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REPORT FROM THE COMMISSION

ON THE IMPLEMENTATION OF THE COUNCIL RECOMMENDATION
OF 13 DECEMBER 1984 ON THE PROMOTION OF POSITIVE ACTION
FOR WOMEN (84/635/EEC)

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1 INTRODUCTION

On 13 December 1984 the Council adopted a Recommendation on the promotion of positive action for women. The Commission undertook to submit a report on its application, which it did in 1988¹. The report stated that the Member States were slowly beginning to promote positive action in different forms, in different contexts and with a varying degree of involvement of the social partners and national agencies responsible for equality of opportunity. But at the time - four years after adoption of the recommendation - it was too early to draw conclusions or even to identify the broad outlines of the policies adopted by the Member States in a domain in which none of them had any real experience.

The Commission is aware that progress towards equality is linked to the development of mindsets and is thus a long and difficult process. Ten years after adoption of the recommendation, now that the Commission has entered the final phase of the third Community action programme on equal opportunities for women and men², the time is ripe for an overview - albeit provisional - of how positive action is faring in the Member States. This report was drafted on the basis of replies by the Member States to the questionnaire sent to them by the Commission. With a view to being as comprehensive and precise as possible, additional sources of information, mainly derived from Commission reports or studies on various aspects of equal opportunities, have been used.

In "unfolding" the main strands of the Recommendation - viz. (i) the status of positive action in the legislation and policies of the Member States, (ii) context of implementation, (iii) the differences between the public and private sectors and finally (iv) diversity of positive actions - the objective of this report is to identify the state of play and the shape of positive action in the countries of the European Union. Finally, the Commission will highlight good practices in the domain of positive action implemented in various Member States constituting models from which other countries could draw inspiration.

¹ Doc. COM (88) 370 final.

² "Equal opportunities for women and men - the third medium-term Community action programme 1991-1995", COM(90) 449 final of 6 November 1990.

The Council recommends the Member States

- to adopt a positive action policy designed to eliminate existing inequalities protecting women in working life and to promote a better balance between the sexes in employment, comprising appropriate general and specific measures, in the framework of national policies and practices, while fully respecting the spheres of competence of the two sides of industry, in order:

a) to eliminate or counteract the prejudicial effects on women in employment or seeking employment which arise from existing attitudes, behaviour and structures based on the idea of a traditional division of roles in society between men and women;

b) to encourage the participation of women in various occupations in those sectors of working life where they are at present under-represented, particularly in the sectors of the future and at higher levels of responsibility in order to achieve better use of all human resources (Article 1).

The point made in 1988 still applies today - only in a few countries have *specific* national policies been designed in the field of positive action. In most Member States, positive actions are just one of a number of measures in the context of equal opportunities policies. To date only Belgium and Italy seem to have taken decisive steps towards an active policy of positive action.

On 14 July 1987, Belgium adopted a Royal Decree on measures designed to promote equality of opportunity between women and men in the private sector. Hence equal opportunity plans may be implemented (on a voluntary basis) either within an individual branch of activity or within individual companies in consultation with the workers' representatives. In 1990 these measures were extended to the civil service, where they are mandatory. Belgian legislation also mandates firms to collect data on the existing situation with a view to preparing a detailed report which may be followed by the creation of positive action plans.

On 10 April 1991 the Italian Parliament adopted a law on positive action designed to ensure equality between men and women at work. Hence Italy transposed into its domestic legal order the Community recommendation of 1984, while introducing certain innovative mechanisms. *"The right to effective legal protection implies that the courts must have the right to monitor compliance with the provisions of Community law and national legislation implementing these provisions. In large measure, the possibility of such monitoring depends on the allocation of the burden of proof."*³ Thus, in line with

³ Michel Verwilghen (editor), "L'accès à l'égalité entre femmes et hommes dans la communauté", Presses Universitaires de Louvain, Louvain-la-Neuve, 1993, p. 140.

the Court of Justice's ruling in *Danfoss*⁴, Italian law introduced a partial reversal of the burden of proof⁵.

Moreover, in the case of "collective discrimination" (concerning women workers as a group, even if they are not directly and immediately identifiable), the court may require the employer to establish a plan designed to eliminate discrimination. Finally, Italian law also mandates public and private firms (with more than 100 workers) to submit, at least every two years, a report concerning the situation of women and men in relation to employment, recruitment, pay and training.

On 25 February 1992 the Italian Parliament adopted a new law ("Azioni positive per l'impreditoria femminile"), whose objective is to achieve equality of opportunity in economic activity and in the business community through provisions designed to promote management training, to encourage the creation and development of women-headed firms, to provide better credit facilities for such firms and for firms in which women form a majority in the most innovatory strands of the different economic sectors.

All the Member States, barring Germany and Spain, have laws concerning equal treatment that contain provisions relating to positive action, or which consider such provisions as derogations from the general equality principle. In France, the 1983 Law on occupational equality ordains, as in Italy and Belgium, the preparation of an annual report on the comparative situation of men and women in firms with more than 50 workers. This report must include tables of figures making it possible to determine for each of the occupational categories the respective situation of women and men in relation to recruitment, training, vocational training, qualification and classification, working conditions and pay. This is an indispensable analytical step in preparing an "occupational equality plan" designed to encourage the diversification of women's jobs and women's migration to qualifications and trades in which they are under-represented.

To date, 25 plans have been adopted, mainly by large companies. In 1987 the *Contrats de Mixité* - with the same objective - were introduced for firms with less than 200 workers. These contracts are more flexible and less cumbersome to implement. They consist of specific measures, taken on a case by case basis, in the form of a contract signed by the employer, the state and the interested female party. To date 250 contracts have been concluded, mainly in the secondary sector, indicating that these measures genuinely contribute to diversifying female employment, since they mainly relate to industrial workers and technicians⁶. However, it seems that both as regards the *Contrats de Mixité* and the occupational equality plans, France has not yet gone beyond the experimental stage.

⁴ CJEC., 17 October 1989, Case 109/88, Handels- og Kontorfunktionaernes Forbund i Danmark v. Dansk Arbejdsgiverforening (*Danfoss*), ECR 1989, p. 3199.

⁵ On 27 May 1988, the Commission submitted a proposal for a Council Directive on the burden of proof in the area of equal pay and equal treatment for women and men, OJ No C 176, 5.7.1988, page 5.

⁶ Indeed it is in working-class jobs that women are least represented - cf. "Women in the European Community" Eurostat 1992, pp. 147-148.

In Germany, the Basic Law is still the point of reference for equality legislation, pending the entry into effect of the 1994 Law on equality of opportunity. However, in certain Laender (Berlin, North Rhine-Westphalia, Hesse, Bremen), a number of positive actions have been adopted.

In Spain, an initial action plan for equality of opportunity 1988 - 1990 was implemented and comprised 120 measures. Given that the principle of equality between men and women is enshrined in the Spanish Constitution rather than a particular law, this action plan led to the reform of certain discriminatory aspects which persisted in legislation in the Spanish system. Discriminatory advertising for vacancies and infringements committed by employers in regard to access to employment are now regarded as "very serious offences", with very severe penalties. Finally, in 1989 an article was introduced into the Labour Code authorising reversal of the burden of proof in sex discrimination cases. A second plan was adopted for 1993-1995 which envisages positive actions in education, training, access to employment and health. The declared objective is the integration of such actions into institutional, political and social programmes, as well as the creation of services designed specifically for women.

3 ADOPTION OF FRAMEWORK FOR IMPLEMENTATION

The Council recommends to the Member States:

- to establish a framework containing appropriate provisions designed to promote and facilitate the introduction and extension of such measures (Article 2);
- to enable national equal opportunities committees and organisations to make a significant contribution to the promotion of such measures, which presupposes that these committees and organisations are provided with appropriate means of action (Article 6).

The context within which the legal or administrative basis of equal opportunities is located is more favourable to the development of positive actions in some countries than in others. Thus, although all the Member States have agencies responsible for equal opportunities, their powers vary considerably from one country to another.

In most cases, the agencies have a consultative role or are entitled to submit recommendations to the Ministry of Labour, Social Affairs or Women's Rights. They also coordinate policies implemented by organisations or persons responsible for equal opportunity affairs at regional and local level (*Germany, Denmark, Spain, France, Greece, Italy, Portugal*) and collect and disseminate information relating to employment and women's working conditions. Such information is often accompanied by statistical analyses, sometimes in the form of annual reports, as in the *Netherlands* and the *United Kingdom* (in the case of the civil service). In Belgium, until 1992, the *Commission du travail des femmes* (Women's Employment Committee) organised, in conjunction with its secretariat and the State Secretariat for social emancipation, ongoing assistance to persons responsible for drawing up and implementing plans. It also regularly organises theme-specific working meetings, where ideas and experience can be pooled and strategies refined. All positive action policy in both the public and private sectors is at the initiative

of the Secretary of State for Social Emancipation, subsequently the Minister for Employment with responsibility for equal opportunities. Measures to accompany the plans are the responsibility of the Ministry's positive action unit for the private sector and of a network of provincial coordinators for the public sector.

In Italy the 1991 positive action law enhanced the powers of the National Equal Opportunities Committee. This Committee is responsible for implementing positive action plans financed by the state. It is also responsible for monitoring proper application of the legislation and is authorised to consult the Labour Inspectorate to obtain any information it requires on women's working conditions and employment. The Equal Opportunities Commission in the United Kingdom may provide assistance to plaintiffs, by giving them legal advice or even appointing a lawyer to represent them in court. These various bodies are also entitled to propose programmes or new laws in the field of equal opportunities and sometimes help draft bills concerning equality between men and women (Luxembourg, Portugal). In Spain, the action plan for equal opportunities has also triggered the creation of a joint congress-senate committee for the protection of women's rights.

In order to promote a policy of equal opportunities, these organisations often publish codes of good practice and practical guides, as well as reports, newsletters and other publications intended for both the public and private sectors (Germany, Denmark, Netherlands, Portugal, United Kingdom). Often they organise forums or conferences to enable employers and experts to articulate their aspirations and proposals (United Kingdom). Another way of promoting equal opportunities is the award of national prizes for model firms (Germany, Ireland, Luxembourg, Portugal). The idea here is to encourage other employers to develop positive action programmes.

4 POSITIVE ACTIONS IN THE PUBLIC AND PRIVATE SECTORS

The Council recommends:

- to take, continue or promote positive action measures in the public and private sectors (Article 3);**
- to ensure that the actions and measures described in points 1 to 4 are made known to the public and the working world - especially to potential beneficiaries - by all appropriate means and as extensively as possible (Article 5);**
- to encourage both sides of industry, where possible, to promote positive action within their own organisations and the workplace, for example by suggesting guidelines, principles, codes of conduct or good practice or any other appropriate formula for the implementation of such action (Article 7)**
- to make efforts also in the public sector to promote equal opportunities which might serve as an example, particularly in those fields where new information technologies are being used or developed (Article 8);**

4.1 Action by the Member State (as an employer) may, *in all the Member States*, be a way of triggering a learning process for the private sector, which they cannot influence directly (because adoption of positive actions is a voluntary matter). From this perspective, *the implementation of positive actions in the public sector takes on the role of a catalyst in triggering awareness, and as a model for the development of positive actions in the private sector, sometimes with the encouragement of financial assistance.* In Germany, the Law on equal opportunities hence envisages a higher proportion of women in all grades and functions where they are under-represented.

The implementation of positive action in the public sector may, as in Belgium or Italy, take the form of an obligation on the government and the "ordinamento autonomo" at central and local levels, and also on the "enti pubblici non economici" to adopt positive actions plans. In Belgium the law says that decisions taken in regard to promotion must be accompanied by an official justification. In France, adoption of the *plans d'égalité professionnelle* in certain public sector enterprises is part of a wide strategy, which see in it a "laboratory for social experimentation". Again, the state bankrolls the implementation of positive action programmes in the private sector in Italy and in France (in the form of "exemplary models" in the plans d'égalité professionnelle) and in Spain (in regard to one-off measures).

In Denmark, after adoption of the Act on equality when appointing members of public committees (1985) the government in 1986 adopted an action plan for equality between the sexes designed to motivate all the public authorities to survey the situation of women and to suggest ways of encouraging equality and equal pay. All ministries and administrations had to draw up action plans on equal opportunity with numerical objectives and deadlines for implementing them, under the supervision of the Equal Opportunities Council. These arrangements were also extended to the municipalities⁷. This programme proved to be very effective, the percentage of women on administrative boards and other committees rising from 13% in 1985 to 27% in 1992. In 1990 the Danish government adopted a new law, entitled the Act on Equal Opportunities between men and women in the occupation of certain executive board positions in the public administration, which was evaluated in 1994.

In the Netherlands, the government since 1987 has been promoting an active policy throughout the public sector. This also comprises numerical objectives and has been extended to 1991-1995. The aim is to ensure that women occupy at least 30% of jobs in the civil service and at least 20% of senior posts. At local level, approximately 35% of the local authorities were implementing positive action programmes in 1990.

⁷ "Occupational segregation of men and women in the European Community", Social Europe, supplement 3/93, p. 126.

The Irish government encourages public sector employers to take the initiative and the Employment Equality Agency helps draw up positive action programmes. To this end it has published a guide indicating how to encourage equality in regard to recruitment, training (for women only when they are under-represented) and promotion, as well as measures allowing the employee to combine family life and work or aiming at the elimination of discriminatory language and sexual harassment. However, a freeze on recruitment in the Irish public sector means that currently the policy is on hold.

- 4.2 The *social partners'* interest in regard to equal opportunities including positive actions varies from one Member State to another. Many trade unions now seem to be taking greater interest in positive actions than in the past, and are trying to integrate positive actions in collective agreements (Germany, Spain, Greece, Italy, Portugal). In Belgium, since the inter-occupational agreement of 1988-1990, positive actions have been integrated in the social concertation system and to date 19 collective agreements have been adopted which make mention of positive actions. Other inter-occupational agreements have been signed for 1991-1992. In the United Kingdom the trade unions are mainly interested in questions relating to "work of equal value" and on the other hand, their effectiveness is limited by the weak role of collective agreements in that country. In Germany, however, collective agreements are centre-stage, but it seems that the upgrading of female labour does not attract much interest⁸.

In Portugal, the employers do not generally take the initiative in regard to new positive action plans and the trade unions have mainly focused on vocational training as a way of desegregating the labour market. In 1991 an agreement was made by the social partners envisaging intensified measures to train women and the explicit inclusion of equal opportunities in various training programmes for apprentices and persons being retrained. In France, however, the *plans d'égalité professionnelle* have largely been initiated and driven by employers. The positive actions consisted of training measures accompanying technical and organisational changes which the firms had to introduce at the time. The social partners' agreement regarding training of women was conditioned both by the fact that equal opportunity at work is a domain where their awareness needs to be developed and because it requires operational adaptations both on the part of business and trade unions.

In Denmark, the social partners' approach is different because as far back as 1988 they had agreed to increase the number of women. Employers set themselves the objective of ensuring a more equitable sex ratio in jobs in which training and recruitment have a gender bias. Since 1992 the trade union federation has been recommending fairer representation of men and women in all the functions of its own organisation, giving priority to the under-represented sex when both candidates are equally qualified. In Germany the *Betriebsverfassungsgesetz* concerning works councils stipulates that their composition must take into account the ratio of men to women; this is a way of vouchsafing representation of

women's interests. In the same perspective the *Bundespersonalvertretungsgesetz* stipulates that both sexes must be represented on the works councils in proportion to their numbers on the payroll.

- 4.3 The implementation of positive action programmes in the private sector relies on voluntary cooperation in all the Member States. The responses from Member States show that the scope for government action in the private sector would be limited to informing and persuading the social partners. This persuasion varies in intensity depending on the country. In order to encourage firms to commit themselves to equal opportunities, certain Member States make it mandatory for private firms to report on the comparative situation of men and women, the first step towards preparing a positive action programme. However, as we have already said, the legal framework and financial support do not have much of an effect. Hence, although some advances have been made in the public sector, positive actions have been slow to take root in the private sector in most countries. Hence initiatives by firms in the field of positive action mainly take place in domains in which companies already have a certain know-how and, notably, in the field of vocational training.

5 THE DIFFERENT ASPECTS OF THE POSITIVE ACTION PROGRAMMES

The recommendation does not so much define a "positive action" as identify it on the basis of the - multiple - objectives associated with it. Hence the Council "recommends to the Member States to take steps to ensure that positive action includes as far as possible actions having a bearing on the following aspects:

- informing and increasing the awareness of both the general public and the working world of the need to promote equality of opportunity for working women;
- respect for the dignity of women at the workplace;
- qualitative and quantitative studies and analyses of the position of women on the labour market;
- diversification of vocational choice, and more relevant vocational skills, particularly through appropriate vocational training, including the implementation of supporting measures and suitable teaching methods;
- measures necessary to ensure that placement, guidance and counselling services have sufficient skilled personnel to provide a service based on the necessary expertise and the special problems of unemployed women;
- encouraging women candidates and the recruitment and promotion of women in sectors and professions and at levels where they are under-represented, particularly as regards positions of responsibility;
- adapting working conditions; adjusting the organisation of work and working time;

- encouraging supporting measures such as those designed to foster greater sharing of occupational and social responsibilities;

- active participation by women in decision-making bodies, including those representing workers, employers and the self-employed. (Article 4).

5.1 *Vocational training.* Vocational training is the most widespread form of positive action and is provided for in all the Member States - indeed in some countries it is the only measure. Training of women is a kind of across the board measure embracing a large number of the multiple objectives assigned to the positive actions.

Hence in France the equality plans focus virtually exclusively on the vocational training of women. Such training is provided for by 21 out of the 25 signatory firms and in seven firms is seen as a prerequisite for promotion measures. Likewise, in the United Kingdom, positive actions mainly consist in training measures for men or women in the event of under-representation in a given employment sector. As in Greece and in Portugal, their objective is also to provide specialisation designed to facilitate integration or reintegration of women in the labour market. In Spain, there is a fund for recruiting women aged over 25 returning to work after an interruption of at least five years.

In Denmark, training programmes are being implemented to ensure the requalification of women "blocked" at a certain level of responsibility or competence. In Ireland, training is seen as a way of securing the penetration of women into traditionally male preserves, such as electronics, aircraft maintenance, welding, etc. Where, as in Greece, women make up a large proportion of the agricultural population, the objective of training measures is to facilitate the creation - by the women themselves - of their own cooperatives with the aid of management courses.

If the emphasis on training is helping to bridge the gap between men and women as regards access to vocational training programmes, focusing on women's qualifications does not necessarily lead to desegregation. Hence in France there are real "overqualification policies" in the public and private sectors in that - in practice - women need better credentials than men, notably in the higher echelons.⁹

In Belgium, sectoral agreements establishing a fund to finance vocational training and integration projects give priority to long-term unemployed (who are mainly female) and allow the financing of positive action projects.

In addition, it must be pointed out that an important step forward has been made by means of measures jointly financed by the Member States under the Community NOW initiative to promote training and employment for women. This Structural Fund initiative (Community joint financing of ECU 153 million for

⁹ Ibid, p. 131.

1991-1994) has highlighted three important measures proposed in the recommendation: diversification of occupational choices, employment for women in sectors with potential for the future and the promotion of accompanying measures.

- 5.2 *Women candidates, and the recruitment and promotion of women.* We know that women encounter great resistance both in entering male-dominated sectors and in breaking the "glass ceiling", the invisible barrier which prevents them from accessing senior posts even in sectors where women are highly concentrated.

To break this "glass ceiling", the effects of which are so profoundly felt by women, measures have been taken in the public sectors in Belgium, Ireland and the United Kingdom in order to ensure female representation on recruitment and promotion committees. In Denmark, an agreement was made in 1991 by which the partners commit themselves to encouraging a more equitable sex ratio in trades and jobs in which training and recruitment have a gender bias.

In Germany a similar measure was adopted in the context of the Land of Bremen's Law on equality which stipulates *inter alia* that in the event of appointment to a higher grade, women have to be given priority if they have equal qualifications and if they are under-represented; women are considered to be under-represented if they do not represent at least half of the staff in the different grades in the category of personnel employed by a service, and the same applies to the operational levels as described in the organisation chart¹⁰.

The fight against the concentration of women in certain sectors or jobs¹¹ and its corollary, diversification in their career choices, is particularly critical in a context characterised by the introduction and spread of new technologies. In Germany, where women are concentrated in sectors which are highly sensitive to technological innovation (insurance companies, trade, banks, etc.) more than 70% of their tasks are capable of being automated and consequently they are liable to be made redundant. It has often been noted that jobs generated by new information and communication technologies may undermine work organisation rigidities and the occupational segregation under which women suffer. Indeed, the skills required by these technologies are not sex-specific.

¹⁰ A request for a preliminary ruling on the conformity of this provision with Article 2 (4) of Council Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions is currently before the Court of Justice - Case C-450/93, Dipl.-Ing. Eckhard Kalande v. Freie Hansestadt Bremen. (Advocate-General Tesouro is expected to present his conclusions on 16 February 1995.)

¹¹ The sectors with most women are administrative personnel and services: both include a large number of occupations in which the proportion of women exceeds 40% - see "Women in the European Community", 1992, op.cit., p. 147.

Hence one might expect that computer jobs would be free of occupational segregation. However, the fact is that women are also under-represented in these jobs in all the Member States¹², even within organisations using new technologies¹³. As we can see, gender is a powerful organising principle of work for men and women which withstands technological revolutions.

In Spain, in the context of a first action programme, there was a specific project whose objective was to facilitate access of women to the labour market through vocational training. The approach was oriented to target groups, viz. women returning to work after an absence of at least five years, women seeking work in occupations in which women are under-represented and, finally, women in need of vocational retraining. In Denmark, the focus was on long-term unemployed women who are given individual assistance in order to direct them to stable jobs.

With regard to *the active participation of women in decision-making bodies*, while the replies to the questionnaire sent out by the Commission unfortunately give insufficient information to determine the level of development in the Member States of the European Union, it can be pointed out that in the White Paper on Social Policy the Commission stresses the need for a careful analysis of the institutional obstacles impeding or preventing proportional representation of women in public and political organisations, including those of the social partners¹⁴.

5.3 *Adapting working conditions; adjusting the organisation of work and working time*

Endeavours to adjust working conditions and organisation of work and working time have mainly taken the form of more flexible use of human resources. It seems that most of the Member States have begun to systematically deregulate the labour market in order to reduce fixed labour costs. However, the upshot has rather been to reinforce segregation (mainly vertical) of women in the labour market.

In the United Kingdom the proliferation of flexible forms of work (part-time, temporary, job-sharing, home working, school time working, flexitime) is claimed to foster better reconciliation of women's family life and work and is supported by the government. In Ireland, job sharing or flexitime arrangements between two persons for a single job (for half salary) are permitted for a maximum of one year. Although these possibilities are offered both to men and women, it is mainly women who opt for them, hence abandoning part of their income (and thus their financial independence), a certain degree of job security and promotion opportunities.

¹² "Occupational segregation of men and women in the European Community", op. cit., p. 77.

¹³ "Skill shortages, women and the new information technologies", Commission of the European Communities, 1992, p.8.

¹⁴ COM (94) 333 of 27 July 1994, Chapter V.

With a view to rendering the organisation of working time more compatible with family life, part-time work has become remarkably popular in Germany. This form of flexible employment is encouraged in particular by the government, both in its capacity as civil service employer and also by amending labour and social legislation on part-time workers. In most Member States, part-time workers have the same rights as full-time workers. Belgium, France, Spain, Greece, Italy and Luxembourg have adopted statutes extending to part-time workers the same degree of social protection as full-time workers. However, although part-time work encourages women to go out to work (particularly because such arrangements make it easier to combine private life and work), it has not been accompanied by a reduction in sexual segregation in the labour market.

In Italy, initiatives have been taken at local level (in Emilia Romagna) with a view to coordinating the planning of opening hours for certain services - in the public and private sector - including services in the social, educational, health and cultural fields, as well as shops, to meet users' needs, taking into account their work responsibilities. This is a response to the failure of services and institutions to accommodate the needs of certain citizens, notably women. Here the reorganisation of working time did not take the usual form of part-time work, but rather a redistribution of working time and reorganisation of municipal life. The idea is to provide inhabitants with more time and opportunities by reconciling "individual" time and "social" time so that services are better attuned to the needs of all citizens.

Reorganisation of working time and reconciliation of the public and private spheres are intimately linked. And in the light of the possibilities offered by part-time work or job sharing, the Member States have also adopted a whole new range of leave arrangements.

5.4 *Reconciliation of work and family responsibilities*

Luxembourg is currently developing a network of infrastructures for childcare and for supervising adolescents (traditional day care centres, open-door day care centres, nurseries, etc,). In the Netherlands, the government emphasises the priority of this infrastructure and sees it as the joint responsibility of government, parents and the social partners.

At the moment few men take leaves "for family reasons" whether for relatively short periods (2 to 3 days in Spain and France), for longer periods (10 days during the 14 weeks following birth in Denmark - 10 days, two, three or four of which are paid depending on the sector concerned in Belgium) or in the form of parental leave (all Member States save Ireland, Luxembourg and the United Kingdom). It seems that a certain number of conditions must be met before men will be tempted to take "leave" in significant numbers - notably as regards pay (since women on average earn less than men), duration of leave, and flexibility (for example the possibility of working part-time) and non-transferability¹⁵.

¹⁵ See the network for child-care and other measures designed to reconcile occupational and family

The proposal for a Council Directive on parental leave and leave for family reasons¹⁶ lists the criteria for according parental leave, including the mention that this right of the worker to parental leave should not be transferable. This is an essential guarantee if the objective of a better sharing of family responsibilities is not to stymie the objective of equal opportunities. Greece and the Netherlands are the only Member States in which parental leave is an individual right (each parent has the right to take the full period of leave), and hence cannot be transferred from one spouse to another. In Italy, however, this right is granted only to mothers who may, if they wish, transfer all or part of it to the father. Likewise in Spain, maternity leave was extended to 16 weeks in 1989, of which only the last four may be taken by the father. In Denmark, the initial period of 10 weeks is a right accorded to the family, and since 1992 it may be extended in the form of non-transferable individual leave.

Hence parental leave is mainly used by women and has unintended effects on their employment and remuneration, by blocking their career perspectives more than it fosters equality of opportunity at the workplace. It has to be recognised that most of the Member States seem satisfied with the situation.

- 5.5 *The war on stereotypes.* Stereotypes which predetermine the distinction between female and male employment have led certain governments (Germany, France) to take action in the field of education and in the form of information campaigns intended for teachers, parents and naturally young girls themselves with a view to expanding their occupational choices. This is an uphill struggle and sometimes involves revising training material in order to purge all sexual stereotypes (Denmark, France, Ireland, Luxembourg).

In Belgium, the Secretary of State for Social Emancipation has organised awareness-raising campaigns in conjunction with the Ministers for Education and has supported pilot projects relating to the war on stereotypes in vocational guidance and in schools. In Denmark, the Equal Opportunities Council has issued a certain number of recommendations on how to encourage anti-sexist education both for boys and girls. This has taken the form of courses intended for young girls on the social construction of differentiated gender roles with a view to motivating girls and boys in such a way that their interests and educational and job choices will be not be shackled by taboos and received ideas. In the same context, organisations responsible for equal opportunities, in cooperation with training organisations, have implemented training programmes focusing on unemployed women in domains in which there is a demand for labour as well as in traditionally male jobs (bus drivers; painters ... in Greece or construction and transport ... in Spain).

¹⁶ responsibilities, "Leave arrangements for workers with children. A review of leave arrangements in the Member States of the European Community and Austria, Finland, Norway and Sweden", January 1994. Presented by the Commission to the Council on 24 November 1983, COM (83) 686 final. This proposal received a favourable opinion both from Parliament and the Economic and Social Committee. It was discussed at Council from November 1983 to December 1985. The proposal is still before the Council, OJ No C 333/6, 9.12.1983.

5.6 *Sexual harassment.* To date only a minority of countries (Belgium, Denmark, Spain, France) have adopted a legal definition of sexual harassment¹⁷ as unwanted conduct of a sexual nature or other conduct based on sex of a verbal or physical nature affecting the dignity of woman and man at work. Hence they take up the definition formulated by the Community in its instruments adopted after the 1984 Recommendation¹⁸. Apart from France and Belgium, which have adopted laws against sexual harassment (such a law is currently being drafted in Germany), in the other Member States the measures have been integrated within statutes against sexual discrimination (Ireland, Netherlands, United Kingdom), or fall within the ambit of general clauses contained in the civil code (Spain, Italy, Portugal). Only France and the Netherlands provide a definition which includes the notion of "abuse of authority" and take into account the hierarchical status of the harasser.

6 CONCLUSION

Ten years after adoption of the recommendation, positive actions have become an important tool in national policies designed to ensure equal opportunities. However this report reveals the diversity of national legal and political frameworks, of implementation procedures, of the degree of involvement of the social partners, and the forms they take... While therefore it is evident that there has been a notable increase in the number and type of positive action initiatives undertaken since a first report on implementation was presented by the Commission to the Council in 1988, it is equally clear that much remains to be done to achieve both a more vigorous and a more systematic approach to implementation of the Recommendation.

The effectiveness of the Recommendation as an instrument for achieving significant change in the situation of women on the labour market is therefore a matter which the Commission would wish to continue to keep under careful review and would propose, inter alia, to submit a further implementation report to the Council in five years' time. In the light of the information provided by the Member States, it would appear that future initiatives in the field of positive action might continue to follow both a legal and a promotional route. These two approaches have in practice proved to be complementary and, indeed, mutually reinforcing.

6.1 *The legal dimension*

The Commission has to recognise at this stage that, despite progress to date, there remains a degree of confusion surrounding the definition of positive action, which has the potential to act as a deterrent to those who might contemplate positive

¹⁷ See the report of the Committee on Women's Rights on a new post of "confidential counsellor" at the workplace, PE 204. 884/Fin.

¹⁸ Recommendation of 27 November 1991 on the protection of the dignity of women and men at work (92/131/EEC). Council Declaration of 19 December 1991 on the implementation of the Commission recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (92/C 27/01). Council Resolution of 29 May 1990 on the protection of the dignity of women and men at work (90/C 157/02).

action measures. As part of its preparations for drawing up a fourth medium-term Action Programme on Equal Opportunities for Women and Men, the Commission will therefore give consideration to seeking to clarify the meaning and scope of Positive Action, within the framework of this future Programme.

If, as we have seen, all the Member States today encourage positive actions in favour of women workers, such a policy must be furnished with adequate resources and an administrative framework to develop equality of opportunity. More effective implementation of the Recommendation means that the Member States must supplement already existing legislation with standards that ensure adequate monitoring and penalties.

Positive action programmes cannot be efficiently or effectively implemented unless companies first conduct a comparative study of the respective situations of their male and female workers (regarding recruitment, qualification, promotion, salary, access to vocational training, classification systems). Reports of this kind must be submitted annually by Belgian, French and Italian firms. This is an instrument which may serve as inspiration for all the Member States.

It is also important to develop a "policing" system to ensure that firms properly perform their obligations. Options in this context could include the concept of contract compliance, insertion of enforceable social clauses into contracts and agreements, state aids, financial measures, public procurement... For example, one could draw inspiration from the Italian model where, as we have already said, the law provides that, if a firm fails to submit a report on the comparative situation, the courts are authorised to impose a fine and, in more serious cases, to suspend all financial aid which the company would have been entitled to.

With a view to aiding and encouraging employers to carry out their obligations in regard to equal opportunities for men and women workers, one should consider reinforcing the role of the equal opportunity agencies, whose powers are all too often restricted to consultation, on the basis of measures already adopted by certain Member States.

In the United Kingdom the statutory body responsible for sexual equality has been given the power to undertake formal investigations in cases where an employer appears to be in breach of the requirements of the national legislation on sex discrimination relating to pay. In Italy, when an employer is found guilty of collective discrimination, even if the employees discriminated against in this manner cannot be identified immediately and directly, the equal opportunities counsellor at regional level is empowered to file proceedings¹⁹. Applied to the concept of "collective discrimination" (or systematic discrimination), the role which French law bestows on trade unions could be extended to bodies responsible for equal opportunities. In France, the firm's representative trades unions are empowered to bring proceedings in favour of workers of either sex,

¹⁹ Article 4 of the law of 10 April 1991 "Azioni positive per la realizzazione della parità uomo-donna nel lavoro".

without a mandate from the interested party, provided he or she has been informed in writing and has not objected within fifteen days of the date on which the trade union notified its intention.

Finally, penalties are currently too mild and heterogenous to systematically vouchsafe good compliance with national laws or provisions in regard to positive action. Thus it would be interesting if the courts could in certain cases require that the company implement a positive action programme, as in Italy. This is a good example of "a positive sanction" in regard to the existence or persistence of collective or systematic discrimination.

6.2 *The promotional dimension*

Efforts to clarify the law and to reinforce the structural framework within which positive action measures may develop are both valuable options in seeking to achieve more widespread and incisive application of the Positive Action Recommendation. In order to contribute significantly to progress in achieving equality of opportunity for men and women on the labour market, however, such efforts must be accompanied by sustained strategies to promote positive action as an indispensable instrument for effective human resource management.

This report has identified a crucial need for on-going monitoring of the development and implementation of the existing legal procedures in relation to positive action. In this perspective, awareness and information measures need to be intensified. Therefore, the Commission will continue to encourage and support activities designed to raise awareness and to disseminate examples of good practice.

The Commission will also lend its continued support to transnational positive action projects and information exchanges by the Social Partners and by individual employers and trade unions and will reflect and consult on the strategic approach to positive action which might be adopted at European level during the period of a Fourth Action Programme on Equal Opportunities for Women and Men.

Given the growing body of opinion which recognises that redressing inequalities and providing equality by means of positive action, as well as being justified on grounds of fairness, also makes sound economic sense, Member States may wish to consider the adoption of medium term positive action plans fixing qualitative as well as quantitative objectives adapted to the national and, where appropriate, regional situation. Mainstreaming equality of opportunity into relevant economic and social policies, including the Structural Funds, could be a major element in such plans.

In order to ensure a more dynamic approach to positive action as envisaged by the Council Recommendation, such plans could also pay attention to the means by which the interest and commitment of other key players, such as local authorities, professional associations, representatives of the social partners, individual employers and trade unions might be engaged, with a view to stimulating positive

action initiatives at organisational level and, acting in partnership, at regional and local levels.

For its part, the Commission reiterates its commitment to promote equality and, particularly, to encourage positive action measures within the Structural Funds²⁰, the Social Dialogue and its own personnel policies.

The principle of equal treatment for men and women is reinforced under the reorganisation of the Structural Funds. Thus not only must measures financed by these Funds respect this principle (among others) but, in addition, measures to be supported by the European Social Fund include those aimed at promoting equal opportunities for men and women in the labour market, particularly in those sectors in which women are under-represented. In consequence, and notwithstanding the fact that more than 50% of participants in all measures financed by the ESF are women, most of the different Community support frameworks for this objective make the promotion of equal opportunities a specific priority. This priority takes into account the unfavourable position of women in the labour market and follows integrated training and placement routes, strengthening support structures, including the care of dependents, and specific guidance and information services. These measures will enable women to widen their career choices. They will guide them towards jobs in which they are under-represented and improve the employment prospects of the long-term unemployed and those returning to work.

In addition, the new Decision establishing an action programme for the implementation of a vocational training policy for the European Community (Leonardo da Vinci) also places greater emphasis than in the past on measures of specific benefit to women in all categories.

Recognising that it may be difficult to achieve measurable results when positive action initiatives are spread over a vast terrain, thought may need to be given at both European and national level to concentrating activity in certain employment sectors, for example those mentioned in the White Paper on Growth, Competitiveness and Employment as offering particularly promising employment prospects, and also in sectors which are undergoing or in future will face technological and structural change, including those in rural areas.

²⁰

See also the Council Recommendation of 22 June 1994 (OJ No C 231, 26.6.1994).

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