

European Communities

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EUROPEAN PARLIAMENT

# Working Documents

198<sup>3</sup> - 198<sup>4</sup>

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12 March 1984

DOCUMENT 1-1502/83

## Report

drawn up on behalf of the Committee on Social Affairs  
and Employment

on the Commission proposal for a Council directive  
(COM(83) 217 final - Doc. 1-384/83) on the implementation  
of the principle of equal treatment for men and women  
in occupational social security schemes

Rapporteur: Mr H. PETERS

PE 87.755/fin.  
Or. De.



By letter of 27 May 1983, the President of the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Article 100 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

On 6 June 1983, the President of the European Parliament referred this proposal to the Committee on Social Affairs and Employment as the committee responsible and to the Committee of inquiry into the situation of women in Europe for an opinion.

At its meeting of 23 June 1983, the Committee on Social Affairs and Employment appointed Mr Peters rapporteur.

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The committee considered the Commission's proposal at its meetings of 2 November 1983 and 23/24 February 1984.

At the last meeting, the committee decided unanimously to recommend to Parliament that it approve the Commission's proposals with the following amendments.

The following took part in the vote: Mr Papaefstratiou, chairman, Mr Peters, first vice-chairman and rapporteur; Mr Abens (deputizing for Mrs Duport), Mr Albers (deputizing for Mr Boyes), Mr Beumer (deputizing for Mr Barbagli), Mr Eisma, Mr Estgen, Mrs Maij-Weggen, Mr van Minnen, Mr Ouzounidis (deputizing for Mr Dido), Mr Patterson, Mr Prag, Mr Radoux (deputizing for Ms Clwyd), Mrs Salisch and Mr Simpson.

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At its meeting of 23/24 February 1984, the committee then considered and unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Mr Papaefstratiou, chairman; Mr Peters, first vice-chairman and rapporteur; Mr Abens (deputizing for Mrs Duport), Mr Albers (deputizing for Mr Boyes), Mr Beumer (deputizing for Mr Barbagli), Mr Brok, Mr Ceravolo, Mr Chanterie, Mr Eisma, Mr Estgen, Mrs Maij-Weggen, Mr van Minnen, Mr Ouzounidis (deputizing for Mr Dido), Mr Patterson, Mr Prag, Mr Radoux (deputizing for Ms Clwyd), Mrs Salisch, Mr Simpson and Mr Vernimmen (deputizing for Mr Motchane).

The opinion of the Committee on inquiry into the situation of women in Europe is attached.

The final version of the report was tabled on 28 February 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

- I. Commission proposal for a Council directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes (COM(83) 217 final)

Amendments tabled by the Committee on Social Affairs and Employment

Text proposed by the Commission of the European Communities

Recitals

Recitals

Unchanged

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

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

**Having regard to the proposal from the Commission,**

**Having regard to the opinion of the European Parliament,**

**Having regard to the opinion of the Economic and Social Committee,**

**Whereas Article 119 of the Treaty provides that each Member State shall ensure the application of the principle that men and women should receive equal pay for equal work; whereas, for the purpose of the said Article, pay means 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;**

Amendments tabled by the Committee  
on Social Affairs and Employment

Text proposed by the Commission of  
the European Communities

Whereas, although Article 119 does indeed apply directly in cases where discrimination can be determined solely on the basis of the criteria of equal treatment and equal pay, there are also possible situations in which achievement of the principle of equal pay implies the adoption of additional measures which more clearly define its scope;

Whereas Article 1 (2) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (\*) provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application; whereas the

Council adopted to this end Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (2);

Whereas Article 3 (3) of Directive 79/7/EEC provides that, with a view to ensuring implementation of the principle of equal treatment in occupational schemes, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its applications;

Whereas the principle of equal treatment should be implemented in occupational social security schemes which provide protection against the risks specified in Article 3 (1) of Directive 79/7/EEC as well as those which provide, to employees, any other consideration in cash or in kind within the meaning of Article 119;

Whereas implementation of the principle of equal treatment does not prejudice the provisions relating to the protection of women on the ground of maternity,

HAS ADOPTED THIS DIRECTIVE:

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(\*) OJ No L 39, 14. 2. 1976, p. 40.

(2) OJ No L 6, 10. 1. 1979, p. 24.



Amendments tabled by the Committee  
on Social Affairs and Employment

Article 1

unchanged

Article 2

unchanged

Article 3

Amendment No. 2

Add the following sentence:

The Directive shall also apply to  
part-time workers, temporary workers  
and those working at home.

Text proposed by the Commission of  
the European Communities

*Article 1*

The object of this Directive is to implement, in occupational social security schemes, the principle of equal treatment for men and women, hereinafter referred to as 'the principle of equal treatment'.

*Article 2*

1. 'Occupational schemes' means schemes whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings or an occupational sector or group of such sectors, with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether affiliation to such schemes is compulsory or optional.

2. This Directive shall cover all occupational schemes, whether or not declared compulsory by administrative measures.

*Article 3*

This Directive shall apply to members of the working population, including self-employed persons, whose activity is interrupted by illness, accident or involuntary unemployment, to persons seeking employment and to retired and disabled workers.

Amendments tabled by the Committee  
on Social Affairs and Employment

Article 4

• Amendment No. 4

This Directive shall apply to:

(a) occupational schemes which provide protection against the following risks:

- sickness,
- invalidity,
- old age,
- industrial accidents and occupational diseases,
- unemployment,

- death of a spouse

(b) unchanged

Article 5

unchanged

Text proposed by the Commission of  
the European Communities

Article 4

This Directive shall apply to:

(a) occupational schemes which provide protection against the following risks:

- sickness,
- invalidity,
- old age,
- industrial accidents and occupational diseases,
- unemployment;

(b) occupational schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits, family allowances and benefits in respect of various periods of leave for family reasons, if such benefits are accorded to employed persons and thus constitute a consideration paid by the employer to the worker by reason of the latter's employment.

Article 5

1. The principle of equal treatment shall imply that there be no discrimination whatsoever on the basis of sex, either directly or indirectly by reference in particular to marital or family status, especially as regards:

- the scope of the schemes and the conditions of access thereto,
- the obligation to contribute and the calculation of contributions,
- the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

2. The principle of equal treatment shall not prejudice the provisions relating to the protection of women on the ground of maternity.

Amendments tabled by the Committee  
on Social Affairs and Employment

Article 6

unchanged

Text proposed by the Commission of  
the European Communities

Article 6

1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, in particular by reference to marital or family status, intended *inter alia* to:
  - (a) specify those persons who may participate in an occupational scheme;
  - (b) fix the compulsory or optional nature of participation in an occupational scheme;
  - (c) lay down different rules as regards the age of entry into the scheme or the minimum period of employment or affiliation to the scheme required to obtain the benefits thereof;
  - (d) lay down different rules for the reimbursement of contributions where a worker leaves a scheme without having fulfilled the conditions guaranteeing him a deferred right to long-term benefits;
  - (e) set different conditions for the grant of benefits or restrict such benefits to workers of one sex only;
  - (f) fix different retirement ages;
  - (g) suspend the retention or acquisition of rights during periods of maternity leave or family leave granted by law or collective agreement;
  - (h) provide for benefits whose level or amount differ and, in particular, set the level of benefits by taking into account different factors of calculation, actuarial or otherwise, with regard to the phenomena of ill health, mortality or life expectancy;
  - (i) set contributions at different rates, in particular by taking into account the factors of calculation mentioned under (h);
  - (j) lay down different standards or standards applicable only to workers of a given sex as regards the guarantee or retention of entitlement to deferred benefits where a worker leaves a scheme or as regards the transfer of such entitlement to another scheme.

Amendments tabled by the Committee  
on Social Affairs and Employment

Article 7

unchanged

Article 8

Member States shall take all necessary measures to ensure that provisions of occupational schemes contrary to the principle of equal treatment are revised before 1 January 1987.

Article 9

Amendment No. 9

1. unchanged

(a) unchanged

(b) delete

2. unchanged

3. unchanged

Text proposed by the Commission of  
the European Communities

2. Where the grant of certain subsidiary benefits is left to the discretionary power of a scheme's management bodies, the said bodies must take account of the principle of equal treatment.

*Article 7*

Member States shall take all necessary measures to ensure that:

- (a) provisions contrary to the principle of equal treatment in collective agreements, staff rules of undertakings or any other arrangements relating to occupational schemes are null and void, or may be declared null and void or amended;
- (b) schemes containing such provisions may not be approved or declared compulsory by administrative measures.

*Article 8*

Member States shall take all necessary measures to ensure that provisions of occupational schemes contrary to the principle of equal treatment are revised before 1 January 1986.

*Article 9*

1. This Directive shall be without prejudice to the right of Member States to defer compulsory application of the principle of equal treatment with regard to:

- (a) determination of pensionable age for the purposes of granting old-age or retirement pensions;
- (b) pension awarded to the surviving spouse.

2. The right referred to above may be exercised provided that the principle of equal treatment has not yet been implemented in the corresponding provisions of statutory social security schemes.

3. Compulsory implementation of the principle of equal treatment shall not under any circumstances be deferred beyond the date on which such equality is achieved in statutory schemes.

Amendments tabled by the Committee  
on Social Affairs and Employment

Article 10

unchanged

Article 11

unchanged

Article 12

unchanged

Article 13

1. Member States shall bring into force such laws, regulations and administrative provisions as are necessary in order to comply with this Directive before 1 January 1986. They shall immediately inform the Commission thereof.

Text proposed by the Commission of  
the European Communities

*Article 10*

1. This Directive shall be without prejudice to the methods of calculating the benefits referred to in Article 6 (1) (h), in so far as they are calculated on the basis of different actuarial data for each sex, whether they are already settled and being paid or to be settled and paid in due course and which relate to a period of affiliation to an occupational scheme prior to the revision of that scheme as provided for in Article 8, from continuing to be governed by the provisions of the occupational scheme in force during the period of affiliation.

2. This Directive shall also be without prejudice to the establishing of appropriate methods, such as the payment of retroactive contribution supplements, which guarantee equal benefits for the earlier period of affiliation.

*Article 11*

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves injured by a failure to apply the principle of equal treatment to pursue their claims before the courts, possibly after bringing the matters before other competent authorities.

*Article 12*

Member States shall take all measures necessary to protect workers against dismissal where this constitutes a response on the part of the employer to a complaint made within an undertaking or to the institution of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 13*

1. Member States shall bring into force such laws, regulations and administrative provisions as are necessary in order to comply with this Directive before 1 January 1985. They shall immediately inform the Commission thereof.

Amendments tabled by the Committee  
on Social Affairs and Employment

2. unchanged

Article 14

unchanged

Text proposed by the Commission of  
the European Communities

2. Member States shall communicate to the Commission, before 1 January 1987, all information necessary to enable the Commission to draw up a report on the application of this Directive for submission to the Council.

*Article 14*

**This Directive is addressed to the Member States.**

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(83) 217 final)<sup>1</sup>,
- having been consulted by the Council (Doc. 1-384/83),
- having regard to the directives on equal treatment<sup>2</sup>,
- having regard to the European Parliament's resolution on the position of women in the Community<sup>3</sup>,

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1 OJ No. C 134, 21.5.1983, p.7

2 Council Directive of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (Directive 75/177) - OJ No. L 45, 19.2.1975, p. 19.

Council Directive 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 (Directive 76/207) - OJ No. L 39, 14.2.1976, p. 40.

Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Directive 79/7) - OJ No. L 6, 10.1.1979, p. 24

3 OJ No. C 50, 9.3.1981, p. 21

- having regard to the judgments of the European Court of Justice and the Federal Constitutional Court and also to the United Kingdom Social Security Pensions Act 1975 <sup>1</sup>,
  - having regard to the report of the Committee on Social Affairs and Employment and the opinion of the Committee of inquiry into the situation of Women in Europe (Doc. 1-1502/83),
  - having regard to the result of the vote on the Commission's proposal,
- A. whereas the Commission's proposal is designed to fill a loophole remaining in the Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security;
  - B. whereas the judgment of the European Court of Justice against Lloyds Bank Limited defined rights under occupational insurance schemes as constituting 'pay' within the meaning of Article 119 of the Treaty of Rome, which means that it may be necessary for occupational schemes to meet requirements which are not stipulated by Directive 79/7/EEC concerning statutory schemes;
  - C. whereas the removal of differences between statutory and occupational social security schemes can only serve legal clarity and legal certainty insofar as employers and employees are concerned;
  - D. whereas the sole purpose of the proposed directive is to eliminate the many instances of discrimination on grounds of sex in occupational social security schemes which are not governed by law,

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<sup>1</sup> Judgment of the European Court of Justice of 11 March 1981, 'Equal pay' (Case 69/80)

Susan Jane WORRINGHAM and Margaret HUMPHREYS v LLOYDS BANK Limited Social Security Pensions Act 1975 (British Parliament, August 1975)



1. Welcomes the basic content of the Commission's proposal and in particular its presentation in the form of a directive, which is the only means of bringing genuine influence to bear on national schemes;
2. Observes that the aim of the directive is solely to achieve equality in respect of individual claims, a principle embodied in all statutory schemes and many occupational schemes, and does not relate to a statistical group;
3. Considers it unacceptable therefore, in calculating benefits to discriminate on the basis of actuarial data relating to sex alone while ignoring other risk factors (smoker/non-smoker, manual/office worker, etc.);
4. Takes the view that it can scarcely be the purpose of this directive, which is concerned with the legal implementation of the basic Community principle of non-discrimination, to provide a detailed estimate of the costs involved since, given the multiplicity of existing occupational schemes (more than 80,000 in the United Kingdom alone)<sup>1</sup>, this would exceed the scope of the proposal;
5. Observes that the proposed deadline for implementing the directive in national law, 1 January 1985, is too brief;
6. Accepts the provisional deferral in Article 9 of the determination of pensionable age for the purposes of granting old age or retirement pensions;

Takes the view, however, that survivors' pensions (i.e. pensions for widows and widowers) should be incorporated as soon as possible in the appropriate directives on the equal treatment of men and women (particularly in Directive No. 79/7);

7. Observes in addition that, in its decision on equal treatment in this area the German Federal Constitutional Court set the deadline at 31 December 1984 and proposes that the deadlines set at European level for the transitional phases be carefully examined;

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<sup>1</sup> See document from the 'Groupe consultatif des associations d'actuares des pays des Communautés européennes'

8. Calls for the burden of proof to be reversed (under Articles 11 and 12) since, particularly in view of the general economic situation, women lack the courage to press their claims and do not have sufficient confidence that they will be protected from dismissal;
9. Otherwise approves the Commission's proposal;
10. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

EXPLANATORY STATEMENTIntroduction

The Commission's proposal for a directive is accepted in its present form. It is a necessary legal instrument to complement the third directive on equal treatment for men and women within the framework of statutory social security schemes. It should be seen in the context of previous directives on equal treatment for men and women, in particular the Council Directive on the application of the principle of equal pay for men and women of 10 February 1975<sup>1</sup> and the Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security<sup>2</sup>.

The proposal for a directive covers occupational social security schemes, which were excluded from both the abovementioned directives, since the subject matter overlaps between the two, relating on the one hand to the question of equal pay under Article 119 of the EEC Treaty, and hence the first directive on the equal treatment of men and women, and on the other to the question of social security, and hence the third directive.

The Commission of the European Communities submitted this proposal for a directive with the intention of filling the existing gap in legislation on social security schemes, since it leads to considerable uncertainty concerning the legal position of for the employees concerned in the European Community. There can and must be no difference between statutory and occupational social security schemes and to this extent the Commission's proposal fills an essential need and is to be welcomed. The multiplicity of different occupational social security schemes, which are not covered by legislation to date in the Member States of the European Community, should be harmonized at least in respect of equal treatment for men and women in order to avoid the serious cases of discrimination referred to by the Commission.

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<sup>1</sup> OJ No. L 45, 19.2.1975, pp. 19-20

<sup>2</sup> OJ No. L 6, 10.1.1979, pp 24-25

## Definition: Occupational social security schemes

Occupational schemes fall between statutory social security schemes and purely private insurance contracts. Affiliation to occupational schemes derives from the contract of employment or from the exercise of an occupational activity. Unlike private insurance contracts, however, such schemes are not defined by free negotiation on an individual basis. They may be based on collective agreements or set up or planned unilaterally by the employer for the benefit of his employees or certain categories thereof. Alternatively they may be special schemes set up for the self-employed.

## Scope of the proposal for a directive

The proposal for a directive applies to all workers entitled to occupational social security benefits on the basis of either collective agreements or company arrangements. The directive also applies to schemes set up by representatives of the self-employed (craftsmen, doctors, lawyers, etc.), which cannot be assimilated with statutory social security schemes. This proposal is designed to exclude all discrimination on grounds of sex in respect of the abovementioned categories of persons and social security schemes.

## Legal basis

### (a) Relevant provisions of Community Law

In its proposal for a directive the Commission refers to Article 119 of the Treaty establishing the European Economic Community, which lays down the principle of equal pay for men and women. The second paragraph of this article specifies that, for the purpose of this article, 'pay' means not only the basic wage 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'. Hence, by definition, occupational social security benefits for employees fall within the terms of the second paragraph of Article 119, and the proposal for a directive may accordingly be regarded as a provision implementing Article 119.

This argument is supported by a judgment of the European Court of Justice of 11 March 1981<sup>1</sup>. In this judgment the Court takes the view that 'a contribution to a retirement benefit scheme which is paid by an employer in the of name employees by means of an addition to the gross salary and which therefore helps to determine the amount of that salary constitutes "pay" within the meaning of the second paragraph of Article 119 of the EEC Treaty.' The Court also ruled that 'Article 119 of the Treaty may be relied upon before the national courts and these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular in the case where, because of the requirement imposed only on men or only on women to contribute to a retirement benefit scheme, the contributions in question are paid by the employer in the name of the employee and deducted from the gross salary whose amount they determine.'

(b) Legislation in the Member States

To date the United Kingdom is the only Community Member State which has passed legislation on discrimination in respect of affiliation to occupational social security schemes. The 1975 Act, which provides for equal access to social security schemes, imposes a number of conditions on employers<sup>2</sup>. For example

- in opting for an alternative occupational scheme employers may discriminate between their employees on the grounds of their occupation alone (that is to say that discrimination on grounds of age or sex for example, is forbidden);
- in respect of repayments of contributions (if the employee leaves the undertaking after less than 5 years) a distinction may be made only on the grounds of the length of employment with the undertaking,
- finally, the employer must stipulate the same conditions for men and women concerning affiliation to the scheme (equal access).

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<sup>1</sup> Judgment of the European Court of Justice of 11 March 1981 on 'Equal pay' (Case 69/80), Susan Jane WORRINGHAM and Margaret HUMPHREYS v. LLOYDS BANK Limited

<sup>2</sup> Social Security Pensions Act 1975 (British Parliament, August 1975)

This example could be taken as a useful model for any legislation on the general application of the principle of equal treatment in respect of occupational social security schemes.

On 12 March 1975 the German Federal Constitutional Court pronounced a decision<sup>1</sup> calling on the legislature to introduce equal treatment for men and women within the framework of statutory social security schemes by the end of the next parliamentary term (1983).

Existing pension schemes for employers and employees offer preferential terms to gainfully employed married women who in addition to their own pension, receive a widow's pension, while widowers receive a widower's pension only in exceptional cases (if the married woman had supported the family before her death).

In a previous decision of 24 July 1963<sup>2</sup> the Federal Constitutional Court did not consider that it was necessary to change the law in respect of the different pension arrangements applying to married men and women. However, given the pronounced increase in the number of married women in employment, the Federal Constitutional Court now takes the view that a social development has taken place, necessitating a change in basic legislation.

An increasing number of women are employed, thereby contributing to the income of the family or even becoming the principal breadwinner. By its decision, which called on the legislature to remove existing inequalities in respect of pension schemes, the objective of the Federal Constitutional Court was to take account of this social development and the changed conceptions concerning the division of domestic and professional activities between men and women.

The decision of the Federal Constitutional Court of 1975 is therefore an example of the different position occupied by women in society today leading to a change in the law. It is necessary for occupational social security schemes to adapt to the new legislation, which recognizes the role of both women and men as breadwinners, entitling them to equal occupational social security benefits.

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<sup>1</sup> Decisions of the Federal Constitutional Court, Vol. 39, p. 169 ff.

<sup>2</sup> Decisions of the Federal Constitutional Court, Vol. 17, p. 1

## Forms of discrimination

### 1. Indirect forms of discrimination

Women receive social benefits less often than men for two main reasons:

#### (a) Undertakings employing mainly women often do not operate an occupational social security scheme

This is not a case of discrimination as such between men and women employed by an undertaking. It is not possible to remedy this disadvantage since occupational schemes are offered by employers on a discretionary basis.

#### (b) Part-time workers are excluded from many occupational schemes

Since most part-time workers are women, they are the most affected. However, this is not a form of direct discrimination against women. The problem can be solved only in the more general context of providing social security benefits for part-time workers. The directive on part-time work<sup>1</sup>, which is relevant to this question, has not yet been adopted by the Council.

### 2. Direct forms of discrimination

#### (a) Conditions of access

- A number of occupational social security schemes, in particular pension schemes, systematically exclude women. In others only married women are excluded.
- In certain schemes it is possible for women to join on a voluntary basis while for men membership is compulsory.
- In a number of schemes the conditions concerning age or length of employment with the undertaking are stricter for women.

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<sup>1</sup> Proposal for a Council directive on voluntary part-time work:  
OJ No. C 62, 12.3.1982, p. 7 ff.  
Amended proposal: OJ No. C 18, 22.1.1983, p.5 ff.

This arrangement is designed solely to discourage young women employed for a few years only, while women who remain in employment for many years are placed at a disadvantage. The number of years for which they are insured under such schemes is considerably less and the pension benefits correspondingly lower.

The Commission stresses that there are no objective reasons for discriminating between men and women concerning conditions of access, since an increasing number of women are entering employment. Such forms of discrimination can be justified neither from the legal nor from the actuarial point of view.

(b) Premiums

Frequently the contributions required of men and women are different or, alternatively, for the same contribution, women receive lesser benefits if, for example, the age of affiliation to the scheme is higher or the retirement age lower. For this reason a number of schemes require a higher premium from women for entitlement to equal benefits to men. The basic problem in applying the principle of equal treatment to occupational social security schemes is deciding whether equality means equal contributions or equal benefits. If the different conditions of access and different actuarial factors were retained (mortality, reduction in earning capacity, possibility of marriage), equal contributions would mean lower benefits for women. On the other hand, if women received equal benefits they would be required to pay higher premiums. A third possibility would be to distribute the higher costs for women among all those insured, both men and women, or to increase the employer's contribution in respect of female employees.

(c) Risks covered

Occupational social security schemes provide guaranteed benefits for old age, death and, possibly, invalidity.

Insured women are frequently treated differently in the case of the following risks:



- the risk of death is frequently excluded or made subject to restrictions,
- for invalidity no cover is given if the invalidity is a result of maternity (however, this form of discrimination against women seldom arises).

Discrimination against men exists insofar as, in general, the schemes provide for a widow's pension or the payment of a lump sum in the event of the death of an insured man, but does not apply the other way round.

The unequal coverage of risks by occupational security schemes is no longer acceptable, given the increasing long-term employment of women who are frequently the principal breadwinners (all the more so with the increase in unemployment).

#### (d) Benefits

On the basis of existing actuarial calculations, since women are deemed to have a higher life expectancy, they receive a lower pension for the same capital input. If, in addition, different conditions of access apply (age of access and age of retirement), the pension is further reduced.

The Commission points out that, from the purely technical point of view, it is possible to restore the balance between risks for men and women by calculating an average premium for all men and women on the basis of average life expectancy, as in the case of statutory social security schemes.

An equal pension would mean either that social security schemes would have to abandon the practice applied by insurance companies, or that a higher capital sum would have to be accumulated if the insured person was a woman, making it necessary for the schemes to apply corresponding financing provisions.

## Directive or recommendation

1. The Common Market section of the European Insurance Committee (EIC) stresses in its opinion that it could agree to the proposed directive only if it took the form of a recommendation rather than a compulsory instrument. It takes the view that occupational social security schemes are not characterized by any abuses which make Community legislation necessary, all the more so since equal treatment of men and women is already embodied in the legislation of the Member States.

The Commission, on the other hand, considers it essential for the application of the principle of equal treatment of men and women in occupational social security schemes to be embodied in a directive, arguing that occupational schemes were excluded from the Directive of 10 December 1975 on equal pay because of their affinity with statutory social security schemes. They were also excluded from the Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. The proposed directive closes a loophole and helps to provide greater legal certainty for both employees and employers. From the many forms of discrimination against female employees listed by the Commission in respect of conditions of access, premiums paid and benefits acquired within the framework of occupational social security schemes, it is clear that a legally binding instrument in the form of a directive is necessary. The European Court of Justice supports this argument, pointing out that the obligation to adopt a binding arrangement for occupational social security schemes exists under Article 119, second paragraph, of the EEC Treaty.

Since the judgment of the European Court of Justice must be respected within the framework of national law, a resolution would not go as far as the legislation adopted at national level.

## 2. The problem of taking into account the differences in life expectancy and frequency of illness of men and women

The EIC stresses that it is necessary for life assurance schemes to require a different scale of premiums from women, who have a longer average life expectancy. This means that women are required to pay lower premiums for endowment or whole life assurance. The frequency of illness among women, on

the other hand, makes it necessary for them to pay higher premiums for sickness insurance. These differences in premiums do not, however, relate to the maternity risk.

The EIC argues that if insurers were obliged to abandon their present actuarial methods and require men and women to pay identical premiums this would be a form of discrimination against men.

The Commission observes, however, that there is nothing to indicate any differences in life expectancy between men and women engaged in professional activity. While the life expectancy of women is calculated statistically for the entire female population women engaged in professional activity constitute a minority of the female population, in the Community (1981: 29.2% Eurostat). According to the Commission, everything indicates that the life expectancy of women engaged in professional activity differs from the general average. In respect of the higher premiums paid by women for sickness insurance within the framework of occupational social security schemes, such discrepancies cannot be justified by arguments concerning the greater frequency of sickness, since no such distinction is made by statutory sickness insurance schemes.

3. More stringent provisions than those contained in the directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security

The EIC objects that more stringent criteria concerning the equal treatment of men and women are being applied in the proposed 4th directive on equal treatment for men and women than in the 3rd directive (statutory social security schemes). While the directive on equal treatment for men and women in matters of social security provides for five possible derogations, in the new proposal for a directive there are only two possibilities (old age and widow's pensions). In addition, the deadline for compliance with the directive, two years from the date of its notification instead of six, is much shorter. The EIC cannot accept that equal treatment for men and women within the framework of this directive must be implemented sooner than in the case of statutory systems, observing that the benefits granted derive from voluntary schemes which are generally concluded on the basis of company arrangements and collective agreements. In abrogating existing contracts it is necessary to respect the agreed deadlines, which should not be shorter than those contained in Article 9 of the Directive of 19 December 1978.

In its proposal for a directive, the Commission argues that a longer transitional period is not necessary since these schemes are often of more modest proportions and can therefore easily be amended. The lower number of derogations from the implementation of this directive as compared with the 3rd directive (equal treatment for men and women in matters of social security) may be explained by the fact that the benefits and premiums paid within the framework of occupational schemes constitute pay within the meaning of Article 119 of the EEC Treaty.

#### 4. The extent to which the unemployed and those seeking employment are affected by the directive

As for previous directives on the implementation of the principle of equal treatment, the scope of this directive covers those engaged in professional activity, that is to say the employed and self-employed including those who are sick, retired, unemployed or disabled.

The EIC objects that it cannot see how the provisions of the directive can be applied to the abovementioned categories, particularly in respect of the unemployed, those seeking employment and the self-employed and how these people could be included within the scope of benefits deriving from occupational schemes.

It may in fact be advisable to exclude those seeking work. The unemployed on the other hand may be insured against unemployment on the basis of collective agreements, while, the self-employed affected by the proposal for a directive include only those who have subscribed to a social security scheme set up by the representatives of the liberal professions.

#### 5. Derogations for restricted schemes

The EIC requests that exemption from the directive be granted for restricted schemes or schemes involving only a small number of people (up to approximately 30)<sup>1</sup>, since it would be technically too difficult and complicated to include them. However, it must be pointed out that the inclusion of schemes with a limited number of members is relatively easy. However, the deadline does seem a little too short and should be adapted to the deadline set for the approximation of statutory schemes.

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<sup>1</sup> See proposal by the 'Groupe consultatif des associations d'actuares des pays des Communautés Européennes'

## 6. Costs

Given the multiplicity of occupational schemes, it is not possible to calculate the cost of implementing the directive. The cost for those schemes which do not yet apply equal treatment will not be particularly high since considerably fewer women than men are engaged in professional activity.

The Commission of the European Communities observes that, since the principle of non-discrimination is a basic principle of Community law, it is essential to ensure equal treatment for men and women within the framework of occupational schemes.

### Observations on the Commission's proposal

1. While derogations for old-age and widows' pensions can be accepted for the time being, the European institutions are nevertheless called upon to consider limiting the transitional period in view of the abovementioned decision of the Federal Constitutional Court. Moreover, the total exclusion of widows' and old-age pensions, as provided for in the 3rd directive, cannot be accepted.
2. It is not clear from Article 10 of the proposal for a directive what measures are to be taken to guarantee the granting of equal benefits by means of supplementary contributions during the transitional period preceding the implementation of the directive and who is to implement these measures.
3. In the drafting of the necessary legal provisions, account must be taken of the steadily deteriorating situation on the employment market, giving rise to the danger that the employees concerned will not assert their rights. For this reason, the burden of proof of nondiscrimination must be established (reversed) in the context of this directive.
4. Since part-time workers, mostly women, are excluded from occupational social security schemes, the Council is urged to adopt the proposal from the Commission for a directive on part-time work.



OPINION OF THE COMMITTEE ON INQUIRY INTO THE SITUATION OF WOMEN IN EUROPE

Draftsman: Mrs I. van den HEUVEL

On 23 May 1983, the Council consulted the European Parliament on a proposal for a directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes (Doc. 1-384/83) (COM(83) 217 final).

On 6 June 1983, the President of the European Parliament referred this proposal for a directive to the Committee on Social Affairs and Employment as the committee responsible and, on the same date, authorized the Committee of Inquiry to submit an opinion.

Since this subject was connected with the report by Mrs van den HEUVEL on the implementation to date of the Third Directive ('Social Security, target date - 1984'), the Committee of Inquiry decided, at its meeting of 16/17 June 1983, to instruct Mrs van den HEUVEL to draw up a draft opinion on the abovementioned proposal for a directive.

The Committee of Inquiry considered the draft opinion at its meetings of 29/30 November 1983 and 19/20 December 1983.

It adopted the opinion unanimously at its meeting of 19/20 December 1983.

The following took part in the vote: Mrs CINCIARI RODANO, chairman; Mrs VAYSSADE and Dame Shelagh ROBERTS, vice-chairmen; Mrs van den HEUVEL, draftsman; Mrs GAIOTTI de BIASE, Mrs MAIJ-WEGGEN, Mr PURVIS (deputizing for Miss HOOPER), Mrs SPAAK and Mrs WIECZOREK-ZEUL.

## Introduction

Before the present directive was submitted to the Council by the Commission, three directives on equal treatment for men and women had already been adopted by the Council.

1. 'Equal pay' (OJ No. L 45, 19.2.1975)
2. 'Equal treatment' (OJ No. L 39, 14.2.1976)
3. 'Social security - target date 1984' (OJ No. L 6, 10.1.1979).



The first and second of these directives have already entered into force and the third is due to be implemented on 1 January 1985. This third directive applies only to statutory social security schemes.

The logical follow-up to the third directive, as stated in Article 3(3) thereof, is that the principle of equal treatment for men and women should be extended to occupational schemes. The present directive contains detailed provisions on the application of that principle to occupational schemes.

#### Definition of occupational schemes

Occupational schemes are schemes based either on collective agreements covering industrial sectors or schemes covering workers in one firm, or schemes applying to one occupational group.

Occupational schemes thus form part of the conditions of employment in that they derive from an employment contract or go hand in hand with the exercise of a certain occupation.

Purely individual agreements with insurance companies do not therefore come within the scope of this directive.

#### Legal basis of the directive

The legal basis for the directive lies in the detailed interpretation of equal pay for men and women given in the second paragraph of Article 119 of the EEC Treaty, particularly the reference to any other consideration, whether in cash or in kind, which the worker receives directly or indirectly from his employer.

#### Persons covered by the directive

The directive applies to all workers, whether employees or self-employed, except as regards the provisions on pensionable age and surviving spouses' pensions.

(In its explanatory memorandum, the Commission promises to settle these and other matters excluded from the present directive and Directive 79/7 in the near future).

## Text of the directive

Article 1	Aim of the directive
Article 2	Definition of occupational schemes
Article 3	Persons covered by the directive
Article 4	Schemes covered by the directive
Article 5	Scope of the principle of equal treatment
Article 6	List of provisions that are contrary to the principle of equal treatment (not exhaustive)
Article 7	Declaration of existing schemes as null and void or their amendment
Article 8	Deadline for implementation
Article 9	Exceptions
Article 10	Provisions relating to existing contracts
Article 11	Complaints procedure
Article 12	Protection for workers who have submitted complaints
Article 13	Deadline for implementation of the directive
Article 14	Final provision

## Comments on the directive

Your draftsman sees the introduction of this directive as a further step on the road towards equal treatment for men and women.

It should be pointed out that the Commission's step by step approach means that it

will only be possible to speak of total equality after a period of some 10 years.

It must be asked what further measures the Commission envisages to ensure that Article 119 of the EEC Treaty is fully implemented and what timescale it has in mind when it says that it will shortly submit to the Council directives settling matters at present excluded from Directive 79/7 EEC and the present directive.

In the case of the present directive, a number of shortcomings should be pointed out. In the action programme adopted in April 1982, the Council promised to provide a better, and above all clearer, definition of indirect discrimination to prevent the interpretation of this concept giving rise to discrepancies between regulations in the Member States.

Although Article 5 provides a brief definition, this is not sufficient. Indirect discrimination must be clearly defined in a way that is not open to conflicting interpretations. Indeed, the first paragraph of Article 5 contains the words 'in particular', and in the opinion of the draftsman this wording has no place in such an important directive.

The governments of the Member States have meanwhile complained themselves, in connection with the implementation of the earlier directives, about the absence of a conclusive definition of indirect discrimination.

Article 6 goes on to enumerate various forms of discrimination but this list is not exhaustive and consequently does not cover all eventualities. For example, in what way does the text of this article apply to the allowance paid by some Member States to the sole breadwinner?

Article 9 provides that the obligation to implement the principle of equal treatment can be deferred as regards the determination of pensionable age and the pension awarded to the surviving spouse provided that the principle of equal treatment has not yet been introduced in statutory schemes (Article 9(2)).

Conversely, where the principle of equal treatment has been incorporated into statutory schemes, equal treatment must also apply in the above cases. This will concern the Netherlands, for example, where the following statutory scheme applies: Pensionable age of 65 for men and women (to qualify for the State pension). Some collective agreements stipulate that women shall retire at 60 and men at 65.

In firms with such collective agreements, problems would arise in the case of early retirement. In many cases this applies from the age of 63 upwards and would therefore concern men only. It is not clear how such schemes would fit in with the provisions of the directive. Moreover, the question of voluntary early retirement perhaps deserves special mention in this directive.

A further problem arises in connection with pension contributions. The calculations are based on life expectancy, which is higher for women than for men. Must we therefore conclude from Article 6(h) and 6(i) that such calculations are no longer allowed?

How does the Commission think that this will work out in practice? Does the contribution or basic premium paid in whole or in part by employers constitute a consideration within the meaning of Article 4(b)? The structure of pensions for men and women often differs owing to the difference in the number of years they are expected to work. Are these differences permissible or not? The draftsman is surprised at the fact that the Commission has not included any clear provision prohibiting interim measures that do not comply with the directive before it comes into force. Experience with the third directive has shown this to be necessary.

### Conclusion

This working document aims to indicate a number of points for discussion and the Commission in particular is expected to clarify its position on the issues raised in this document.

The Committee of Inquiry into the Situation of Women in Europe advised the Committee on Social Affairs and Employment to include the following conclusions in its report on the above Directive:

1. It would be desirable if the Commission would, in the very near future, submit its programme for measures to implement Article 119 of the EEC Treaty, where these fall outside the scope of Directive 79/7/EEC and the present Directive.
2. There is an urgent need for the Commission to include a well-reasoned definition in the proposal for a Directive making clear to the Member States what it understands by indirect discrimination 'by reference, in particular, to marital or family status'. It appears that this concept is interpreted differently by the various Member States. In particular, it should be made clear that family allowances in various schemes (including those covered by this Directive) contravene the Directive, even where they are granted irrespective of sex (i.e. either to the married man or to the married woman).
3. Article 6, which lays down equal treatment for those participating in occupational schemes, should expressly call for equal treatment to apply also to all schemes - including ad hoc arrangements - governing voluntary early retirement, especially where these are financed from funds other than pension contributions.
4. Experience with earlier directives indicates that there is a need for the present Directive to incorporate a paragraph prohibiting a decline in the standards obtaining at the moment of signing.

