COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 711 final.
Brussels, 16 January 1979.

REPORT OF THE COMMISSION TO THE COUNCIL
ON THE APPLICATION AS AT 12 FEBRUARY 1978
OF THE PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN

(Article 119 of the EEC Treaty and Council Directive 75/117/EEC
of 10 February 1975)

REPORT OF THE COMMISSION TO THE COUNCIL ON THE APPLICATION AS AT 12 FEBRUARY 1978 (1) OF THE PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN

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I N D E X

(1) The position has been updated to end September 1978 by footnotes.

INTRODUCTION

1. The Commission has, within the general context of the duties conferred on it by Article 155 of the Treaty establishing the EEC, prepared and submitted periodical reports to the Council regarding the application of the principle of equal pay for men and women set out in Article 119 of the Treaty.

The last report covering the original six Member States[1] described the situation as at 31 December 1972 and outlined developments since 1958. Following the enlargement of the Community, a report was drawn up on the situation existing as at 31 December 1973 in Denmark, Ireland and the United Kingdom as regards the principle of equal pay for men and women[2].

Council Directive 75/117/EEC 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[3] has since been adopted. Article 9 of the Directive provides that within three years of its notification, i.e., before 12 February 1978, "Member States shall forward all necessary information to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council".

The Commission prepared a detailed questionnaire to facilitate the forwarding of such information and sent it to the Governments of the Member States and to European employers' and workers' organizations[4]. As in the past, persons receiving the questionnaire could choose to draw up a joint reply, i.e., a tripartite one, at national level, or send separate answers direct to the Commission. In addition, Governments were requested to draft their replies with the collaboration of the Commissions or Committees on the employment of women set up at national level[5].

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[1] Doc. SEC(73)3 000 final of 18 July 1973.
[2] Doc. SEC(74)2 721 final of 17 July 1974.
[3] OJ No L 45 of 19 February 1975, pp. 19 and 20.
[4] European Trade Union Confederation (ETUC), Employers' Liaison Committee (ELC), European Centre of Public Enterprises (CEEP) and the Committee of Agricultural Organizations in the EEC (COPA).
[5] See paragraph 5 below.

The Commission based this report on the replies received and submitted it to the Special Group on Article 119 at its meeting held on 26 and 27 September 1978 (1).

The report is in five parts. Part One describes the legal situation and lays particular emphasis on the incorporation into national law of the provisions contained in each article of Council Directive 75/117/EEC of 10 February 1975, so that in effect it amounts to a legal report on the application of the directive. Draft laws or proposed legislation and parliamentary activities are also included, as are the requirements for instituting legal proceedings.

Part Two deals with collective agreements, including their field of application, provision for equal pay and especially the types of job evaluation adopted, which can be a source of indirect or concealed discrimination.

Part Three describes the situation in the Member States with regard to monitoring and control, first where the task has been entrusted to a team of inspectors and secondly where a specific body has been set up to encourage equal opportunities for female workers.

In Part Four statistics available at Community level (supplemented by some national statistics) on the differences in earnings between males and females have been compiled, analysed and commented upon. Part Five reviews the operative part and grounds of judgment of the three major judgments delivered by the Court of Justice of the European Communities on Article 119 of the EEC Treaty.

In the final part, the Commission puts forward its conclusions drawn from all the data thus assembled.

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(1) The draft report was updated at this meeting but the most recent information could only be included in footnotes so that the deadline of 12 February 1978 fixed by Article 9 of Council Directive (75/117/EEC) of 10 February 1975 could be kept.

(5) - The following six Member States submitted tripartite replies : Denmark, the Federal Republic of Germany, Ireland, Italy, the Netherlands and the United Kingdom. The Netherlands reply was formulated in conjunction with the Commission for Equal Pay for Men and Women ("Commissie voor gelijk loon voor vrouwen en mannen") and the National Emancipation Consultative Committee ("Nationale Adviescommissie Emancipatie"). The Danish Equal Treatment Commission ("Ligestillingsråd") helped draft the Danish reply. The Irish reply took account of the views of the Employment Equality Agency and other bodies which were consulted. The United Kingdom's Equal Opportunities Commission submitted a very detailed reply. In Italy the Ministerial Decree setting up the Committee for the Employment of Women (Comitato per il lavoro femminile) has been annulled by the administrative court and a new decree is being prepared.

- The Belgian Government submitted its reply to the Commission on the Employment of Women; the employers' delegation on this commission stated that this should be regarded as being the responsibility of the Government alone, since the two other partners wished to maintain their complete independence; despite these reservations, the members of the Commission presented observations which were taken into account in the Government reply. The French Government forwarded the questionnaire drawn up by the Commission for comments by the Commission on the Employment of Women. The Luxembourg Government requested the two sides of industry to send it their respective views on the questionnaire but only two employers' organizations replied.

- At European level, the ETUC submitted memos from two French trade unions (the CFDT and the FO). The ELC submitted the replies of the Conseil National du Patronat Français and the Fédération des Entreprises de Belgique and a memo from the German Retail Trade Organization (Hauptgemeinschaft des Deutschen Einzelhandels). CEEP submitted communications from its French and German sections.

A - THE LEGAL SITUATION

I. TABLE OF PRINCIPAL IMPLEMENTING MEASURES ADOPTED OR PREVIOUSLY IN FORCE IN THE MEMBER STATES

BELGIUM

- Royal Decree of 22 July 1964 (replaced by the Royal Decree of 29 June 1973) on the Financial Regulations concerning staff employed in the public service.

- Article 14 of Royal Decree No 40 of 24 October 1967 on the employment of women, introduced by the Law of 16 March 1971, as Article 47a, into the Law of 12 April 1965 on the protection of employees' remuneration.

- Royal Decree of 9 December 1975 giving binding force in the private sector to Collective Employment Agreement No 25 concerning equal pay for men and women concluded on 15 October 1975 within the National Labour Council (1).

DENMARK

- Law No 489 of 12 September 1919 on State employees, as amended by subsequent laws on State employees, the latest of which is Law No 291 of 18 June 1969.

- Central Agreement concluded in April 1973 between the Confederation of Employers (DA) and the Confederation of Workers (LO).

- Law No 32 of 4 February 1976 on equal pay for men and women.

THE FEDERAL REPUBLIC OF GERMANY

- Basic Law of the Federal Republic of Germany of 23 May 1949 (Article 3).

- Law of 5 January 1972 on the organization of undertakings.

- Federal Law of 15 March 1974 on staff representatives and Länder laws on staff representatives (applicable to all public services).

- Law of 9 April 1949 on collective agreements (version of 25 August 1969).

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(1) It should be noted that the law on economic reorientation enacted in Belgium on 4 August 1978 contains a Title V on equal treatment of men and women as regards working conditions, including pay.

FRANCE

- Preamble to the 1946 Constitution (confirmed by the preamble to the 1958 Constitution).

- Law of 11 February 1950 on collective agreements (supplemented by the Law of 13 July 1971).

- Decree of 23 August 1950 laying down a national guaranteed minimum wage (SMIC) (and subsequent provisions) and Law of 2 January 1970 introducing a minimum growth wage (SMIC) (and implementing provisions).

- Order of 4 February 1959 laying down general staff regulations.

- Law of 22 December 1972 on equal pay for men and women (and implementing Decree of 27 March 1973).

IRELAND

- Law of 1 July 1974 (Anti-Discrimination (Pay) Act 1974) prohibiting wage discrimination, amended by the Employment Equality Act 1977 of 1 June 1977.

ITALY

- 1947 Constitution (Article 37).

- Law No 604 of 1966 on individual dismissals.

- Law No 300 of 20 May 1970 on the status of employees.

- Law No 903 of 9 December 1977 on equal treatment for men and women with regard to employment.

LUXEMBOURG

- Law of 22 June 1963 laying down the rules applicable to civil servants' salaries.

- Grand-Ducal Decree of 22 April 1963 determining and regulating the minimum wage (and subsequent provisions) and the Law of 12 March 1973 revising the minimum wage.

- Law of 12 June 1965 concerning collective labour agreements.

- Grand-Ducal Regulation of 10 July 1974 on equal pay for men and women.

NETHERLANDS

- Law of 27 November 1968 introducing a minimum wage and compulsory minimum holiday pay and Decree of 29 November 1973 introducing a minimum wage for young persons.

- Law of 20 March 1975 establishing a right for men and women to equal pay for work of equal value.

UNITED KINGDOM

- Equal Pay Act 1970 of 29 May 1970.

- Equal Pay Act (Northern Ireland) 1970 of 17 December 1970.

- Equal Pay Ordinance 1975 Gibraltar of 24 October 1975.

- Sex Discrimination Act of 12 November 1975, Schedule 1 of which contains the amended and supplemented text of the Equal Pay Act 1970.

- Sex Discrimination (Northern Ireland) Order of 2 July 1976, Schedule 1 of which contains the amended and supplemented text of the Equal Pay Act (Northern Ireland) 1970.

II. INCORPORATION INTO NATIONAL LAW OF COUNCIL DIRECTIVE 75/117/EEC OF 10 FEBRUARY 1975

Content and scope of the principle of equal pay

Article 1

"The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called principle of equal pay, means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

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

2. In Belgium, Article 1 of Collective Labour Agreement No 25 of 15 October 1975 (given binding force by the Royal Decree of 9 December 1975) states that equal pay for men and women implies, for the same work or for work of equal value, the elimination of all discrimination based on sex.

Article 3 provides that all aspects and conditions of pay (defined in Article 4) must be equal, including methods of job evaluation, where applied. Under no circumstances may methods of job evaluation give rise to discrimination in the choice of criteria, their weighting or the manner in which evaluation factors are embodied in pay components (1).

3. In Denmark, the Law of 4 February 1976 imposes an obligation on any employer employing men and women for the same work to pay them the same wages for like work "if he is not already obliged to do so under a collective agreement".

It should be noted that the mediation proposal submitted by the conciliator on 28 March 1973 and which was used as a basis for the agreements concluded in April 1973 between the Confederations of employees (LO) and employers (DA) provides that:

- the agreed hourly rate of the 'standard wage' for women shall be fixed at the same amount as for men, including the cost of living allowance and the other agreed supplements payable in respect of time work, with the exception of the heavy work allowance;

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(1) In the Belgian reorientation law of 4 August 1978, in which Title V concerns equal treatment of men and women, Article 128 specifies that by working conditions is meant the provisions and practices relating in particular "to remuneration and its protection".

- agreed 'minimum wage' hourly rates for adults, including certain allowances, are to be fixed uniformly for both men and women;

- daily, weekly or monthly rates are to be governed by the same rules, and

- piece-rates or rates of pay with bonuses are to be fixed without regard to sex.

4. In the Federal Republic of Germany, the Federal Labour Court has established the principle of equal pay for men and women for like work or work of equal value on the basis of Article 3 of the Basic Law which provides that "men and women have equal rights" (Article 2) and "nobody may be placed either at an advantage or at a disadvantage because of his or her sex" (Article 3).

According to Article 75 of the Law of 5 January 1972 on the organization of undertakings and Article 67 of the Law of 15 March 1974 on staff representation, works councils and staff representatives must ensure that there is no discrimination based on sex when collective agreements are being applied and when women are being accorded steps on the company salary scale.

The concept of pay is not defined by law in the Federal Republic of Germany.

5. In France, Articles 1 and 2 of Law No 72-1143 of 22 December 1972 expressly set out the principle of equal pay for men and women for like work or work of equal value. Pay means the ordinary basic or minimum wage or salary and all benefits and supplements paid directly or indirectly in cash or in kind. The various components of pay must be fixed in accordance with identical rules. The categories, criteria of classification and occupational advancement and all bases for calculating pay, in particular the methods of job evaluation, must be common to employees of both sexes.

6. In Ireland, Article 2 of the Anti-Discrimination (Pay) Act 1974 provides that any agreement under which a woman is employed in a given place must contain a clause to the effect that she is entitled to the same wage as a man employed in that place by the same employer where both perform like work. Where an agreement does not contain such a clause, or where there is no agreement, Article 4 provides that the terms and conditions of employment of the employee in question shall include an implied clause conferring entitlement to equal pay which shall take precedence over any express clause to the contrary.

Two persons are regarded as being employed on like work where:

- both perform the same work under the same or similar conditions or where each is fully interchangeable with the other in relation to the work;

- the work performed by one is of a similar nature to that performed by the other and any difference between the work performed or the conditions under which it is performed is infrequent or of little consequence in relation to the work as a whole;

- the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions.

7. In Italy, Article 37 of the Constitution provides that "a working woman shall have the same rights and shall receive the same pay for equal work as a working man".

The Government states that the principle of equality applies both to like work and to work of equal value and that the systems of job classification used in collective agreements are common to men and women and exclude all discrimination based on sex.

Moreover, Article 2 of the Law of 9 December 1977 on equal treatment for men and women with regard to employment provides that: "Female employees are entitled to receive the same pay as male employees for identical work or work of equal value" and "The systems of job classification used to determine pay shall adopt criteria common to men and women".

8. In Luxembourg, Article 1 of the Grand-Ducal Regulation of 10 July 1974 provides that all employers shall pay men and women the same pay for like work or for work of equal value. Article 2 stipulates that pay means the ordinary basic or minimum wage or salary and all benefits and supplements paid directly or indirectly. According to Article 3, the various components of remuneration must be fixed in accordance with identical rules, the categories and criteria of classification and occupational advancement and all other bases for calculating pay, in particular the methods of job evaluation, must be common to employees of both sexes.

9. In the Netherlands, Article 2 of the Law of 20 March 1975 on equal pay for men and women provides that the employment contract entitles an employee to establish against his or her employer entitlement to a wage equal to that normally received by an employee of the other sex for work of equal value. Article 1 provides that wages means the pay due by an employer to an employee for work carried out, not including rights or allowances arising under pension arrangements.

In accordance with Articles 3 and 5 entitlement to equal wages may be established by drawing a comparison with wages habitually paid by the undertaking in question to an employee of the other sex performing work of equal value or, if no such work exists, broadly similar work. If a valid comparison cannot be made within the undertaking in question, reference may be made to another undertaking which is as similar as possible and is engaged in the same activity, account being taken of general differences in the wage scales of the undertakings in question. Wages shall be regarded as being equal if they are calculated on identical bases and account is taken of non-financial benefits included in the pay.

The value of work is determined by means of a job evaluation system or, in the absence of such a system the firm, on an equitable basis, taking into account the available data.

10. In the United Kingdom, the Equal Pay Act enacted on 29 May 1970 came into effect on 29 December 1975. The aim of the Act is to eliminate discrimination between men and women by establishing the right of the individual woman to equal treatment in regard to pay and other terms of her contract or employment (eg overtime, bonus, output and piecework payments, holiday and sick leave entitlement) :

- where she is employed on like work to that of a man in the same employment, or

- where she is employed on work which, although different from the work performed by men, has been classed as being of equal value under job evaluation.

Section 1 (5) of the Act stipulates that a job evaluation study shall be valid only if account has been taken of the criteria attached to the job (such as effort, skill, decision) and if the value of each one of these criteria is assessed independently of the sex of the employee. The Equal Pay Act applies both to men and to women (Section 1 (13).

Section 3 makes provision for the elimination of discrimination in collective agreements and employers' pay structures and provides that no woman should be paid less than the male minimum.

Possibility of taking legal action

Article 2

"Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities."

11. In Belgium, Article 47a of the Law of 12 April 1965 on the protection of employees' remuneration provides: "In accordance with Article 119 of the Treaty establishing the European Economic Community, approved by the Law of 2 December 1957, any employee may institute proceedings before the competent court or tribunal, seeking application of the principle of equal pay for men and women. This provision applies to the private and public sectors.

The interprofessional organizations of heads of firms and employees concluded on 15 October 1975, within the National Labour Council, Collective Employment Agreement No 25 on equal pay for men and women. A Royal Decree of 9 December 1975 rendered all its provisions binding on all employers in the private sector. (It should be noted, however, that this agreement, concluded (Article 9) for an unlimited period, may be revised or terminated at the request of a signatory party, subject to six months notice.)

Article 5 of the agreement provides that any employee who considers himself wronged or the employees' representative organization of which he is a member may institute proceedings before the competent court or tribunal seeking application of the principle of equal pay.

Article 6 provides for a committee of experts to be set up on a basis of parity. Its task is to advise the competent court or tribunal, if the latter so requests, on proceedings concerning the application of the principle of equal pay.

This binding collective agreement must be supplemented by a provision to be issued by the Secretary of State for the Civil Service enabling the Council Directive to be applied to the public sector (1).

12. In Denmark, a Law of 4 February 1976, which entered into force on 9 February 1976, imposes an obligation on every employer employing men and women for like work to pay them the same wage for the same job "if he was not already obliged to do so under a collective agreement".

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(1) The law of 4 August 1978 on economic reorientation contains a Title V on equal treatment of men and women (implementation of Council Directive 76/207/EEC of 9 February 1976) as regards working conditions including remuneration. This law applies to workers in the private and the public sectors. It prohibits any direct or indirect discrimination in formal provisions of any type and in practice. Article 131 provides that any person who consider himself wronged may have recourse to the judicial process to implement the provisions of Title V of the law.

Most sectors are covered by collective agreements which are traditionally negotiated by the Confederation of employees (LO) and the Confederation of employers (DA). With regard to equal pay, a national agreement based on a mediation proposal submitted by the conciliator on 28 March 1973 was signed in April 1973 and abolished any wage discrimination between men and women still existing in previous agreements.

Article 6 of the above Law of 4 February 1976 provides that an employee who believes that his employer is not complying with his obligation to pay him an equal wage in accordance with the Law may institute proceedings before the courts. The Danish Government states that the special tribunals for dealing with labour disputes provided for under Danish law (in particular Law No 317 of 13 June 1973 concerning Labour Law) may, in the case of workers who are entitled to equal pay under collective agreements, constitute the judicial process referred to in Article 2 of Directive 75/117/EEC.

It should be noted that a Law of 7 June 1958 on the remuneration and pensions of State employees abolished the differences still existing between the salaries payable to men and women.

13. In the Federal Republic of Germany, the Government states that the application of Article 2 of the Directive does not require new national provisions since employees may already institute proceedings before the Labour Courts under Article 3 of the Basic Law of 1949. According to Article 84 of the Law of 5 January 1972 on the organization of undertakings, an employee is entitled to lodge a complaint with the appropriate bodies of the undertaking and the works council where he considers that he has been injured or unfairly treated by his employer. Employees in the public sector enjoy the same rights.

14. In France, it has been necessary, in spite of the legislation already in force (in particular the preamble to the 1946 Constitution confirmed by the 1958 Constitution) to enact Law No 72-1143 of 22 December 1972 (supplemented by Decree No 73-360 of 27 March 1973) in order to ensure that the principle of equal pay is fully implemented.

Employees who consider themselves wronged enjoy the normal rights of recourse to the competent courts or tribunals and in particular to conciliation boards which decide whether or not the law has been applied. The Decree of 27 March 1973 lays down the procedure to be followed in the event of a dispute, especially with regard to standards, criteria and bases of calculation, and specifies the particulars which are to be communicated to the employment inspector and details of the enquiry which he must conduct.

It should be noted that a Law of 13 July 1971 provided that national collective agreements must provide for "procedures for settling difficulties which might arise in connection with the application of the principle of equal pay for equal work".

Article 7 of the Order of 4 February 1959 laying down general staff regulations provides that "no distinction shall be made between men and women when applying this Order". Article 4 of the Law of 22 December 1972 specifies that its fundamental provisions (Articles 1 to 3) shall apply to relations between employers and employees which are not governed by the Labour Code and especially to employees who are bound by a contract governed by public law.

15. In Ireland, the Act designed to apply the principle of equal pay, the Anti-Discrimination (Pay) Act 1974, was enacted on 1 July 1974 and was to enter into force on 31 December 1975.

It should be pointed out however that an amending bill was introduced in Parliament by the Government in December 1975. Its purpose was to postpone until 31 December 1977 at the latest the implementation of equal pay by certain undertakings in the private sector experiencing difficulties. The Government notified the Commission on 5 February 1976 and made application to derogate from applying Directive 75/117/EEC on the basis of Article 135 of the Treaty of Accession (protective measures). The Commission, while acknowledging the difficulties of the Irish economy, was unable, on grounds of principle, to comply with the request and the bill was therefore withdrawn. In the circumstances the implementing Act of 1974 came into force on 31 December 1975. It should also be noted that an Act on equality in employment of 1 June 1977 (Employment Equality Act 1977) made certain amendments to the Anti-Discrimination (Pay) Act 1974. The Act taken into consideration in this document is of course the amended version.

Article 7 of the Anti-Discrimination (Pay) Act provides that any dispute between an employee and an employer may be referred by either party to an equality officer for investigation. The Employment Equality Agency may also make a referral if it establishes that an employer has not observed an equal pay clause, even if no dispute has arisen. Having carried out his investigation, the equality officer formulates a recommendation and conveys it to the parties concerned and to the Labour Court.

According to Article 8 of the Act, the employer or employee may appeal to the Labour Court either against the equality officer's recommendation or because it has not been applied. A party to a dispute on which the Labour Court has given a ruling may refer the matter to the High Court on a point of law.

Up to 31 December 1975 there existed in the public sector a salary scale differentiated on the basis of sex and marriage. On that date salary differentials based on sex were abolished and although differentials based on marriage were retained, salaries paid to married women were aligned to those paid to married men. The differentiation system based on marriage was completely abolished on 1 July 1977 (1).

16. In Italy, the principle of equal pay is a right recognized by Article 37 of the Constitution which has been in force since 1 January 1948 and which stipulates that "a working woman shall enjoy the same rights and shall receive the same pay for equal work as a working man". Learned writers and court decisions have acknowledged that this provision is mandatory and has a direct bearing on the relationships between individuals. It gives rise to a subjective right to equal pay which may be relied upon before the courts.

However, the Law of 9 December 1977 on equal treatment for men and women with regard to employment contains five articles concerning the implementation of the principle of equal pay (Articles 2, 13, 16, 18 and 19).

17. In Luxembourg, the legislation in force was supplemented by the Grand-Ducal Regulation of 10 July 1974 on equal pay for men and women. Article 6 stipulates that disputes arising out of the application of this Regulation shall be referred to the court or tribunal competent to deal with contracts of employment.

According to the Law of 12 June 1965, all collective labour agreements must lay down the procedure for implementing the principle of equal pay "exclusive of all discrimination based on sex" and the Law of 22 June 1963 laying down the rules applicable to civil servants' salaries provides that female officials shall receive the same pay as male officials for identical work.

18. The Netherlands published on 1 April 1975 the Law of 20 March 1975 governing the right of employees to receive pay equal to that of employees of the other sex for work of equal value (Law on equal pay for men and women).

Article 2 of the Law specifies that employment contracts shall enable an employee to establish against his employer his right to receive pay equal to that habitually received by an employee of the other sex for work of equal value.

According to Article 16 of the Law an action for the payment of wages is admissible only if the employee produces a reasoned opinion drawn up by the Committee on equal pay for men and women established pursuant to

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(1) An agreement reached in October 1978 provided for the back dating of the elimination of marriage differentiation to 31 December 1975.

Article 9. Article 10 provides that this Committee shall, at the request of the employee, employer or both parties, make available to the two parties a reasoned opinion on the wages to which the employee is entitled under the Law. It also has the task of forwarding, where necessary, to the authority responsible for settling the dispute additional information required to establish the right.

Article 1 of the Law provides that "employee" means any person who performs work under a contract of employment but Article 17 specifies that the Law does not apply to persons employed by or who work on behalf of the State, provincial authorities, a commune, a local water authority or any other body governed by public law.

The Law on equal pay does not apply to staff employed in the public sector in the strict sense, including staff employed under a contract of employment by public authorities or on their behalf. The Government states however that the principle of equal pay has been established for staff in the public service for a long time in the staff regulations applicable to such officials. The staff regulations and the job classification system refer only to "officials" and do not distinguish between the sexes.

Nevertheless, complaints from employees in the public services were submitted to the Committee on Equal Pay for Men and Women concerning payment for equivalent work. According to the Committee, these complaints would have been incompatible with the law of 20 March 1975 if that had been applicable. However, according to the Government, an "exceptional" case was involved which immediately led to a change in the statute in question. However the employers, the workers, "emancipation committee" and the Committee on Equal Pay were dissatisfied with the fact that in the Netherlands opportunities for complaint in the public sector were limited to the verification of the applicabilities of statutes and that there were no formal means of recourse on the basis of the non-application of the principle of equal pay.

19. In the United Kingdom, the right to equal pay was introduced by the Equal Pay Act 1970 enacted on 29 May 1970 for Great Britain and by the Equal Pay Act 1970 enacted on 17 December 1970 for Northern Ireland. An Ordinance of 24 October 1975 extended the right to Gibraltar. The three instruments took effect on 29 December 1975. The Sex Discrimination Act 1975, enacted on 12 November 1975, amended and supplemented the Equal Pay Act 1970 (1). Similarly, the Sex Discrimination Order 1976, adopted on 2 July 1976, amended and supplemented the Equal Pay Act (Northern Ireland) 1970.

Under Section 2 of the Equal Pay Act 1970 any woman (or man) who considers that she (or he) has been subject to discrimination with regard to pay may apply to an Industrial Tribunal. The Secretary of State for Employment may also take legal action if persons making the complaints appear to have rights which must be established but cannot reasonably be expected to do so themselves.

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(1) For purposes of simplification, only the Equal Pay Act 1970 will be referred to here.

Although the industrial tribunals have principal responsibility for securing compliance with the Act, the Equal Opportunities Commission, set up under the Sex Discrimination Act 1975[1], is empowered under certain conditions to assist persons who wish to establish their rights and take legal action.

The Equal Pay Act 1970 applies to all employees in the private and public sectors. Section 1(9) of the Act formally excludes the naval, military and air forces of the Crown and any women's service administered by the Defence Council. Section 7 of the Act specifies however that the Secretary of State and the Defence Council shall not adopt any instrument governing the terms and conditions of service of such staff which would draw a distinction as regards pay, allowances or leave between men and women, unless such distinction is justified by the differences in the obligations assumed by such men and women.

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[1]The abovementioned Sex Discrimination Order 1976 also set up an Equal Opportunities Commission for Northern Ireland.

Elimination of discrimination which may still exist in certain legislation

Article 3

"Member States shall abolish all discrimination between men and women "arising from laws, regulations or administrative provisions which is "contrary to the principle of equal pay".

x
x x

20. In Belgium, the Government states that there no longer exist, in principle, any statutory provisions which are contrary to the principle of equal pay.

Any regulations or administrative provisions which continue to discriminate are void. They may be formally repealed by instituting proceedings before the Council of State. The nullity of these provisions may in addition be invoked before the competent court by any person affected or by the representative of the State.

However, the "Commission du Travail des femmes" (Commission on the employment of women) has pointed out that there are two royal decrees containing discrimination in the public sector :

- the Royal Decree of 30 January 1967 granting a household allowance or residence allowance to Ministry employees lays down different conditions for granting the household allowance depending on the sex of the staff member;
- the Royal Decree of 13 April 1965 concerning Government contributions to costs of change of residence of Ministry staff lays down different conditions for the award of removal allowances in the interests of the service for members of the family depending on the sex of the staffmember.

Lastly, in the transport sector, the wives of male employees receive free travel tickets but not the husbands of female employees pursuant to the regulation on transport staff travel updated on 2 December 1974 (1).

21. In Denmark, according to a Government statement, no legislative or administrative provision exists which is incompatible with the principle of equal pay.

22. In the Federal Republic of Germany, the Government states that there is no provision laid down by law, regulation or administrative provision which is contrary to the principle of equal pay.

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(1) It should be noted that in the abovementioned law on economic reorientation of 4 August 1978, the provisions covering equal treatment of men and women (in particular as regards remuneration) concern : administrative and legal provisions and regulations ... statutory rules of administrative law applicable to teachers in the public service and subsidized educational establishments.

23. In France, the Government states that there is no provision laid down by law, regulation or administrative provision which is contrary to the principle of equal pay. Minimum legal wage rates (SMIG and subsequently SMIC) in particular have always been identical for men and women.

24. In Ireland, Article 5 of the Anti-Discrimination (Pay) Act 1974 states that any provision in an Employment Regulation Order introducing different rates of pay based on or related to sex is automatically null and void.

25. In Italy, Article 19 of the Law of 9 December 1977 on equal treatment for men and women with regard to employment, which also deals with equal pay, provides for the repeal of all statutory provisions contrary to the Law. Internal rules and administrative acts of the State which are contrary to the provisions of the Law no longer have effect.

26. In Luxembourg, the Government states that there no longer exist any provisions laid down by law, regulation or administrative action which do not comply with the principle of equal pay.

Article 1 of the Law of 12 March 1973 provides that the minimum wage shall apply to any employee of normal physical and intellectual aptitude, without distinction of sex.

27. The Government of the Netherlands states that there are no laws or regulations which are contrary to the principle of equal pay.

The minimum wage introduced by the Law of 27 November 1968 and the minimum wage for young people introduced by the Decree of 29 November 1973 have been fixed at the same rate for men and women.

However, wage earners who regularly work less than one third of the normal working time are excluded from the field of application of this law. On 26 November 1976 the Economic and Social Council gave an opinion on the advisability of eliminating this criterion. The findings of the recent survey show that female workers represent the large majority of wage earners working less than one third of the normal working time.

28. In the United Kingdom the Government states that there are no statutory provisions which are contrary to the principle of equal pay. The Secretary of State for Employment may refer statutory wages orders to the Central Arbitration Committee for a declaration of the amendments necessary to eliminate any discrimination between men and women.

Nullity (or amendment) of any provision appearing in an agreement or contract which is contrary to the principle of equal pay

Article 4

"Member States shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended."

x

x x

29. In Belgium, Article 51 of the Law of 5 December 1968 on Collective Employment Agreements and Joint Committees establishes the ranking of sources of obligations between employers and employees. The Law and collective agreements adopted within the National Labour Council and given binding effect by Royal Decree take precedence over the other sources of obligations such as collective agreements for the different sectors or individual contracts of employment.

Articles 9, 10 and 11 of the Law provide that the following shall be null and void:

- provisions in an agreement which are contrary to the mandatory provisions of laws and decrees and international treaties and regulations binding in Belgium;

- provisions in an agreement concluded by a joint committee which are contrary to an agreement concluded within the National Employment Council;

- provisions in an agreement concluded by a joint sub-committee which are contrary to an agreement concluded by the National Employment Cocuncil or the joint committee to which the sub-committee belongs;

- provisions in an agreement concluded otherwise than within a joint body, which are contrary to an agreement concluded within the National Employment Council or a joint committee or sub-committee to which the undertakings in question belong;

- clauses in an individual contract of employment and provisions in a labour settlement which are contrary to the provisions of a collective employment agreement binding on the employers and employees in question (1).

30. In Denmark, the Government and both sides of industry state that any agreement or contract of employment contrary to the principle of equal pay is null and void under the terms of the Central Agreement of April 1973 and Law No 32 of 4 February 1976 referred to above.

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(1) The abovementioned law of 4 August 1978 includes in the provisions relating to equal treatment of men and women (in particular as regards remuneration) : " ... individual and collective agreements and conditions of employment ... ". Article 130 lays down that "provisions contrary to the principle of equal treatment are null and void".

30. In Denmark, Article 2 of the law of 4 February 1976 on equal pay for men and women entitles wage earners whose earnings are - contrary to the principle of equal pay - less than those of other workers, to the difference in wage involved. According to the Government, this provision means, as was stated in the comments accompanying the draft law on equal pay - that if an agreement contains provisions contrary to the principle of equal pay the agreement is null and void and that wage earners are entitled to equal pay notwithstanding the said provisions.

The Government and both sides of industry state that any agreement or contract of employment contrary to the principle of equal pay is null and void under the terms of the applicable collective agreements and the Law on Equal Pay which covers all sectors where collective bargaining does not take place.

31. In the Federal Republic of Germany, learned writers and court decisions - especially those of the Federal Labour Court - consider Article 3 of the Basic Law to be a rule of positive law directly applicable to equal pay and equally binding on the public authorities and the signatories to collective agreements. Discriminatory provisions in agreements are therefore automatically null and void and may invalidate the entire agreement.

32. In France, Article 3 of the Law of 22 December 1972 provides that any provision appearing in a contract of employment, a collective agreement, a wage agreement, a wage settlement or a wage scale decided upon by an employer or group of employers and which entails a lower rate of pay for one or more workers of one sex compared with that given to workers of the other sex for equal work or work of equal value is automatically null and void.

The second paragraph of the abovementioned Article 3 specifies that the higher rate of pay accorded to the latter employees automatically replaces the rate appearing in the void provision.

33. In Ireland, Article 5 of the Anti-Discrimination (Pay) Act 1974 provides that any term or condition contained in a collective agreement providing for wage differences based on or connected with the sex of a person is null and void.

In addition, where a woman is employed without a contract, or under a contract which does not contain a term or condition relating to equal pay, Article 4 of the Act provides that the terms and conditions of her employment are to be construed as including an implied term entitling her to receive equal pay and overriding any express term or condition to the contrary.

34. In Italy, Article 19 of the Law of 9 December 1977 on equal treatment for men and women with regard to employment, which also deals with equal pay, provides that "Provisions appearing in collective agreements, individual contracts of employment, the internal regulations of firms and staff regulations which are contrary to the rules contained in this law shall be null and void". Article 13 provides that discrimination based on sex shall be subject to Article 15 of Law No 300 of 20 May 1970 on the status of employees, and consequently that "any agreement or act dismissing an

employee, discriminating against him in respect of the allocation of qualifications or duties, transfers or disciplinary measures or prejudicing him in any other way on grounds of sex shall be null and void".

35. In Luxembourg, Article 4 of the Grand-Ducal Regulation of 10 July 1974 provides that any provision appearing in a contract of employment, collective employment agreement or the regulations of a firm or workshop which entails a lower rate of pay for one or more employees of one sex than for an employee of the other sex for work of equal value shall be automatically null and void.

The higher rate of pay to which the latter employees are entitled shall automatically replace the rate contained in the void provision.

36. In the Netherlands, Article 8 of the Law of 20 March 1975 on equal pay for men and women provides that any term or condition providing for the payment by an employer of a lower wage than that to which an employee is entitled under the Law is null and void.

37. In the United Kingdom, Section 1 (1) of the Equal Pay Act 1970 lays down that if the terms of a contract under which a woman is employed do not include an express equality clause they shall be deemed to include one. An equality clause affects all contractual terms and conditions, including any concerned with pay.

The Central Arbitration Committee is responsible for eliminating any discrimination which might be contained in collective agreements which are submitted to it either by one of the signatory parties or by the Secretary of State for Employment. The amendments which the Committee is empowered to make are defined in the Act, which also stipulated that such amendments must be incorporated in the contracts of employment of the employee concerned. The provisions of the Act relating to collective agreements apply also to employers' pay structures, except that references to the Central Arbitration Committee may be made only by the employer concerned or by the Secretary of State for Employment.

Section 77 (3) of the Sex Discrimination Act 1975 renders unenforceable any term of a contract purporting to exclude any provision of the Equal Pay Act.

Protection of employees against dismissal relating to the application of the principle

Article 5

"Member States shall take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal pay."

x

x x

38. In Belgium, under Article 7 of the Agreement, an employer may not terminate the employment relationship nor unilaterally amend the conditions of employment because a reasoned complaint has been lodged (at company or inspectorate level) or legal action has been taken to revise the remuneration in line with the present agreement. If the reasons given do not have any bearing on this complaint or action, the burden of proof lies on the employer.

An employer who reinstates an employee (at his own request or that of the employees' organization to which he belongs) in the undertaking or places him in his original post is bound to pay the remuneration lost. In the event of failure to reinstate the employee or place him in his former post the employer shall pay the employee compensation amounting either to six months of his gross remuneration or an amount equal to the actual loss suffered (1).

39. In Denmark, Article 3 of the Law of 4 February 1976 provides that if an employee is dismissed after having demanded equal pay under the law, the employer must pay him a fixed amount in compensation, based on the length of time he has been employed and the general circumstances of the case, but amounting to a maximum of 26 weeks pay.

In view of the fact that Article 1 of the Law limits its scope to employers not covered by a collective agreement, Article 4 had to lay down that the protective provisions under Article 3 mentioned above also apply mutatis mutandis to all sectors covered by collective agreements by virtue of which employees are entitled to equal pay, but where there is no rule concerning payment of compensation for unjustified dismissal.

The protective provisions of Article 3 of the Law do not therefore apply to cases where equal pay is granted under a collective agreement and where, at the same time, the provisions of such agreements contain specific rules relating to compensation for dismissal without adequate justification.

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(1) Article 136 of the abovementioned law of 4 August 1978 provides that an employer who engages a worker who has submitted a reasoned complaint to the undertaking - or who initiates or for whom are initiated legal proceedings to enforce the provisions of the law cannot terminate the worker's contract nor unilaterally alter the terms of employment, except for reasons unrelated to the complaint or proceedings. If the employer refuses to re-engage the worker or reinstate him in his former capacity, he must pay the worker compensation equal to 6 months of gross earnings or an amount equivalent to the loss of earnings.

40. In the Federal Republic of Germany, an employee may claim before the Labour Courts that he has been invalidly dismissed. Article 138 of the Civil Code provides that the dismissal of an employee who has defended his interests or asserted his rights is contrary to public policy and is null and void.

Article 84 (3) of the Law of 5 January 1972 on the organization or undertakings provides that an employee may not suffer injury as a result of having lodged a complaint. Any dismissal as a result of lodging a complaint or the institution of proceedings to secure compliance with the principle of equal pay is contrary to this provision and is null and void under Article 134 of the Civil Code.

A dismissal which is unjustified on social grounds is null and void under the terms of the Law on protection against dismissal. Socially unjustified dismissal includes in particular the dismissal of an employee because he has demanded compliance with the principle of equal pay.

41. In France, in accordance with the Law of 13 July 1973, the competent courts, where proceedings are duly brought before them in cases of dismissal without "genuine and serious reason" may propose the reinstatement of the employee in the undertaking together with the retention of benefits acquired, and, in the event of refusal, order the employer to pay compensation equivalent to not less than six months pay.

42. In Ireland, Article 9 of the Anti-Discrimination (Pay) Act 1974 provides that an employer who dismisses a woman for the sole or main reason that she has asserted her right to equal pay is deemed guilty of an offence and is liable to a fine.

The dismissed employee may, on the basis of this Article, take legal action before the courts of law, the burden of proof of not having committed an offence lying with the employer. If the court finds than an offence has been committed, it may impose a fine on the employer on summary conviction of not more than £100 or on conviction on indictment of not more than £1,000. The court may also impose an additional fine on the employer, to the benefit of the plaintiff, the amount of which may not exceed the arrears of remuneration which, in the opinion of the court, the plaintiff would be entitled to claim but subject to a maximum of 104 weeks' remuneration. The court may also order reinstatement or reengagement.

However, the dismissed employee may choose an alternative legal procedure before the Labour Court based on Article 10 of the Act. In such a case, the Labour Court conducts an investigation following which it may order the employer to pay to the party concerned compensation equal to the remuneration she would have received from the date of her dismissal up to the date of the Court order (not exceeding 104 weeks remuneration) and may order her reinstatement or reengagement.

If the Court's decision is not carried out within two months of notification,

the employer is liable on summary conviction in a court of law to a fine not exceeding £100 and to a further fine not exceeding £10 for every day during which the offence continues. This court may also, as in the case of the procedure based on Article 9 impose on the employer a fine, to the benefit of the plaintiff, of the amount which in the opinion of the court the plaintiff would be entitled to claim in a civil action for arrears of remuneration, subject to a maximum of 104 weeks remuneration.

43. In Italy, the Government states that in accordance with the principle of equality referred to in Article 37 of the Constitution, dismissal on the grounds of a claim made to the management of an undertaking or of legal action to ensure compliance with the principle of equal pay, is illegal. Furthermore, Law No 604 of 1966 on individual dismissals and Law No 300 of 20 May 1970 on the status of employees limit the right of termination by the employer (ad nutum dismissal) to "just cause" and "justified reason".

In addition, as stated above in paragraph 34, Article 13 of the Law of 9 December 1977 makes discrimination based on sex subject to Article 15 of Law No 300 referred to above on the status of employees, which provides that "any agreement or act dismissing an employee, discriminating against him in respect .... of transfers, or disciplinary measures or prejudicing him in any other way on grounds of sex shall be null and void".

44. In Luxembourg, the provisions of Article 5 of the Directive are covered by Articles 15 (2) and 16 of the Law of 24 June 1970 on the rules governing contracts for hiring the services of manual workers and Article 22 (6) of the Coordinated Law of 12 November 1971 on contracts for hiring the services of non-manual workers. The employer is bound to notify the worker in writing of the reasons for his dismissal and, if this is unfair, the injured person may claim damages. The right to terminate a contract of employment of fixed or unlimited duration is considered to be exercised unfairly where the grounds for the dismissal are illegal or where the act is irregular on economic and social grounds.

45. In the Netherlands, Article 6 of the Extraordinary Decree of 1945 on industrial relations makes the unilateral termination of a contract of employment subject to the prior authorization of the Director of the Regional Employment Office. In general, such authorization is not given when it appears that the employer wishes to terminate a contract of employment because the female employee in question wishes to assert a tight to which she is entitled by law.

46. In the United Kingdom, the Sex Discrimination Act makes it unlawful to victimise a person by treating him or her less favourably in any area covered by the Act (eg work allocation, dismissal, benefits, etc ...), because that person has brought proceedings under the Act or the Equal Pay Act. Where an industrial tribunal finds a complaint of victimisation to be well-founded it can make an order declaring the rights of the parties, award compensation (currently up to £5,200) and make a recommendation for a particular course of action.

In addition under the Trade Union and Labour Relations Act (as amended), employees with 26 weeks service including part-time employees who work 16 hours or more, have a general right not to be unfairly dismissed as do part-time workers who work between 8 and 16 hours provided they have at least five years continuous service in the undertaking. Where an industrial tribunal finds a dismissal to be unfair it may award compensation or make an order for reinstatement or re-engagement. If, unreasonably, the order is not complied with, the tribunal will award enhanced compensation. An order for reinstatement or re-engagement is not made if it is impracticable to do so or it is not in the complaint's interest.

Measures and means available to ensure the application of the principle

Article 6

"Member States shall, in accordance with their national circumstances and legal systems, take the measures necessary to ensure that the principle of equal pay is applied. They shall see that effective means are available to take care that this principle is observed."

x

x x

47. In Belgium, the implementation of Collective Agreement No 25 of 15 October 1975 is supervised by the "Inspection des lois sociales".

The abovementioned law of 12 April 1965 on the protection of employees' pay in the public and private sectors is a public policy law and makes provision for penalties (1).

48. As regards Denmark, the Government states that, according to tradition, the trade organizations themselves supervise the implementation of collective agreements and to a certain extent supervise their implementation in the case of employees who are not members of a trade union. It adds that the "Council for Equality" (Ligestillingsråd), set up by the Government, keeps under review the implementation of the principle but that there will be no State control as such "in view of the fact that it would be contrary to Danish practice and to the national legal system".

49. In the Federal Republic of Germany, the Government considers that the effective implementation of the principle of equal pay in undertakings is guaranteed by the courts. The law does not make provision for any administrative control.

However, the Government has asked the central organizations of the two sides of industry to comply with the provisions of Directive 75/117/EEC when applying collective agreements, in particular with regard to work considered to be of equal value. The central organizations have agreed to implement the directive within the framework of the autonomy which they enjoy when negotiating collective agreements.

50. In France, under Article 5 of the Law of 22 December 1972, works inspectors, agricultural labour law inspectors or, as the case may be, other inspectors with similar duties, are entrusted with the task of ensuring that the principle of equal pay is applied, and, in collaboration with police and criminal investigation officers, of detecting offences.

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(1) The law of 4 August 1978 mentioned earlier provides for prison sentences (of eight days to one month) and fines (of Bfrs 20 to 500 per person concerned up to a maximum of Bfrs 50,000). The application of this law is also supervised by the Inspection des lois sociales.

Articles 3, 4 and 5 of the implementing Decree of 27 March 1973 lay down that any employer who contravenes the provisions of the law is liable to a fine (ranging from FF 600 to 1 000 per employee) which may be increased in the event of the repetition of the offence (to FF 2 000). A prison sentence of ten days may be imposed. In the event of a sentence, the Court may order that the decision be published.

Any refusal by the employer to inform the inspector (or similar agent) of the various factors which go to make up remuneration within the undertaking may give rise to a fine (ranging from FF 80 to 160, which may be increased to FF 600 in the event of the offence being repeated).

51. In Ireland, Article 6 of the Anti-Discrimination (Pay) Act 1974 provided for the appointment of equality officers who are responsible for ensuring that the principle of equal pay is implemented. In order to obtain information which they may require for the purpose of their work, these officers may enter premises to inspect work in progress and require an employer to produce any records or documents in his possession. Any person who obstructs or impedes an equality officer in the exercise of his powers is guilty of an offence and liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £1 000.

Under Article 7 of the Act, a dispute between an employer and an employee in relation to the existence or operation of an equal pay clause may be referred by either of the parties to the dispute to an equality officer for investigation. The Employment Equality Agency may also refer the matter to an equality officer if an employer has failed to comply with the law and it is not reasonable to expect the employee concerned to refer the matter to an equality officer. Following the investigation, the equality officer issues a recommendation which he conveys to the parties concerned and to the Labour Court.

52. In Italy, the works inspectorate, whose role is to supervise the implementation of laws relating to employment, also supervises the implementation of the principle of equality on the basis of Article 37 of the Constitution and Convention No 100 of the ILO (International Labour Organization).

Article 13 of the Law of 9 December 1977 relating to equal treatment for men and women with regard to conditions of employment provides that fines ranging from Lit 200 000 to 1 000 000 may be imposed for failure to comply with the provisions relating to equal pay referred to in Article 2. Article 18 requires the Government to present each year to Parliament a report on the application of the law.

53. In Luxembourg, the Works and Mines Inspectorate is responsible, under Article 5 of the Grand-Ducal Regulation of 10 July 1974, for ensuring that the provisions of the Regulation are implemented.

54. In the Netherlands, the Law of 20 March 1975 (Articles 9 to 15, 17 and 18) set up an Equal Pay Commission composed of five members appointed by the Minister for Social Affairs. Two are selected from a list of candidates submitted by the employers' organizations, two are selected under the same conditions for the employees' organizations and the chairman is a Ministry official from the technical pay unit.

At the request of an employee, an employer or both, this Commission conveys to both parties a reasoned opinion on the wage or salary to which the employee is entitled by law. It also has the task, where necessary, of forwarding to the authority responsible for settling the dispute supplementary information which may be required in order to determine the entitlement. If the Commission considers that an undertaking, or a group of undertakings belonging to the same branch of activity, has acted contrary to the provisions of the Law, it informs the Minister for Social Affairs and the employer(s) concerned. It may also inform the employers' and the employees' organisations and the work committee(s), but only after the employer(s) concerned have had the opportunity to express their opinion.

In performing its tasks, the Commission may be assisted by one or more officials in order to obtain the information which it considers necessary, and each party is required to ensure that the information he furnishes is complete and accurate.

Under Article 16 of the abovementioned Law, an employee who considers himself wronged may institute proceedings for payment of remuneration by submitting a reasoned opinion from the Commission which must have been issued not earlier than three months previously. Such proceedings must be instituted not later than two years after the time when payment should have been made.

55. In the United Kingdom, the Sex Discrimination Act of 1975 instituted the Equal Opportunities Commission, which has the authority to undertake investigations within the sphere covered by the Equal Pay Act in order to abolish discrimination, to issue non-discrimination notices and to keep under review the working of the Equal Pay Act. This Commission also has the right to assist persons who wish to assert their rights and take legal action, in particular when the complaint raises a question of principle or when the plaintiff cannot reasonably be expected to take the necessary steps without assistance. The Secretary of State may also refer questions to the Industrial Tribunal if the plaintiff cannot reasonably be expected to do so herself.

The Advisory, Conciliation and Arbitration Service has the statutory duty to give advice and assistance to employers and employees who so require. The Central Arbitration Committee has the statutory responsibility to make declarations of the amendments which need to be made to remove discrimination between men and women in collective agreements or employers' pay structures referred to it.

Notification to employees (in particular at their place of employment)

Article 7

"Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of employees by all appropriate means, for example at their place of employment."

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56. In Belgium, the text of Collective Agreement No 25 of 15 October 1975 must, in accordance with Article 8 thereof, be annexed to the works regulations of the undertaking.

The Commission du Travail des Femmes (Commission on the Employment of Women) and the Commissariat général à la promotion du travail et le Ministère de l'Emploi et du Travail (Minister of Employment and Labour) have drawn up and published a brochure which explains the contents of Collective Agreement No 25 and the rights which it grants to employees. This brochure has been sent to the management boards of every undertaking in Belgium.

57. In Denmark, the Equal Treatment Commission (Ligestillingsråd) has distributed a brochure on the provisions of the law and the agreements on equal pay. The brochure contains advice on how to institute proceedings, details relating to compensation, etc., and has been sent to all public libraries, employment agencies, town halls, etc.

58. In the Federal Republic of Germany, the Government states that it is not customary to inform employees by means of notices displayed in undertakings of the provisions of labour law. However, the Government has forwarded Directive 75/117/EEC, which has been published in the Bundesarbeitsblatt, to the federations of parties to collective agreements and has requested them to ensure that it is observed.

59. In France, Article 6 of the Law of 22 December 1972 provides that information will be made available by means of notices displayed at places of employment and at places where employees are recruited. Any employer who fails to display notices is liable to a fine (ranging from FF 80 to 160, which may be increased to FF 600 in the event of the offence being repeated).

60. In Ireland, the provisions of the Anti-Discrimination (Pay) Act 1974 have been widely publicized by all the media and notified to employees in explanatory brochures.

61. In Italy, the Government states that the provisions of Directive 75/117/EEC have been brought to the attention of employees at works meetings and meetings organized by the trade unions, including meetings at places of employment.

62. In Luxembourg, the Government considers it unnecessary to adopt the special means of notification, since the Community Directive and the measures implementing it at national level have been widely publicized in trade union journals and feminist publications.

63. In the Netherlands, a leaflet giving details of the extent of the "right to equal pay for men and women" and how the right can be asserted has been widely distributed. The leaflet contains a detachable section which enables an employee who considers herself wronged to obtain from the Equal Pay Commission the appropriate from on which to set out her complaint and to obtain the opinion of the Commission.

The right to equal pay has also been widely publicized on television. The report drawn up by the Technical Service for Wages ("Loontechnische Dienst") on the implementation of the law is a further method of disseminating information.

64. In the United Kingdom, the Government conducted an intensive advertising campaign in both the daily and the weekly press and in regional and specialized publications to remind employers throughout 1975 of their responsibility to implement the Equal Pay Act.

A guide to the Equal Pay Act and brochures for employers and employees were distributed free of charge to the general public. Guides and brochures are available at all employment offices.

The Equal Opportunities Commission is at the disposal of the public to supply any information or advice. Its general role is to provide instruction and persuasion.

Advice about the Act is also obtainable at regional offices of the Advisory, Conciliation and Arbitration Service.

III. DRAFT LAWS OR PROPOSED LEGISLATION AND PARLIAMENTARY ACTION

(1) DRAFT LAWS OR PROPOSED LEGISLATION

65. The implementation of equal pay should be facilitated by the entry into force in the Member States on 12 August 1978 of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Without wishing to encroach on the report which the Commission must also submit to the Council on the application of this second directive, it is interesting to note that four laws are now in force in this field and that three of them directly concern equal pay, as has been stated in the previous two sections of this report:

- in the United Kingdom, Schedule 1 of the Sex Discrimination Act of 12 November 1975 contains the amended and supplemented provisions of the Equal Pay Act 1970;

- in Ireland, the Employment Equality Act 1977 of 1 June 1977 amended some minor provisions in the Anti-Discrimination (Pay) Act 1974, and

- in Italy, Law No 903 of 9 December 1977 on equal treatment for men and women with regard to employment contains five articles which concern the application of the principle of equal pay.

The fourth law dealing with the subject covered by this directive of 9 February 1976 is the Danish Law of 12 April 1978 (which is to enter into force on 1 July 1978). Three draft laws were in preparation on 12 February 1978 : in Belgium (1), the Netherlands and Luxembourg.

66. It should be noted furthermore that in Belgium a proposal for a law, of parliamentary origin, on equal treatment with regard to conditions of employment was put before the Chamber of Representatives on 24 November 1977 by Mr Glinne. The proposal deals primarily with the implementation of equal pay and is based on the United Kingdom law of 29 May 1970 and the French law of 22 December 1972.

A draft law (2) designed to establish on a legal footing the Equal Treatment Commission (Ligestillingsradet) which was set up simply by a Government decision at the end of 1975, and to define its powers under the Law of 12 April 1978 on equal treatment, has been placed before the Danish Parliament.

In Italy, a proposal for a law laying down "rules to protect equality between the sexes and to establish a parliamentary commission of enquiry into the condition of women in Italy" has been presented to the Senate by Senator Tullia Romagnoli Carrettoni.

In the Netherlands, the Emancipation Commission (Emancipatie Kommissie) (a Government consultative body set up on 17 December 1974 for five years) issued an opinion on 28 November 1977 in which it recommends the adoption of specific legal rules for the campaign against sex discrimination in the determination of obligations, rights or powers or where goods or services are offered or sollicited.

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(1) The Belgian draft was incorporated in the Law of 4 August 1978 on Economic Reorientation (Title V - Equal treatment of men and women as regards working conditions and access to employment, vocational training and promotion, and access to self-employment).

(2) This draft was adopted on 12 April 1978.

These rules should also provide for the setting up of a Commission on sex discrimination. The question arises whether this Commission would assume the duties of the present Committee for equal pay for men and women.

In its opinion the Commission suggests the following measures for increasing the effectiveness of the Law of 20 March 1975 on equal pay:

- permitting group actions to be instituted before the courts;
- guaranteeing that the applicant's identity shall not be revealed to his employer;
- conferring on the Committee for equal pay for men and women the power to institute proceedings of its own motion.

The Emancipation Commission believes that the information campaign should be stepped up and directed primarily at those sectors where the operation of the law has not been altogether effective.

In the United Kingdom the Equal Opportunities Commission, which has a duty to keep under review the working of the Equal Pay Act of 1970 and the Sex Discrimination Act of 1975, may, at the request of the Secretary of State or if it considers it necessary itself, make proposals to the Secretary of State for amending the two Acts. In March 1978 some proposals for the amendment of the Equal Pay Act were received by the Government from the Trades Union Congress and these are being considered. No proposals for amending the Equal Pay Act have yet been received from the Equal Opportunities Commission. The Commission however intend to put forward proposals for amendments in the first half of 1979.

(2) PARLIAMENTARY DISCUSSIONS, QUESTIONS AND REPORTS

67. In three countries - Denmark, Italy and Luxembourg - there have been no parliamentary discussions, questions or reports during the period under consideration.

The French Government has not provided any information on this subject.

68. In Belgium, two questions have been put to the Minister for Labour and Employment in the Chamber of Representatives, one in 1975 and one in 1976, on the conditions of application of equal pay and especially on the form of legal instrument adopted to implement Directive 75/117/EEC of 10 February 1975. Certain replies were given and the Minister explained that in his opinion the form adopted, i.e., Collective Agreement No 25[1], raised no legal problem since the agreement had been made generally binding by Royal Decree.

In the Senate, two questions have been put, one in 1975 to the Minister for Labour and Employment, and the other in 1977 to the Minister for the Interior. The first concerned wage discrimination between men and women in the food sector and the Minister replied that the wage rates applicable to the different categories of workers were based on the job classification system

[1] See page 9 of this report.

of the General Technical Committee created in 1945. The second concerned discrimination with regard to the allocation of the household allowance to male and female staff employed by local authorities. It was stated in reply that the conditions for granting such allowances to those employees were the same as those laid down in the Royal Decree of 30 January 1967 on State employees, i.e., that the allowances are granted automatically to married male officials, but only under certain conditions to married female officials.

69. In the Federal Republic of Germany, the Federal Government is required, in accordance with a decision of the Bundestag of 8 December 1966, to inform that Assembly every two years "of the nature, extent and outcome of the notifications by the Federal Government of the Governments of the Länder to apply Article 119 of the EEC Treaty". In the light of this obligation, three reports have been presented during the reference period, one in 1973, one in 1975 and one in 1977. The reports set out the progress achieved, especially in collective agreements, and deal in detail with the question of categories of wages for "light work"[1] which for a number of years has been the subject of controversy between employers and unions of employees. The Federal Minister for Labour and Social Affairs presented a study on this subject to the Bundestag in 1975 carried out by Professors Rohmert and Rutenfranz on "the ergonomic evaluation of the physical and mental burden of various jobs in industry". A second study was conducted by Professor Rohmert in 1976 on the use of an "ergonomic questionnaire" for job evaluation and a summary of the study was attached to the 1977 report to the Bundestag. It should be noted that the Federal Government's biennial reports are examined by the Committee for Employment and Social Affairs which submits draft recommendations to the Bundestag. During its session on 27 October 1977, the Bundestag took formal note of the efforts being made by the Federal Government and the two sides of industry and stated that it did not expect the Federal Government's next progress report before 1980.

Three parliamentary questions were tabled, two of them in 1973, relating to the controversy between the two sides on wagescategories relating to "light work" and the Federal Government's attitude to the matter. The replies disclosed the continuing lack of agreement and the Government's decision to instruct Profs. Rohmerts and Rutenfranz to carry out the specific studies referred to in the preceding paragraph. An oral question was put to the Federal Government in 1977 to determine what conclusions it had drawn from the judgment of 8 April 1976 of the Court of Justice of the European Communities in the case of Gabrielle Defrenne v SA Sabena. The reply given was that the judgment would have no new legal implications in the Federal Republic of Germany.

70. In Ireland, 18 parliamentary questions on equal pay were tabled between January 1973 and February 1978: three in 1974, three in 1975, seven in 1976, two in 1977 and three in February 1978.

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[1] See page 61 of this report.

The questions followed the gradual implementation of equal pay, ranging from the content on this subject of the 1972 and 1974 national wage agreements to the role of the Employment Equality Agency which commenced operating on 1 October 1977. The majority of the questions concerned the number of cases referred to equality officers, the number of recommendations formulated, applications to the Labour Court, penalties imposed on employers etc. It is worthy of note that in 1976 some questions concerned the Government's intention to postpone the implementation of equal pay (1) and the problem of differential salary scales based on marriage applicable in the public sector (2).

71. In the Netherlands, the Minister for Justice was questioned in 1977 by a member of the second chamber on the subject of equal pay for men and women serving long sentences. It would appear from the reply that the problem involved the reorganization of work carried out in some prisons by men and women serving long or short sentences or in custody awaiting trial.

72. In the United Kingdom, one parliamentary question was asked in 1976 in the House of Lords concerning the application of the Equal Pay Act, and twelve (nine in 1976 and three in 1977) were asked in the House of Commons, thus showing a continuing interest in equal pay matters. The majority of questions concerned the number of proceedings brought before the Industrial Tribunal. Others however concerned the implications of the judgement of 8 April 1976 by the Court of Justice of the European Communities in the case of Gabrielle Defrenne v S A Sabena, the effect of equal pay increases in relation to incomes policy, discriminatory clauses still existing in collective agreements, etc.

(1) See page 15 of this report.

(2) See page 16 of this report.

IV. IMPLEMENTATION OF LEGAL REMEDIES

73(a) In Belgium, Article 47a of the Law of 12 April 1965 on the protection of employees' remuneration (former Article 14 of Royal Decree No 40 of 24 October 1967 on the employment of women) provides that in accordance with Article 119 of the Treaty establishing the European Economic Community, any employee may institute proceedings before the competent court or tribunal, seeking application of the principle of equal pay for men and women. This action is available where discrimination arises in an individual contract of employment or in a collective agreement.

Article 5 of Collective Employment Agreement No 25 concerning equal pay for men and women, concluded on 15 October 1975 within the National Labour Council, provides that "any employee who considers himself prejudiced, or the employees' representative organization to which he belongs, may institute proceedings, seeking application of the principle of equal pay for men and women".

In addition, under Article 4 of the Law of 5 December 1968 on Collective Employment Agreements and Joint Committees, employers' representative organizations and employees may bring proceedings based on:

- decrees giving binding effect to decisions or collective agreements;
- the application and performance of collective agreements;
- rights conferred on members of the organization by collective employment agreements.

This provision grants trade organizations a completely independent power to defend the rights of their members, who need not, therefore, authorize them to do so. The organizations could even take legal action against the wishes of their members.

Two remedies lie against collective agreements which fail to comply with the principle of equality of employment;

- before the Conseil d'Etat (Council of State) and employment tribunals if the agreement has been given binding force by a Royal Decree. The Conseil d'Etat delivers a judgment on applications for the annulment of acts and regulations of an administrative authority (including those giving binding effect to a collective employment agreement), i.e., the Conseil d'Etat may declare an act to be null and void "erga omnes", and
- before labour tribunals if it is an agreement which has not been given binding effect.

Article 5 of Collective Agreement No 25 extends the right of employees and their organizations to institute proceedings to cover all cases which might arise in the context of the application of the principle of equal pay as set out in Agreement No 25 with regard both to the definition of pay and to the scope of the principle, irrespective of whether the employee is covered by a collective agreement applicable to a particular sector.

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(1) Further, workers in the private and public sectors are entitled to recourse to labour tribunals on the basis of the abovementioned law of 4 August 1978 for any infringement of equal treatment in the provisions or in practice. The organizations representing workers and employers can go to law to defend the rights of their members.

(b) Employees in the public sector are also entitled to institute proceedings before the labour courts in the event of failure to observe Article 47a of the abovementioned Law of 12 April 1965.

Proceedings may also be instituted before the Conseil d'Etat for the annulment of an act or regulation of an administrative authority which is contrary to Article 119 of the Treaty establishing the European Economic Community or Directive 75/117/EEC of 10 February 1975 (1).

(c) With regard to the legal action actually taken in Belgium, mention must be made of the outcome of the proceedings brought by Miss Defrenne, an air hostess employed by SA Sabena, particularly in view of the important judgments of the Court of Justice of the European Communities giving its preliminary rulings on Article 119 of the Treaty establishing the EEC (2).

It will be recalled first of all that Miss Defrenne made an application on 9 February 1970 to the Conseil d'Etat for annulment of Article 1 of the Royal Decree of 3 November 1969 which excluded hostesses from the pension arrangements applicable to other members of the air crew, including male stewards who performed the same work as air hostesses. The contract of employment of the latter stipulated that they could not continue working after the age of 40 years, whereas no such age limit was imposed on stewards. In support of her application the applicant claimed that this involved an infringement both of Article 14 of Royal Decree No 40 of 24 October 1967 on the employment of women and of Article 119 of the EEC Treaty. By order of 4 December 1970 the Conseil d'Etat referred the matter to the Court of Justice of the European Communities under Article 177 of the EEC Treaty to determine whether a retirement pension granted under the terms of the social security scheme constituted a consideration which the worker receives indirectly in respect of his employment from his employer within the meaning of Article 119. In its judgment of 25 May 1971 (Case 80/70)(3), the Court replied in the negative, at least in so far as schemes laid down by legislation were concerned, and the Conseil d'Etat rejected the applicant's application on 10 December 1971.

However, on 13 March 1968 Miss Defrenne had made application to the Tribunal du travail (Brussels Labour Court), seeking to obtain from Sabena (on the grounds of inequality of treatment between air hostesses and stewards) the payment (1) of arrears of pay, (2) of an additional end-of-service allowance, and (3) of damages for the loss she had suffered in respect of old age pension. This application, like the previous one, was based on Article 119 of the EEC Treaty and Article 14 of the Royal Decree of 24 October 1967. The Brussels Tribunal du travail held in its judgment of 17 December 1970 that none of the applicant's claims was well founded. On 11 January 1971 the applicant appealed to the Brussels Cour du travail. Considering that the second and third counts of the applicant's application did not fall within the scope of Article 119 of the EEC Treaty, the Brussels Cour du travail in its judgment of 23 April 1975 upheld the judgment of the lower court on these two matters. It considered however that the

(1) **See footnote** on previous page.

(2) Cf. p.127 of this report.

(3) Cf. p. 13 of the Report of the Commission to the Council on the application as at 31 December 1972 of the principle of equal pay for men and women (Doc. SEC(73)3000 final of 18 July 1973) and p. 127 of this report.

first count of the application, i.e., the arrears of pay, raised a question of interpretation of Article 119 of the EEC Treaty on which the resolution of the dispute depended. Consequently, in the same judgment of 23 April 1975 it decided to stay the proceedings on this point and to refer two questions to the Court of Justice of the European Communities for a preliminary ruling under Article 177 of the EEC Treaty; one concerned the direct effect of Article 119, and the other, the implementation of Article 119 and the respective powers of the Community and the Member States. The Court of Justice gave its ruling on the questions by judgment of 8 April 1976 (Case 43/75) and acknowledged in particular the self-executing nature of Article 119, which is limited however to direct and overt discrimination which can be established solely on the basis of the criteria of identical work and equal pay contained in the Article[1], which was the case in this instance. Following this judgment, the Brussels Cour du travail on 24 November 1976 granted the applicant the arreas of pay she had requested.

On 16 September 1976, Miss Defrenne lodged an appeal before the Belgian Court of Cassation against the abovementioned judgment of 23 April 1975 of the Brussels Cour du travail in so far as it upheld the judgment of the Tribunal du travail of 17 December 1970 on the second and third counts of her application (seeking payment from Sabena of an additional end-of-service allowance and damages for the loss suffered in respect of pension on the grounds of the age limit of 40 years). Miss Defrenne pleaded in support of her appeal, first, the infringement of Article 119 which, in her view, was to be interpreted as prescribing equality of conditions of employment for men and women and, secondly, the infringement of a general principle of Community law. By judgment of 28 November 1977, the Court of Cassation decided to stay the proceedings pending the ruling of the Court of Justice of the European Communities on the question whether Article 119 of the EEC Treaty must be interpreted as prescribing not only equal pay but also equal conditions of employment for men and women. The Court of Justice replied in the negative in its judgment of 15 June 1978 (Case 149/77)[2].

Particular emphasis should be placed here on the fact that the Belgian courts (Conseil d'Etat, Brussels Cour du travail and Court of Cassation) are the only national courts to have referred questions of interpretation of Article 119 to the Court of Justice for a preliminary ruling under Article 177 of the Treaty since the EEC was established.

Apart from Miss Defrenne's actions, the Belgian Government is aware of only one judgment delivered on 25 April 1977 by the Mons Cour du Travail ordering an employer to pay a female employee in respect of the years 1961 to 1965 an amount representing the difference between the remuneration she received and that set out in the salary scales for male workers, pursuant to the judgment of the Court of Justice of 8 April 1976 in the Defrenne case. The employee had commenced her original action on 13 January 1966, i.e., prior to that judgment. The argument concerning equal pay had not been raised at the time but was introduced on 25 January 1977 in a further pleading.

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[1] Cf. p. 128 of this report.

[2] Cf. p. 130 of this report.

(d) The Belgian Government believes that the reason why there have been very few cases before the entry into force of Directive 75/117/EEC and none since are as follows:

- steps taken to make known the provisions of Collective Agreement No 25 are too recent to have been fully effective. For example, the explanatory brochure prepared by the Commission on the employment of women, which is an aid for the identification of discriminatory situations, was not distributed to the chairmen and members of boards of directors until February 1977;
- when discriminatory situations arise, trade unions follow their customary procedure with the result that the problems are resolved by negotiation rather than by recourse to the courts;
- workers are apprehensive of taking action in spite of the protection they enjoy under Agreement No 25. They tolerate a certain amount of discrimination, expecially in the present economic situation, from fear of being dismissed;
- female workers are not always aware of the discrimination to which they are subject. Often it is not obvious, and indirect discrimination or discrimination arising from discriminatory criteria or classification systems is difficult to prove. Finally, the burden of proof rests on the person who considers herself prejudiced.

74. In Denmark, proceedings may be instituted under the Law of 4 February 1976 on equal pay for men and women by an organization on behalf of its members and by the employee directly concerned. Employees in the public sector enjoy the same rights under Article 54(1) of the Law of 18 June 1969 on State employees as other employees. The Law of 4 February 1976 on equal pay does not distinguish between employees in the private and public sectors.

No case has been brought before the courts however and the Government believes that this is a reflection of the effective implementation of the principle of equal pay and also arises from the fact that professional and trade organizations have been able to resolve amicably any cases of failure to comply with the principle.

75(a) In the Federal Republic of Germany, according to the Law on labour courts and civil procedure, an action is admissible only if brought personally by the person claiming the right to equal pay. A number of persons may instruct a representative to establish their rights. This also applies to manual and non-manual workers covered by the collective agreement governing the public services. Proceedings may be instituted before the administrative courts by civil servants in the strict sense and by the armed forces and judges.

In the first instance (labour tribunal), the person concerned may be represented by a trade union or by a staff delegate. In the second instance (labour tribunal of the Land), the only authorized representatives, apart from lawyers, are trade union representatives. In the Federal Labour Court the persons concerned cannot be represented by trade unions or staff representatives, but only by lawyers.

The parties to collective agreements may also institute proceedings against one another in connection with the application of corresponding provisions of collective agreements.

(b) **The Federal Government is not in a position to state the number** of actions brought concerning the principle of equal pay and, consequently, whether there have been very few of them. Specific legal statistics for such actions do not exist.

Judgments of the Federal Labour Court concerning the principle of equal pay are rare and occur, for example, only when a situation that is difficult to assess is examined with a view to its possible infringement of the principle of equal pay. Where there is an obvious breach of the law, an employer generally does not appeal or apply for a review of the judgment. Three judgments have been delivered during the reference period by the Federal Labour Court: Judgment No 5 AZR 321/72 of 11 January 1973, Judgment No 4 AZR 339/72 of 9 May 1973 and Judgment No 5 AZR 567/73 of 11 September 1974. The latter two are worthy of attention in view of the questions of principle resolved by them.

The case which was the subject of the judgment of 9 May 1973 concerned the application of a term in a collective agreement governing private insurance undertakings which made provision for the allocation of a family supplement payable once per household to male employees, and in certain well-defined circumstances only to female employees. The Court considered the differentiation between men and women was compatible with Article 3(2) of the Basic Law of 23 May 1949 only in so far as it prevented the family supplement from being paid twice. Imposing more stringent conditions on women than on men, however, was unacceptable. Thus, a woman did not qualify for the allowance if her husband, for example, was a professional man and received a higher income than she did and contributed more towards the upkeep of the children, whereas male workers did not face the same restriction (their wives being permitted to receive a higher income than they did). The Court regarded such a differentiation as being a breach of the Basic Law.

In the second case (Judgment of 11 September 1974) the employer had defined the category of persons receiving a certain allowance in such a way that only male employees were entitled to receive it although there was no mention of a sex criterion. Factors taken into consideration as justification of a general nature were aggravating circumstances for men, such as the possibility of their having to work

at night or assigning certain "heavier" tasks to them. The Court considered this reasoning too general and arbitrary since some male workers received the allowance without being required to work at night or to perform heavier work. The Court also stated, and this constitutes a major statement of principle, that the prohibition on night work for women must not be used to emasculate the principle of equal pay.

(c) The Federal Government also stated that proceedings had not been brought on the basis of Article 119 of the EEC Treaty but solely on the basis of national law.

76. (a) In France, conseils de prud'hommes (conciliation boards) are responsible for settling individual disputes between employers and employees in respect of contracts of employment. Where no competent conseil de prud'hommes exists, or if one exists but does not have a section dealing with the trade concerned, the dispute is brought before the court dealing with conciliation matters.

The application must be an individual one and personal but the employee may be assisted, or, on justifiable grounds, represented by an employee pursuing the same profession or trade, a trade union delegate, his spouse or a lawyer.

By way of exception, groups which are entitled to institute proceedings, whose members are bound by a collective employment agreement, may, under Article L. 135-4 of the Labour Code, institute proceedings arising from the agreement in favour of their members without having to prove that they have been authorized to do so by the person concerned, provided he has been notified and has not stated his opposition. The person concerned may at any time intervene in the proceedings instituted by the group.

In these circumstances, a trade union may, under Article L. 411-11 of the Labour Code, provided it establishes an interest, institute proceedings before any civil, criminal or administrative court to defend the professional interests of its members or the collective interests of the trade or profession.

When defending professional interests it may intervene:

- as a third party to assist or represent one of its members before the conciliation court, provided a dispute which has arisen directly between the employer and the employee has been brought previously or simultaneously before the Conseil de Prud'hommes;

- in the event of failure to perform a collective agreement, since Article L. 135-4 of the Labour Code permits it "to institute any proceedings arising under this agreement"...in favour of its members without having to be authorized to do so by the persons concerned. The trade union acts therefore in a personal capacity.

The concept of actions concerning the collective interests of trades or professions is understood in a broad sense. The prejudice to such interests may be direct or indirect.

Trade unions may be called upon, in the context of what has been said above, to institute proceedings to secure compliance with the principle of equal pay for men and women:

- as third parties

  when proceedings are being instituted by one of their members before a conciliation court in respect of the contract of employment of the employee in question;

- directly

  where the entire profession or trade has been prejudiced by individual acts constituting a breach of the right to equal pay, committed against one or more employees who are members of the union;

  where there has been failure to implement the terms of a wage agreement which provides expressly or by implication for equality of treatment for men and women (minimum wage rates, bonuses, occupational categories, classification criteria, promotion, etc...).

Where there has been an infringement of the Law of 22 December 1972 on equal pay, or failure to implement a wage agreement which was the subject of a decree, trade unions may also lodge a complaint with the Director of Public Prosecutions or institute civil proceedings before a criminal court in which proceedings have been instituted by the employee in question or as a result of a report drawn up by the Inspector of Employment and forwarded to the Public Prosecutor.

In conclusion, a trade union would be entitled to institute proceedings before the Conseil d'Etat for the annulment of a Ministerial Decree extending a collective agreement containing terms relating to wages which it considered to be contrary to the principle of equal pay.
(b) In France, workers in the public sector who consider they have been wronged by an administrative decision have a means of recourse specific to this sector in the framework of administrative or jurisdictional control (administrative tribunals, Conseil d'Etat) or each in turn.
(c) According to the French Government, relatively few actions have been brought by women who consider that they have been the subject of direct or indirect wage discrimination, if account is taken only of decisions delivered at the highest level, i.e., the Court of Cassation. During the reference period, the Court was required to decide on the following three cases in this connection:

- Court of Cassation (Social Division) Judgment dated 21 July 1976 - Spouse Domingo Ferrer v SA Le Chesnay Trianon

- Court of Cassation (Social Division) Judgment dated 24 November 1976 - Galaries Lafayette v Mrs Bachalas and others

- Court of Cassation (Criminal Division) Judgment dated 22 June 1977 - Marcoux case.

In the first of these judgments, the Court considered that in a household where a couple were caretakers of buildings, the fact that the husband received higher remuneration than the wife did not constitute discrimination based on sex since the wage difference arose from the different periods of time spent on the job and also different tasks.

In the second judgment of 24 November 1976 the Court of Cassation held that courts dealing with the substance of the case could not award female workers a wage supplement bringing their pay up to the same level as that of men in the same occupational category without determining whether, within each of the occupational categories set out in the relative collective agreements, certain posts do not possess certain characteristics or difficulties capable of giving rise, leaving aside any consideration relating to the sex of the employees, to a remuneration higher than the minimum for the category and, assuming that a post differed in this way, whether the persons concerned received the same wage as men in the establishment in question performing the same work or work of equal value.

The case which was the subject of the Judgment of 22 June 1977 concerned an attendance bonus granted to male manual workers (knitters) but not to female employees (pressers or folders) since the employer regarded the work performed by the men as affecting the overall work of the staff which was not the case as regards the work performed by the women. The Court did not accept this argument and deduced from the circumstances that the presence of the men was no more essential than that of the women. It considered that, while the posts occupied by the two sexes were different, the women performed work of equal value to that of the men. The employer was therefore found guilty of infringement of the law on equal pay (criminal and civil penalties).

(d) The French Government believes that there are several reasons why the number of actions brought appears to be relatively small.

The problem of wage discrimination frequently arises not alone but in connection with other disputes such as wage increases, revision of wage scales, alteration of conditions of employment, etc., which may be resolved as a whole by means of an agreement negotiated by the parties in question.

However, while the search for a solution results in most cases in an agreement being reached with the assistance of the works inspectorate, the problem remains that the complexity of the questions raised frequently makes it difficult and awkward to detect a flagrant breach of statutory provisions which can be established in a report to the Public Prosecutor.

Finally, the objective criteria on which the works inspectorate could base its findings often do not exist and the principle whereby under an identical scale wages must be the same irrespective of the post occupied cannot be inferred from the law given the manner in which wages

are fixed and their structure in the private sector. Checks by the works inspectorate can only be carried out on the basis of certain wage norms and classification. The fact remains that while the application of these norms may allow not inconsiderable wage differences to continue to exist, the differences detected are largely connected with factors relating to job structure which cannot be checked by administrative or judicial authorities.

(e) It should be noted in conclusion that the cases mentioned above were brought solely on the basis of national law and the preamble to the 1946 Constitution confirmed by the preamble to the 1958 Constitution.

77. (a) In Ireland, an action to secure compliance with the right to equal pay may be brought before the Labour Court or the courts of law by the persons directly concerned, the representatives of trade unions or staff and the Employment Equality Agency on behalf of a private individual or a group of individuals.

(b) Employees in the public sector may invoke all the provisions of the Anti-Discrimination (Pay) Act of 1974 and enjoy the same legal remedies as employees in the private sector.

(c) The table below sets out for the period 1 January 1976 to 12 February 1978 the number of cases referred to equality officers and their opinions, including those which were the subject of proceedings before the Labour Court:

	1976	1977	1978 up to 12/2/78	TOTAL
1. Number of cases referred to equality officers	40	64	10	114
2. Number of opinions delivered by equality officers	3	17	5	25
3. Number of cases settled by equality officers or withdrawn without the equality officers having had to deliver an opinion	16	14	2	32
4. Number of opinions delivered by equality officers which were the subject of proceedings before the Labour Court	1	10[1]	-	11
5. Number of judgments delivered by the Labour Court	-	7	-	7

[1] The actions do not necessarily refer to the opinions delivered in that particular year.

The vast majority of cases referred to equality officers entailed giving an opinion on the "similar nature" of tasks performed by men and women or their "equal value", having regard, as specified in the Anti-Discrimination (Pay) Act 1974, to skill, physical or mental effort, responsibility and conditions of employment. Equality officers formulated their opinions after examining various documents which must be submitted to them and after visits in certain cases to the place of employment.

Among the 14 opinions delivered by equality officers which were not the subject of proceedings before the Labour Court, it is interesting to single out that of 16 May 1977 in case 7/77 concerning female telephone operators employed by the Department of Posts and Telegraphs who worked during the day (from 8 to 20 hours) and who claimed the same pay as male telephone operators working at night (from 17 hrs to 8 hrs in the morning). The latter qualified for a much higher basic rate than their female colleagues employed during the day and also received an additional 25% in respect of hours worked between 20 hrs and 6 hrs in the morning and 12% in respect of the hour from 6 am to 7 am. The Department of Posts and Telegraphs claimed in particular that women would be entitled to claim the same basic rate as men and the same night supplements only if they worked the same timetable as men and were completely interchangeable with them, which was not the case. After having considered the various arguments and documents put forward by the parties and having inspected the telephone exchange, the equality officers considered that the work carried out by the female operators was of "equal value" to that carried out by male operators. However, the supplements granted to the men in respect of night work did not, in his view, fully compensate for the constraints of this type of work and part of the difference between the basic rates for men and women also had to be regarded as compensation for such constraints. The outcome was that only the other part of the difference in rates constituted discrimination based on sex. The equality officer advised the parties in question to quantify this proportion and stated that he himself found it impossible to do so.

Of the seven judgments on appeal delivered by the Labour Court, that of 1 December 1977 (case 6/77) seems the most significant. The salary scales originally applicable in the undertaking in question (the Insurance Corporation of Ireland Ltd.) contained eight wage scales: scales 1 to 3 for women, 4 to 6 for men and 7 to 8 for women and men (senior officials). An agreement concluded on 10 December 1976 between the undertaking and the union established a new scale containing seven unisex steps. A number of employees were dissatisfied however with their grading and lodged a complaint with the equality officer for failure to comply with the Anti-Discrimination (Pay) Act 1974. The undertaking maintained that there had been no discrimination based on sex in this particular case, and in particular, that where an agreement was regarded by the undertaking and union as complying fully with the statutory provisions on equal pay, it was "socially undesirable" that employees who were members of the signatory trade union should question this agreement on an individual basis in reliance on the Anti-Discrimination (Pay) Act 1974. In his opinion of 8 July 1977 the equality officer found

in favour of the complainants and recommended that they be graded in an appropriate step. The undertaking appealed against the decision and the Labour Court confirmed the opinion of the equality officer, rejecting in particular the argument put forward by the undertaking that a collective agreement presumed to confirm the principle of equal pay could deprive individual employees of their right to avail themselves of the procedures introduced by the Anti-Discrimination (Pay) Act 1974.

As regards cases brought before the courts of law, pleadings have closed in a case brought before the High Court by a woman civil servant graded as an executive officer to obtain the same rate of pay as that laid down in the scale for married men.
This action is being supported by the applicant's trade union, the Civil Service Executive Union, because it considers it a matter of principle to abolish in certain areas of the public service salary scales differentiated on the basis of marriage as from 31 December 1975, which is the date of entry into force of the Anti-Discrimination (Pay) Act 1974, and not from 1 July 1977 as decided by the Government .

(d) The Irish Government and the two sides of industry believe that the reason why more cases have not been brought is perhaps that equal pay has already been achieved in those areas where there are very many women employed in posts identical to those of men, for example, in the tertiary sector.

(e) All the questions referred to the equality officers in respect of equal pay have been based on national law.

The proceedings instituted by the female executive officer before the High Court are based however on Article 40 of the Irish Constitution, the Anti-Discrimination (Pay) Act 1974, Article 119 of the EEC Treaty and Directive 75/117/EEC of 10 February 1975 (1).

78. (a) In Italy, proceedings in respect of equal pay are instituted directly by the person concerned. It should be noted that Law No 533 of 11 August 1973 introduced a special procedure for employment disputes involving individuals which is not only simpler and less costly, but also makes provision for financial assistance, to be borne by the State, for needy parties. The law also makes provision for an optional conciliation procedure which may be instituted by a professional or trade organization before the Conciliation Committee set up in each province within the Labour and Full Employment Office.

(b) The following remedies are available to employees in the public sector: they may appeal to their immediate superiors in respect of acts on which a final decision has not yet been taken; they may appeal to the administrative tribunal or, in exceptional cases, to the Head of State.

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(1) An agreement reached between the Irish Government and the Irish Congress of Trade Unions in October 1978 resulted in the withdrawal of the court action.

(c) The Italian Government does not consider it possible to determine the exact number of actions brought on which a final ruling has not yet been given. Approximately ten judgments have been delivered during the period 1 January 1973 to 31 December 1977.

These judgments contain nothing that is new compared with the approach in previous decisions. Three judgments of the Supreme Court of Cassation (No 672 of 12 March 1974, No 2188 of 14 June 1976 and No 1593 of 25 April 1977) in particular confirmed the principle that the concept of equal work refers not to equal output (rejection of the presumption of a woman's lower average output), but rather to equal qualifications and tasks. Two judgments of the Supreme Court of Cassation (No 672 of 12 March 1974 and No 5.208 of 29 November 1977) confirmed the binding effect of Article 37 of the Constitution which applies not only to individual contracts of employment but also to collective agreements containing terms which are contrary to the constitutional rule, a principle which applies also to terms in collective agreements which were extended erga omnes by the Presidential Decrees adopted pursuant to Law No 741 of 14 July 1959.

(d) The number of legal actions in respect of equal pay, all of which were brought prior to Law No 903 of 9 December 1977, appears to remain at the same level as previously. While the number is not very high, it must be pointed out that many individual disputes are settled within the Conciliation Committee or directly by the unions.

(e) All the actions have been based on national legal provisions although some refer to Article 119 of the EEC Treaty. It should be pointed out in this respect that Article 37 of the Constitution has always been considered to possess a legislative function and that ILO Agreement No 100 entered into force in the Italian domestic legal system following the promulgation of the law of ratification.

79. (a) In Luxembourg, only the person directly concerned may institute proceedings before the appropriate labour court to secure compliance with the right to equal pay.

However, where a person is bound by a collective employment agreement and the action is based on terms concerning equal pay contained in it, any trade or professional organization which is a party to this agreement may intervene in the proceedings by virtue of the collective interest which the resolution of the dispute may offer its members (Article 11(4) of the Law of 12 June 1965 concerning collective employment agreements).

(b) Employees in the public sector whose employment relationship is governed by an agreement may institute proceedings before the appropriate labour courts with responsibility for employees in the private sector. Employees in the public sector whose employment relationship is a matter of status must however bring their action before the Litigation Division of the Conseil d'Etat.

(c) No action for direct or indirect wage discrimination has yet been brought before the appropriate courts, a situation which the Government believes can be explained primarily by the fact that in Luxembourg collective agreements are, in most cases, concluded within undertakings, thereby enabling trade unions to demand directly the elimination of any cases of discrimination against specific groups or even individuals.

80. (a) In the Netherlands, the person directly concerned may institute proceedings personally, but not on behalf of a group of persons, before the court of first instance (kantonrechter) to secure observance of the right to equal pay. An employee may be represented before the court by another person, for example, a trade union official. The employee's request is admissible only if he provides the court with a reasoned opinion formulated by the Equal Pay Commission set up by Article 9 of the Law of 20 March 1975, irrespective of whether the opinion is positive or negative.

(b) Officials may institute proceedings in respect of the incorrect application of their staff regulations before a court specializing in public administration and, on appeal, before the Central Appeal Council (Centrale Raad van Beroep). Persons who are under contract to the State or are employed in its name or by provincial or local authorities, the Water Board or any other public law body may institute proceedings before a court of first instance.

(c) With regard to the number of actions, a distinction must be drawn between the number of requests submitted under Article 10 of the Law of 20 March 1975 to the Equal Pay Commission and the number of cases reaching the court of first instance after the Commission has given its opinion.

Between the entry into force of the law and the end of 1977 the Equal Pay Commission received 108 complaints, 87 from women and 21 from men. More than half of the cases notified had no connection with the principle of equal pay or did not fall within the scope of the law. The majority of the remaining complaints did not reach the courts, in most cases because in the meantime a satisfactory solution had been found as the result of an agreement between the employer and the employee, frequently with the assistance of the Commission.

The Commission issued nine opinions. In two cases, the conclusion was that equal remuneration within the meaning of the law had not been paid. In two other cases, the Commission noted that there had not been unequal remuneration with reference to the workers in question but there would have been if they had compared conditions with other male colleagues. In five other cases, there had not been unequal remuneration within the meaning of the law.

Up to now only four cases have resulted in proceedings before the court of first instance and they were still pending on 12 February 1978.

(d) The Government states that it does not understand why the number of actions brought has been so low in spite of the major information campaign conducted on the subject. This is all the more true since it is clear from the report of the technical wages department ("Loontechnische Dienst") for 1976 concerning the implementation of the

Law of 20 March 1975 that cases of unequal pay exist.

(e) The actions have been brought on the basis of national law. However, in one action (involving the remuneration of long-term convicts) Article 119 of the EEC Treaty was invoked, but the court based its decision on other grounds.

81. (a) In the United Kingdom, under the Equal Pay Act 1970, any individual who has been prejudiced may apply to an industrial tribunal which is an independent judicial body. At the hearing the applicant and defendant may be represented by a person selected by them, for example, a solicitor or a trade union representative. Where a number of individuals bring similar actions before the tribunal, the latter may, with the agreement of all the parties, select one case to serve as a test case for the others. The Equal Opportunities Commission is empowered under certain conditions to assist applicants in various ways (including representing them legally). However it is not empowered to bring an action itself. Only the Secretary of State for Employment may do so, if a woman appears to have rights which must be established but cannot reasonably be expected to do so herself.

Collective agreements are also examined in the light of the Equal Pay Act by the Central Arbitration Committee, a body which, although not having judicial powers, has statutory responsibility for eliminating discrimination contained in collective agreements submitted to it by trade unions, employers or the Secretary of State.

(b) The Equal Pay Act 1970 also applies to employees in the public sector, who enjoy the same remedies as other employees.

(c) During the first two years in which the Equal Pay Act was in force (from 29 December 1975 to 31 December 1977), decisions were taken on 2 493 individual claims brought before an industrial tribunal. More than half of these were settled out of court or by conciliation[1] or were withdrawn before the hearing. A total of 1 072 cases camebefore the tribunals.

A decision of an industrial tribunal is not binding on the other tribunals. Case law is established by the Employment Appeals Tribunal. Up to now 50 decisions have been taken by the Employment Appeals Tribunal in respect of equal pay. These decisions have contributed greatly towards clarifying the interpretation of the Equal Pay Act. They have served as a guide to industrial tribunals when adopting their decisions and have begun to form a useful body of case law.

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[1] Cf. p. 92 of this Report concerning the functions of the Advisory, Conciliation and Arbitration Service and the Central Arbitration Committee.

The following cases may be cited simply as examples:

- Mrs A.M. Sorbie and others v Trust Houses Forte Hotels Ltd.- 12 October 1976

  A woman does not lose her entitlement to a higher rate of pay acquired under the Act simply because the man with whom she is compared leaves his job.

- Mrs S.A. Waddington v Leicester Council for Voluntary Services - 15 December 1976

  When determining whether a man and woman perform equal work, account must be taken of the work they actually perform and not of the terms contained in their respective contracts of employment.

- Mrs A. Dugdale and others v. Kraft Foods Ltd. - 11 October 1976

  The additional effort expended on work carried out at night or on Sundays may be compensated by additional pay or a bonus, but basic pay should be the same for men and women occupying equal posts.

- Eaton Ltd. v Mrs J. Nuttall - 26 January 1977

  The provisions of the Act relating to job evaluation apply only to a "valid" evaluation study, i.e., an exhaustive analysis which can be applied impartially.

- Miss Snoxell and Mrs Davies v Vauxhall Motors Ltd. - 16 March 1977

  An employer cannot under any circumstances maintain that a difference between the contract of employment of a man and that of a woman is a "material difference" and not a difference based on sex (in the case in question, the retention of higher pay for men where previously the job was not open to women) where it can be established that this difference is due to a former discrimination based on sex.

(d) The United Kingdom Government does not regard the number of cases brought before the industrial tribunals as small. It emphasizes that the number of women who have received equal pay as a result of the activities of the Central Arbitration Committee (which has now examined 36 collective agreements or salary scales) is likely to have been much greater than the number of women who applied individually to an industrial tribunal.

The Equal Opportunities Commission believes that while a reasonable number of cases has been brought before the tribunals, the number of successful actions is likely to decrease. This is because of the requirement of a comparison with men which will prevent women from bringing individual actions in situations where jobs have been segregated into male and female work.

(e) All the actions brought have been based on national law although the Employment Appeals Tribunal has taken into consideration the effects of Article 119 of the EEC Treaty in conjunction with the Equal Pay Act in a major case (Snoxell and Davies v Vauxhall Motors Ltd. - 16 March 1977).

B - THE SITUATION IN REGARD TO COLLECTIVE AGREEMENTS

I. SCOPE OF COLLECTIVE AGREEMENTS

82. Before examining the actual content of collective agreements in the light of the application of the principle of equal pay, it must first be considered whether all workers in every branch or sector of business activity are in fact covered by collective agreements, whether they be negotiated at national, sectoral, regional, local or company level.

83. In Belgium, following implementation of the Law of 5 December 1968 on collective agreements on employment and joint committees, the scope of the latter bodies' activities has been extended to cover almost all workers in the private sector. The only joint committee that it has not yet been possible to set up is the "auxiliary" committee for manual workers, to which undertakings not specified elsewhere belong. The number of workers covered by this committee is steadily declining because of the widening of the competence of the other joint committees, the setting-up of new joint committees and the Administration's efforts to link firms to the committees with which they have the closest affinities. Only a few thousand workers remain affiliated to the committee out of a total of more than two million wage earners and salaried employees. Moreover, two joint committees have ceased functioning in marginal sectors about to disappear from the economy : independent coking plants and cargo unloading firms on inland waterways. These two committees currently involve only a few hundred workers. It should be pointed out that workers not covered by sectoral agreements are covered by national agreements concluded within the National Labour Council, particularly as regards the fixing of the guaranteed inter-trade minimum wage.

84. In Denmark, the Government and both sides of industry believe that all sectors or branches of business activity are covered by collective agreements. It is possible, however, that in one or two branches a number of small firms are not covered by an agreement. Nevertheless, certain non-organized employers voluntarily apply the terms of the collective agreements that have been concluded for their sector.

85. In Germany, the collective agreements in force, numbering approximately 30 000, cover almost all industrial and services sectors. According to certain estimates of the Federal Ministry of Labour and Social Affairs and of the management and labour organizations, over 90% of the German workforce is employed in sectors covered by collective agreements. The pay and conditions of employment of civil servants, servicemen and judges are for their part governed by statute.

At present, only the following services sectors are without collective agreements : lawyers' and notaries' practices; chambers of industry and commerce, chambers of craft trades; professional associations and employers'

associations; churches, trade unions and parties. Even in these sectors, however, collective agreements have been concluded in certain specific cases.

There are a number of possible reasons for the non-existence of collective agreements in these sectors including, on the one hand, the structure of the sectors and, on the other, the small number of persons employed or the large number of employers (e.g. lawyers' practices) or else the fact that satisfactory pay settlements are concluded at company level.

86. In France, the branches without collective agreements belong particularly to the tertiary sector. However, almost all industrial sectors are covered by collective agreements, concluded as a rule at national level. It should be noted that in certain sectors, such as the metallurgical industry, the building sector and the public works sector, collective agreements and wage agreements are mainly concluded at regional or local level.

For example, gaps are found, at least in certain regions, in the hotel trade and the catering industry, the office cleaning industry, the laundering and dry cleaning trade, certain retail businesses, domestic staff and staff employed in the professions.

The main reasons for this are the lack of trade unions or their weakness, where they are endowed with limited bargaining strength, and the isolation of workers in small establishments or employed by private individuals.

It is not easy to give a precise estimate of the number of employed persons covered, all the more so because, even in those sectors which are covered, where the agreement is not widespread it may be invoked only against employers who are members of the signatory employers' organizations, the exact number of which is not known. The least protected category appears to be that of non-manual workers, whether they be male or female.

87. In Ireland, where there is no central agency responsible for the registration of collective agreements, such information as is available would suggest that in the region of 75% to 80% of wage and salary earners are covered by such agreements.

88. In Italy, the Government and both sides of industry consider that the scope of collective agreements, whether national or regional, extends to every category of employment in the industrial, agricultural and tertiary sectors.

As far as crafts are concerned, the two sides of industry have apparently succeeded in recent years, thanks to the conclusion of new agreements and the renewal of old ones, in extending protection to almost all production and services branches of the craft industry. The following are still without national agreements : photographers, printers, stonemasons, textile workers, grocers, glaziers and workers in the plastics industry. Nevertheless, some of these branches do have regional agreements. The trade unions and employers' organizations are currently discussing the advisability of concluding a national agreement for the first time. The existing collective agreements are thought to cover about 90% of workers.

89. In Luxembourg, the rate of cover of workers in the private sector (manual and non-manual workers) by collective agreements is steadily increasing.

Almost 14 000 non-manual workers out of a total of 34 000 are currently covered by collective agreements. The major ones are those of the iron and steel industry and the banking and insurance sector, with about 10 000 employees. The main sectors or branches of business activity without collective agreements for non-manual workers are commerce - which employs many women, whose only protection is the minimum guaranteed wage - (except for trade in steel and the textile trade), the professions (except for chemists' shops) and the building trade (which employs very few women).

On the other hand, about 70% of manual workers are bound by a collective agreement. With a few exceptions (the iton and steel industry and iron mines, breweries, the consortium of sparkling wine producers, hospitals, the building trade) collective agreements are concluded at company level. In certain sectors (mining of minerals other than metals and fuels, manufacture of metal objects, clothing industry, chemical industry) only a fraction of undertakings are governed by agreements, whereas in others almost all are covered. This is so, for instance, in many branches of the craft industry where a collective agreement concluded initially for a group of undertakings only is subsequently declared applicable "erga omnes", i.e., to all the other undertakings in the branch. No collective labour agreement exists, however, for workers employed in agriculture and wine-growing, or for domestic staff. The main reason why there are no collective agreements in small undertakings is the lack of interest on the part of staff, who refrain from canvassing their employer for the conclusion of an agreement because of the small number of employees concerned.

90. In the Netherlands, about 4 million out of a total working population of 4.8 million are wage or salary earners. If Government officials are deducted, this leaves a wage- or salary-earning population of about 3.3 million workers in the private sector, about 2.3 million of whom are covered by collective agreements on wages and salaries. Thus, there are still about one million workers who are not so covered, or are covered by an agreement which does not fix wages and salaries.

Of these, the most important categories are :

- managerial staff;
- middle and lower grade administrative staff, canteen staff, cleaning staff and part-time workers, these being formally excluded from the scope of collective agreements applicable to their branch of activity or undertaking;

- some workers in the wholesale and retail trade;
- some workers in the banking and insurance sector;
- some workers in the business services sector and the social services;
- domestic staff employed by private individuals.

The main reasons for the lack of collective agreements applicable to these categories must be sought in their low level of trade union organization. The Dutch Government and both sides of industry are unable to specify, for each of these categories, the number of persons involved and their sex. However, in view of the nature of the trades and activities in question, this probably involves large numbers of female workers in some of the categories referred to above.

91. In the United Kingdom, although the system of collective bargaining does not allow for the compulsory registration of agreements, the statistical inquiry on earnings of April 1973 (New Earnings Survey) shows that about a quarter (24.8%) of all male workers over 21 in full-time employment and about a third (32.7%) of all female workers over 18 in full-time employment are not covered by collective agreements.

Some of those who were reported as not covered by a collective agreement were reported as within scope of a wages board or council. These boards and councils establish minimum rates of pay for the workers within their scope and to this extent are similar to collective agreements. The percentages reported as neither affected by a collective agreement nor within scope of a wages board or council were 22.0 per cent for full-time adult men and 25.1 per cent for full-time adult women.

II. THE CONTENT OF COLLECTIVE AGREEMENTS

92. In answer to the question whether all collective agreements contain clauses which guarantee the application of the principle of equal pay or whether, on the contrary, there are still sectors of business activity, branches or regions where collective agreements do not provide such a guarantee, the Member States can be divided into two categories : those in which the formal introduction of such a guarantee is thought justified, and those in which, on the contrary, an explicit guarantee clause in collective agreements is thought unnecessary having regard to the relevant legislative provisions in force. The only thing that matters in this case is that the agreement should not contain discriminatory terms. The first category includes Denmark and Luxembourg.

93. In Denmark, the Law of 4 February 1976 on equal pay for men and women is to some extent "subsidiary" or "complementary" to collective agreements, since Article 1 provides that "any employer who has engaged men and women for the same job must pay them the same wage for the same work by virtue of this Law where he is not already obliged to do so under a collective agreement". That is why the agreements concluded in April 1973 between the Workers' Confederation (LO) and the Employers' Confederation (DA), which eliminated any wage discrimination between men and women still existing under the previous agreements, are of particular importance.

It should be recalled that the mediation proposal, which was submitted by the conciliator on 28 March 1973 and which served as the basis for the national agreements, provides that :

- the agreed hourly rate of the "standard wage" for women shall be the same as that for men, including the cost of living allowance and the other agreed supplements for all hours paid on a time basis with the exception of the allowance for arduous work;
- the agreed "minimum wage" hourly rates for adult workers shall be the same for men and women, including the cost of living allowance;
- daily, weekly and monthly payments shall be governed by the same principles;
- piecework and bonus rates shall be fixed without discrimination on grounds of sex.

Following the April 1973 agreements, branch collective agreements subsequently introduced have complied with the principles they laid down for the fixing of wage rates.

This being so, the Government and both sides of industry assert that :

- all collective agreements contain clauses guaranteeing the application of the principle of equal pay;

- there are no agreements which provide for different time rates for men and women;
- the same holds true for piecework rates and complementary wage benefits (bonuses and various ancillary benefits).

94. In Luxembourg, Article 4 (2) of the Law of 12 June 1965 provides that all collective labour agreements must lay down "detailed rules for the application of the principle of equal pay excluding any discrimination on grounds of sex". The Government considers that there are in fact no collective labour agreements which do not guarantee the implementation of the principle of equal pay. Similarly, no agreements provide for different time rates or piecework rates for men and women. Nor do any collective agreements provide for different classifications or distinct categories of jobs for men and women, but it is nevertheless apparent that, owing to the recruitment procedure, certain posts are occupied almost exclusively by women. The absolute levels of the wage rates for such jobs may be lower than the rates for jobs done mainly by men.

As regards complementary wage benefits, certain collective agreements provide for the payment of a household allowance to married male workers and to married women whose husbands cannot afford the upkeep of the home. New clauses have appeared, however, granting the allowance to widowed, separated or divorced women who are heads of household.

95. Whilst in the two abovementioned countries (Denmark and Luxembourg) it is considered that the insertion into collective agreements of clauses guaranteeing the application of the principle of equal pay is necessary, it is felt in the other seven countries that such explicit guarantee clauses are not justified in view of the legal provisions in force in that field, France and Belgium being in a state of transition between the two categories.

96. In France, where the guarantee of the principle of equal pay is to be found in the preamble to the Constitution and in the Law of 22 December 1972, it is not deemed necessary for all collective agreements to contain a clause expressly laying down such guarantee, the important thing being that the content of agreements should respect the principle in question. It is pointed out that, if a few discriminatory rules still exist by way of exception, such clauses are automatically illegal and void.

Nevertheless, and this is where France occupies an intermediate position between the two categories of country, the Law of 11 February 1950 stipulated that collective agreements capable of being extended, and they alone, had to contain clauses laying down detailed rules for the application of the principle "equal pay for equal work". These provisions have been strengthened by the Law of 13 July 1971 which requires signatories of collective agreements to provide for procedures for settling disputes which might arise in this field. It should also be noted that the more recent collective agreements tend to include a guarantee clause on equal pay.

Moreover, the Government and the CNPF (Conseil National du Patronat Français) state that they have no knowledge of any collective agreements which provide for different time rates, piecework rates or complementary wage benefits according to sex.

As regards job classifications, collective agreements make no distinction between women and men in any branch of activity, the hierarchical coefficients relating to such classifications also being the same. Although in the female-dominated branches of business activity (clothing, domestic staff, etc.) job descriptions seem to be more discriminatory, men and women have the same classification and the same coefficient for the same work. However, the least skilled jobs are, generally speaking, filled by women, thereby restricting the latter to the lowest job categories.

It should be noted that, in certain large sectors, job classifications have been completely revised with a view to classifying jobs according to more functional criteria. Although the main object of the revision was not to bring women's pay into line with that of men, the use of the new criteria has brought application of the equal pay principle one step closer.

As a rule, complementary wage benefits are common to workers of both sexes, but certain disparities have been detected, particularly in the semi-public sector, in the allocation of certain benefits based on the "head of household" concept. This concept, which expressed the husband's authority over his wife and children, disappeared from the Civil Code when equal rights were conferred on both spouses (Law of 4 June 1970). Consequently, distinctions between men and women based on the "head of household" concept are no longer justified under civil law.

97. The method chosen by Belgium (1) to implement the Council Directive (75/117/EEC) of 10 February 1975 was the national, interprofessional collective agreement given erga omnes effect by Royal Decree, namely Agreement No 25, concluded on 15 October 1975 in the "Conseil National du Travail" (National Employment Council), and given binding force by the Royal Decree of 9 December 1975. Without wishing to reproduce here the contents of the Agreement, let us recall that Article 3 provides that "equal pay for male and female workers must be guaranteed with regard to all aspects and conditions of remuneration, including,,when used, job classification systems". There is no binding provision in the Agreement obliging industries' joint committees to insert in their respective collective labour agreements a clause explicitly guaranteeing the application of the principle of equal pay. Such a guarantee is, in principle, superfluous in Belgian law since, because of the hierarchy of the sources of law, Collective Agreement No 25, which is a general provision valid at national interprofessional level, must cover ipso facto every sectoral agreement. The Government considers, however, that such a clause might prove useful for the sake of clarity and by way of guidance, although not from a strictly legal point of view.

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(1) The situation in Belgium was, of course, changed by the economic recovery law of 4 August 1978 which introduced legal security for the private sector and also covered the public sector as regards equal pay.

This is because there are a number of sectors which have not explicitly provided for application of the principle of equal pay, and these can be divided into two main categories : on the one hand, those which have not included any formal amendment of their collective agreement, although no discrimination has been established; and, on the other hand, a group of joint committees which are encountering difficulties as regards direct and, above all, indirect discrimination, a study of which is currently being carried out by an administrative unit (1) responsible for analysing collective labour agreements to detect any remaining cases of discrimination and anomalies. The joint committees concerned have been invited by the Ministry of Labour and Employment to provide details of their efforts to ensure compliance with the principle of equal pay for male and female workers. It is likely, moreover, that further joint committees will decide to include in their general definition of the scope of their agreement such phrases as : "worker shall mean male or female worker" or "this Agreement shall apply to male and female workers covered by the joint committee ...". Such clauses are becoming increasingly common and the joint committees might be asked to standardize them.

The administrative unit referred to above has recorded two cases of direct discrimination over pay. The collective labour agreement concluded on 4 May 1977 for four sub-sectors of the food industry provides, in respect of the same unskilled, specialized and skilled worker functions, for different gross hourly pay for male and female workers (2).

The other case concerns the joint committee of the paper and cardboard processing industry. The committee concluded a joint labour agreement on 24 May 1976 providing for the payment of an annual Christmas bonus to trade union members subject to its jurisdiction and divided into three categories : male workers over 21, male workers between 18 and 21 and female workers over 21, male workers under 18 and female workers under 21. The bonus is also graded according to the worker's age. Representatives of the workers' organizations of the Commission du Travail des Femmes (Committee on Employment of Women) feel that it should be pointed out that the bonus is graded because it is linked to the trade union subscription which is itself graded according to age and sex.

A third case of direct discrimination concerns an additional social benefit. The Commission paritaire des services de santé (Joint Committee of the Health Services) provided, in its collective labour agreement of 31 October 1975, for the granting of a household or residence allowance to certain workers. Married male staff receive the allowance automatically whereas married female staff receive it only if they actually have dependent children. The situation is the same in the public sector.

The administrative unit's report mentions no cases of direct discrimination in piecework rates.

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(1) Cf. page 87 of this Report.

(2) The FEB (Fédération des Entreprises de Belgique - employers federation) asserts that this problem has been resolved by the agreements for the food industry signed in May 1978.

Although there are no longer any job classifications specifically for female workers, it is to this point that the administrative unit's report devotes most attention. It is also under this heading that is found the largest number of cases of indirect discrimination according to the criteria for assessing privileged jobs. Moreover, certain classifications are worded sufficiently loosely to allow of different interpretations.

For example, a large number of joint committees still attach importance to the criterion of physical strength in conjunction with those of professional qualifications and degree of responsibility. On the other hand, jobs requiring speed or dexterity are classed as light work and are therefore less well-paid than jobs involving heavy or skilled work.

Another type of difficulty has arisen over several classifications in which a large number of jobs have been defined in the masculine while a few of them have been defined in the feminine. In several collective agreements, for example, the jobs of typist and shorthand typist are defined exclusively in the feminine, as is that of secretary.

The Belgian Government considers that it is in the field of job classifications that the implementation of the provisions of Agreement No 25 will encounter the greatest difficulty. It has been decided, therefore, that the administrative unit will be instructed to examine such classifications in depth. An ad hoc committee has also been set up within the Ministry of Labour and Employment to re-examine job evaluation systems.

The Fédération des Entreprises de Belgique (Federation of Belgian Undertakings) notes, for its part, that, although they were not made in order to comply with the principle of equal pay, the changes in job classifications that have taken place in certain sectors have had a positive influence on its application.

98. In the Federal Republic of Germany, the Government and both sides of industry consider that it is unnecessary to include in collective agreements a clause guaranteeing application of the principle of equal pay since under German law agreements containing any provisions contrary to the principle are void.

They also state that no collective agreements provide for different time rates for men and women and that the same holds true for piecework rates and complementary wage benefits (bonuses and various ancillary benefits).

Broadly speaking, German collective agreements no longer contain different job classifications for men and women. Separate job categories reserved for women can still be found, however, in agreements relating to domestic staff. Jobs reserved for men are even more uncommon (e.g. chauffeur, caretaker, butler). Collective agreements in the hotel and catering trade

also provide for certain categories of job reserved either for women or for men. They are jobs which, because of their nature or the services they involve, are in fact carried out only by men (e.g. messenger, night porter) or by women (e.g. chambermaid, preparer of cold meals or coffee).

As regards cases of indirect discrimination, however, attention must be drawn to the dispute that has been going on now for many years between employers and the trade unions over pay categories for "light work". In the trade unions' opinion, these "light work" categories are defined in such a way that they in fact become mainly feminine categories, but this is challenged by the employers, who consider that they do not give rise to discrimination as they are applicable to both men and women.

According to an enquiry conducted by the Federal Ministry of Labour and Social Affairs, such pay categories for light work were still provided for at the end of 1974 in 104 collective agreements. But improvements have gradually been introduced (abolition of such categories in the chemical industry, adjustments in the metallurgical industry) and the number of individuals affected is on the decline (400 000 workers including 300 000 women and 100 000 men).

To clarify and solve the question of light work, the Federal Ministry of Labour and Social Affairs commissioned a study by Professors Rohmert and Rutenfranz, which was sent to the Bundestag in 1975 (1), on "the ergonomic assessment of the physical and mental stress involved in various jobs in industry". The Minister sent copies of the study to the employers' and trade union federations inviting them to make use, in the context of their freedom to negotiate, of the findings and conclusions of the report.

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(1) Cf. page 34 of this Report.

Both sides of industry also gave a favourable reception to the second study carried out in 1976 by Professor Rohmert on the use of an "ergonomic questionnaire" on job analysis. Consultations with employers' and workers' representatives on the results of this second study give grounds for hoping, according to the Federal Government, that the parties to collective agreements will in fact try in the next few years to solve any problems outstanding in the field of pay categories for light work.

99. In Ireland, since there is no central agency responsible for the registration and analysis of collective agreements (other than the Labour Court which registers certain agreements negotiated under the Industrial Relations Act 1946), the Government and both sides of industry state that they are unable to say definitely whether any collective agreements guarantee the application of equal pay or whether such agreements contain clauses about equal pay. But in Ireland collective agreements are not regarded as an essential means for achieving equal pay. The Anti-Discrimination (Pay) Act 1974 establishes women's rights in this field and Section 5 of the Act stipulates that any clause in a collective agreement which sets down different rates of pay for men and women or which contains a discriminatory provision is null and void. Also, since the law came into force every contract of employment is construed as including an implied term giving every woman the right to equal pay and this provision overrides any agreement which may conflict with the principle of equal pay.

Likewise according to the Government and both sides of industry, there is no evidence of collective agreements which provide for different time rates, piecework rates or job classifications for men and women. It is pointed out, however, that some cases of disputed claims to complementary wage benefits have been referred to the equality officers.

Following the coming into operation on 31 December 1975 of the Anti-Discrimination (Pay) Act 1974, Employment Regulation Orders (which prescribe minimum pay and conditions of employment in certain industries) have been amended, in so far as rates of pay were based on sex. However, a case has been referred for a determination to the Employment Equality Agency as to whether some of these amendments are themselves discriminatory. In three recently restructured Employment Regulation Orders relating to the tailoring, shirt-making, women's clothing and millinery industries in which a number of job classifications are provided for, a weight stipulation has been introduced for the first time in the general worker grade providing for the lifting of weights in excess of 35.2 lbs. The effect of this stipulation is to debar women from entry to the general worker grade, as under protective legislation they may not lift weights in excess of 35.2 lbs. The legality of the weights clause has been examined by the Employment Equality Agency (1).

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(1) This clause has since been removed from the relevant Employment Regulation Orders.

100. In Italy, there are no collective agreements containing express clauses on equal pay. The agreements establish basic pay levels and all other pay aspects with reference to the various categories of workers, which are in turn based on systems of staff classification involving no distinctinction as to sex.

The Government and both sides of industry state that no collective agreements provide for different time rates for men and women and that the same holds true for piecework rates, complementary wage benefits and, as has just been pointed out, job classifications.

On this last point, the same remark is made as for Belgium and France, namely that, even though they are not specifically aimed at establishing equal pay for men and women, the new criteria used when revising job classification systems contribute in practice to a better application of the principle.

101. In the Netherlands, it is not usual for collective agreements to contain clauses explicitly guaranteeing application of the principle of equal pay. As a rule, workers covered by a collective agreement find such a guarantee in the fact that the agreement contains no discriminatory provisions in that field.

According to the Government and both sides of industry, there are practically no collective agreements which provide for different time rates or piecework rates for men and women.

As regards complementary wage benefits, a very small number of collective branch agreements and several collective company agreements provide that the minimum amount of holiday pay, which is fixed for adult workers, applies also to young married male workers and young heads of household.

Similarly, although no collective agreements provide for different job classifications for men and women, certain company agreements still provide that young married male workers and young heads of household may be appointed to a step on the salary scale higher than that corresponding to their age; but no mention is made of young married female workers.

The trade unions are attempting to have the concept of "head of household" abolished or at least modified by removing any reference, direct or indirect, to sex.

It should be noted that a new pay structure has been introduced in the clothing industry based mainly on equal pay for men and women. Moreover, the salary scale applicable to women in the textile industry has been

incorporated in that of men.

102. In the United Kingdom, the essentially voluntary system of collective bargaining does not allow for the compulsory registration of agreements or in general for such agreements to be legally binding.

Pay agreements between employers or associations of employers on the one hand and employees or trade unions on the other are not made public unless the parties so wish. Many collective agreements are, however, made public or notified informally to Government departments. All such agreements, the United Kingdom Government states, conform with the Equal Pay Act 1970. The rates of pay and other conditions apply regardless of the employee's sex. This applies not only to basic rates but to piecework rates and other benefits.

Section 1(1) of the Equal Pay Act 1970 lays down, in fact, that if the terms of a contract under which a woman is employed in an establishment in Great Britain do not include an equality clause they shall be deemed to include one.

According to the Equal Opportunities Commission, some collective agreements contain the TUC "equal opportunity clause". This is a statement of commitment to the principle of equal opportunity, as applying to all conditions of work including pay.

Still according to the Equal Opportunities Commission, a large number of collective agreements contain different job titles for men and for women (e.g., in retail distribution - warehouseman and stores assistant). Job titles have often been amended in wording, eg "man" deleted from the title and replaced by "assistant" or "staff" but this has been largely nominal. Grades previously labelled "male" or "female" have been widely replaced by unisex numbering or other categorisation whilst still retaining women in segregated jobs.

The Government points out, moreover, that statutory wages orders made by wages councils lay down in a number of sectors minimum remuneration which applies equally to men and women, but all that is required by the legislation is that not less than these minimum rates should be paid. About 2.8 million workers are covered, roughly in the proportion of one man to two women.

III. APPLICATION OF COLLECTIVE AGREEMENTS: SOME PRACTICAL ASPECTS

103. The systems of job classification adopted and the rules governing their application in undertakings are a major factor in the practical implementation of the principle of equal pay. It is here that there is most scope for indirect or disguised discrimination (the importance of which has been stressed by the Court of Justice of the European Communities) in the form of an under-classification of women within job categories which either form a single unit or are insufficiently differentiated, the result being the creation of job categories practically reserved for women. One should also bear in mind that the various pay scales negotiated within the context of branch collective agreements generally lay down only minimum or "basic" rates of pay which may, on the face of it, be equal for men and women but which may also be greatly "exceeded" in varying degrees by the wages actually paid to male and female workers. All such forms of indirect or disguised discrimination are, of course, difficult to detect and the answers received from the various Member States to the questions put by the Commission are revealing in this respect.

104. In Belgium, two types of job classification form the historical basis of the systems currently used in the various sectors and undertakings:

(a) a type of classification that is described as "traditional", meaning that rates of pay are laid down for the most common categories of worker, namely unskilled, specialized and skilled;

(b) the general method of job evaluation worked out by a "Commission Technique Générale" (CTG) set up in 1945 within the Ministry for Labour and Employment; the method is one of classification by points and involves the use of 28 evaluation criteria which can be transformed into numerical values via scales expressed in letters and figures.

Currently, the classification systems used in Belgium are, on the whole, based on the complexity or difficulty of the job, the amount of physical effort, training, professional qualifications or experience and the degree of independence or responsibility in carrying out the work. One mostly encounters a mixed classification, namely a gradation of the general criteria integrated into a traditional hierarchy of the following type: unskilled, specialized, skilled and highly skilled worker.

This method of classification, which is applicable mainly to manual workers, is also used in the case of non-manual workers, for whom the joint committees have drawn up a similar four-level structure. It is noteworthy that there is no positive legal definition of the term "managerial staff", except in the agreement drawn up by the joint committee of banks where they are defined in the negative as "non-categorized staff". Thus there is no text to which to refer when studying the position of such staff.

It would appear, from what the Belgian Government says, that the systems of classification set out in collective agreements are not applied at company level in different ways to men and women. The Government considers, however, that it is in the field of job classifications that the implementation of Agreement No 25 on equal pay will encounter the greatest difficulty, particularly in the evaluation by joint committees of certain male and female posts in the job classification provided for in the collective agreement themselves (remembering that more value is placed on the criterion of physical strength than on dexterity or precision). As already indicated[1], the task of the administrative unit responsible for analysing collective labour agreements to detect any remaining cases of discrimination and anomalies has been prolonged and widened, and an ad hoc committee has been set up by the Ministry for Labour and Employment to re-examine job evaluation schemes.

In Belgium, there are, in fact, a number of sectors in which women predominate in the lower echelons of the hierarchy. This is due either to a system of work division in which there is still some down-grading of women's jobs such as that of housekeeper or to a traditional concentration of women workers as, for example, in the beauty treatment sector or in many secretarial jobs, although the wording of collective agreements does not explicitly provide that such jobs should be reserved for women. There is also a de facto concentration of female labour in various unskilled jobs in certain basic industries owing to their lack of professional training.

The Fédération des Entreprises de Belgique stresses that the choice of criteria used as a basis for job classification and the points awarded to them for conversion into pay components relate to the function and the job in question and not to the sex of the person who is to fill it. Certain aspects of this choice are, however, dictated by the law of supply and demand. Furthermore, it adds that women are not deliberately classified and kept in the lower levels of the job hierarchy, despite the fact that these levels contain a majority of women. The reason is that women have no, or inadequate qualifications : even where

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[1] Cf. page 56 of this Report.

women are educated to the same level as men, as attested by their diplomas, their qualifications are often unusable on the labour market. Moreover, seniority, the corollary of which is the amount of experience acquired, is frequently a factor militating against the advancement of women, whose turnover in employment is higher. In addition to these objective factors, it is possible that more subjective social values have hampered a development which should normally have resulted from the total or partial disappearance of the objective criteria.

On the general question of breakdown by branches of business activity, quite apart from the fact that a large number of women work in the tertiary sector, statistics show, without being able to prove discrimination, that women are concentrated in certain branches (shoes and clothing: 85% of staff employed; tobacco: 67% of staff employed; miscellaneous services: 66% of staff employed) and professions (teaching staff in nursery schools: 99.05% of staff employed; telephonists and nurses: over 90% of staff employed).

This concentration may be due to the fact that the work requires a certain amount of dexterity and no, or little, training (shoes and clothes) - hence the lower pay - and to the fact that it is based on the traditional role allocated to women in our society (caring for the sick, looking after children). Any discrimination should be sought rather in the non-recruitment of workers of one or the other sex.

As regards the excess of real pay over the minimum pay laid down by agreement, the Belgian Government states that in many firms the collective agreement is used only as a "floor" reference to determine the wages structure. However, wages and earnings statistics do not allow a comparison to be made with the rates provided for in the collective agreement. The fact that each firm has its own wages policy enables it to personalize the wages it pays. Nevertheless, even if it were possible to compare the structure of the wages actually paid with that of the rates provided for in the collective agreement, it would be extremely difficult, in the Belgian Government's view, to detect any discrimination based on sex. Such discrimination would be noticeable only in extreme cases where personalization had led either to a systematic down-grading or to the payment of a lower wage. Any emergence of this phenomenon would call for the carrying out of case studies, the conclusions of which could not easily be given general application.

105. In Denmark, as far as job classifications are concerned, the collective agreement system in force draws a distinction only between skilled and unskilled workers, based on whether or not they have completed a period of apprenticeship.

There are therefore no different classifications or separate job categories for men and women.

The Danish Government and both sides of industry also state that there are no job categories which are a fortiori reserved for women and in which the latter are classified and kept in the lower levels of the job hierarchy. The Equal Treatment Commission has, however, stressed that some sectors of the labour market have so far been traditionally reserved for women, in the same way that others have been mainly male dominated. The Equal Treatment Commission also drew attention to the fact that certain tasks which are exclusively or mainly carried out by women are relatively disadvantageous both as regards pay and the prestige attached to them.

106. In the Federal Republic of Germany, collective agreements determine "job inventories", mainly in the light of either the content of the work or the characteristics of the worker. There are also some schemes which are based on a conceptual definition of the various pay categories and which propose a more or less abstract definition of the content of each one, thereby making it possible to rank the various jobs. The major criteria used in such schemes are professional training and the nature (or difficulty) of the work. Many collective agreements apply both systems at once (job inventories and systems based on the conceptual definition of pay categories) to either manual or non-manual workers or both.

Generally speaking, as regards assessment principles, all collective agreements and all job evaluation schemes used by firms are based on the Geneva standard classification of occupations which dates from 1950. The main requirement categories are : knowledge (training, experience), ability (skill, dexterity), responsibility (for one's own work or that of others), mental effort (concentration, power of thought), physical effort (dynamic or static work) and environmental influences (noise, dust, risk of accidents, etc.). These various requirements are defined, adopted and broken down in different ways taking into account the situation and potential of the firms in question, common practices in the branch of activity concerned and collective agreements. This is why there are numerous ways of measuring, computing, describing and evaluating, partly based on scientific methods, to produce the data needed to describe and evaluate jobs.

Since there are many ways of weighting requirements and ranking factors in pay categories laid down by agreement or at company level, no overall survey has been carried out. The Federal Government and both sides of industry state that, even if it were possible to make an inventory of weighting and ranking systems, no conclusions coule be drawn as to their value as instruments in the campaign for equal pay. Since there are no objective evaluation criteria in the field of weighting and ranking in existing pay scales, the decision still lies with the signatories of collective agreements. The methods cannot be imposed upon them. At the most, as in the case of "light work", it is apparent that, in so far as the signatories to collective agreements and the undertakings use ergonomic concepts, such as light work and heavy work, they must, in keeping with the approach adopted by the Federal Labour Court and the Federal Government, apply them to comparable activities for men and women as accurately and verifiably as possible and in so doing avoid any discrimination based on the sex of the worker. Since there will always be heavy work and light work, the mere existence of such distribution criteria cannot be regarded as constituting wage discrimination against women. Disputes cannot be settled at the level of the undertaking and only the courts can rule as to the presence of any wage discrimination.

If there are, in fact, branches of the economy and undertakings in the Federal Republic of Germany in which women are classified and kept in the inferior categories of the job hierarchy, it is, according to the Federal Government and both sides of industry, due entirely to their lack of professional qualifications, the criterion of training often being a decisive factor in the placement of persons at a particular level within the pay hierarchy. The example is given of the food industry, in which 53% of male workers, yet barely 3% of female workers, are skilled. Lastly, the criteria governing the fixing of individual rates of pay in firms are independent of the worker's sex.

107. In France, the systems of job classification set out in most collective agreements can be traced back to the readjustment of wages carried out by the Government between 1945 and 1948 as part of a controlled wages policy (the so-called "Parodi" decrees, named after the then Minister for Employment). The method used at that time was one of classification by categories whereby jobs were classified into several predetermined hierarchical categories which had previously been defined in detail. The classification was done by comparing job descriptions against the definitions of the various categories and one job against another. This "traditional" method is noted for its simplicity.

Most collective agreements now provide, therefore, for three groups of employee: manual workers, non-manual workers and managerial staff.

The manual workers' group includes labourers (M1, M2), specialized workers (OS1, OS2) and skilled or trained workers (P1, P2, P3). The non-manual workers' group may be subdivided into: clerical workers, technicians, draughtsmen and supervisors. Managerial staff, who include engineers, are graded into standard categories.

With the wider adoption of payment by the month, the old system of job classification has latterly undergone change.

In certain branches of activity, common pay scales have even been drawn up for manual and non-manual workers. A national agreement was concluded, for example, on 21 July 1975 on classifications in firms in the metal-producing and metal-processing industries. The agreement sets up a system which enables all job categories to be reclassified into five levels: manual workers, clerical workers, technicians, draughtsmen and supervisors, each level being subdivided into three steps and each step being assigned a coefficient.

The definitions given to each level are derived from an identical conception conception based on four criteria: initiative, responsibility, type of work and knowledge required. The knowledge required for each level is defined with reference to a level of training and may be acquired either

at school or at an equivalent institution or on the job. The definitions given to the various steps were based on the complexity and difficulty of the work, the nature of the qualification being the same for each step within a level.

Similarly, an agreement signed on 27 June 1973 established a common classification for manual and non-manual workers' jobs in the oil industry. Lastly, the agreement reached on 20 June 1974 harmonized job classifications in various branches of agriculture and the food industry.

The Government considers that the classification systems set up by agreement are based solely on the nature of the jobs and work to be carried out, to the exclusion of any factor relating to the worker's sex.

The criteria generally adopted by both sides of industry for the grading of the various jobs within the hierarchical structures laid down by collective agreements depend not only on such factors as level of training, degree of responsibility, physical effort and prevailing working conditions, but also on such qualities as precision, speed and dexterity in carrying out the work.
The weighting given to the various criteria and their translation into wages is extremely variable in view of the freedom of negotiation enjoyed by management and labour and the diversity of situations encountered within forms. But, generally speaking, the qualities of "precision, speed and dexterity" result in classifications inferior to those which take into account the level of training or the degree of responsibility, for example. Although, as a rule, the systems of job classification are not applied within firms in different ways to male and female workers, difficulties may arise, particularly in the case of classifications which, being derived from those laid down by the "Parodi" decrees, sometimes fail to distinguish clearly enough between the various jobs that they define, lacking the details necessary for a more precise evaluation of jobs or even of the posts actually described.

Nor are there in theory, any "reserved" professions or categories in which women are systematically classified and kept in the inferior categories of the job hierarchy. In practice, however, as certain surveys on the breakdown of staff in industrial and commercial establishments with more than ten employees have shown, it would appear that, depending on the job category, the proportion of women among managerial staff is relatively low (14.1%), among supervisors and technicians scarcely larger (19.3%) and among manual workers fairly substantial (23.8%). Among clerical workers, where women are in the majority (61%), their share of the skilled jobs is much lower than of the unskilled.

This phenomenon is even more pronounced in the case of manual workers in the comparison that can be made between labourers and specialized workers on the one hand (between 30 and 45%) and skilled workers on the other (between 4 and 14%).

But this does not, according to the Government, mean that there is wage discrimination in the eyes of French law.

The causes are more deep-seated - as the Committee on Employment of Women stated in its report on the implementation of the Law of 22 December 1972. They include women's real or supposed lack of qualifications, their lack of opportunity for in-service training, the persistence of certain prejudices or traditions which give rise, particularly in the case of managerial staff, to a preference for male workers over female workers with the same qualifications and, in general, the position still occupied by women in French society.

Although no professions or categories are "reserved" for women, there are in effect branches of business activity and, within them, professions and jobs in which women unquestionably predominate: clothing and textiles (83%), hospitals (nursing and ancillary work, etc.) and the social services (child care, social work), domestic staff, the hotel trade (51%) - or in which women are present in large numbers: administration, teaching and work in the tertiary sector (commerce in particular) such as shop assistants, secretaries, etc.).

The reasons for this are manifold, the main ones being, according to the Government, women's natural aptitude for the jobs they do, the strength of habits and traditions whereby there is a sort of predetermination of choice of career depending on sex, not to mention certain economic factors which encourage recourse to a predominantly female labour force (position of women with regard to employment and unemployment within the context of the legislation designed to protect workers, geographical situation).

This combination of socio-economic factors results in a concentration of female workers in certain sectors of activity, which are all the more sought after by women because they enable a job to be reconciled with bringing up a family.

Jobs in these sectors tend to be less well-paid and very often have limited promotion prospects.

In France, most manual workers are now covered by collective agreements or by agreements which lay down minimum rates of pay. The wages actually paid to manual workers are generally higher than the agreed rates. No statistical survey has as yet been conducted, however, to measure the extent of such differences.

An estimate has nevertheless been produced by the research department of the Ministry of Labour and it would appear, very approximately, that the gap between the agreed and actual rates of pay - viewed overall - might be about 15%. It has not, of course, been possible to break this overall gap down into its male and female components.

The Government considers that the criteria governing the fixing of individual pay rates in firms are independent of the sex of the worker.

The fixing of rates of pay by mutual agreement under individual contracts of employment has not, as far as the Ministry of Labour is aware, given rise to cases of discrimination based on sex requiring intervention by the Works Inspectorate either during its routine checks or when sorting out situations created by the workers directly involved or by their staff representatives.

While there is no doubt that some of the "personalized" elements of pay such as individual output bonuses, attendance bonuses, seniority bonuses and so-called "danger" money can create pay disparities, they do not necessarily discriminate against women.

Such disparities are justified in view of the differences between jobs and the different way in which they are carried out; account should be taken of length of service, which tends to be greater in the case of men than in that of women, absenteeism - more common, as a rule, among women if one includes, for instance, temporary cessation of employment due to childbirth, nursing sick children or bringing up a family - and the bonuses and allowances inherent in certain working conditions, from some of which women are in any case excluded by law (e.g. night work).

For its part, the CFDT considers that although the criteria laid down are not necessarily discriminatory, the real wages and salaries paid to women for the same job are frequently lower than those paid to men, as a result of prejudice and habit. Moreover, the organization of work, with women grouped together in certain jobs, means that the criteria taken into consideration for "women's" jobs are systematically undervalued.

10. In Ireland, the systems of job classification are of the "traditional" type since one finds roughly the following categories : unskilled, semi-skilled, skilled/craft, clerical, technical/administrative, professional and managerial. The systems and criteria of job classification vary, of course, according to the nature of the different enterprises and organisations. Job evaluation techniques are little used and then only in relatively large undertakings.

As regards any "under-classification" of women, the Commission on the Status of Women, reporting in December 1972, stated that there was evidence that in the past the lesser physical strength of women had excluded them completely from many types of heavy industry and had, as a consequence, increased the supply of women's labour relative to the demand for its in other kinds of employment. In addition, it could happen that where men and women were employed on work of a similar nature, men received a higher rate because they were required to perform any heavy tasks which might arise from time to time. Improvements in mechanical handling procedures have tended to diminish the importance of physical strength as a requisite for certain jobs and will no doubt continue to do so.

On the question of inferior categories and jobs reserved, in practice, for women, the Government states that women have generally been employed in a clerical/commercial/secretarial capacity and that, traditionally, employers have tended to appoint men to managerial/executive positions. Traditionally, the nursing service (with the exception of psychiatric nurses) has tended to be a predominantly female profession, and there is also a high concentration of women in the hotel and catering industry and in domestic service.

In the clothing industry, where females predominate, women are employed mainly as machinists (skilled and semi-skilled), a category which is at the bottom of the scale in pay rates.

109. The system of job classification in force in Italy, prior to 1960, was based on the sex of the worker.

The agreement concluded on 16 July 1960 for workers in the industrial sector and other subsequent agreements abolished the old pay scales differentiated according to sex (four for men and three for women) and provided for a single classification into eight categories for manual workers, six for non-manual workers and three intermediate categories. The agreement left certain problems outstanding, however, in that a number of traditionally female jobs were placed in the lowest categories. Absolute equality was assured only in the case of traditionally male jobs and of some regarded as hybrid.

Between 1960 and 1972, those collective agreements that were renewed showed a steady reduction in the number of pay categories and abolished the lowest categories, in which traditionally female jobs had been placed; as far as the classification of jobs is concerned, recourse was had for the first time to criteria based on the value of the work. At this stage in the trade

union campaign for equal pay, job categories were divided into: manual workers (categories 5 and 6), non-manual workers (categories 3 and 4) and intermediate functions (category 2). In this system, distinctions between men and women as regards classification played an increasingly minor role.

Since 1972, collective agreements have more often than not ceased classifying workers into three categories (non-manual, intermediate and manual) and have tried to set up a system of the common classification of workers based essentially on a scale of values assigned to each job. In general, provision is made for between seven and ten levels of pay, except in certain specific sectors. This breakdown of workers into various pay levels is leading to the implementation of a system of classification whereby, apart from the classification of the workers themselves, functions having an equivalent job content are placed on an equal footing. The adoption of the system has brought about a considerable improvement, not only from the purely economic viewpoint, but also from the occupational, especially for those workers who have traditionally been placed in the lowest categories.

The employers' organizations and the trade unions disagree as to whether there are branches of the economy or firms in which women are classified and kept in the inferior categories of the job hierarchy.

The employers' organizations state that, as a result of an undifferentiated classification, the principle of equal pay is now applied by collective agreements and that, in compliance with the criteria laid down by the agreements, the placement of staff in the various categories is done on the basis of the jobs actually done. Nevertheless, a number of female workers are still placed in lower categories than their male counterparts. This is attributable not to discriminatory practices against women workers but rather to the lower level of women's training and the impact of certain customs.

The trade unions consider that women are paid less in all sectors as a result of their being classified in the lower categories and of traditionally female work being undervalued. There are instances, moreover, especially in the public service, of classifications and levels of pay based on diplomas being higher than the value of the work done.

In Italy there are no statistics for evaluating the difference between the minimum wages laid down by agreement and the wages actually paid by firms to male and female workers. However, according to the workers' representatives, these payments in excess of minimum wages vary considerably and those paid to men are generally higher than those paid to women.

110. Three main types of job classification are currently used in Luxembourg: the first, the classes method, is simple and non-analytical, whereas the other two, the so-called factor comparison method and the points method are analytical.

The classes method consists in drawing up the desired number of classes of work and then defining the jobs to be classified in each of them. Classification can be either simple, using a very small number of classes (manual, specialized, skilled), or complex, using a description highlighting certain differences in levels of skill, responsibility, etc. Jobs which involve carrying out simple instructions are usually placed in the lowest class of the hierarchy, the more skilled jobs being assigned to higher grades.

Since the system is not analytical, the various jobs are considered in the aggregate and are not subdivided according to their distinguishing features on the basis of classification criteria.

The classes method is by far the most common, and this in the most diverse branches. It is widely used in the public sector for civil servants and in the private sector for those employed in services (banks, insurance, broadcasting) and for manual workers in certain industries (iron and steel and metal construction, breweries, printing works).

The factor comparison method consists in comparing jobs on the basis of a varying number of factors (working conditions, skill, apprenticeship, responsibility). The outcome of these partial comparisons is then used to compare all the jobs with each other. Thus, starting from job descriptions, the main factors of a job are chosen and analysed. The various jobs can then be classified according to these factors.

This system of job classification is uncommon and has been applied only in a collective agreement concluded in the rubber industry.

The points method consists of a combination of a comparative analysis of job contents and the principle of classification. It takes into account a number of criteria which are subdivided into degrees. It calls for a detailed description of the degrees of application of each criterion since jobs are analysed in the light of such descriptions.

This system of job classification is provided for in only a limited number of collective agreements concluded in the pottery, man-made fibre and mechanical engineering industries.

It is somewhat difficult to describe the criteria taken into consideration in the three job classification systems to evaluate certain specific characteristics of work regarded as typically male or female.

In the classes system, the criteria usually applied (studies and professional training, knowledge of the work and experience, complexity of the work, scope for individual initiative) cannot be accurately weighted and it is impossible to determine their relative importance to the classification. Since, however, the classification criteria are not based on specifically male qualities, it would be wrong to conclude that typically female qualities have been systematically ignored in the classifications carried out under the classes system.

In systems applying the points method or the factor comparison method, differences in the way the criteria are defined and the intermingling of various criteria make it very difficult to compare such classification systems from the point of view of the weighting of the classification factors. The explicit factors contained in the classifications used in a number of collective agreements are qualifications and apprenticeship, physical and mental effort and working conditions. The part played by these factors in the evaluation of the classification criteria is, however, very variable.

As regards the classification of female workers in the inferior categories of the job hierarchy, the Luxembourg Government states that there is a marked imbalance in the hierarchial breakdown between men and women in those branches of business activity which employ female staff. The proportion of women is greater in the lower-paid jobs, while the responsible, highly skilled jobs are done very largely by men. In the clothing, pottery and food industries and banking there are few women in the higher grades.

This imbalance could be regarded as a reflection of real differences in training, skill and length of service. But such differences provide only a very partial explanation, since from the time of recruitment men are channelled into the best jobs. This phenomenon is especially pronounced in banking and insurance. Many establishments cease to recruit female staff above school-leaving certificate level.

A characteristic of Luxembourg industry is the preponderance of heavy and semi-heavy industries (iron and steel, metalworking, construction) that call for a predominantly male labour force. Those sectors which could use

"more specifically female qualities" (e.g. electronics) are hardly represented in Luxembourg. Thus, as a result of the situation on the labour market, in the past at least it has been mainly women who have applied for the lowest paid jobs requiring no skill and very little effort (e.g. light handling, easy stages of manufacture, packing, etc.). With a few exceptions (dressmaking, workshops), the position is similar in the craft trades. In the services sector, certain paramedical (nurses, specialists in infant welfare), social (social workers) and domestic jobs are primarily done by women.

As regards the difference between minimum wages laid down by agreement and the wages actually paid by firms, the Government states that it is difficult to assess the extent to which the criteria governing the fixing of individual rates of pay are independent of the sex of the worker. The rate for a given job might have been based either on "personalized" criteria (unpleasantness, responsibility, etc in the case of men and dexterity, speed, etc in the case of women) which cannot be evaluated, or on the dual criterion of the worker's skill and the quality of his work.

111. There are three main systems of job classification currently in use in the Netherlands, namely: the system of the simple hierarchial classification of jobs or trades, the method of classification by broad categories and the job evaluation technique.

In some cases, a simple hierarchial classification of jobs or trades is drawn up. Job comparison schemes are worked out by the firm's management or, if it is a branch of business activity, by management and labour experts. Sometimes, the classification used is more systematic, i.e. the so-called paired comparisons method whereby a numerical value is given to each job.

Some collective agreements (e.g. throughout the agricultural and horticultural sector, in cleaning firms and in the residual products trade) contain job classifications by broad categories of workers, such as unskilled, semi-skilled and skilled. There are also similar classifications into job categories, but with a description of the work representative of each category, in a large number of collective agreements, e.g. in architects' offices, banks, the wood products industry, various wholesale businesses, finishing and painting firms, etc. In the latter type of classification, it must be possible to draw a distinction according to the nature of the description used; in some cases, this is so vague that it is impossible to deduce from it the rank of the job.

Lastly, about 45 different methods of evaluating jobs are used. The best known is the "standardized method of work classification". The other methods are mostly derived from it and therefore share many of its basic features. These systems are employed at both branch (basic posts) and company level.

The original standardized method (SM) has been in use since 1952, but almost exclusively for manual jobs. Between 1960 and 1964 the "drawbacks" inherent in certain jobs (e.g. dirt and heavy loads), which hitherto had given rise to bonus payments, were incorporated into the evaluation scales and given a high points value. Since then, this method has been known as the "SM-64". A "supplementary code" has, however, been included in the "SM" system in respect of job drawbacks. It should be noted that physical strength plays quite an important role whereas the factor of tension (more characteristic of women's work) is of lesser importance.

In the beginning (1955), the classification of non-manual workers was distinct from that of manual workers in that the "administrative system" was applied. In order to integrate manual and non-manual functions, two integrative systems have been developed since 1965 (the extended standardized method (ESM) and the universal job classification system (UCS), both based on the "SM" and accepted by the trade unions). In the ESM and the UCS, sub-totals are first calculated before the "drawbacks" factor is taken into account. In another method - the "Philips system" - the drawbacks are left out of the classification system and evaluated by means of a "discomfort" allowance.

Generally speaking, in the Netherlands the classification systems set out in collective agreements are not applied in different ways to men and women.

A few problems have nevertheless been raised. Thus, at the time of recruitment, there are differences in the wages paid for work of equal value because of the awarding of so-called "fictitious" years of service or seniority in a particular grade on the basis, as a rule, of such things as training, age and experience. Thus, although collective agreements in the printing industry stipulate that certain jobs can be done only by technically qualified staff who hold a particular diploma, in practice technically qualified staff often do the same work as non-technically qualified staff. Generally speaking, it should be noted that the criteria and weightings used in job evaluation systems inevitably reflect the value placed on jobs and their associated characteristics together with labour market relations more or less applicable when the systems were drawn up. These values may have undergone changes since then. This is one of the reasons why the Minister of Social Affairs asked the two sides of industry, in letter of 10 February 1975 and 9 February 1976, to re-examine the question of job assessment.

On the question of the classification of women workers in the inferior categories of the job hierarchy, the Loontechnische Dienst referred, in its report for 1976, to a survey carried out among 899 firms employing almost 300 000 workers, including 72 000 men and 222 000 women.

It would appear from the eight levels of job chosen at random by that Office that most women do jobs on average one level lower than men. 75% of the female workers covered by the survey did jobs which were classified in levels I and II (very easy to easy work of a highly repetitive nature requiring little or no knowledge and/or administrative or technical experience). The corresponding proportion of male workers was 34%. The survey shows that the relative over-representation of female workers in the lower categories is repeated to a greater or lesser extent in all branches of business activity. This phenomenon cannot be explained objectively. However, it is likely that the gap between women's and men's qualifications is partly responsible. Firms' staff policy might also be influenced by the assumption that women regard their jobs as a temporary activity pending marriage.

In the Netherlands, there are no jobs or categories which are reserved in practice for women. Nevertheless, out of the 100 or so job categories counted by the 1975 labour census there are two in which, for every 100 women employed, there are fewer than 20 men. They are: secretaries, typists, punch operators, etc. (4.4 men per 100 women) and domestic and hospital staff (3.8 men per 100 women). The Government is unable to supply a more detailed breakdown but considers that if one were available it would probably show that, for example, light assembly work in the electronics industry, light packing work, dressmaking or nursery school teaching are done mainly by women. It may be said, however, that such over-representation of women is not peculiar to the abovementioned jobs, but is also found in the lower categories in general.

As regards the criteria governing the fixing of individual rates of pay, such as age, seniority, output, overtime, unsocial hours, etc., the Government and both sides of industry cannot say whether a distinction is made on the basis of sex, firstly because there is a shortage of data, and secondly because the quantitative importance of such pay factors compared with the overall level of pay varies from one sector to another.

112. Three main types of job classification are currently used in the United Kingdom: the first two are non-analytical systems, namely job ranking and job classification, while the third, the points method, is analytical.

Job ranking is a simple method, in which each job is considered as a whole and is given a ranking in relation to all the other jobs under consideration. A ranking table is drawn up and the ranked jobs grouped into grades, for each of which a pay level can be negotiated. Instead of comparing each job with all other jobs, which is only feasible when there are only a small number of jobs, each job can be compared with each other job in turn and points (0, 1 or 2) awarded according to whether the job is considered to be worth less than, of equal worth, or worth more than the other. The points awarded for each job are then totalled to produce the ranking order. This technique is known as paired comparisons. Job ranking is a non-analytical method of job evaluation; that is, each job is considered as a whole without being analysed into factors.

Job classification is also non-analytical. A first step is to draw up a grading structure and to define broad descriptions of the jobs appropriate for each grade. Individual jobs typical of each grade, known as "bench-mark jobs", are also selected. Every other job to be assessed is then compared with the bench-mark jobs and with the general descriptions, and placed in an appropriate grade. This method is used more for white collar than for manual workers.

Points assessment is the most common method in use. It is an analytical method, which, instead of comparing whole jobs, breaks down each job into a number of factors - for example, skill, responsibility, physical and mental requirements and working conditions. Each of these factors may be analysed further into sub-factors. Points, up to a pre-determined maximum, are awarded for each factor in the job being evaluated, and the total points decide the job's place in the ranking order. Usually, the factors are weighted so that, for example, more or less weight may be given to hard physical conditions or to a high degree of skill. When each job has been evaluated, the jobs are normally arranged into a grading structure. Small differences in points value between different jobs are therefore not usually significant. The evaluation exercise is often conducted by a joint management-union team, and it is normal for the work force to be fully briefed before and during the exercise, and for there to be a procedure for appeals to be made by individuals against their gradings.

A small-scale survey conducted by the Institute of Personnel Management, published in 1976, indicated that as many as 80% of employers in the United Kingdom operate some form of job evaluation scheme. In most cases, however, schemes cover only a proportion of the employees and it is

likely that the proportion of employees covered by job evaluation schemes is considerably lower than 80%. Job evaluation schemes are more frequently used by large organizations than by firms with only a small number of employees.

The Equal Opportunities Commission recognises that job evaluation can provide a means of achieving equal pay, particularly where there is job segregation between the sexes. However, the Commission stresses that job evaluation will bring about an unfair result if more importance is attached to factors which are not present in the jobs in which women predominate. Thus, physical strength demands may be more highly rated than dexterity, as may be any vestige of authority or responsibility attached to a job. The placement of persons at a particular level within a grade does not always relate to clearly laid down age or experience criteria; where subjective assessments of placing, particularly as related to merit, are involved, then women are often placed at a lower level than men, or progress up the grade more slowly. The Commission will be publishing guidance in 1979 on how to avoid discriminatory elements in job evaluation schemes.

On the other hand, and still according to the Equal Opportunities Commission, there is a definite tendency for women to be found in inferior categories in the job hierarchy in both factory and office. In the former, entry to skilled and therefore more highly paid jobs may be governed by apprenticeships or other forms of service qualifications. In the latter, progress into managerial or supervisory grades may be inhibited by the fact that women have different career patterns from men. Employers may be reluctant to offer the appropriate training in order to remedy this situation, although some argue that women are not interested in taking up opportunities for training and advancement.

The Government states that it does not have knowledge of all criteria governing individual rates of pay. Discriminatory rates of pay are in any case unlawful and individuals have the right to take their complaints to an industrial tribunal. The employer would have to prove that the "personalised" element of the wage was due to a "material difference" other than that of sex, within the meaning of the Equal Pay Act 1970.

The Equal Opportunities Commission states that very little is known about pay in small non-unionised companies, even by employees themselves, but all the indications are that traditional low evaluation of women's work compared with that of male "breadwinners" continues to be reflected in lower pay. In general, it believes that personalized elements of pay such as merit payments have been used as a way of rewarding men and avoiding equal pay.

C - SUPERVISION AND CONTROL

For the purposes of describing their situation in regard to the supervision and control of the implementation of equal pay legislation, the Member States may conveniently be classified according to whether supervision at works level has been entrusted to an already existing body of works inspectors.

I. COUNTRIES WITH AN OFFICIAL INSPECTION SYSTEM AT WORKS LEVEL

1. WITH A COMMITTEE OR COMMISSION ON WOMEN'S EMPLOYMENT

113.(a) In France, the "Inspecteurs du travail" (Works Inspectors), and to a lesser extent the agricultural labour law inspectors - or in certain cases other inspectors with similar duties - have been given the task of ensuring that the principle of equal pay is applied and, in conjunction with the police and criminal investigation department, of detecting infringements.

The decree of 27 March 1973 implementing the Law on Equal Pay of 22 December 1972 specifies the information that must be supplied to the Works Inspector to enable him to act in full knowledge of the facts, and also lays down the procedure for conducting investigations.

Articles 3, 4 and 5 of the Decree lay down that any employer who contravenes the provisions of the Law is liable to a fine (of FF600 - 1 000 per employee concerned) which may be increased for second and subsequent offences. A prison sentence of ten days may even be imposed.

Moreover, refusal by an employer to provide the Works Inspector with details of the various elements on the basis of which pay in the undertaking is determined makes him liable to a fine of FF80 - 160, increasing to FF600 for second offences.

Every year a review is carried out of the Works Inspectorate's three main functions of advice, conciliation and inspection; however, it has not been possible to determine the share of its activities devoted to the single question of the application of the principle of equal pay.

Since the entry into force of the Law of 22 December 1972, the Ministry of Labour has had comparatively few (around 40) cases of alleged discrimination referred to it. In more than half these cases, all of which were thoroughly investigated by the Works Inspectorate, no real disparities within the meaning of the Law of 22 December 1972 were found.

No case of dismissal which might have been held to be a reaction to a complaint made in the undertaking was reported to the Ministry of Labour.

(b) To be valid, collective agreements must be registered with the Secretary of the "Conseil des Prud'hommes" (Industrial Tribunal) or, where there is no such Tribunal or where it is not competent in the case of the workers in question, at the office of the clerk of the magistrates' court of the place in which the agreements were concluded. Four copies of agreements must be lodged, and three of these must be sent by the Secretary or the Clerk of the Court, normally within two days, to the Ministry of Labour (2 copies) and the Departmental Labour and Employment Directorate (one copy).

The Law also provides that agreements must be placed on view in the premises of the undertaking or individual establishment in which they are applicable.

(c) Under the provisions of Article L 420-3 of the Labour Code, staff representatives have the power to lodge complaints with the employer about the application of rates of pay or the grading of jobs and to inform the Works Inspector of any breaches of the law, including those relating to equal pay.

Also, under Article L 432-4 of the Labour Code, employers must present a general report to the Works Committee every year, describing - among other things - any changes in pay structure and levels. In particular, they are required to give the Works Committee a statement showing the levels of average monthly earnings during the year by comparison with the previous year. In addition, in undertakings with over 300 employees, the Works Committee is required to set up a committee to study the terms and conditions of employment of women workers.

However, as staff representatives and members of Works Committees are not under a legal obligation to inform the Ministry of Labour of the results of their activities, the French Government is unable to supply information about their work in securing effective implementation of the principle of equal pay.

It should also be noted that by virtue of the Decree of 8 December 1977, implementing the Law of 12 July 1977, the managements of undertakings with more than 300 employees are required to present a "social balance sheet" each year to the Works Committee, giving, in particular, details of pay and accessory costs including the total wage bill for the year and the average monthly pay in each job category for both men and women.

(d) The law provides for intervention by conciliation boards, mediators and arbitrators only in cases of collective labour disputes. These bodies are therefore not competent to deal with individual complaints relating to the principle of equal pay.

However, many collective agreements contain a clause setting up joint committees before which individual complaints can be brought. Such committees, whose involvement does not preclude the parties' taking the case before the competent court or tribunal, suggest amicable settlements or give opinions on points of interpretation, particularly in connection with disputes arising from the application of the collective agreements under which the committees were set up.

(e) Also, a special committee on women's employment, the "Comité du travail féminin", has been set up by the Government under the Ministry of Labour. This body is advisory and includes representatives of women's and employees' organizations and leading experts in the field. It examines the problems for women involved in pursuing a paid occupation and studies ways of facilitating their employment and vocational advancement. Within the Committee a number of working parties have been set up, including one which is particularly concerned with women's pay.

The Committee advised the Government on the preparation of the draft which was passed by the Parliament to become the Law of 22 December 1972 on equal pay for men and women.

In addition, the Committee disseminates information on aspects of women's employment, both in regard to pay and conditions, and carries out studies in this field backed up by survey results. Examples are the two reports of September 1976 on problems in women's terms and conditions of employment and the progress made in implementing the Law of 22 December 1972 on equal pay.

114.(a) In Belgium, the Inspection des lois sociales (Labour Law Inspectorate), while carrying out on-the-spot inspections, has also checked on compliance with Collective Agreement No 25 of 15 October 1975, and in particular the requirement that the text of the Agreement must be displayed together with the undertaking's staff rules. Up till now, no employer has refused to abide by this provision. During their visits to firms, inspectors have drawn employers' attention to the matter of equal pay.

The Inspectorate has received four complaints; one in Brussels, one in the Dutch-speaking area and two in the French-speaking area. In two cases the situation was rectified following the Inspector's intervention, whilst in another, the complaint proved to be unfounded. In the fourth, the employer has been accused of an offence.

The Law of 12 April 1965 on the protection of employees' remuneration, Article 47a of which deals with the principle of equal pay, is a "public order" law and lays down penalties for infringements.

No cases of dismissal by an employer as a reaction to a complaint made in the undertaking have come to the notice of the Labour Law Inspectorate. One case of dismissal was reported to the Bureau of the "Commission on Women's Employment". It concerned a woman worker who had distributed copies of the Commission's brochure explaining Collective Agreement No 25, whereas the undertaking's staff rules appeared to prohibit the distribution of pamphlets except where expressly authorized.

(b) The Law of 5 December 1968 on collective agreements on employment and joint committees provides, in its Article 18, that all collective agreements must be registered at the Industrial Relations Office of the Ministry of Labour. This formality is essential for the agreement to be fully valid. Under the same provision, anyone may obtain a copy of a registered agreement. However, systematic circulation of the many national, regional and company-level agreements to the various competent Inspectorates has so far not proved feasible.

(c) The Belgian Government does not have particulars of the role played by trade union representatives and works councils in ensuring that the principle of equal pay is implemented.

(d) The "Commissions paritaires" (sectoral joint committees) were asked by the Minister of Labour in a memo dated 1 June 1976 to report on the measures that had been taken within their particular sphere to secure implementation of the principle of equal pay. However, in their replies, the Chairmen of the committees appeared to have commented only on direct discrimination, and not indirect discrimination - a point to be borne in mind, since most disparities are presumed to lie in indirect discrimination and grading. Hence, a full appreciation of the views of the joint committees will only be possible once they have given their reactions to the above-mentioned report by the working party[1], on which they are to be asked to comment.

(e) In March 1975 a "Commission du Travail des Femmes" (Commission on Women's Employment) was set up in Belgium. The Commission, which is attached to the Ministry of Labour, is an advisory body whose voting members are all drawn from the employers' associations and trade unions.

From its inception, the Commission has taken an interest in the problem of equal pay.

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[1] Cf. pp. 56 and 66 of this Report.

It has issued two Opinions on this subject:

(1) - Opinion No 1, of 26 May 1975, on a preliminary draft law on equal pay for male and female workers prepared by the Minister of Labour. The Opinion was submitted to the National Labour Council, and the substantive recommendations contained in it were largely taken account of in collective agreement No 25 when the National Labour Council decided instead to implement Directive 75/117/EEC by means of a collective agreement given binding force by Royal Decree.

(2) - Opinion No 6, of 22 March 1976, which made various suggestions as to how to secure application of the principle of equal pay, on the basis of which a campaign was started to increase awareness and knowledge and promote discussion of the matter. In line with this opinion, the following steps were taken:

- a leaflet was published and widely distributed;

- in September 1976 a working party was set up in the "Service des relations collectives du travail" (Industrial Relations Department) of the Ministry of Labour to "scrutinize collective labour agreements and uncover any instances of discrimination and anomalies which may persist in them";

- in June 1976 all the sectoral joint committees were asked to examine the collective agreements then in force to bring them into line with collective agreement No 25;

- finally, the Ministry of Labour instructed the Labour Inspectorate to pay particular attention to the application of equal pay, and a day-long briefing session was organized for the inspectors.

The Commission has also presented the Minister of the Civil Service with a statement of its findings regarding the application of Directive 75/117/EEC in the public sector.

The National Labour Council has also been following up the implementation of collective agreement No 25, as the two sides of industry undertook to do when concluding the agreement. It has asked the Minister of Labour for a report, and the Minister has conveyed to the Council the views of the various registered joint committees and also Opinion No 6 of the Commission on Women's Employment. The National Labour Council's Executive Board has also called for the working party's report to be sent to the joint committees, and wished to be informed of their reactions.

115.(a) In Italy, the Works Inspectorate, alongside its other supervisory duties, also monitors observance of the law on equal pay. To boost the Inspectorate's effectiveness in this work, Law No 903 of 9 December 1977 on equal treatment of men and women in employment introduces penalties, in the shape of fines of between Lit 200 000 and Lit 1 000 000, for failure to comply with the equal pay provisions. In carrying out their duties, works inspectors are considered as police officers, and are required to report offences which come to their notice to the judicial authorities.

The Italian Government does not have precise data on the results of these checks on equal pay. It doesnot think there have been any cases of dismissals in response to complaints at works level or legal action. There is no requirement for collective agreements to be registered with the Ministry of Labour or notified to the Inspectors, but these agreements are published and on sale to the public.

(b) The Italian Government and the two sides of industry state that with the principle of equal pay now being incorporated in collective agreements and legislation, trade union representatives in industry (trade union committees and representatives, works councils) are concentrating on getting rid of all obstacles tending to prevent women from following exactly the same careers as men. A number of disputes have been referred to the conciliation boards and the trade unions.

(c) A national committee on problems of women's employment ("Comitato per il lavoro femminile") was set up under the Ministry of Labour by a Ministerial Regulation dated 17 December 1973; however, this Committee had been at work for only a year when the order by which it had been set up was repealed by the Administrative Court following an action brought by a trade union which had been excluded. The Ministry of Labour intends as soon as possible to issue a new order re-establishing the Committee and to include, among the tasks assigned to it, assistance in preparing the Government's annual report to Parliament on progress in the implementation of Law No 903 of 9 December 1977. In this way the Committee will be asked for its views on equal pay questions.

2. COUNTRIES WITHOUT A COMMITTEE OR COMMISSION ON WOMEN'S EMPLOYMENT

116. In Luxembourg, the "Inspection du travail et des mines" (Works and Mines Inspectorate) is responsible for ensuring implementation of the provisions of the Grand-Ducal Regulation of 10 July 1974 on Equal Pay. During its checks in undertakings and individual establishments, the Inspectorate has so far not had any infringements reported to it.

Nor has any case of dismissal in reaction to a complaint yet been noted.

Regarding the registration of collective agreements, it is compulsory to file agreements with the Works Inspectorate before they enter into force.

Staff representatives and joint works committees have played a three-fold part in ensuring that the principle of equal pay is implemented, namely by their information work, particularly among the women employees, by checking to see that the principle is observed in contracts and agreements establishing individual and collective terms of employment, and finally by monitoring the actual implementation of the principle in the execution of individual and collective employment contracts.

The channels for settling collective labour disputes, however, have not so far had to intervene in this area.

No special body in the nature of a committee or commission on women's employment has yet been set up in Luxembourg.

II. COUNTRIES WITHOUT OFFICIAL INSPECTION AT WORKS LEVEL

1. WITH A COMMITTEE OR COMMISSION ON EQUAL TREATMENT

117. (a) In the Netherlands, there is no provision for monitoring the application of equal pay in undertakings.

However, the Law of 20 March 1975 set up a "Commissie voor gelijk loon voor vrouwen en mannen" ("Equal Pay Commission"), which has a membership of five, namely two representatives of employers' organizations, two trade union representatives, and a civil servant as chairman. When a dispute is referred to it, the Commission has to deliver a "reasoned opinion" on the wage or salary to which the employee is entitled by law. This opinion, whether it finds in favour of or against the applicant, must first be produced before a party can bring a case before the magistrate ("kantonrechter"). The Commission also reports to the Minister of Social Affairs any practices carried on by an undertaking or group of undertakings in the same industry which it considers to be against the law and notifies the employer(s) to that effect. The results obtained by this system have been described in the earlier part of this report, on "The implementation of legal remedies" (1).

The Ministry of Social Affairs has introduced the department responsible for wages and salaries to carry out a special enquiry to prevent inequality as regards pay and treatment in undertakings and firms. These surveys are part of the assistance and back-up duties to be carried out by the wages department in order to implement the law on equal pay.

The Dutch Government does not think it possible to determine whether dismissals have in fact occurred as a consequence of complaints regarding equal pay. The Equal Pay Commission, has, however, reported one case of a complaint lodged with it which was withdrawn for fear of victimization by the employer.

(b) The parties to collective agreements are required by law to have them registered by the "Loonbureau" (Wages Office). Scrutiny of provisions which might be contrary to the law on equal pay takes place when the agreements come to be declared generally binding. The Equal Pay Commission may, if it deems this necessary in carrying out its work, require the parties involved to submit their agreement to it.

(c) The trade union organizations are giving priority to removing all trace of discrimination vis-à-vis women workers in collective agreements and making equal rights and legal protection for part-time workers a reality in such agreements. Furthermore, these organizations, including the secretariat for "women workers" (FNV) (Dutch Trade Union Federation), have undertaken a large-scale information and guidance campaign on entitlement to equal pay geared towards all workers, whether or not members of trade unions. It points out the legal procedure to be followed in the

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(1) Cf. p. 29 of this Report.

event of pay discrimination. Moreover, a complaint from a worker is sometimes lodged with the Equal Pay Commission.

As regards the task of works councils, the recently amended Article 28 (3) of the law on works councils (1) stipulates that : "In general, the works council shall ensure that there is no discrimination in the undertaking and, in particular, endeavour to promote equal pay for men and women". Moreover, the law on equal pay makes provision for the Equal Pay Commission to inform the works council(s) of any contravention of the law which it may have observed within an undertaking, a group of undertakings or branch of activity.

(1) 4 October 1978.

(d) Moreover, the National Economic and Social Council and the "Commissie Arbeidspositie Vrouwen en Meisjes" ("Commission on the employment situation of women and girls") advised the Government during its drafting of the Equal Pay Law of 20 March 1975. This Commission was dissolved following the creation by the Government, on 17 December 1974 for a five-year period, of the "Nationale Adviescommissie Emancipatie" ("National Advisory Commission on Emancipation"). In 1975, the latter Commission issued an opinion calling for intensified publicity to be given to rights under the Equal Pay Law. In 1977 it also issued an opinion advocating special legislation to combat sex discrimination (1).

On 28 November 1975 the "International Committee for Economic and Social Affairs" of the Economic and Social Council expressed an opinion on the draft directive on equal treatment to the Minister of Social Affairs. This opinion stresses the advisability of creating anti-discriminatory laws whose first step should be to emphasise equal rights for women.

118. (a) In Ireland, there is no systematic inspection of the application of equal pay in industry. However, the Anti-Discrimination (Pay) Act 1974 provides for the appointment of Equality Officers of the Labour Court (three such Officers have been appointed to date). Any dispute between an employer and employee may be referred by either party to an Equality Officer for investigation. To obtain the information they require for the exercise of their duties, Equality Officers may enter undertakings' premises to inspect any process of work and demand access to any document. Anyone obstructing or impeding an inspector in the exercise of his powers is guilty of an offence and liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £1 000. Following an investigation, the Equality Officer issues a recommendation which is conveyed to the parties concerned and to the Labour Court. This system and its practical operation are described in more detail in earlier sections of this report (2). The majority of cases reported to the Equality Officers have been referred by trade union or staff representatives. In a number of cases, trade unions have also been involved in the amicable settlement of disputes directly with the employers.

No case of dismissal in retaliation for an equal pay claim has been reported to the Equality Officers.

(b) Apart from certain agreements negotiated under the Industrial Relations Act 1946, which are registered by the Labour Court, there is no obligation to notify collective agreements to the public authorities.

(c) In March 1970, the Government established a "Commission on the Status of Women" with the following terms of reference : "to examine and report on the status of women in Irish society, to make recommendations on the steps necessary to ensure the participation of women on equal terms and

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(1) Cf. p. 32 of this Report.

(2) Cf. p. 44 of this Report.

conditions with men in the political, social, cultural and economic life of the country and to indicate the implications generally - including the estimated cost of such recommendations". In its report published in December 1972, the Commission recommended the abolition of all forms of discrimination including that in relation to pay, and recommended the introduction of legislation to ensure the implementation of the principle of equal pay. This legislation was enacted in July 1974, in the shape of the Anti-Discrimination (Pay) Act.

The Employment Equality Act 1977 provided for the establishment of an Employment Equality Agency with the main function of promoting equality of job opportunities between men and women. In addition to advising persons about their rights under the equality legislation, a notable feature of the Agency, which came into operation on 1 October 1977, is that it has the power to report an employer who fails to apply equal pay direct to the Equality Officer when the employee concerned cannot reasonably be expected to do so herself. More generally, however, the task of the Employment Equality Agency is to keep under review the working of the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977, and where necessary to make proposals for amending these Acts. It also has the task of reviewing, in consultation with both sides of industry, any provisions in existing "protective" legislation which restrict women's employment and may therefore constitute discrimination. A sub-committee of the Agency has been set up to monitor the progress made in the implementation of equal pay to date. The Agency, on its own initiative, has power to hold formal investigations and, if satisfied that practices or conduct contravene either the 1974 or 1977 Acts can serve non-discrimination notices requiring that they cease. The Agency has already issued a number of explanatory brochures about the provisions of the 1974 and 1977 Acts which have been widely distributed throughout the country.

119. (a) In the United Kingdom, there is no system of official inspection regarding the application of equal pay in undertakings. Apart from the role played by the Equal Opportunities Commission, which is discussed below, it may be noted that anyone who feels discriminated against over pay may bring the matter before an Industrial Tribunal.

(b) Officers of the Advisory, Conciliation and Arbitration Service give advice to individuals, and the service has a statutory duty to attempt conciliation where complaints are made to industrial tribunals about alleged infringements of the Equal Pay Act. The object of such conciliation is to help the parties to reach a settlement without the need for a tribunal hearing. The ACAS, which is in general competent to advise employers and trade unions on personnel and industrial relations matters, also frequently assists in the introduction of job evaluation schemes. Employers and unions who request such assistance are often concerned with the removal of discriminatory elements in pay systems, in the light of the Sex

Discrimination and Equal Pay Acts.

The Central Arbitration Committee (CAC) has the task of determining whether or not a collective agreement or pay structure referred to it is discriminatory. In nearly all cases the Committee has found there was some discrimination, either overtly or in the practical application of the agreement or pay structure. The Committee has frequently given advice to the parties in lieu of making a formal award.

(c) There is no statutory obligation in the United Kingdom to register collective agreements with any official body, and no provision for notifying dismissal cases, so that it is impossible to say whether there have actually been dismissals resulting from an equal pay claim. However, the number of such dismissal cases coming before industrial tribunals is known to be very small (i.e., one or two).

(d) The British Government has no information about the role played by trade union representatives or "works councils" in ensuring application of equal pay.

(e) The Equal Opportunities Commission, set up under the Sex Discrimination Act 1975, has the following statutory duties:

- to work towards the elimination of discrimination,
- to promote equality of opportunity between men and women generally, and
- to keep under review the working of this Act and the Equal Pay Act 1970 and, when they are so required by the Secretary of State or otherwise think it necessary, to draw up and submit to the latter proposals for amending these Acts.

The Commission has powers to assist individuals wishing to bring complaints and it has replied to many individual enquirers and written to and visited employers on their behalf. It also advises on the preparation of cases and provided for legal representation at tribunal hearings and at the Appeal Tribunal in certain cases. The EOC may, on its own initiative, conduct formal investigations (1); it may also be required to do so by the Secretary of State.

It is at present conducting an investigation into pay structures at Electrolux Ltd.

If, during the course of a formal investigation, the Commission becomes satisfied that a contravention of the Equal Pay Act has occurred, it is empowered to serve a non-discrimination notice on the person concerned requiring the latter to cease the discriminatory practice(s).

The Commission is required to publish an annual report which must include a survey of development during the year.

Early in 1978 the Commission published a booklet on "Guidance on Equal Opportunities Policies and Practices in Employment".

120. (a) In Denmark, official supervision of the application of equal pay would, the Government states, be contrary to custom and the legal system. Collective agreements do not have to be registered with the public authorities, and their implementation is supervised by the employers' associations and trade unions.

In view of the fact that the principle of equal pay was recognized by both sides of industry in the collective agreements made in 1973, it is not supposed that there has been any great difficulty in applying this principle.

As far as the Government and the two sides of industry are aware, there have been no cases of dismissals of employees who had claimed equal pay.

(b) A "Ligestillingsrådet" ("Equality Council") was set up by the Government at the end of 1975 and issued a report on equal pay. A Law adopted by the Danish Parliament on 12 April 1978 has now made the Equality Council into a statutory body and assigned it, among other functions, certain powers under the Equal Treatment Law of the same date. The Council keeps social trends under review, particularly in relation to matters of relevance to the application of equal pay; in collaboration with the two sides of industry, which are represented on the Council, it also attempts to determine how far equal pay is being observed, both in sectors covered by collective agreements and others.

It also tries to identify the factors making for differences in actual earnings between men and women, such as vocational training levels - generally lower among women - , the traditional segregation of the job market between the sexes, the inferior professional status of women due to part-time work, etc.

2. COUNTRIES WITHOUT A COMMITTEE OR COMMISSION ON EQUAL TREATMENT

121. There is no official inspection system regarding the application of equal pay in undertakings in the Federal Republic of Germany. Only the labour courts, conciliators, works committees and staff representatives are competent to deal with disputes over equal pay, or the subject of pay determination generally. Neither the Federal Government nor the two sides

of industry have reason to believe that these persons or bodies have neglected these tasks.

It is impossible to say whether any cases of dismissal have occurred as a result of complaints relating to equal pay, since there is no notification procedure.

However, under Article 6 of the Law on collective agreements, the Federal Ministry of Labour and Social Affairs keeps a central record of collective agreements containing particulars of their conclusion, amendment and termination and giving the beginning and end of the period during which the agreements are generally binding. Under Article 7 of the Law, the signatories of collective agreements have one month to notify the Federal Ministry and the Länder Ministries of the agreements and amendments made to them. The Law does not provide for checking to see whether the agreements observe the principle of equal pay, just as it does not require any verification of their correct legal form. However, if there were any violation of this principle - or of any other law for that matter - an agreement would not, of course, be made generally binding.

As yet, no special body in the form of a committee on women's employment or an equal opportunities commission has been established in the Federal Republic. There is, however, a committee attached to the Federal Ministry of Labour and Social Affairs known as the "small committee", which has been trying for several years to sort out the problems of pay gradings for light jobs. The committee is composed of representatives of the German employers' and trade union confederations and certain other employers' and trade union organizations; the secretariat is provided by the Ministry.

D- STATISTICAL ASPECTS: COMMUNITY AND NATIONAL DATA

122. Since they began their work of monitoring the progress of the implementation of Article 119 of the EEC Treaty, the Commission and the Council have been seriously concerned by the lack of comparable statistics on men and women's pay with which to assess the situation and trends in the member countries.

The Resolution of the Conference of Member States of 30 December 1961 accordingly provided, in paragraph 6, for a special statistical survey on men and women's pay. However, despite the long and involved work which was then carried out by the Statistical Office of the European Communities, preparations for the survey were never completed, due to the fact that the job categories chosen for the operation were found to be insufficiently representative both in regard to type and the size of the workforce involved. The Commission could only accept the view of the experts in its ad hoc working party, and sent the Council a report[1] admitting that it had failed in its task but stressing that the survey on the structure and distribution of wages and salaries - also provided for by the Resolution of 30 December 1961 - for which preparations were then under way, would offer a good statistical basis from which to approach the subject.

"Traditional" statistics on the average earnings of men and women workers disregard many factors such as the number of hours worked, overtime paid for at higher rates, sectoral manpower structures, training levels, length of service and age of employees, size of firms, etc., which seriously reduces the value of any comparison.

The survey on the structure and distribution of wages and salaries, however, was expressly designed to investigate the effects of just such personal characteristics of the employees as sex, training, age, length of service, etc., on average earnings and the distribution of pay rates around the average levels. However, such surveys are a major operation which cannot be contemplated more than once every six years; in addition, considerable time must be allowed for processing and publishing the findings.

The first Community survey on the structure and distribution of wages, conducted in October 1966, covered only manual workers in industry[2]. It was repeated in October 1972, covering industry in the six original

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[1] The Commission's progress report to the Council on the preparation of the statistical survey on the wages and salaries of men and women workers (Doc V/COM(64)225 final of 26 June 1964).

[2] Council Regulation No 188/64/EEC of 12 December 1964 (OJ No 214 of 24 December 1964, p. 3634).

Member States, and this time included non-manual workers[1]. In 1974 a survey was conducted for the first time in the service industries (wholesale and retail distribution, banking and insurance) in the nine Member States[2]. The next survey is to be carried out in 1978/79 and will cover both industry and the service sectors in the nine Member States[3].

In this chapter we shall first look at the overall picture emerging from the twice-yearly harmonized statistics on the gross earnings of manual workers in industry, supplemented by some national statistics, and then recall the main findings of the Community surveys on the structure of earnings in industry and the trends (for manual workers only) from 1966 to 1972; finally, comments will be made on the basic data emerging from the 1974 survey of earnings in the service sector.

I. THE HARMONIZED STATISTICS ON EARNINGS

123. The twice-yearly (April-October) harmonized statistics on hourly earnings give the latest figures for the gross hourly earnings of manual workers in industry.

Table 1 shows the average hourly earnings, in national currencies, of male and female manual workers for the whole of manufacturing industry in seven of the Member States[4], and indicates the percentage gap between women's and men's earnings. Ireland does not yet supply data for the harmonized statistics and the Danish figures give no breakdown by sex.

In the five years from October 1972 to October 1977, the gap between men's and women's earnings in the various countries narrowed only slightly: from between 41.7% (Luxembourg) and 22.9% (France) in October 1972 to between 37.5% (Luxembourg) and 19.9% (Italy)[5] in October 1977. However, the change is more marked if we disregard the Luxembourg figures, which anyway reflect a very special situation[6]; we then have 41.2% (United Kingdom) and 22.9% (France) in October 1972, compared with 29.3% (Belgium) and 19.9% (Italy)[5] in October 1977.

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[1] Council Regulation (EEC) No 2 395/71 of 8 November 1971 (OJ No L 249 of 10/11/71, p. 52).

[2] Council Regulation (EEC) No 178/74 of 21 January 1974 (OJ No L 21 of 25/1/74, p. 2).

[3] Council Regulation (EEC) No 495/78 of 6 March 1978 (OJ No L 68/3 of 10/3/78, p. 3).

[4] The Statistical Office of the European Communities EUROSTAT Series on Hourly Earnings - Hours of Work (Latest issue: 1/1978, for earnings in April 1977) gives a full breakdown by industry and region together with indices showing the trend.

[5] The latest figures available for Italy refer to April 1976.

[6] Due to the small number of women employed and the sectoral distribution of the labour force (predominance of the metalworking industry, in which 52% of the labour force are employed).

TABLE 1: AVERAGE GROSS HOURLY EARNINGS OF MANUAL WORKERS IN INDUSTRY

(All manufacturing industry)

	October 1972			October 1973			October 1974		
	M	F	% difference	M	F	% difference	M	F	% difference
BELGIUM (Bfrs)	95.35	64.94	31.9	108.51	74.54	31.3	136.00	94.20	30.7
GERMANY (DM)	7.93	5.60	29.4	8.82	6.30	28.6	9.79	7.05	28.0
FRANCE (FF)	7.99	6.16	22.9	9.18	7.10	22.7	11.18	8.50	24.0
ITALY (Lit)	870	665	23.6	1.086	853	21.5	1.325	1.034	22.0
LUXEMBOURG (Lfrs)	111.66	65.13	41.7	124.84	69.02	44.7	156.78	89.67	42.8
NETHERLANDS (Fl)	6.78	4.46	34.2	7.75	5.28	31.9	9.12	6.42	29.6
UNITED KINGDOM (p)	79.09	46.53	41.2	90.14	55.07	38.9	108.21	70.82	34.6

	October 1975			October 1976			October 1977		
	M	F	% difference	M	F	% difference	M	F	% difference
BELGIUM (Bfrs)	155.79	111.06	28.7	172.73	121.85	29.5	188.69	133.39	29.3
GERMANY (DM)	10.49	7.61	27.5	11.24	8.13	27.7	12.04	8.73	27.5
FRANCE (FF)	12.88	9.84	23.6	14.99	11.33	24.4	16.88	12.80	24.2
ITALY (Lit)	1.642	1.300	20.8	(a) 1.791	(a) 1.434	(a) 19.9			
LUXEMBOURG (Lfrs)	169.25	103.06	39.1	195.50	125.33	35.9	211.13	131.88	37.5
NETHERLANDS (Fl)	10.35	7.58	26.8	11.18	8.32	25.6	(b) 11.70	(b) 8.75	(b) 25.2
UNITED KINGDOM (p)	135.68	90.78	33.1	151.3	106.2	29.8	163.20	115.80	29.0

(a) April 1976.
(b) April 1977.

The overall trend conceals sharp differences between the individual countries: in France, for example, the gap has widened since 1974 (October 1972 - 22.9%; October 1974 - 24.0%; October 1977 - 24.2%), whilst in Germany, Belgium and Italy it has narrowed by about 2-4 percentage points. In the Netherlands, the differential has narrowed by 9 percentage points; the change was even greater, however, in the United Kingdom, i.e., a full 12% (from 41.2% in October 1972 to 29.0% in October 1977). As we know, in the United Kingdom the Equal Pay Act of 29 May 1970 only came into force on 29 December 1975; the gap narrowed by 2.3% between October 1972 and October 1973, 4.3% between October 1973 and October 1974, and 1.5%, 3.3% and 0.8% respectively in the three following years.

Whilst the trend in the size of the differential between male and female average hourly earnings may broadly reflect the extent to which the principle of equal pay is being applied, short-term movements in one direction or the other may, as has already been noted, result from changes in the numbers of men and women employed, e.g. due to lay-offs for economic reasons.

At all events, the average earnings figures, which ignore all the structural influences at work, should be interpreted in this sense only with the strictest caution, and the differential in men's and women's average earnings obviously does not constitute a statistical measure of pay discrimination against women for the same - or equivalent - work.

124. For non-manual workers in industry, the Community harmonized statistics do not give the absolute levels of average gross monthly earnings, but only indices of the trends in such earnings in the original six Member States.

Table 2 shows the increases throughout manufacturing industry from October 1972 to April 1977. In all six countries, these increases were slightly greater for women than for men.

TABLE 2: Percentage rise in the average gross monthly earnings of non-manual workers in manufacturing industry (October 1972-April 1977)

	Men	Women
BELGIUM	84.1	93.1
FRANCE	48.3	54.5
GERMANY	69.4	79.7
ITALY	78.7[1]	89.0[1]
LUXEMBOURG	82.3	85.4
NETHERLANDS	64.6	90.8

[1] April 1976.

II. SOME COMPLEMENTARY NATIONAL STATISTICS

125. Although Ireland does not yet participate in the Community earnings survey, the Irish Central Statistics Office publishes quarterly statistics on the average hourly earnings of industrial workers.

Table 3 shows the average hourly earnings for men and women in new pence, and the percentage difference between them, in certain industries and in manufacturing industry as a whole. It shows that over the period in question (September 1972-September 1977) the overall gap fell from 42.8% to 37.3%. Although the Anti-Discrimination (Pay) Act of 1 July 1974 entered into force on 31 December 1975, the difference remained practically the same from September 1975 (39.2%) to September 1976 (39.4%), but fell by 2% in the following year (37.3%). Whilst these figures are of course subject to the same reservations as were expressed in relation to the harmonised statistics, it is nevertheless noteworthy that the gap narrowed to a much lesser extent than in the United Kingdom.

TABLE 3 IRELAND

Average hourly earnings in certain branches of industry

New Pence

	September 1972			September 1973			September 1974		
	M	F	% difference	M	F	% difference	M	F	% difference
Slaughterhouses, meat processing:									
Bacon	62.5	38.7	38.1	77.1	50.7	34.2	97.1	66.8	31.2
Other	61.5	33.9	44.9	75.7	47.8	36.9	95.8	57.7	39.8
Manufacture of dairy products	56.1	38.8	30.8	71.1	47.9	32.6	85.5	56.9	33.5
Breweries	88.9	61.0	31.4	114.7	71.0	38.1	134.4	91.9	31.6
Tobacco industry	84.0	54.4	35.2	96.5	61.4	36.4	114.4	80.7	29.5
Wool and textiles (excluding clothing)	60.0	39.7	33.8	75.4	51.9	31.2	89.9	61.4	31.7
Clothing industry:									
Men's clothing	66.5	39.8	40.2	80.7	48.7	39.7	93.1	57.7	38.0
Shirtmaking	55.6	36.3	34.4	67.2	45.0	33.0	75.1	53.5	28.8
Women's clothing	59.9	37.6	37.2	71.1	46.1	35.2	83.2	54.7	34.3
Miscellaneous	58.5	34.1	41.7	69.2	40.3	41.8	75.6	45.8	39.4
Leather industry	60.7	33.8	44.3	66.7	41.4	37.9	70.4	51.2	27.3
Electrical goods	66.5	39.6	40.5	79.2	49.1	38.1	94.4	62.7	33.6
Total manufacturing industry	69.2	39.6	42.8	82.9	49.4	40.4	99.6	59.3	40.5

TABLE 3 (contd)

	September 1975			September 1976			September 1977		
	M	F	% difference	M	F	% difference	M	F	% difference
Slaughterhouses, meat processing:									
Bacon	125.7	77.8	38.1	133.6	87.6	34.4	162.8	111.7	31.4
Other	128.2	81.2	36.7	137.0	92.8	32.3	157.6	112.0	28.9
Manufacture of dairy products	120.3	82.6	31.3	133.6	94.5	29.3	158.8	111.8	29.6
Breweries	156.0	116.5	25.3	177.8	143.5	19.3	205.7	163.5	20.5
Tobacco industry	152.6	118.1	23.6	166.3	147.6	11.2	190.8	166.7	12.6
Wool and textiles (excluding clothing)	123.5	82.3	33.4	140.0	93.6	33,1	167.5	109.7	34.5
Clothing industry									
Men's clothing	112.9	75.4	33.2	127.4	83.2	34.7	140.5	95.0	32.4
Shirtmaking	96.4	66.5	31.0	118.7	80.3	32.4	134.2	95.5	28.8
Women's clothing	104.3	70.1	32.8	122.8	76.6	37.6	135.3	89.1	34.1
Miscellaneous	89.5	57.7	35.5	93.5	68.5	26.7	103.6	80.3	22.5
Leather industry	91.0	59.6	34.5	97.5	66.7	31.6	118.6	83.8	29.3
Electrical goods	123.3	79.9	35.2	147.8	92.6	37.3	162.3	112.9	30.4
Overall	129.3	78.6	39.2	148.3	89.8	39.4	171.7	107.1	37.3

126. Although Denmark supplies figures for the Community harmonized statistics on earnings, it unfortunately does not yet provide a breakdown by sex. We are therefore obliged to use the national statistics.

The quarterly statistics on average hourly earnings in the capital city and the provinces will be shown, for five main groups of manual workers : (1) skilled workers (men + women); (2) unskilled men; (3) total men (but including skilled women); (4) unskilled women and (5) all manual workers covered.

A comparison of men's and women's earnings levels can therefore only be made in relation to unskilled manual workers. The explanation for this is the insignificant number of skilled female manual workers in Denmark (under 1%).

TABLE 4 shows the differentials in male and female earnings (including and excluding overtime) in specific industries and for unskilled manual workers as a whole. A continuous, steady reduction in these differentials is found between the last quarters of 1972 and 1977 respectively.

TABLE 4 DENMARK

Difference between average hourly earnings of unskilled female manual workers and their male counterparts (as % of male earnings)

	Fourth quarter 1972				Fourth quarter 1973				Fourth quarter 1974			
	Capital		Provinces		Capital		Provinces		Capital		Provinces	
	Overtime				Overtime				Overtime			
	Incl.	Excl.	Incl.	Excl.	Incl.	Excl.	Incl.	Excl.	Incl.	Excl.	Incl.	Excl.
Dairies			16.4	14.4			12.2	10.0			12.4	10.5
Breweries	4.8	4.1	7.2	6.1	1.0	0.4	1.6	0.8	0.9	0.5	0.0	+0.6
Chocolate manufacture	10.2	8.5			4.8	3.2			4.2	2.9		
Slaughterhouses	9.9	8.3	7.8	4.7	1.4	0.0	8.4	6.4	+4.7	+6.2	8.6	7.1
Sweets and confectionary	9.2	8.7	12.1	9.8	5.0	2.0	9.4	7.4	4.4	1.5	10.2	7.6
Canning			13.8	11.7			6.9	4.4			10.6	8.8
Cigarettes	3.7	2.5			4.6	3.5			2.6	2.1		
Cigars			3.2	2.5	+0.7	+2.0	+1.2	+2.1	0.5	+0.2	+3.8	+4.4
Textiles	19.1	18.4	17.5	16.0	17.1	16.4	14.9	13.5	13.8	13.9	13.9	13.3
Clothing	14.5	12.4			14.1	13.3			16.1	15.1		
Leather	12.4	12.4	18.3	18.1	16.1	15.8	14.3	14.0	13.6	13.6	11.3	11.2
Overall	21.9	20.8	18.9	17.6	16.7	15.4	14.7	13.2	15.1	14.9	12.6	12.3
	Fourth quater 1975				Fourth quarter 1976				Fourth quarter 1977			
Dairies			11.2	8.7			9.8	7.9			7.6	5.4
Breweries	2.4	2.0	0.2	+0.2	1.3	0.8	2.2	1.6	1.5	1.0	2.0	1.5
Chocolate manufacture	5.5	3.6			3.6	4.1			3.4	2.2	0.4	0.0
Slaughterhouses	+5.6	+8.1	6.6	5.6	+5.2	+6.7	8.9	8.0	+2.0	+2.0	6.4	5.1
Sweets and confectionary	3.2	0.2	9.3	6.9	0.8	0.3	9.4	7.3	1.9	1.7	10.8	9.1
Canning			4.6	1.7			6.1	3.0			4.2	1.4
Cigarettes	1.6	1.1			1.0	0.6			+0.1	0.2		
Cigars			+3.8	+4.7							+2.8	+3.3
Textiles	10.8	11.5	13.3	12.1	10.2	10.1	11.8	10.5	11.5	11.0	11.6	10.7
Clothing	17.9	17.7			22.6	22.1			9.8	9.3		
Leather	11.4	11.3	10.1	9.7	6.2	6.3	11.0	10.8	5.2	5.2	10.4	10.1
Overall	14.0	12.8	12.1	10.8	12.2	11.0	10.1	9.8	12.1	10.9	10.4	9.0

127. Although it is a participant in the Community harmonized survey and the figures supplied were examined together with those of the original six Member States, the United Kingdom, like Ireland and Denmark, did not take part in the Community survey in October 1972 on the structure and distribution of earnings in industry; a few figures drawn from the New Earnings Survey will therefore be given to complement the aggregate figures from the harmonized survey (which even include overtime bonuses).

The data appears in TABLE 5, which shows the average hourly earnings in new pence, excluding overtime, of male and female manual and non-manual employees in all industries and services over the period 1972-77, together with the annual increases and the changes in the differential between the earnings of men and women.

It will be seen that the annual increases from 1972 to 1977 were all considerably greater for women than for men, in the case of both manual and non-manual workers. As a result, the gap between male and female earnings closed considerably over the period, namely for manual workers from 38.4% in 1972 to 27.0% in 1977 and for non-manual workers from 46.0% in 1972 to 35.3% in 1977.

TABLE 6 below, also from the New Earnings Survey 1977, shows the differences in the average hourly earnings of men and women in manual and non-manual occupations by age group. In both categories these differences are found to be smaller in the younger age groups, but increase up to 40-49 and then fall slightly in the 50-59 and 60-64 age-groups.

TABLE 6 Average hourly earnings of manual and non-manual workers by age-group
(Excluding overtime)

(New Pence)

Age group	Manual employees			Non-manual employees		
	Men	Women	% difference	Men	Women	% difference
18 - 20	113.9	97.8	14	111.4	103.5	7
21 - 24	144.0	108.7	25	154.5	131.8	15
25 - 29	155.2	113.5	27	201.4	155.7	23
30 - 39	160.3	114.2	29	241.2	157.9	35
40 - 49	159.1	113.8	28	256.0	157.4	39
50 - 59	152.9	112.0	27	243.7	154.6	37
60 - 64	142.9	107.4	25	205.8	.	
Overall	151.6	110.7	27	222.2	143.7	35

TABLE 5 UNITED KINGDOM

Average hourly earnings of male and female manual and non-manual full-time workers aged 18 and over in all industries and services (Excluding overtime)

	Average hourly earnings (New Pence)					
	1972 (a)	1973 (b)	1974	1975	1976	1977
Manual + non-manual workers						
Men	83.3	91.6	104.8	136.3	162.9	177.4
Women	53.9	60.3	70.6	98.3	122.4	133.9
Manual workers						
Men	69.1	77.8	89.6	117.4	138.6	151.6
Women	42.6	49.1	58.7	81.1	100.2	110.7
Non-manual workers						
Men	110.8	118.5	134.2	170.1	205.4	222.2
Women	59.8	66.1	76.7	105.9	131.8	143.7

	Annual increases %				
	72-73 (c)	73-74	74-75	75-76	76-77
Manual + non-manual workers					
Men	12.5	14.4	30.0	19.5	8.9
Women	11.9	17.1	39.2	24.5	9.4
Manual workers					
Men	14.6	15.2	31.0	18.1	9.4
Women	15.3	19.6	38.2	23.6	10.5
Non-manual workers					
Men	9.8	13.2	26.8	20.8	8.2
Women	10.5	16.0	38.2	24.5	9.0

	% difference between men and women					
	1972 (a)	1973	1974	1975	1976	1977
Manual + non-manual workers	35.3	34.2	32.6	27.9	24.9	24.5
Manual workers	38.4	36.9	34.5	30.9	27.7	27.0
Non-manual workers	46.0	44.2	42.8	37.7	35.8	35.3

(a) 1972 - men aged 21 and over.

(b) The figures for men aged 21 and over are 93.7p, 79.2p and 121.7p.

(c) The annual increases for men refer to workers aged 21 and over.

128. The picture supplied by the Community harmonized survey on earnings may also be supplemented by the results of a survey carried out in the Netherlands in 899 firms employing almost 300 000 workers (approximately 72 000 men and 222 000 women), published in the report of the "Technical Pay Unit" ("Loontechnische Dienst"). This survey was referred to above in the section on the implementation of collective agreements with regard to the grading of women at the lower end of the pay scale[1].

In 750 of the firms surveyed, paired comparisons of earnings, adjusted for length of service, overtime and shift-work payments, etc., were made for men and women doing equivalent work. As is shown by Table 7 below, on average women's earnings were 2% below those of men, the difference ranging from 0-3.2% depending on which of the 8 grades of work arbitrarily chosen by the Technical Pay Unit was involved (Grade I: very simple work; grade VII: top-grade posts).

TABLE 7 - Difference in earnings between men and women workers

	All women workers	Workers whose pay is based on a job evaluation system
Grade I	2 %	1.8%
Grade II	1.7%	0.6%
Grade III	3.2%	2.5%
Grade IV	2.3%	1.2%
Grade V	0.3%	0.7%
Grade VI	1.3%	11.9%
Grade VII	0	-

The survey illustrated the impossibility of making pay comparisons in the top-grade posts, owing to the small numbers of women at these levels.

129. For France, two additional sets of national statistics are of interest: an analysis of tax returns showing a considerable disparity in net annual earnings (but only covering the two years 1972 and 1973), and a Ministry of Labour survey on hourly wage rates, in which the differences are much smaller.

(a) The National Institute for Economic Statistics and Research (INSEE) carried out an analysis of the annual wage declarations submitted by employers for tax purposes.

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[1] Cf. p. 78 of this Report.

Table 8 below summarizes the findings of the 1972 and 1973 enquiries.

TABLE 8 - Difference between male and female net annual earnings, expressed in % of male earnings (Employers' annual par returns)

	OVERALL	MANUAL WORKERS			
		Unskilled	Semi-skilled	Skilled	All manual
1972	33.4	20.8	24.7	26.1	29.5
1973	33.6	20.1	24.8	26.3	29.3
	NON-MANUAL WORKERS				
	Clerical	Supervisory	Middle management	Senior management	All non-manual
1972	22.7	16.2	29.7	36.5	47.0
1973	23.6	18.2	31.5	37.0	48.2

(b) The figures in Table 9 below are taken from the Ministry of Labour quarterly survey of hourly earnings. They come closest to showing the differential for equivalent work. They are based on a comparison of the hourly wage rates of male and female manual workers by training level and branch of industry. The findings are thus not distorted by differences in hours worked (since overtime pay is excluded) or, on the whole, by differences in levels of skill. Nevertheless, part of the residual disparity may be due to the different occupations pursued by men and women with similar training levels, and also to the fact that within the same branch, firms employing a majority of women will tend to pay lower wages than those employing a majority of men. Further, disparity can only be calculated for manual workers.

The difference is greater, the more heterogeneous the category, and generally speaking, it increases with the level of training. Since 1972, the gap in each of the categories has been tending to close.

TABLE 9 - Difference between male and female hourly earnings (as % of male earnings)

	All manual workers	Grade 1 (workers)	Grade 2 (specialized workers)	Grade 3 (semi-skilled workers) OS1
October 1972	4.6	3.1	4.0	5.2
October 1973	4.2	2.5	3.0	4.4
October 1974	3.6	1.9	2.6	3.6
October 1975	3.4	1.8	2.6	3.4
October 1976	3.5	1.9	2.5	3.5
July 1977	3.3	1.7	2.1	3.4
	Grade 4 (semi-skilled workers) OS2	Grade 5 (skilled workers) P1	Grade 6 (skilled workers) P2	Grade 7 (skilled workers) P3
October 1972	3.5	7.3	8.2	10.0
October 1973	3.9	6.7	8.1	9.7
October 1974	3.4	5.7	7.5	9.1
October 1975	3.4	5.7	7.9	8.7
October 1976	3.7	6.0	7.0	6.3
July 1977	3.4	6.0	6.3	7.3

III. THE COMMUNITY SURVEY ON THE STRUCTURE AND DISTRIBUTION OF EARNINGS

1. THE 1966 SURVEY - MANUAL WORKERS IN INDUSTRY

130. As stated above, the purpose of the Community survey on the structure and distribution of wages was chiefly to throw light on the relationship between workers' average earnings and their personal characteristics (sex, qualifications, age, length of service in the undertaking, etc).

The Commission's Report to the Council on the situation in the original six Member States on 31 December 1972 regarding implementation of the principle of equal pay[1] summarized the main findings emerging from the SOEC's analysis of the data obtained from the October 1966 survey on the structure of wages among manual workers in industry[2].

The analysis was based on data from the four industries in which the bulk (over 50%) of female manual labour is concentrated in all the six countries except Luxembourg, namely the textile, food, clothing and electrical equipment industries.

Starting from a comparison of men and women's average hourly earnings in manufacturing industry as a whole (very few women are employed in mining and quarrying or the construction industry), in which of course all structural influences are disguised, the SOEC went on to analyse data from each of the four industries referred to according to certain personal characteristics of the workers and other structural factors.

The difference between men's and women's average hourly earnings, as a proportion of male earnings, in manufacturing industry as a whole in October 1966, was 25% in Italy, 28% in France, 30% in Germany, 32% in Belgium, 40% in the Netherlands and 46% in Luxembourg.

The more detailed analysis for the first time made it possible to compare the magnitude of the differentials among groups of workers that were fairly homogeneous from the point of view of age, qualifications, size of undertakings, pay system (only time rates) and type of hours paid (regular hours, excluding overtime). The results were remarkably similar for the textile, food and clothing industries, in which the smallest differentials were found in Italy and France (averaging 14%), followed

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[1] Doc SEC(73)3000 final of 18 July 1973.

[2] Cf. "Structure and Distribution of Wages - 1966", Social Statistics. Special Series, Volume 8 - "Community-wide Synthesis"; Chapter 6 - "Some comparisons between gross hourly earnings and the structure of the work force by sex" (p.98-216).

by Germany (20%), Belgium (23%) and the Netherlands (28%). In the electrical equipment industry, the smallest differentials were found in France (8%), Italy (12%) and the Netherlands (13%), followed by Belgium (21%) and Germany (22%)[1].

Although still quite large, the gaps between men's and women's hourly earnings are narrowing appreciably. The differentials clearly cannot be taken as a statistical measure of pay discrimination against women: caution is required for many reasons. To take a simple example, the uniform qualification categories that were defined for the survey each still cover several training levels for a sometimes quite wide range of occupations. Hence it has only partly been possible to remove the effect of heterogeneous qualification standards on the differential betweel male and female earnings. Others factors not recorded by the survey may also bring about differences in pay, such as bonuses for night work (shift work), or for dangerous or dirty jobs, etc.

In spite of these reservations, whose importance the Commission does not minimize, this survey on the structure and distribution of wages among manual workers in industry, using common methods and definitions, nevertheless gave for the first time a rough idea of the various countries' positions in regard to the extent to which the principle of equal pay has been implemented, insofar as this is reflected in actual earnings.

If the arithmetical mean is calculated for the pay differentials in all the homogeneous groups of male and female manual workers in the four selected industries, the following results are obtained for 1966:

- France: 13%; Italy 14% (the lowest),

- Netherlands: 26% (the highest),

- with Belgium (22%) and Germany (21%) falling between these extremes.

2. THE 1972 SURVEY OF WAGES AND SALARIES IN INDUSTRY

131. The main figures from the 1966 structural survey are given in Table 10, together with the corresponding figures from the second Community survey on the structure and distribution of earnings in 1972, which also covered non-meanual workers in industry.

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[1] Luxembourg could not be included in the comparison because of the small numbers of women workers involved.

TABLE 10: STRUCTURE OF EARNINGS IN INDUSTRY IN 1966 AND 1972

Manual workers: % difference between male and female hourly earnings (change, 1966-1972)

Non-manual workers: % difference between male and female monthly earnings (situation in October 1972)

COUNTRY	Manufacturing industry			I. Clothing and footwear			II. Textile industry		
				NICE (24)	NACE (45)		NICE (23)	NACE (43)	
	1966	1972		1966	1972		1966	1972	
	(a) M	(a) M	(b) N-M	M	M	N-M	M	M	N-M
Belgium	- 32	- 33	- 39	- 23	- 23	- 17	- 24	- 23	- 22
Germany	- 30	- 31	- 36	- 20	- 19	- 17	- 19	- 18	- 16
France	- 28	- 25	- 42	- 14	- 14	- 14	- 14	- 12	- 17
Italy	- 25	- 23	- 37	- 11	- 6	- 5	- 16	- 14	- 6
Netherlands	- 40	- 31	- 48	- 28	- 23	- 22	- 31	- 24	- 22

COUNTRY	III. Food industry			IV. Electrical equipment			I + II + III + IV (c)		
	NICE (20)	NACE (41 A)		NICE (37)	NACE (34)				
	1966	1972		1966	1972		1966	1972	
	M	M	N-M	M	M	N-M	M	M	N-M
Belgium	- 20	- 17	- 24	- 21	- 19	- 17	- 22	- 20	- 20
Germany	- 23	- 22	- 20	- 22	- 20	- 16	- 21	- 20	- 17
France	- 15	- 15	- 19	- 8	- 11	- 16	- 13	- 13	- 17
Italy	- 15	- 13	- 10	- 12	- 9	- 7	- 14	- 11	- 7
Netherlands	- 23	- 20	- 20	- 13	- 12	- 10	- 26	- 21	- 18

(a) M = Manual workers (b) N-M= Non-manual workers

(c) Arithmetical mean of the differentials for all the homogeneous groups in the four industries.

The SOEC repeated the analysis it had carried out of the material from the 1966 survey, just described, on the data from the new survey, and the complete findings were likewise published[1].

They showed that over the six intervening years, the average earnings differential for all the homogeneous groups of manual workers in the same four industries had fallen by only five percentage points in the Netherlands (26% to 21%), three points in Italy (14% to 11%), two points in Belgium (22% to 20%) and one point in the Federal Republic of Germany (from 21% to 20%); the situation had remained unchanged in France.

Thus in October 1972 the relative positions of the Member States in regard to earning differentials for manual workers were as follows (approximate figures):

- the differentials were smallest in Italy (11%),
- slightly higher in France (13%),
- significantly higher in the Federal Republic of Germany (20%), Belgium (20%) and the Netherlands (21%), the latter having practically caught up with the other two between 1966 and 1972.

Among non-manual employees in industry, where the situation was being analysed for the first time, the overall differentials between male and female average monthly earnings (excluding overtime) in manufacturing industry in October 1972 were as follows: 36% in the Federal Republic of Germany, 37% in Italy, 39% in Belgium, 42% in France and 48% in the Netherlands.

However, the analysed data for the same four selected industries showed average differentials which were clearly the smallest in Italy (7%) and about half the size of those in manufacturing industry generally in the other countries, namely 17% in the Federal Republic of Germany and France, 18% in the Netherlands and 20% in Belgium. In the latter country, the differentials were thus the same for manual and non-manual employees (20%), whilst they were smaller for non-manual workers in Italy (7% as against 11%), the Federal Republic of Germany (17% as against 20%) and the Netherlands (18% as against 21%). In France, the earnings differential among non-manual employees was higher than among manual workers (17% as against 13%).

3. THE 1974 SURVEY OF SERVICE SECTOR EMPLOYEES

132. The Community survey on the structure and distribution of earnings in the service sector (wholesale and retail distribution, banking and insurance) in 1974 was a natural sequel to the similar surveys conducted in industry in 1966 and 1972. It was also the first of its kind conducted in the nine Member States using common definitions and methods.

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[1] The SOEC did not publish a special volume giving a Community-wide synthesis for this second survey; however, the first of the two volumes on each country contains a chapter giving some comparisons of gross earnings by sex. See EUROSTAT, Special Series: "Structure of earnings in industry - 1972", 12 volumes.

The results were processed according to a standard programme prepared by the Statistical Office. The complete findings are now in the process of publication, with one volume on the methodology and one for each country[1].

In this series the Statistical Office gives breakdowns of average monthly earnings and their indices by industrial branch, sex, qualifications, size of firm, etc., enabling a comparison to be made of the differences in male and female earnings for relatively homogeneous groups. It should be noted that the structural survey of earnings in the service sector covered all the employees in the undertakings surveyed without distinction between manual and non-manual workers.

The differences between the gross monthly earnings of men and women in each homogeneous group, according to qualification category (four) and age group (two: 21-29 and 30-44) in the same industry (of the four service industries selected) in each Member State are shown in Tables 11-19.

Tables 20 (distribution) and 21 (banking and insurance) summarize the average overall earnings differential for the sector and the average (simple arithmetical mean) of the differentials by group; in this case the groups are slightly more homogeneous since they also take account of the size of the employer undertaking, using the same technique as in the 1966 and 1972 structural surveys in industry (in which the size of firm was also considered). These figures are especially interesting because, although not quite as up to date as might be wished, for the first time they cover Denmark, Ireland and the United Kingdom. They also vindicate the method used, since the figures in Tables 20 and 21 confirm the well-known fact that equal pay is much better observed in the banking and insurance industries than in the distributive trades.

In wholesale and retail distribution (Table 20) the corresponding figures for the overall differential in the sector and the average differential within the homogeneous groups are as follows:

18% and 8% respectively in Italy,
39% and 14% in France,
28% and 19% in Denmark,
32% and 20% in the Federal Republic of Germany and Belgium,
39% and 22% in the Netherlands,
43% and 29% in Luxembourg,
47% and 31% in the United Kingdom,
and 43% and 32% in Ireland.

With regard to the United Kingdom and Ireland, it must be remembered that their national legislation on equal pay only came into force at the end of 1975.

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[1] EUROSTAT - "Structure of earnings in distribution, banking and insurance in 1974", 10 volumes in the process of publication; cf. the D8 series of Tables: "Index of mean gross monthly pay (corrected) of full-time employees according to occupation, sex, qualification and age (pay of full-time male employees = 100)".

Table 21, for banking and insurance, indicates overall differentials similar to those in the distributive trades; however, they fall much more sharply (especially in seven of the countries) when earnings within the homogeneous groups are compared.

The corresponding figures for the overall differentials and the differentials within the groups are as follows:

- 25% and 4% respectively in Italy,
- 30 % and 5% in France,
- 42% and 8% in Luxembourg,
- 24% and 8% in Denmark,
- 31% and 9% in Belgium,
- 29% and 9% in the Federal Republic of Germany,
- 40% and 13% in Ireland,
- 42% and 16% in the Netherlands,

and finally 48% and 23% in the United Kingdom.

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 11 — BELGIUM

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 20	- 23	- 20	- 18	- 23
	30 - 44	- 22	- 20	- 17	- 25	- 32
	All ages	- 23	- 25	- 25	- 26	- 35
Retail distribution	21 - 29	- 24	- 30	- 19	- 22	- 26
	30 - 44	- 22	- 22	- 13	- 18	- 26
	All ages	- 17	- 27	- 18	- 21	- 29
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	- 8	- 7	- 8	- 9	- 12
	30 - 44	- 11	- 7	- 11	- 13	- 21
	All ages	- 15	- 13	- 16	- 15	- 29
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	- 20	- 9	- 4	- 4	- 11
	30 - 44	- 13	- 7	- 7	- 6	- 23
	All ages	- 21	- 8	- 12	- 11	- 32

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 12 — DENMARK

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	. (a)	- 19	- 15	- 17	- 20
	30 - 44	- 17	- 22	- 19	- 23	- 29
	All ages	- 24	- 21	- 18	- 20	- 29
Retail distribution	21 - 29	.	- 13	- 26	- 17	- 17
	30 - 44	- 26	- 25	- 20	- 17	- 35
	All ages	- 19	- 20	- 17	- 16	- 27
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	.	- 12	- 1	- 12	- 14
	30 - 44	- 7	- 7	- 8	- 17	- 30
	All ages	- 8	- 7	0	- 13	- 30
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	- (b)	- 8	- 12	- 13	- 21
	30 - 44	.	- 12	- 10	.	- 35
	All ages	- 15	- 7	- 11	- 7	- 17

(a) . = data not published (inter alia, subject to statistical secrecy).

(b) - = data not available or not collected.

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 13 — FEDERAL REPUBLIC OF GERMANY

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 18	- 13	- 16	- 16	- 19
	30 - 44	- 20	- 14	- 11	- 30	- 26
	All ages	- 21	- 18	- 13	- 28	- 30
Retail distribution	21 - 29	- 14	- 19	- 22	- 21	- 28
	30 - 44	- 15	- 20	- 27	- 24	- 31
	All ages	- 14	- 20	- 25	- 24	- 34
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	- 11	- 7	0	- 4	- 14
	30 - 44	- 17	- 15	- 9	- 8	- 26
	All ages	- 17	- 15	- 11	- 20	- 29
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	- 9	- 10	- 3	0	- 17
	30 - 44	- 11	- 16	- 11	- 11	- 27
	All ages	- 11	- 15	- 12	- 13	- 28

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 14 — FRANCE

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualificiations				
		Executives and managerial staff	Highly qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 12	- 10	- 13	- 13	- 23
	30 - 44	- 17	- 5	- 12	- 17	- 32
	All ages	- 14	- 8	- 14	- 14	- 33
Retail distribution	21 - 29	- 14	- 18	- 21	- 15	- 28
	30 - 44	- 23	- 21	- 23	- 19	- 37
	All ages	- 20	- 19	- 20	- 13	- 44
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	- 10	- 6	- 3	- 3	- 12
	30 - 44	- 13	- 8	- 6	- 19	- 32
	All ages	- 10	- 6	- 3	- 5	- 28
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	- 15	- 6	- 2	- 9	- 16
	30 - 44	- 10	- 8	- 8	- 13	- 44
	All ages	- 7	- 6	- 5	- 10	- 32

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 15 — IRELAND

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	•	- 36	- 29	- 36	- 35
	30 - 44	•	- 37	- 29	- 50	- 38
	All ages	- 20	- 35	- 36	- 37	- 44
Retail distribution	21 - 29	- 31	- 26	- 28	- 32	- 37
	30 - 44	•	- 29	- 35	- 42	- 41
	All ages	- 22	- 28	- 35	- 35	- 41
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	•	- 12	- 8	•	- 19
	30 - 44	+ 4	- 6	- 25	•	- 27
	All ages	- 1	- 6	- 9	- 41	- 38
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	-	- 24	- 22	-	- 27
	30 - 44	•	- 28	- 11	-	- 33
	All ages	•	- 30	- 24	-	- 41

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 16

ITALY

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 8	- 13	- 8	- 8	- 11
	30 - 44	- 15	- 9	- 10	- 15	- 18
	All ages	- 9	- 11	- 13	- 14	- 21
Retail distribution	21 - 29	- 9	- 10	- 3	- 2	- 4
	30 - 44	- 11	- 5	- 6	- 6	- 12
	All ages	- 10	- 7	- 8	- 7	- 14
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	+ 1	+ 1	- 3	- 4	- 11
	30 - 44	- 4	0	- 9	- 6	- 13
	All ages	- 4	- 1	- 14	- 13	- 20
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	- 8	- 3	+ 1	.	- 10
	30 - 44	- 8	- 3	- 4	- 22	- 24
		- 8	- 3	- 6	- 23	- 29

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 17

LUXEMBOURG

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 28	- 29	- 33	- 42	- 32
	30 - 44	- 32	- 28	- 31	- 47	- 35
	All ages	- 38	- 34	- 39	- 42	- 41
Retail distribution	21 - 29	- 38	- 33	- 35	- 27	- 39
	30 - 44	- 25	- 35	- 48	- 36	- 44
	All ages	- 29	- 34	- 40	- 28	- 44
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	- 14	- 12	- 12	- 13	- 18
	30 - 44	- 19	- 13	- 17	- 11	- 28
	All ages	- 19	- 16	- 25	- 20	- 38
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	•	- 5	- 9	+ 5	- 24
	30 - 44	-	- 8	•	•	- 30
		•	- 3	- 5	- 35	- 46

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 18

NETHERLANDS

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	- 23	- 17	- 18	- 18	- 20
	30 - 44	- 25	- 18	- 19	- 24	- 27
	All ages	- 33	- 28	- 31	- 25	- 39
Retail distribution	21 - 29	- 22	- 18	- 16	-	- 21
	30 - 44	- 23	- 16	- 23	-	- 29
	All ages	- 27	- 25	- 27	-	- 39
		Executives (junior management)	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	- 36	- 20	- 14	- 11	- 18
	30 - 44	.	- 13	- 14	- 11	- 17
	All ages	.	- 29	- 29	- 25	- 43
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-warning employees	ALL
Insurance	21 - 29	- 28	- 19	- 12	- 8	- 17
	30 - 44	- 32	- 12	- 13	- 18	- 24
		- 48	- 17	- 23	- 25	- 40

EARNINGS STRUCTURE IN THE SERVICE SECTOR IN 1974

TABLE 19 UNITED KINGDOM

% difference between male and female gross monthly earnings by occupation, qualifications and age group

	Age	Qualifications				
		Executives and managerial staff	Highly-qualified junior personnel	Skilled junior personnel	Unskilled junior personnel	ALL
Wholesale distribution	21 - 29	.	- 26	- 30	- 36	- 36
	30 - 44	.	- 41	- 41	- 43	- 52
	All ages	- 36	- 34	- 35	- 37	- 48
Retail distribution	21 - 29	- 28	- 26	- 36	- 42	- 38
	30 - 44	- 34	- 23	- 43	- 42	- 49
	All ages	- 32	- 25	- 37	- 32	- 45
		Executives (junior management	Highly-qualified clerical staff	Qualified clerical staff	Other employees	ALL
Banking	21 - 29	.	- 21	- 17	- 11	- 29
	30 - 44	.	- 25	- 27	- 32	- 31
	All ages	- 22	- 21	- 22	- 28	- 46
		Middle-management executives	Highly-skilled employees	Skilled employees	Other wage-earning employees	ALL
Insurance	21 - 29	-	- 11	- 21	- 16	- 29
	30 - 44	.	.	- 42	- 35	- 51
	All ages	.	- 19	- 31	- 30	- 50

TABLE 20: EARNINGS STRUCTURE IN THE DISTRIBUTION TRADES - 1974

% difference between male and female earnings, overall and by homogeneous group (according to occupation, qualifications, age, size of undertaking)

COUNTRY	I. WHOLESALE		II. RETAIL		I + II	
	Overall average (a)	Average by group ($\bar{b}$)	Overall average (a)	Average by group ($\bar{b}$)	Average of overall differentials	Average of differentials by group
BELGIUM	- 35	- 20	- 29	- 20	- 32	- 20
DENMARK	- 29	- 18	- 27	- 19	- 28	- 19
GERMANY	- 30	- 19	- 34	- 20	- 32	- 20
FRANCE	- 33	- 11	- 44	- 17	- 39	- 14
IRELAND	- 44	- 33	- 41	- 30	- 43	- 32
ITALY	- 21	- 9	- 14	- 6	- 18	- 8
LUXEMBOURG	- 41	- 33	- 44	- 25	- 43	- 29
NETHERLANDS	- 39	- 25	- 39	- 18	- 39	- 22
UNITED KINGDOM	- 48	- 33	- 45	- 28	- 47	- 31

(a) Overall difference in gross monthly pay of full-time employees (adjusted for bonuses).

(b) Arithmetical mean of the differences within the homogeneous groups (according to sex, occupation, qualifications, age and size of undertaking).

TABLE 21: EARNINGS STRUCTURE IN BANKING AND INSURANCE IN 1974

% difference between male and female earnings, overall and by homogeneous group (according to occupation, qualifications, age, size of undertaking)

COUNTRY	III. BANKING		IV. INSURANCE		III + IV	
	Overall average (a)	Average by group (b)	Overall average (a)	Average by group (b)	Average of overall differentials	Average of differentials by group
BELGIUM	- 29	- 9	- 32	- 8	- 31	- 9
DENMARK	- 30	- 7	- 17	- 9	- 24	- 8
GERMANY	- 29	- 9	- 28	- 8	- 29	- 9
FRANCE	- 28	- 5	- 32	- 4	- 30	- 5
IRELAND	- 38	- 6	- 41	- 20	- 40	- 13
ITALY	- 20	- 2	- 29	- 6	- 25	- 4
LUXEMBOURG	- 38	- 12	- 46	- 3	- 42	- 8
NETHERLANDS	- 43	- 17	- 40	- 14	- 42	- 16
UNITED KINGDOM	- 46	- 24	- 30	- 22	- 48	- 23

(a) Overall difference in gross monthly pay of full-time employees (adjusted for bonuses).

(b) Arithmetical mean of the differences within the homogeneous groups (according to sex, occupation, qualifications, age and size of undertaking).

E - THE THREE JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES ON ARTICLE 119 OF THE EEC TREATY

133. As a result of court actions brought in Belgium by Miss Defrenne, an air hostess with SA Sabena, the Court of Justice of the European Communities was called upon, under Article 177 of the EEC Treaty, to give three important preliminary rulings on the interpretation of Article 119 of the EEC Treaty: the judgment of 25 May 1971 in Case 80/70, the judgment of 8 April 1976 in Case 43/75 and the judgment of 15 June 1978 in Case 149/77[1].

I. THE JUDGMENT OF 25 MAY 1971 IN CASE 80/70

134. Article 119 of the EEC Treaty, which lays down the principle that men and women should receive equal pay for equal work, extends the idea of "pay" to which it refers to any consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

By order of 4 December 1970, the Belgian Conseil d'Etat asked the Court of Justice of the European Communities, pursuant to Article 177 of the EEC Treaty, (Case 80/70) to give rulings on the following questions:

- firstly, whether a retirement pension granted under the terms of the social security financed by contributions from workers, employers and by State subsidy, constitutes a consideration which the worker receives "indirectly" in respect of his employment from his employer;

- secondly, whether the rules can establish, without infringing Article 119, a different age limit for men and women crew members in civil aviation;

- finally, whether air hostesses and stewards in civil aviation do the same work.

By its judgment of 25 May 1971[1], the Court answered the first question in the negative and ruled that as a result the other two questions did not call for a reply.

While emphasizing that "consideration in the nature of social security benefits is not in principle alien to the concept of pay", the Court ruled that this concept, as defined in the second paragraph of Article 119, could not be extended to "social security schemes or benefits, in

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[1] Cf. page 37 of this Report.

particular retirement pensions, directly governed by legislation without any element of agreement within the undertaking or the occupational branch concerned, which are obligatorily applicable to general categories of workers".

In support of this, the judgment notes that "these schemes assure for the workers the benefit of a legal scheme, the financing of which workers, employers and possibly the public authorities contribute in a measure determined less by the employment relationship between the employer and worker than by considerations of social policy".

Hence the finding that "the part due from the employers in the financing of such schemes does not constitute a direct or indirect payment to the worker". Moreover, "the worker will normally receive the benefits legally prescribed not by reason of the employer's contribution but solely because the worker fulfils the legal conditions for the grant of benefits".

Therefore, "situations involving discrimination resulting from the application of such a system are not subject to the requirements of Article 119 of the Treaty" (1).

II. THE JUDGMENT OF 8 APRIL 1976 IN CASE 43/75

135. Still in connection with actions brought by Miss Defrenne, the Cour du Travail of Brussels, in a judgment of 23 April 1975, referred the following questions to the Court of Justice of the European Communities (Case 43/75):

(i) Does Article 119 introduce directly into the national law of each Member State of the European Community the principle that men and women should receive equal pay for equal work and does it, therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance, and if so, as from what date?

(ii) Has Article 119 become applicable in the internal law of the Member States by virtue of measures adopted by the authorities of the European Economic Community (if so, which and as from what date?) or must the national legislature be regarded as alone competent in this matter?

In its judgment of 8 April 1976, the Court rules that Article 119 was directly applicable ("self-executing" nature) but only within certain limits.

The Court ruled that the principle that men and women should receive equal pay, laid down by that article, "may be relied upon before the national courts" and that the latter "have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin in legislative provisions or collective labour agreements, as well as cases in which men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public".

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(1) On 31 December 1976 the Commission sent the Council a proposal for a Directive, based on Article 235 of the EEC Treaty, concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security.

The Court arrived at this ruling by first making a distinction, within the whole area of application of Article 119 "between, first, direct and overt discrimination which may be identified solely with the aid of the criteria based on equal work and equal pay referred to by the Article in question and, secondly, indirect and disguised discrimination which can only be identified by reference to more explicit implementing provisions of a Community or national character". The direct applicability of the principle of equal pay has therefore been limited only to direct and overt discrimination as described above.

The Court emphasized at the same time that the complete implementation of the aim pursued by Article 119 "may in certain cases involve the elaboration of criteria whose implementation necessitates the taking of appropriate measures at Community and national level" (in the sense for example of broadening the strict criterion of "same work" to the concept of work of equal value and also criteria relating to indirect or disguised discrimination).

The Court affirms that neither the Member States in their Resolution of 30 December 1961 nor the Council in Directive 75/117/EEC of 10 February 1975 were able to modify the date by which the principle laid down in Article 119 had to be fully effective pursuant to either the EEC Treaty or the Treaty of Accession. Nevertheless, the Court makes a distinction between the theoretical date for implementing this legal standard - i.e. 1 January 1962 in the original Member States and 1 January 1973 in the new Member States and that on which it actually took effect, connected with its own judgment. For compelling reasons of "legal certainty" and because of the serious economic consequences which might result from the theoretical date of implementation, it has stated that "except as regards those workers who have already brought legal proceedings or made an equivalent claim, the direct effect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of this judgment".

In this judgment, and at a more general level, the Court also recognizes the double aim, which is at once economic and social, of the principle of equal pay which "forms part of the foundations of the Community". The Court emphasizes the importance of the "social objectives" of the Community, "which is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of the living and working conditions of their peoples, as is emphasized by the preamble to the Treaty".

III. THE JUDGMENT OF 15 JUNE 1978 IN CASE 149/77[1]

136. By judgment of 28 November 1977 the Cour de cassation of Belgium decided to postpone its decision on an appeal by Miss Defrenne until, in pursuance of Article 177 of the EEC Treaty, the Court of Justice of the European Communities had given a preliminary ruling (Case 149/77) on the following questions:

- whether the principle of equal pay laid down by Article 119 can be interpreted as prescribing, in a general way, equality in respect of the working conditions applicable to men and women, so that the inclusion in the contract of employment of an air hostess of a clause stipulating that the contract will be terminated when the employee reaches the age of 40 years (while it is common ground that the contract of air stewards carrying out the same work is not subject to such a time limit) would constitute discrimination as prohibited by the said Article 119, if such clause could have financial effects, particularly with regard to the termination of service allowance and pension?

- or whether there is in Community law a general principle prohibiting discrimination on grounds of sex with regard to the conditions of employment and working conditions of men and women?

In its judgment of 15 June 1978, the Court replied in the negative to the two questions. As regards the first point, the Court considers that Article 119 is strictly limited to the problem of discrimination in wages and that it constitutes a special rule whose application is tied to precise facts. "In particular, the fact that the stipulation of certain conditions of employment (such as the fixing of a particular age limit) may have financial consequences is not an adequate reason for including such conditions in the scope of Article 119". The scope of Article 119 cannot therefore be extended to elements of the employment relationship other than those which it has explicitly envisaged, otherwise the direct applicability of this provision would be compromised and there would be an encroachment on the scope of Articles 117 and 118 of the Treaty, where the conditions of employment and working conditions are considered in the context of a harmonization of the social systems of the Member States and an approximation of their laws. The Court confirms firstly that the elimination of discrimination on grounds of sex undoubtedly enters into this programme of social policy and refers, secondly, to the Council Resolution of 21 January 1974, (concerning a social action programme) and to 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.

As regards the second question raised by the Cour de cassation of Belgium, the Court of Justice recognizes that respect for fundamental

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[1] Translator's note: The quotations from the Court's judgment in Case 149/77 are given in a provisional translation, since the official English text of the judgment was not available at the time this Report was prepared.

human rights forms part of the general principles of Community law and that the elimination of discrimination on grounds of sex enters into these fundamental rights.

It emphasizes nevertheless that at the time of the facts submitted for judgment by the Belgian courts, there was no concrete rule in the field of working conditions (except pay), apart from the programme contained in Articles 117 and 118 of the Treaty as referred to above.

In conclusion, the Court ruled that at the time in question, "there was, as regards the relationship between employer and employee under national law, no rule of Community law prohibiting discrimination between men and women in the matter of working conditions other than the requirements as to pay referred to in Article 119 of the EEC Treaty".

CONCLUSIONS

137. The main object of this report is to ascertain from a legal standpoint the situation in respect of the transposing of Council Directive 75/117/EEC 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, in national laws.

The essential purpose of this directive is to specify procedures likely to facilitate the implementation of the principle of equal pay and at the same time to generalize certain minimum standards of protection for female workers.

The first fact which emerges is that general laws or regulations specifically for the purpose of implementing this principle of equal pay now exist in seven Member States : Equal Pay Act 1970 (amended by the Sex Discrimination Act of 1975) in the United Kingdom, Law of 22 december 1972 in France, Anti-Discrimination (Pay) Act 1974 (amended by the Employment Equality Act 1977) in Ireland, Grand Ducal Regulation of 10 July 1974 in Luxembourg, Law of 20 March 1975 in the Netherlands, Law of 4 February 1976 in Denmark and Law of 9 December 1977 in Italy. It must however be pointed out that the Dutch law of 20 March 1975, mentioned above does not apply to the staff of the public sector.

One Member State, Belgium, has chosen as its legal instrument a national and inter-professional collective agreement on employment which was concluded by the two sides of industry within the Conseil National du Travail (National Employment Council) on 15 October 1975 and made compulsory for the private sector by a Royal Decree of 9 December 1975. This is an agreement of unspecified duration which may, however, be revised or even terminated at the request of one of the contracting parties with a period of notice of 6 months (1).

In the Federal Republic of Germany, no new specific national provisions were considered necessary, mainly because of the fact that recourse to labour courts is already open (Article 2 of the Directive) to all persons

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(1) The Economic Reorientation Law of 4 August 1978 (Title V of which is concerned with equal treatment of men and women as regards working conditions, including remuneration) has since brought about legal security in the private sector and ensured coverage of the public sector. Belgium has therefore joined up with the seven other Member States quoted earlier.

considering themselves victims of wage discrimination on the basis of Article 3 of the Basic Law of 1949.

It is moreover on this basis (Article 3 of the Basic Law lays down that "Men and women shall have equal rights" and that "No persons shall be placed at a disadvantage or advantage on grounds of their sex") that the Federal Labour Court has established a body of case law on the application of the principle of equal pay for the same work and for work of equal value (Article 1 of the Directive). In this respect, it should be noted that the Danish Law of 4 February 1976 uses only the terms "same work" and not "work of equal value".

Although it may be said that in principle, and in general terms, there is no longer in the Member States any law, regulation or administrative provision containing pay discrimination clauses (Article 3 of the Directive), certain problems may, however, still arise, for example in some regulations governing State officials or officials in the semi-public sectors, which still provide for various benefits in cash or kind (household or residence allowance, accomodation, travel vouchers) connected with the concept of "head of household" which is always understood as being in the masculine gender (in particular in Belgium, France and Luxembourg).

In seven Member States (Belgium, France, Ireland, Italy, Luxembourg, Netherlands and United Kingdom), there is a rule of substantive law stipulating that discriminatory clauses in collective agreements are null and void or compulsorily amended (Article 4 of the Directive). Such a provision does not exist either in the Federal Republic of Germany or in Denmark.

As regards the protection of workers against dismissal following a complaint or action aimed at obtaining equal pay (Article 5 of the Directive), it is found that in six countries (Belgium, Denmark, France, Ireland, Luxembourg and the United Kingdom) employers in infringement of this rule are obliged to pay compensation or fines; a judicial decision for reintegration in the firm in a new or in the original post is generally followed, if not complied with, by damages paid to the dismissed employee and eventually by additional fines paid by the employer. In the Netherlands, the unilateral termination of a contract of employment is subject to the director of the regional Labour office's prior approval. In the Federal Republic of Germany and Italy, such unwarranted dismissals are considered to be illegal and declared null and void.

As regards the existence of "effective means" to ensure that the principle of equal pay is observed (Article 6 of the Directive), four Member States - Belgium, France, Italy and Luxembourg - have entrusted supervision in undertakings to the Works Inspectorate. Naturally female workers (or their representatives, in particular trade unions) who consider themselves wronged, do also have the possibility of bringing proceedings. Luxembourg is the only country in that group which has no Committee or Commission on the employment of women. It must however be pointed out that the Decree instituting such a Committee in Italy was annulled following an appeal and that a new Decree is being drawn up.

In two Member States (Ireland and the Netherlands) where there is no administrative supervision of equal pay at factory level, workers must, before bringing an action before the court (Labour Court and Kantonrechter respectively), apply to an "Equality Officer" (Ireland) or to the "Equal Pay Commission" (Netherlands). Moreover, in Ireland, the "Employment Equality Agency" can refer the matter to an "Equality Officer" when an employer has failed to observe the law on equal pay and the employee cannot reasonably be expected to do so herself.

In the three other Member States (United Kingdom, Denmark and Federal Republic of Germany) employees (or their representatives) are entitled only to apply to the competent courts if they have not been able to obtain satisfaction through the normal channels in operation in all Member States as provided by trade unions, staff representatives, works' councils or conciliation boards. It should be noted that in the United Kingdom, the "Equal Opportunities Commission" can assist persons who so desire but cannot refer the matter to the Labour Court if it is not reasonable to expect the plaintiff to do so herself. In such a case, only the Secretary of State for Employment may do so. However, this "Equal Opportunities Commission" has other important powers such as that of carrying out, on its own initiative, official investigations in undertakings and sending them, where appropriate, "summonses" to put an end to discriminatory practices. In Denmark and in the Federal Republic of Germany,

any administrative control in undertakings is considered as contrary to practice and the national legal system and the public authorities entrust the task of supervising the proper application of the principle of equal pay to the two sides of industry, in particular trade unions in the framework of their autonomy and responsibility. Although an "Equality Council" functions in Denmark, no specific body of this type has yet been set up in the Federal Republic of Germany.

Finally, as regards the question of whether the measures to inform employees of their rights have been sufficient (Article 7 of the Directive) it should be noted that in France the display of the Law of 22 December 1972 is obligatory at places of employment and places where employees are engaged, while in Belgium Collective Agreement No 25 must be annexed to the Works Regulations of the undertakings. In Ireland, the United Kingdom, the Netherlands and Denmark, the content of laws adopted and information on the means available to employees to enforce their rights have been widely publicised by all media and through the distribution of leaflets or explanatory brochures. In Italy meetings have been organised, even at places of employment, by trade unions. In Luxembourg the trade union and feminist movements have ensured publicity in their journals and newspapers. In the Federal Republic of Germany, the Federal Government has sent Directive 75/117/EEC to the federations of the parties to collective agreements and requested them to ensure that it is observed.

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138. At present, any persons considering themselves wronged through failure to apply the principle of equal pay can enforce their rights before the competent courts either directly on the basis of Article 119 of the EEC Treaty, within the scope of direct applicability determined by the Court of Justice of the European Communities in its judgment of 8 April 1976 (1), or on the basis of laws and regulations transposing Directive 75/117/EEC of 10 February 1975 into national law.

(1) Cf. page 128 of this Report.

As has already been stated, the purpose of this Directive was to make it easier for women to bring court proceedings by providing adequate information to workers regarding their rights and guaranteeing them protection against any dismissal following complaints made at factory level or following judicial proceedings brought with a view to having the principle of equal pay enforced.

However it needs must be noted that actions are non-existent in Luxembourg and Denmark, almost non-existent in Belgium, France, Italy and the Netherlands, extremely rare in Ireland (of 114 cases referred since 1 January 1976 to the Equality Officers, 11 have been the subject of proceedings before the Labour Court) and more common only in the United Kingdom (during the two years 1976 and 1977, approximately 2.500 individual actions were brought before an industrial tribunal, of which fewer than half were the subject of a hearing, the others have been settled amicably or by conciliation).

In an attempt to explain this small number of actions - given that the situation is not perfect in any Member State - it must first be stated that if some women are aware of their rights (Article 119, Directive of 10 february 1975 and National Laws) most of them are still unaware of the means at their disposals and of the procedures that they can follow to enforce their rights.

Fresh efforts must therefore be undertaken to ensure that information and guidance are available to everyone. Emphasis should also be given to the important role played by, for example, the Equal Opportunities Commission in the United Kingdom in giving advice and assistance, a role which could usefully be extended to all Committees of this type. However, the action of trade unions, whether or not through staff representatives, works' councils or joint committee is fundamental, not forgetting representation or legal assistance, or even direct action to protect the rights of their members, which in certain countries is possible even against the will of individual female workers.

Women are too often afraid that, by claiming equal pay, they will get themselves dismissed, above all in the climate of economic crisis and unemployment which has prevailed in Community countries for almost five years. It appears in this respect that national measures for "protection"

against dismissal, in accordance with Article 5 of Directive 75/117/EEC, in reality consist, in the majority of cases, merely of damages or compensation, which does not constitute an adequate "deterrent". The Commission points out that Article 5 of the proposal for a directive which it submitted to the Council requested Member States "to take the necessary measure to prevent any dismissal, etc. etc.". In this respect it is worth noting here that no case of dismissal, likely to have constituted a reaction from an employer regarding a complaint at the level of the enterprise, has been brought to the attention of the competent authorities in each country. However it would appear that in all Member States, it is most difficult, for trade unions notably, to have a real control over the reasons for an employee's dismissal.

On the other hand and with a view to giving women easier access to legal proceedings, it would be equally desirable to generalise the granting of free legal aid, having regard naturally to level of income.

Women are not, however, always aware of the discrimination to which they are subject, whether it is a question of their pay, the male worker to whom they can be compared, and above all what is meant by work "of equal value".

As regards the concept of pay, Article 119 of the EEC Treaty lays down that this 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". Article 1 of Directive 75/117/EEC makes an overall reference to "all aspects and conditions of remuneration". In this sphere, several problems have arisen (apart from the particularly important one of social security benefits settled by the judgment of the Court of Justice of the European Communities of 25 May 1971 (1)) concerning for example :

- various benefits, in cash or in kind, connected with the concept of "head of household", the conditions for the grant of which to men and women will have to be revised in accordance with the more modern concept (in which there is no discrimination) of equal status for the two members of a couple where family or parental responsibilities are concerned;

(1) Cf. p. 127 of this Report.

- higher basic salary for men who carry out at night the same work as women during the day, although these basic wages should be the same; the less pleasant conditions of night work should be compensated solely by specific and properly defined supplementary payments;

- higher wages (or bonuses) granted only to men whom the employer is "able" to put on night work or to whom he could give heavier work, although he does not actually do so (courts have considered such practices as discriminatory);

- the granting also to men only of higher wages (or bonuses) justified by additional duties which are more or less fictitious or practically negligible (this is illustrated by the case law established in the concept of "genuine material difference" in the United Kingdom Equal Pay Act);

- the rejection by the courts of the presumption of a lower average output of women. On this important point, it should be recalled that the Commission had already indicated in its recommendation to Member States of 20 July 1960 that "factors affecting the cost of employment (including specific protection measures drawn up in favour of women) or the output of female workers should not be taken into consideration in the case of work at time rates".

  As regards the difficulty of finding a male worker to whom the female worker can be compared generally in the same workshop or establishment or even in the same undertaking, it appears that one suitable interpretation is contained in the Netherlands law of 20 March 1975 which lays down that:

- "for the comparison of two wages, reference shall be made to the wage normally paid by the undertaking employing the worker for whom the comparison is made to an employee of the opposite sex performing work of an equal value or, failing this, of a very similar value".

- "If in the undertaking employing the person concerned no work of equal value or very similar value is carried out by an employee of the opposite sex, reference shall then be made to the wage paid by another undertaking, as far as possible of the same type, belonging to the same business sector, to an employee of the opposite sex performing work of an equal value or, failing this, of a very similar value".

This leads us, however, to the problems of interpreting the concepts of "same work" and "work to which equal value is attributed" contained in Article 1 of Directive 75/117/EEC.

It is not possible in this connection that **narrow interpretations** on the following lines could be accepted:

- on the one hand "mixed duties" (that is duties which are technically identical and are carried out simultaneously in the same undertaking (even in the same establishment or workshop) under the same conditions by men and women;

- on the other hand, duties to which a scientific job evaluation system applied in the undertaking in question has attributed an "equal value".

Firstly, there have proved to be in practice very few "mixed duties" in the narrow sense in all branches of activity in the Member States and secondly, the proportion of undertakings which have actually introduced a scientific job evaluation system is also very small throughout the Community.

If these narrow interpretations were accepted they would completely negate Directive 75/117/EEC, the aim of which is on the contrary to broaden the concept of "same work" to that of "work of equal value" adopted by Convention No 100 of the ILO, ratified by the nine Member States; this aim was recognized by the Court of Justice of the European Communities itself in its judgment of 8 April 1976[1]. Worse still, such **interpretations** would constitute a considerable step backwards by comparison with that adopted hitherto by all the institutions of the Community with regard to Article 119 itself.

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[1] Cf. p. 129 of this Report.

The "value of the work" of the two posts or duties which are to be compared must therefore be established, where there is in the undertaking or undertakings in question no appropriate system for evaluating jobs, simply "on an equitable basis" having regard to the available data, in accordance with the terms used by the Netherlands law of 20 March 1975. It should be possible for this evaluation "on an equitable basis" to be carried out without any great difficulty by the employers, staff delegates or trade union representatives and by works inspectors, Equality Officers and the courts, even if on occasions the decisions of certain courts have unfortunately been too restrictive.

One criterion which might appear simplistic but is sometimes effective is to consider whether, if a man were placed in the post occupied by a woman, he would receive the same wage as hers or would demand an increase to remain there.

Having regard to all these considerations, it appears that, for the purpose of actually implementing at works level national laws on equal pay, it will be possible to make significant progress only if women themselves, whose resignation or discouragement in this respect can be understood, assume their own responsibilities, with the assistance of trade union organizations and the Committees or Commissions responsible for promoting equal opportunities for women.

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139. As regards developments in the content and application of collective agreements, an examination of the actual situation shows that new progress has been made throughout the Community but more especially, naturally, in the new Member States.

It is however, necessary to make one preliminary remark, namely that in some countries it is difficult to assess the exact situation with regard to collective agreements, above all where these are not deposited

with the public authorities or are not centralized or recorded by the two sides of industry themselves. Special mention should be made here of the creation in Belgium, in the Ministry of Employment and Labour, of an "administrative cell" responsible for carrying out a systematic analysis of collective agreements in order to reveal any discriminations and anomalies which still exist (1). It would obviously be of the greatest importance if a comparable initiative could be undertaken in the other Member States, either by an administrative body or by the two sides of industry themselves.

Be that as it may be, it appears from the information collected by the Commission that direct discrimination figuring explicitly in collective agreements in the form of different salary scales for men and women or abatements applicable to women's wages has almost totally disappeared; in any event it should be pointed out that Article 4 of Directive 75/117/EEC lays down that such clauses are null and void.

However the situation is much more complex and delicate as regards the systems of job classification adopted in collective agreements and their practical application in undertakings. As has already been said in Part B of this report, it is here that there are possibilities of indirect or disguised discrimination, the importance of which was emphasized by the Court of Justice of the European Communities in its judgment of 8 April 1976.

It can be ascertained that there is still an **underestimation** of certain posts occupied exclusively or principally by women, as a result of the underestimation of "qualities" attributed to women workers (dexterity, meticulousness, precision, etc.) or of the "unpleasantness" of certain posts traditionally occupied by women (sustained attention, repetitiveness, monotony, etc.).

Other examples of indirect or disguised discrimination may take the form of a sub-classification of women within occupational categories either

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(1) Cf. in particular page 87 of this Report.

"formally unisex" or insufficiently differentiated, leading to occupational categories which are now filled almost exclusively by women.

As already stated in the Resolution of the Conference of Member States of 30 December 1961, it is essential to eliminate "practices such as the systematic downgrading of female employees, the adoption of different qualification rules for men and women and the use of criteria for evaluating jobs for the classification of workers which have no relation to the objective conditions for carrying out the said jobs".

There is a marked difference between the employment of women and the employment of men. Women are too often employed in different posts, different jobs, different sectors of the undertaking and different sectors of the economy. Progress will therefore be achieved by integrating all jobs.

Moreover, great attention should also be paid to the risk, which has been mentioned many times by the Commission, of a tendency in collective agreements to a purely formal observance of the principle of equality in fixing minimum or basic wage rates which are strictly equal for men or women but which in reality are exceeded to different degrees by the wages actually paid to men and women.

It is clear from everything that has been said that fresh efforts will still have to be made by the two sides of industry, in the framework of their own autonomy and responsibility, to ensure that the principle of equal pay is correctly applied, with regard to both the structure and the use of job classification systems and with regard to the fixing of contractual and actual wages. On this latter point, the application of wage policies aimed at a preferential increase in the lowest wages will help to improve substantially the situation of women employees.

Of course, the public authorities for their part must, in accordance with Article 6 of the Directive 75/117/EEC, introduce "effective means"

to ensure that the principle of equal pay is observed. In those countries with a Works Inspectorate, this should be reflected in particular in an increase in its activity in this respect during regular visits to undertakings. Thinking in particular of the other Member States, the Commission regrets that Article 6 of its proposal for a Directive, which called for the organization of supervision at the level of undertakings, coupled with penalties, has not been adopted by the Council.

In view, moreover, of the information provided on the activities of Committees or Commissions responsible for promoting the employment of women and equal opportunities for women, the Commission would like such bodies firstly to be set up in all Member States and secondly to be given adequate powers and means.

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140. On the basis of all the information relating to laws and agreements obtained from Governments and the two sides of industry for the purpose of drawing up this report and in the light of statistical data now available at both Community and national level, the Commission has established that since the end of 1972 (1) more steps forward have been taken in the original Member States, above all the Netherlands, and that since the end of 1973 (1), substantial progress has been achieved in Ireland and the United Kingdom, while the situation in Denmark has been improved since the signature of the April 1973 conventional agreements.

Nevertheless, the Commission regrets having to formulate a general conclusion similar to that already submitted to the Council in previous reports, namely that the principle of equal pay has still not been completely implemented in practice in any of the Member States of the Community, even though some of them have made considerable progress towards this aim.

(1) It is pointed out that the last report by the Commission on the original Member States related to the situation on 31 December 1972 and that the report on the new Member States described the situation on 31 December 1973.

For this reason, the Commission, having regard to the statements, guidelines and recommendations formulated in the first three sections of these conclusions and relating to strengthening the role of the national public authorities, the two sides of industry and women themselves, not forgetting the effective cooperation it will be able to obtain from the Council of the Communities, the European Parliament, and the Economic and Social Committee, intends :

1) To initiate, pursuant to Article 169 of the EEC Treaty, infringement procedures against certain Member States which have still not applied completely Council Directive 75/117/EEC of 10 February 1975, as it appears from the first part of the present conclusions, and based on the detailed description of the legal situation which constitutes the first chapter of this Report to the Council.

2) To request employers' and employees' organizations to meet at European level where, within the framework of their autonomy and individual responsibilities, they would seek means and ways of eliminating indirect discrimination, particularly by the use of job classification systems. With this in view, the Commission will set up an ad hoc working group (social partners only), within the general framework of "Special Group Article 119's" mandate, following the Special Group's approval of such an initiative at its tripartite (representatives of Governments and of social partners) meeting held on 27 September 1978.

3) To follow actively the application in the Member States of Council Directive 76/207/EEC of 9 February 1976 (1) 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. The Commission considers that the achievement of equal pay will be greatly facilitated by the implementation from 12 August 1978 of this second Directive which should make it possible to remove the divisions between the employment of women and the employment of men ; - women receiving better guidance, obtaining better vocational training, having access to all posts and enjoying the same promotion conditions. A report will of course be submitted to the Council on the application of this Directive, according to the conditions laid down in Article 10 thereof.

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(1) It is worth underlining the importance of the Council's adoption, on 27 November 1978, of a new Directive, proposed by the Commission, concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security.

The Commission recalls in this respect the approach which it adopted in the document drawn up for the Tripartite Conference of 27 June 1977, entitled "Growth, stability and employment - stocktaking and prospects" : "A fundamental change is occurring in the Community towards the equal sharing of tasks and responsibilities between men and women. There is a need to improve job prospects for women in line with this. There is also a need to tackle discriminatory legislation and practices under the Community directive on equal treatment and to ensure that efforts are maintained despite current employment difficulties".