of the legal framework already in place. It believes that problems of discrimination (particularly on such sensitive questions as race and religion) are best dealt with in this way, through national legislation. Solutions need to be tailored to the particular circumstances and traditions of each Member State."

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For further information on this note, please contact Andrea SUBHAN, DG IV, EAS 212, Bruxelles, (Tel. 3684).

ANNEX ONE

The European Council at its meeting at Madrid on the 15 and 16 December 1995 reaffirmed that

“the fight against unemployment and for equal opportunities is the priority task of the Community and its Member States”

Article 119

Article 119 establishes the principle of equal pay for equal work:

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

For the purpose of this Article, ‘pay’ means the ordinary and basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

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

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

Despite various legislative extensions and developments beyond the area of pay, through the primary and secondary legislation and through the decisions of the European Court of Justice (ECJ), the equality treatment principle is limited in scope to employment related sex discrimination. The European Parliament has strongly and repeatedly urged the European Union to strengthen its policy in the field of equal opportunities for men and women.

Recent events, in particular, the ruling of the European Court of Justice on the Kalanke case in October 1995⁴, has highlighted the lack of legal clarity on equal opportunities and equality issues. The European Court of Justice (ECJ) found that the City of Bremen’s positive action policy on recruitment and promotion contravened Article 2.4 of the equal treatment directive 76/207/EEC⁵ which could be interpreted as meaning that positive action measures were permitted. The European Commission has subsequently decided to interpret the ruling in its

4 Kalanke vs. Freie Hansestadt Bremen, 17 Octobre 1995, C-450/93.

5. Article 2.4 states “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), those being access to employment, promotion, vocational training, working conditions and with some restrictions, social security”.

strictest sense and to continue to promote the idea of positive discrimination⁶.

Preambles to equality directives and statements issued by the Council, Commission and ECJ tend to give the impression of women as an 'economic underclass' and they therefore stress the urgency of raising the standard of treatment received by women in among other spheres the workplace and vocational training, so as to give women the equality of employment with men

Equal Pay, Equal Treatment and Social Security

Community law in this field may be divided principally into three areas: equal pay, equal treatment and social security. Although the principle of non-discrimination on grounds of sex is common to all three, each is governed by different legal provisions. Hence, the distinction between the directives is significant.

Equal Pay	Equal Treatment	Social Security
Article 119	Dir. 76/207	Dir. 79/7
Directive 75/117	Dir. 86/613	Dir. 86/378
	Dir. 92/85	

The Community's treatment of these categories of sex-discrimination varies. Matters of equal pay are subject to more stringent application since Article 119 is both vertically (it can be invoked against the State) and horizontally (it may be invoked against another individual) directly effective and there are no specific exceptions outlined in the Directive.

Equal treatment in employment are subject to less strict regulations in that they are several exceptions within Directive 76/207. This directive is only vertically effective and its efficacy has therefore been subject to the various procedures for implementation of the directives. The Social Security directives are again only of vertical direct effect and are subject to various exceptions. Prohibition on sex discrimination in social security relates to protection against certain specified risks only.

6 Agence Europe No. 6644 of 13.01.1996. Commissioner Flynn outlined the approach of the Commission which aims to avoid any situation of conflict with the ruling of the ECJ and interprets the judgement in its literal and narrow sense which means that only *rigid* quotas are not permitted in favour of employing women.

Division between these three areas is in practice not so clear cut. The concept of equality and of non-discrimination in Community law has been criticised as a strictly formal concept which makes no allowances for the differences in the social and material circumstances experienced by men and women. Through granting identical treatment for men and women who are similarly situated, it has been argued that the Community disregards the differences in their working and family lives.

ANNEX TWO

LEGAL BASIS

Primary Legislation

Article 119

Secondary Legislation

Council Directive 75/117/EEC on the approximation of laws in the Member States relating to the application of the principle of equal pay for men and women. (OJ L 45, 19.02.1975)

Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. (OJ L 39, 14.02.1976)

Council Directive 79/7/EEC on the progressive implementation of the equal treatment for men and women in matters of social security. (OJ L 6, 10.01.1979)

Council Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. (OJ L 225, 12.08. 1986)

Council Directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood. (OJ L 359, 19.12.86)

Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers who have recently given birth or are breastfeeding. (OJ L 348, 28.11.1992)

Council Recommendation of 31 March 1992 on child care (92/241/EEC), OJ L 123, 08.05.1992

Council Resolution of 12 July 1982 on the promotion of equal opportunities for women, OJ C 186, 21.07.1982

Council Resolution of 7 June 1984 on action to combat unemployment amongst women, OJ C 161, 21.06.1984

Resolution of the Council and of the Ministers for Education, meeting within the Council of 3 June 1985 containing an action programme on equal opportunities for boys and girls in education, OJ C 166, 05.07.1985

Second Council Resolution of 24 July 1986 on the promotion of equal opportunities for women, OJ C 203, 12.08.1986

Council Resolution of 16 December 1988 on the reintegration and the late integration of women into working life, OJ C 333, 28.12.1988

Council Resolution of 29 May 1990 on the protection of the dignity of women and men at work, OJ C 157, 27.06.1990

Council Resolution of 21 May 1991 on the third medium-term Community action programme on equal opportunities for women and men (1991-1995) OJ C 142, 31.05.1991

Council Resolution of 22 June 1994 on the promotion of equal opportunities for women and men through action by the European Structural Funds, OJ C 231, 20.08.1994

Commission proposal for a Council Directive on parental leave and leave for family reasons (COM (83) 686 final, 24 November 1983) (OJ C 333 9.12.1983) amended (COM (84) 631 final, 15 November 1984) (OJ C 316, 27.11.1984)

Commission Recommendation on child care (92/247/EEC) (OJ L 123, 08.05.1992)

Council Decision on the fourth medium-term Community action programme on equal opportunities for women and men (1996-2000) (COM (95) 381 final)

Protocols

Protocol concerning Article 119 of the Treaty establishing the European Community (OJ C 191, 29.07.1992).

Protocol and Agreement on Social Policy concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland (OJ C 191, 29.07.1992)

First European Framework Agreement

Under the procedure defined in the agreement on social policy annexed to the social protocol, the Commission in consultation with the social partners including the ETUC (European Trade Unions), UNICE (European employers) and CEEP (public enterprise) signed the First European Framework Agreement on 14 December 1995. The Agreement advocates the promotion of equal opportunities and salaries for men and women. It also sets out minimum provisions on parental leave and leave from work for reasons that cannot be avoided as a significant means to reconcile family and professional life.