COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(73) 3000 final Brussels, 8 July 1973

REPORT
OF THE COMMISSION TO THE COUNCIL
ON THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY
FOR MEN AND WOMEN
SITUATION ON THE 31 DECEMBER 1972

(Article 119 of the Treaty establishing the EEC and Resolution
of the Conference of the Member States of 30 December 1961)

INDEX - SUMMARY

I N T R O D U C T I O N

1. Within the framework of the tasks conferred on the Commission by Article 155 of the Treaty establishing the EEC, and in order to carry out the duty entrusted to it by the Resolution of 30th December 1961 of the Conference of Member States to ensure the respecting of obligations undertaken in common, the Commission has drafted and submits to the Council the present report on the state of application as at 31st December 1972 of the principle of equal pay for men and women as set out in article 119 of the Treaty.

As in the past the Commission has appealed for the collaboration of governments, trade unions and employer organisations (social partners) and has sent them a detailed questionnaire. Initially the report was to relate to the changes occurring in the situation between 31st December 1968 (the date retained by the previous report) and the 31st December 1971. However, for various reasons, most notably the considerable delay in receiving certain national replies, it has not been possible to keep to the dates envisaged for the study and the Commission considered that the 31st December 1972 should be used as the relevant date as it immediately preceded the enlargement of the Community.

The information provided by the Governments and employers and trade union organisations was brought up-to-date during the course of a meeting of the Article 119 Special Group which was held on the 2nd and 3rd April 1973. Actions taken on various matters even at the beginning of this year were mentioned. Consequently, it was no longer viable to reproduce (as had become the usual practice) the now largely out-of-date replies in their entirety either within or as an annex to the report (1).

In relation to the particularly appropriate date of the 31st December 1972 : the report is not restricted to the 4 year reference period of 31st December 1968 to 31st December 1972, but strives to present a survey which is both brief and as complete as possible concerning the changes occurring in the six Member States since 1958. It brings to light not only the irrefutable progress made in the field of wage equality, but also the gaps and inadequacies which still persist and for whose elimination the Commission proposes a number of concrete measures.

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(1) Stencilled copies of these national replies are available at the Commission from the Directorate-General for Social Affairs.

The report consists of 4 parts. The first part sets out the situation at the legal level - starting with an analysis of the nature and portent of Article 119 and examining the different legislations and national regulations. The second part reviews developments in collective agreements, and a third part the changes in the actual situation. The fourth part is devoted to the statistical aspects of the problem, i.e. in particular to the important information which has been and will be obtained from the Community enquiries on the structure and distribution of salaries.

Two new additions to this report should be pointed out : the first consists of an appraisal of contractual social security systems which are complementary to one another, which follow on the decision given on the 25th May 1971 by the Court of Justice of the European Communities in case No. 80/70. The second innovation is the extension of the report to cover several more general problems relating to the employment of women and certain measures taken to help them towards better work and working conditions to the extent that these have an influence in the field of wages.

The final part presents the "Conclusions" of the Commission which establish the lines of action to be followed by all the interested bodies, i.e. : public authorities, employer-worker organisations (social partners) and by the Commission itself.

This report only concerns the 6 original Member States of the European Communities. An additional report on the situation in the three new Member Countries is now being drafted.

A. THE LEGAL SITUATION

Foreword

2. The main question which arose from the very beginning, at the legal level, was that of whether Article 119 constituted a provision that could be directly applied. Had it done so, in fact, it would have created rights for individuals which national legal authorities were bound to safeguard.

The EEC Treaty contains a series of provisions which have been recognised as directly applicable by the Court of Justice of the European Communities. According to this jurisprudence, this character has to be accepted for all those provisions which contain precise, complete obligations and which do not give the States concerned any right to exercise discretion in such a way as to exclude either all or some of the effects of their obligations under the Treaty. Consequently, these provisions can be invoked before a national judge, if the State concerned allows the stipulated deadline to pass by without complying with the obligations the provisions impose on it.

As far as Article 119 is concerned, one finds that it meets with these criteria in a different way according to whether the principle of equal wages has to be put into effect in the relationship between the States and individuals, on the one hand, or in the relationship between individuals, on the other. While, in the first instance, it is evident that the obligation stemming from Article 119 binds the Member States directly - since the date which Article 119 lays down for the carrying out of this obligation is long since past - it seems, on the other hand, that one cannot very well assume that Article 119 is directly applicable to the relationship between individuals. One notes, above all, that the aforementioned jurisprudence of the Court of Justice has been developed through the interpretation of provisions of the Treaty concerning the relationship between States and individuals. In order to be directly applicable to the relationship between individuals, Article 119 would have had to be drafted objectively and addressed to individuals, as is the case for Article 85 of the EEC Treaty, for example. However, Article 119 refers solely to the Member States.

In addition, the problem of wage disparities in this sphere is very complex and demands various and multiple actions for its solution. The

putting into effect of the principle of equal wages ought to be the result of the action which the States are obliged to take under the terms of Article 119.

A fortiori this conclusion applies to Convention No. 100 of the ILO, which has now been ratified by all the Member States : by Belgium in 1952, by France in 1953, by Germany and Italy in 1956, by Luxembourg in 1967 and by the Netherlands in 1971. In fact, the obligations (1) which this Convention imposes on the States which have ratified it are of no greater legal scope than those which result from Article 119 of the EEC Treaty, backed-up by the Resolution of the Conference of the Member States of 30 December 1961.

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(1) Article 2 of the said Convention stipulates that :

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of :

   a) national laws or regulations;
   b) legally established or recognised machinery for wage determination;
   c) collective agreements between employers and workers; or
   d) a combination of these various means.

I. The right to an equal wage

3. As we have seen, the only rights which can be invoked before a national court are those following from national laws and statutes or, possibly, from a collective agreement or an individual work contract.

It is clear that, within a country, two methods can be used, either separately or together, by the public authorities :

- through legislation, the worker can be given a personal right to an "equal wage", quite independently of the contents of collective agreements;
- signatories of collective agreements can be obliged to include the principle of equality in their agreements and, by this very token, undertake to respect it.

The second method, when used in isolation, is undeniably inadequate : indeed, on the one hand, not all workers are covered by collective agreements and, on the other hand, effective penalties are difficult to establish and, furthermore, to apply.

This difficulty was, moreover, recognised by the Resolution of the Conference of the Member States of 30 December 1961, in which the signatories declare that they "will take ... the appropriate steps ... in order to ensure that the principle of equal remuneration for men and women is applied to female workers, in such a way that this principle might be protected by the courts. These steps, which will entail either legal and statutory measures or, when this method is organised and adequate, the intervention of compulsory collective agreements, ought to result in the principle of equal wages for men and women being put into effect".

4. In certain States, the right to equal remuneration was recognised by the law before the Treaty of Rome. Thus, in Germany, this right has featured in the Constitution of several Länder since 1945; in 1949, the Constitution of the Federal Republic laid down that "Men and women have equal rights" and that "nobody may be placed either at an advantage or at a disadvantage because of his or her sex" (Art. 3).

The principle of prohibiting discrimination is reiterated in the law on the organisation of companies of 11 October 1952, in the new law on the organisation of companies which came into effect on 19th January 1972 and in that of 5 August 1955 on staff representation. Doctrine and jurisprudence - particularly that of the Federal Labour Tribunal - consider that Article 3 of the Constitution is a positive legal standard directly applicable to equality in respect of pay and just as binding for State authorities as for signatories of collective agreements. This results in the complete invalidity of all discriminatory clauses in agreements which could, ultimately, entail the invalidity of all agreements.

In Italy, Article 37 of the Constitution, which has been in force since 1 January 1948, stipulates that "a woman who works has the same rights and, if the work is equal, receives the same payments as a working man". After a certain amount of initial hesitation, doctrine and jurisprudence have recognised this provision as having binding force; it has a direct bearing on the relationship between individuals and results in a personal right to wage equality, which can be appealed to in law. Clauses in contracts which are contrary to the constitutional provision are null and void and should by right be replaced by the latter. Moreover, specific provisions exist for the civil service, female workers employed by the State and some occupational categories (caretakers, etc.).

In Belgium, until 1967, only those female workers covered by a collective agreement, whether compulsory or not (unless, in the second case, a clause to the contrary was included in an individual work contract), could assert their claims to equal wages. In 1967, the Royal Decree No. 40 of 24 October 1967 (since replaced by the law of 16 March 1971) laid down that "any female worker can bring an action, before the competent legal authorities with the aim of getting the principle of equal remuneration for male and female workers applied". The law of 5 December 1968 gave Trade Unions the right to take legal action to defend the rights to which their members are entitled under collective agreements. No mandate is necessary and such action can be taken even against the wish of the workers. This law also foresees that the Minister of Work and Employment could refuse to give binding force to a discriminatory collective agreement and that the Royal Decree which would have extended such a collective agreement outside the immediate parties to it could be repealed. Further, an appeal to the Council of State can be presented against discriminatory collective agreements which are made compulsory. The repeal pronounced by the Council takes effect "erga omnes"(1).

(1) Binding on persons not directly parties to the agreement.

In France, the decrees passed in 1946 under the system for the fixing of wages by the Authorities cancelled the provisions on the lower rates for female workers authorised previously. The average, minimum and maximum wages were therefore fixed at the same rates for men and women, on the basis of the occupational branch and skills (unskilled labourer, trained labourer, specialised worker, skilled worker, highly skilled worker). In 1950, at the time of the return to wage freedom, the law limited itself to fixing the principle that, in the fixing of individual wages, minimum legal rates (SMIG) and minimum rates for particular occupations should be respected, the latter being negotiated jointly from then on in the framework of collective agreements. On the other hand, collective agreements which seemed likely to be extended had to include clauses laying down the manner of the application of the principle "equal wages for equal work". These provisions were strengthened by the law of 13 July 1971, which obliges signatories of collective agreements to provide for procedures to settle any difficulties which might arise in this sphere. Furthermore, the preamble of the 1946 Constitution, confirmed by the 1958 Constitution, laid down in general terms that "the law, in all respects, guarantees women rights equal to those of men". The French government maintains that, in cases when the right to an equal wage is not laid down by a collective agreement, the preamble of the Constitution, which expresses a general legal principle, can constitute the basis for court proceedings. However, no ruling in this respect has been given in France.

In 1972, the French government prepared a draft bill for a law relating to equal pay for men and women doing the same work, or work of equal value. This has been adopted by the Parliament and was promulgated on the 22nd December 1972. This law, which clearly sets out the general principle of the equality of men and women as laid down in the Constitution, gives a precise juridical base to suits brought before competent jurisdictions by wage-earners affected, and allows for the application of sanctions where infractions are found to exist. In addition, the law declares void any arrangement figuring especially in any work contract, collective agreement, wage agreement, wage-settlement or scale resulting from the decision of an employer or a group of employers and which contravenes the principle of equality.

To deal with the difficulties which can occur should the law be applied, the law provides for a decree (1) after consultation with the Council of State

(1) This decree was adopted on the 27th March 1973.

to settle the procedure which should be followed on the hypothesis that the conflicts which would arise between interested parties would be most notably in relation to the norms, tests and bases of calculation used to establish remuneration and aimed at by article 2 of the law. In particular, this text specifies the facts which must be communicated to the Inspector of Labour to enable him to intervene with a comprehensive knowledge of the case, as well as of the form of the enquiry he will have to conduct. In addition, it also specifies the conditions he must comply with in the general notification of the text of the law and relevant rules for its application. As regards sanctions, given the necessity of creating them in conformity with the intention of the legislature and as an effective protection for those workers who could be made the object of discrimination : criminal sanctions (fines) have been retained which are severe enough to constitute a very real element of dissuasion for employers who deliberately fail to fulfil their legal obligations.

In Luxembourg, since the law of 12 June 1965 (Art. 4), all collective work agreements have to lay down the manner in which the principle of equal pay is applied. On the other hand, the law of 23 June 1963 fixing the salary system for civil servants, confirmed the principle of non-discrimination for workers in the public sector. The Luxembourg Government considers that, since the principle of equal wages has been formally established in legal and statutory texts, all female workers, regardless of whether they are covered by a collective agreement or not (in respect of the latter case the Commission expresses serious doubts (1)) are entitled to appeal before legal authorities for the application of this principle.

In the Netherlands, no general legal or statutory provisions have been adopted with a view to putting the principle of equal pay into effect. Consequently, apart from the arrangements for the application of a minimum legal wage, the right to equal wages results solely from a collective agreement or an individual work contract (2). In 1972, when Convention No. 100 of the ILO (International Labour Organisation) was ratified and came into effect, the Economic and Social Committee was asked to draft an opinion with the aim of finding out how the achievement of the principle of equal wages could be ensured. Among the points to be covered by this opinion will be the question as to whether an individual right should be given to each and

(1) Cf. "CONCLUSIONS" § 36 a).
(2) Cf. "CONCLUSIONS" § 36 a).

every woman if, in particular, the concept of "work of the same value" does not require more precise definition, and, similarly, on the expediency of forming an advisory committee to serve as an intermediary between the judge and the individual concerned.

5. Up to now, we have examined the possibilities of appeal for individuals who consider themselves to have been wronged by a discriminatory provision or situation. However, we must also look at the possible legal reactions against illegal clauses in an agreement; it is conceivable, in fact, that public authorities have the power to make such a provision null and void. Furthermore, it should be remembered that, in the aforementioned "Resolution" of 30 December 1961, the six governments undertook to refuse to extend the binding force "erga omnes" to discriminatory collective agreements.

From these two aspects, the situation in the six countries is as follows. First of all, in no country, except the Netherlands, does the government have the power to cancel a discriminatory collective agreement. At the end of 1970, the Dutch government, while waiting for the opinion requested from the Economic and Social Committee on the instruments of anti-cyclical policy, declared that it did not intend to apply Article 8 of the law relating to wage formation. This article confers on public authorities the power, in certain circumstances, to declare that certain clauses in collective agreements are not binding. On the other hand, the Netherlands is the only country to have made collective agreements, in which the equality of men and women in respect of pay was not put into effect, binding "erga omnes".

6. At the level of the practical application of clauses in collective agreements, it should be remembered that, in Belgium penal sanctions exist to combat the non-observance of collective agreements made binding. In France, as has already been seen, penalties are provided for any violation of the principle of equality.

While in Luxembourg and France the Work Inspector is responsible, among other things, for controlling the application of the principle of equality, in Italy, this inspector deals solely with supervision in this field. In Germany and Holland, no administrative checks are provided for by legislation.

As far as France is concerned however, the C.F.D.T. notes that the numbers of work inspectors are insufficient to deal with the mass of tasks they must accomplish. The C.G.T. for its part, considers that while the extension of opportunities for governmental action given by the law should not be minimised, yet the usefulness of the latter is limited by the difficulty of bringing to light certain wage discriminations which are often hidden and this prevents the effective intervention of the Works Inspector.

II. "Equal pay" and "equal work"

7. Article 119 is very explicit in respect of the notion of "equal pay" : "for the purposes of this Article, "pay" shall mean 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". Consequently, with the exception of the instance described in the following point, as far as the definition of benefits paid " ... indirectly" is concerned, the notion of "equal pay" has never caused any problems up to now, neither in respect of work paid by the hour nor in respect of piece-work.

The situation is quite different regarding the notion of "equal work", for which Article 119 gives no precise definition apart from the indication which can be found in the last paragraph of the article, namely that : "Equal pay without discrimination based on sex means :

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

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

In this connection, jurisprudence exists in Italy and Germany. It follows from this jurisprudence that :

- when men and women are paid by the hour, it is not admissible to pay a reduced wage to women on the basis of the lower yield of their work, because remuneration by the hour is based not on the result obtained but on the period of time during which the company commands the services of the worker;
- the notion of "equal work" cannot depend on the economic equivalence of the work done : it ought to be defined by the use of objective criteria for the scientific evaluation of jobs;
- equality is, therefore, determined exclusively by the job done, independently of the results obtained and the sex of the worker.

Furthermore, this jurisprudence stipulates that no weight may be attached to the fact that the cost of female labour is higher - owing to the laws on the social protection of women.

This interpretation is in accordance with that of the European Commission which, in its Recommendation to the Member States of 20 July 1960, expressed the view that "the factors affecting the cost of the employment or the yield of female labour should not be considered in the case of work paid by the hour".

8. As has been stated in the previous point, the interpretation of the expression : "consideration ... which the worker receives indirectly" posed a legal problem in connection with only one of its aspects. One might, indeed, easily have taken it to include a reference to "indirect wages", that is, the various benefits stemming from social security systems. The Court of Justice of the European Communities had occasion to give a verdict on this matter on 25 May 1971, in case 80/70. It formally ruled out the possibility of legal social security systems and, in particular, retirement pension systems coming under the field of application of Article 119 but, in principle, accepted the possibility of it including social security systems and allowances comprising "an element of negotiated agreement within the company or the occupational branch concerned".

The reference to complementary social security systems seems clear : the Commission has therefore requested the Member States and employers and unions to provide it with information on the way in which the principle of equality is respected within these systems. The Belgian government has expressed the opinion that this matter does not come under the field of application of Article 119. The F.E.B. rallying to the support of the government stance, states that, after a rapid survey at the level of the major sectors, it was possible to establish that there was no discrimination in this sphere.

In the Netherlands, it emerged from a study of the situation of women in pension funds for various branches of activity (on 1 January 1969) that women are not allowed to join 25 % of the pension funds of the establishments examined. As far as the funds which women are allowed to join are concerned, it transpired that - assuming a constant identical wage - they can get an average per fund of 89,6 % of the pension paid to men. This lower pension

rate is, among other things, due to the lower pensionable age fixed for women by some of these pension funds (1).

The other countries deny the existence of discrimination.

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(1) In respect of benefits in the case of unemployment, it should be noted that in principle no distinction is made during the first six months of unemployment in the legal right to benefits payable as between men and women. After six months of unemployment, the married woman no longer has any right to benefits unless she is head of a family. The minimum benefit provided for in the legal regulations is only payable to heads of families and to unmarried workers aged 40 years and over, who, for the purposes of application of this clause, are also presumed to be head of a family. On the other hand, whereas a married man is presumed to be the head of a family, a married woman must prove this status in order to obtain the fringe benefits in case of illness or inability to work provided for in some collective agreements, this right being linked to a minimum age limit.

III. Minimum legal wage

9. The principle of equality must obviously apply to the minimum legal wage. In their Resolution of 30 December 1961, the Member States declared as discriminatory "the application of the minimum compulsory wage to men alone or the fixing of this wage at different levels for men and women". In this regard, the principle is fully respected : there is no indication of any discrimination in the three countries in which a minimum legal wage is laid down by legislation, that is, in France, Luxembourg and the Netherlands.

In France, the rate of the minimum legal hourly wage (SMIG and subsequently SMIC) which applies to workers over 18 years of age has always been identical for men and for women. It is equal for all sectors. Only a few categories of workers are not covered by it : caretakers and domestic staff, in particular. The rate of the SMIC has been fixed at 4,55 FF per hour since 1 November 1972 (1). There is no possibility of it being waived. Lower rates independent of sex, are laid down for young people under 18 years of age. These no longer apply once a person has worked for six months.

In Luxembourg, the minimum social wage is compulsory for employers and workers, with the exception of domestic staff and the sectors of farming, vine-growing and market gardening. Lower rates are laid down for young people aged between 15 and 18; a 20 % supplement is laid down for skilled workers. On 1 November 1972, the minimum monthly wage was 8.306 F.Lux. Since 1963, the same rate of the minimum social wage has applied to men and women. Provision is made for the temporary exemption of employers who consider that the situation of their company does not permit them to apply the minimum rates of pay but no requests for such exemption have been made since 1965 (2).

In the Netherlands, when wages could be regulated by the Authorities, the decisions of the Group of State Mediators imposed identical minimum rates for the payment of male workers and female workers doing the same job in the same company under the same conditions ("mixed" jobs). These decisions

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(1) Fixed at 4,64 FF per hour since 1 February 1973.

(2) A sweeping reform of the minimum social wage has been affected by a law passed on 12 March 1973 which most notably fixes the minimum monthly wage rate as from 1 March 1973 at 9.400 F.Lux. for a 40 hour weekly work period. The law has retained provisions recognising the possibility of derogation from these norms.

also authorised the payment of the minimum wage to women doing "single-sex" jobs, if the collective agreement or the wage system in question did not lay down lower rates because of the sex of the worker. The law of 27 November 1968, which came into force on 23 February 1969, replaced the provisions decided on by the State Mediators. This law fixes a single minimum wage applicable to all workers, whether male or female, apart from :

- persons of less than 23 years of age. Out of the total male wage-earning population, 15 to 25 % are less than 23 years of age; out of the total female wage-earning population, 55 to 60 % are less than 23 years of age;
- persons aged 65 and over;
- persons who, as a general rule, do not work for more than one third of normal working hours.

On 1 July 1972, the minimum weekly wage amounted to 198,60 guilders.

After this law came into force, the government authorised the temporary waiving of the legal stipulations for a number of branches of activities and companies, largely for female workers doing so-called "single-sex" jobs. The last two authorisations expired during the first half of 1972.

As far as the respecting of these provisions on a minimum wage is concerned, at the end of 1971 the Central Bureau of Statistics organised a survey covering about 50.000 companies, institutions and persons working in the liberal professions, and concerning the number of workers receiving a salary equal to or below the minimum wage. About 24.000 male workers, and about 60.000 female workers would seem to be in this position. However, it is not possible to distinguish between those workers receiving a minimum salary and those who receive less.

B. DEVELOPMENTS IN COLLECTIVE AGREEMENTS

Foreword

10. A reminder was given, during the examination of developments at the legal level, of the role played by collective agreements in the application of the principle of equal wages. Even when the right to an equal wage is recognised by legislation, which the Commission has always considered to be an essential condition, inadequate though it may be, it is chiefly through these agreements that it ought to be possible to achieve equal wages.

The gradual action taken at the level of collective agreements for the implementation of Article 119 ought to relate :

- on the one hand, to wage scales, in order to prevent different rates being laid down for men and women (direct discrimination);
- and, on the other hand, to job classification systems, in order to avoid both the practice of reserving certain categories almost exclusively for women and the systematic under-rating of female labour within categories which are apparently "common" to men and women (indirect discrimination) (1).

Assessment of the situation is largely positive as far as instances of direct discrimination are concerned, except in one country, the Netherlands, where, however, progress has been made during recent years.

In the field of indirect discrimination, on the other hand, even though great progress has been made, a certain number of problems still linger.

11. However, the improvements obtained only concern female workers covered by a collective agreement. In this respect, the situation is not identical in all the Member States. In Belgium, it is estimated that the number of female workers who are not protected by a collective wage agreement is extremely low. For certain activities, however, there is no joint committee or the intended joint committee does not function (this is the case, for example, of the auxiliary joint committee for factory hands). In France,

(1) The latter aspect will be examined more closely in Part C.

a certain number of workers are not protected by a collective agreement : in the liberal professions, small businesses, a number of food industries and in mixed farming and stock rearing in 13 departments. In Italy, gaps are found in the sector of craftsmen and domestic staff. In Luxembourg, the same applies for the wood-working sector and a small proportion of the food sector. In Germany, the number of workers (male and female) not covered by a collective agreement is apparently somewhere between 500.000 and 1 million, distributed amongst several branches. It is in the Netherlands that the situation is the least satisfactory : between 20 and 25 % of the wage-earning population are not covered by a collective agreement or by wage regulations based on the law on wage structures. In 1964, this figure was 17 %.

I. Direct discrimination

12. As far as direct discrimination is concerned, it is interesting to give a reminder of the changes which have taken place in the member countries. In Belgium, the government initially insisted on the fact that Article 119 and, in addition, Convention No. 100, did not have any direct effect in respect of individuals and could not alter the traditional methods governing the structuring of wages, since these remained within the competence of employers and unions or the parties themselves. The joint committees, the only bodies entrusted with the structuring of wages, were therefore responsible for the putting into effect of the principle of equality. In view of this, the Minister of Employment and Labour invited the committees to adapt collective agreements to the principles of the Resolution of 30 December 1961 and announced his intention of no longer presenting for the signature of the King such draft decrees as conferred binding force on discriminatory collective agreements. There has, in fact, been evidence of a gradual reduction both in the differences between the scales for men and those for women and in the number of female workers involved : in 1963, it was estimated that, in a large number of industrial branches employing 80 to 85 % of female labour, the difference in remuneration given under collective agreements varied between 15 and 13 %.

The Belgian government has reported that, at present, differences, generally in the region of 5 %, are found in a few branches employing about 800 female workers. The list of discriminatory collective agreements sent by the unions, the CSC and the FGTB, varies only very slightly.

In the petroleum sector, equality has been assured in two stages, half on 1 January 1971 and half on 1 January 1972, by gradually raising the rates for female workers and for women doing unskilled work to the rates for unskilled labourers.

In Germany, the Minister of Labour, after the Resolution of the Conference of the Member States of 30 December 1961, called on employers and unions to carry out the obligations assumed at community level. His appeal generally resulted in positive effects when it came to the renewal of collective agreements.

Thus, at the end of 1964, direct discrimination no longer existed except in agriculture in one Land and in the leather industry. At the end of 1968, discrimination only existed in the latter branch, since when even these cases of discrimination have been removed.

In France, some cases of direct discrimination which still existed at the end of 1968 have now disappeared. These cases involved distinct job categories in the shoe industry and in tanning which were abolished in 1970. The C.G.T. considers that some problems still exist in publishing.

In Italy, the first step towards equality was taken with two inter-confederal agreements reached in 1945; they stipulated that : "when women take on work which is traditionally done by male labour, in equal working conditions and with an equal qualitative and quantitative yield, they will receive the contractual wage laid down for men". Stress should be laid on this formula, which referred to equality of yield in addition to equality of work. These agreements, however, foresee salary scales with different minimum wages. After the Resolution of 30 December 1961, a considerable contractual movement led to the gradual, and almost complete, removal of contractual differences. The government contributed to this by the organisation of high-level tripartite talks and by intervening with employers and unions. The few instances of discrimination which still existed at the end of 1960 (preserved vegetables road haulage) have since disappeared.

The new wage and social discriminations which strike most often at women can be found in the field of "work at home". According to some estimates, one and a half million workers of whom 3/4 are women, are engaged in this form of work, which is now in the process of expanding. Only 40.000 of these workers are protected by legislation concerning salaried employment. The others are regarded as self-employed, but in fact, according to the trade unions, are involved in disguised salaried work. The difference in pay as compared with those workers not working at home is considerable. Several laws to improve the situation have been introduced.

The employers organisation, while having its reservations on the real import of this phenomenon, agrees that the time has come for legislative reform. It should be pointed out that this does not concern discrimination against women only but also against the whole section of home workers.

In Luxembourg, all discrimination had already disappeared from collective agreements by 1964.

In the Netherlands, there still exist a certain number of collective agreements which provided for different wages for men and women. However, the differences have been gradually reduced and the number of female workers concerned has decreased considerably in the course of recent years.

Thus, since 31 December 1968, equal pay for positions considered to be "non-mixed" has been achieved in a certain number of sectors, like the industry of raw materials for bakeries, bulb-growing concerns, for the drink industry, the Gouda pottery industry, the fruit and vegetable processing industry, hotel serving staff, cafés and restaurants, the button industry, the leather industry, the rubber and thermo-plastic materials industry, and the cigar industry.

In some sectors, equal wages had not been put into effect by 1 July 1972. This was the case in the bakeries (differences between 10 % and 22 %), in the clothing industry (7 % - 8 %), the ceramic works at Maastricht (10 %), the footwear industry (5 %), the textile industry (9,5 % - 11,5 %) and the laundry industry (3,5 %).

II. Indirect discrimination

13. Indirect discrimination results from job classification systems. It can arise, as has been recalled, in two different ways :

a) at the level of collective agreements themselves, through job categories reserved exclusively for women;

b) at the level of their practical application, through the under-classification of women within job categories which are either too strictly limited, or lacking in sufficient precision.

14. In Belgium, categories exclusively reserved for women existed, for example, in the textile sector, metal-engineering, etc. The great majority of these had disappeared by the end of 1964 and such clauses have now virtually ceased to appear in collective agreements. The only exceptions are in a number of food sub-sectors.

In Germany, a single classification was theoretically arrived at between 1955 and 1964. At that time, however, the trade unions were of the opinion that, despite the substantial progress made, a number of problems still had to be settled. In fact, certain collective agreements made it possible to get round the provisions on an "equal wage", largely by means of two methods known respectively as "vertical discrimination" and "horizontal discrimination". The first method consisted of creating job categories for which the coefficient of pay was lower than that laid down for an unskilled labourer. These categories were not solely for women but the activities were defined in such a way as to reserve them almost exclusively for women. The second method consisted of laying down, besides the lowest paid job categories, "light work" categories which were defined in such a way as to become, in fact, purely female categories. For their part, employers considered that these categories of "light work" did not give rise to discrimination because they were applicable to men as well as to women.

This controversy is still going on : since 1969, the federal government has been urging employers and unions to clarify and settle this question in the framework of a general study on job evaluation. Agreement on the method

to be followed for this study has finally proved possible; it has been been tried out in a company. However, because of the difficulties encountered in the evaluation of different jobs, it has become unlikely that a general survey on these lines could be voluntarily carried out. If it should prove impossible for the workers and employers organisations (social partners) to reach agreement, the federal government could find itself confronted with the problem of having to resort to a "law providing for a survey" in order to finally solve the problem.

Two points should be stressed in this respect :

- on the one hand, these "light work" categories are still wide-spread;
- on the other hand, a series of joint agreements have been reached in several branches in order to abolish either the categories as such or the lower wages which they entail. In the chemical sector, for example, an agreement reached in 1969 provides for the gradual reduction of lower wages, with equality being planned for 1975. By that time, "light work" categories will have been abolished.

However, the Christian union, the CGB, considers that the relative position of men and women has not been changed by these agreements.

On the other hand, a special effort has been made in the food sector, by means of a model, prepared by the trade union NGG, for an "integrated method of calculating salaries and wages". It takes account of all the characteristics of a job : "skills and responsibility", "space and surroundings", "the carrying out of the work". This method, which is suited to modern industrial procedures, enables the factor of subjective evaluation to be eliminated in fixing wages.

In Italy, an agreement between the confederations of industrial employers organisations and unions was reached on 16 July 1960 regarding the establishment of a programme for the unification of classifications, to be put into effect through branch agreements. For factory workers, this agreement laid down a single eight-category classification, instead of the categories laid down previously (four for men and three for women). For office workers, the agreement laid down a single six-category classification (instead of four for men and four for women). At the end of 1964, numerous branch agreements had already adopted this system, and frequently reduced the number of categories, generally down to five, both for office workers

and factory workers. In agriculture, on the other hand, typically female categories existed which could not be compared or assimilated with male activities (flower pickers, etc.).

The classification of industrial staff into five groups has gradually been harmonised, with the main aim of abolishing the lower categories in which the vast majority of female workers were placed. In some branches of industry (shoes, hosiery and clothing) a reduction to three categories for factory workers has been achieved.

Steps have been taken in the collective agreements of 1972 towards overcoming different systems of job evaluation for factory hands and employees, by progressing towards a system of single classification especially favourable for women.

At present, there are no job classifications in industry which are exclusively reserved for women. Some problems still have to be settled in agriculture (olive and jasmine pickers). In public administration, the final marginal problems which still existed in respect of female workers employed by the State were settled by a decree in 1970.

In France, the single classification system introduced by the 1946 decrees means that direct discrimination scarcely exists at the level of job classifications laid down by collective agreements. On the other hand, the law of 22 December 1972 stipulates that categories and tests for classification, and particularly the manner of job evaluation, must be the same for workers of either sex.

In Luxembourg, at the end of 1964, the government and employers and unions decided that the hierarchical structure and the job nomenclature would be the same for men and women. The situation has not changed since.

In the Netherlands, the classification system is that of job evaluation the criteria used are objective and independent of the sex of the worker.

C. THE ACTUAL SITUATION

Foreword

15. In this chapter, an examination will be made both of the actual situation which results from the application of collective agreements - classification systems, bonuses and real wages - still in respect of the principle of Article 119, and, at a more general level, of the situation of female labour in the working world as a whole and of the measures adopted or planned to improve this situation. For the first time, in fact, the Commission has asked the Member States a number of questions aimed at defining the general sociological context in which the problem of wage equality belongs and, more especially, to outline the influence which is exerted on the structure of wages by a series of factors : traditional psycho-sociological ideas, absenteeism, lack of occupational continuity and changes of employment, the inferior preparation of women for the jobs they do within any given employment category, local labour supply and demand conditions, the rate of union membership amongst women. In this section, the results obtained, which vary greatly from country to country, will be outlined, after which a reminder will be given of the new initiatives taken, both strictly in the sphere of wages and, more generally, in the advancement of women at work. Obviously, it is not intended to describe all the measures taken for the latter purpose, but only those which have a more direct impact in the sphere of wages.

I. The application of collective agreements : job classifications, bonuses and real wages

16. For Belgium, the government mentions a series of difficulties in method which make it very difficult to assess how far the practical application of collective agreements, seen from all its aspects, conform with Article 119. It feels that, in the first place, the classification systems drawn up ought to be analysed and criticised from within. Subsequently, the results obtained ought to be compared with the results of a series of specific surveys carried out within companies : it is, in fact, impossible to prove the existence of discriminatory practices without a thorough analysis of the wage phenomenon, aimed at isolating the "sex" factor from the group of factors which determine wage structures. Such research would be difficult and expensive.

The trade unions known as the CSC and the FGTB consider that, generally speaking, the scientific systems for job classification are correctly applied. The same is true of the more empirical systems, but it is far more difficult to ensure their reliable application.

In respect of real wages and bonuses, these unions consider that, at the level of companies, differences exist between the rates of real wages paid to men and those paid to women for the same job. This results in there also being differences in respect of bonuses and gratuities which, generally speaking, vary according to wages.

17. As far as Germany is concerned, the Employers' Federation (BDA) maintains that all workers are classified on the basis of the same principles and in accordance with the description of jobs given in the collective agreements. The trade unions have a different opinion. The Federation of Trade Unions (DGB) and the Christian Union (CGB) consider that the lowest wage categories are virtually reserved for women only. The DGB also adds that companies systematically interpret the category given in agreements as "light work" as "physically light work", which is contrary to the spirit in which these agreements are negotiated. It follows from this that, particularly in branches in which a high proportion of employees are female, all other job characteristics (responsibility, dexterity, job skills, etc.)

are neglected, and all that is considered is the physical effort, which results in the underrating of women. According to a survey carried out by I.G. Metall, this is true of 80 % of the women who work in the metal industries. Furthermore, there are low wage categories which employers do not even offer to men.

The bonuses and gratuities are paid to men and to women under the same conditions. However, they generally vary according to wages, so that the lower the remuneration, the lower the bonus.

18. In France, as has already been noted, the classification systems are established exclusively in terms of the nature of the work to be done, regardless of any factor relating to the sex of the worker. The criteria used by the employers and unions in classifying various jobs within the hierarchical categories defined by the collective agreements are largely based on factors such as the level of training, the degree of responsibility, the physical effort and the working conditions which are entailed, but they also take account of qualities such as precision, speed and dexterity during the work itself. The criteria established according to the fixing of individual wages within companies are also independent of the sex of the worker.

However, a few problems have been raised : in 1968, the CFDT considered that, in the practical application of classification systems, too much importance was attributed to male qualities (strength) to the detriment of female qualities (dexterity). The French government does not share this opinion. Furthermore, in 1968, the CFDT pointed out that, in the electronics industry, an effort is made to attract girls with a CAP (job aptitude certificate) for sewing, since employers thus have a guarantee of their dexterity, while not being obliged to pay them at the same rate as trained workers. The CGT for its part drew attention to the fact that the concentration of women in certain work-shops often made a direct comparison impossible. More generally, factors like the pronounced splitting up of female work, the link between wages and output and the non-recognition in value terms of the qualities required of female workers (speed, dexterity) all lead to women being deprived.

Additional wage benefits are common to workers of either sex. If female workers sometimes do not receive full advantage from these benefits, it is because they do not always fulfil the conditions of entitlement (seniority, attendance).

19. In Italy, the classification systems are applied in the same way to workers of either sex. The criteria employed in companies in fixing individual wage rates are independent of the worker's sex. However, certain problems exist in agriculture concerning share-croppers. Additional wage benefits (bonuses, gratuities, etc.) are not generally differentiated according to the sex of the worker.

20. In Luxembourg, according to the Manufacturers' Federation, virtually no job categories are exclusively reserved for women, nor are there differences in respect of bonuses and gratuities. The criteria followed in the fixing of individual wages have to be more or less independent of the sex of the worker, given the considerable labour shortage which still exists in the Grand-Duchy.

21. In the Netherlands, bonuses and gratuities are calculated in relation to the basic wage which, in a certain number of fields, is still lower for women. According to the law on minimum salaries and minimum holiday bonuses, every male and female wage-earner who works for more than one third of the period normally considered as a work period, has a right to a holiday bonus of at least 6 % of the wage paid by the employer. In a certain number of collective agreements the right to a minimum holiday bonus is included but is also linked to a minimum age limit. As regards this latter point, an exception is made for workers who are married men or heads of families. As to this point, in some collective agreements (and as, in practice, elsewhere) a married man is presumed to be the head of a family, whereas for a married woman proof has to be given of such status.

II. The situation of women at work and the causes for it

22. The Belgian government considers that the factors recalled in the Foreword of this section (traditional ideas, etc.) have certainly influenced the structure of wages, but it maintains that it is impossible to assess their real impact.

The CSC and FGTB unions emphasise the absence of reliable statistics regarding absenteeism and consider that the factor which has the greatest influence on classifying women in the lowest grades of the hierarchy is their inadequate occupational training. In fact, women are most often placed in low categories, both in certain sectors of industry which are traditionally their preserve (photography, pharmaceutical products, etc.) and in other sectors, where they are largely employed on small assembly lines and in finishing and packaging. In the tertiary sector, certain jobs, such as typing, remain almost exclusively the preserve of female labour. The same is true of the sector of nursing and child welfare. The problem is even more difficult in respect of domestic staff. In the absence of a really active joint committee, working conditions and wages are settled in an arbitrary fashion and considerable differences are found to exist between men and women.

This situation has repercussions for the possibilities of promotion : women have little chance of reaching responsible positions.

The Belgian unions consider that it is necessary to fight the traditional ideas about female labour and, furthermore, to oppose those who wish to use women as a "balance wheel" for the cyclical situation, by drawing them on to the labour market when the short-term economic situation is good and laying them off when it becomes less favourable.

23. For Germany, the Employers' Federation (BDA) states that it is impossible to give a reply to the questions asked on the influence of certain factors on the structure of wages, without a thorough sociological survey.

The DGB considers that traditional psycho-sociological ideas can still be seen to influence the fixing of wages, despite the fact that the cogency of such ideas is not confirmed by experience. For example, absenteeism is no higher amongst women than amongst men, the training possibilities open to

women are now far wider, but they are still not being used fully; the reasons for the interruption of occupational activity are well-known and are generally accepted, as far as family reasons are concerned, for example : the high level of employment means that there is no distinction between male and female workers as regards labour supply.

On the other hand, female workers account for only 15 % of the membership of the DGB.

24. According to the French government, there are no job categories which are almost exclusively reserved for women. However, it is true that certain jobs are done largely by female staff (nursing and orderly work, for example) and that female labour traditionally concentrates on a certain number of jobs (social work, child care, hostessing, etc.). Without always being predominant, female labour is also relatively abundant in other sectors of activity : administration, the liberal professions, trade, the textile industry, the clothing industry, work at home.

A comparison of the results of the 1968 census with those of the 1962 census shows that women are more willing to take jobs in the tertiary sector.

From a poll carried out in 1968, it emerges that the representation of women in a number of socio-occupational categories was as follows :

Engineers	3,5 %
Female foremen	6,9 %
Technicians	11,2 %
Trained Workers	16,2 %
Specialised Workers	23,2 %
Unskilled Workers	29,7 %
Apprentices	9,9 %

The reasons why a considerable proportion of women are in the lower categories of the hierarchy relate above all to the problems of vocational training, either because the skills taught are ill-adapted to the jobs available or because women, in practice, benefit less than men from the possibilities of training and further training.

The C.G.T. however, states that it is not only a question of vocational training because often salaries are unequal at an equal training level. In

fact (according to the opinion of this Union), the low level of women's salaries is a reflection of one concept of the woman's role in society; a concept which makes her a cheaper source of labour.

For its part, the C.N.P.F. feels that female labour has particular characteristics as compared with the work of men : higher absenteeism, particularly at the least skilled levels, shorter working careers (although they are, in fact, tending to become longer), the conditions for labour supply and demand. These characteristics can lead to considerable differences in real wages, sometimes even in women's favour, particularly in the case of domestic staff, but the C.N.P.F. considers that their greatest impact is on employment and promotion possibilities.

25. In Italy also, one notes the presence of a larger number of female workers in the lowest grades, which is probably due in some branches to the lower level of vocational training.

On the other hand, there are no occupations or categories which are exclusively reserved for women and, at a more general level, one finds that the situation of women has been evolving in a positive fashion. The "woman at home", "woman at work" alternative is now a thing of the past, and a woman's right to take part in social and political life in all its forms is now recognised. However, one finds that, in 1969, working women made up only 19,5 % of the total. This is probably largely due to the slackness of labour demand but it can also be attributed to the tasks which the female worker has to carry out within her family, taking into account the inadequacy of social services, and to the lack of competitiveness of female labour as compared with male labour.

In respect of the development of the series of sociological factors already referred to and their influence on the "equal wage" principle, one notes that :

- the traditional idea of women only seeking an additional income is a thing of the past;
- the rate of absenteeism of female workers, while higher than that of male workers (probably because of motherhood and family duties), does not have any impact on negotiations on wage equality;
- the level of the training of girls seeking work is no lower than that of young men in the same situation; in addition, as a general rule, one finds an increase in the level of female education;

- the rate of union membership amongst women has been rising since 1968/1969;
- in certain regions characterised by a low level of employment, particularly outside agriculture, the demand for female labour is very low. On the other hand, it should increase as the result of development projects providing for the creation of jobs in tourism and manufacturing industries.

All these factors also influence the working career of women. Problems in this respect exist in all sectors of the economy.

26. In Luxembourg, according to the Manufacturers' Federation, there are categories in which a larger number of women are employed, but this is due to the nature of the work done (clothing, food). The labour shortage which continues to exist in the Grand-Duchy makes it impossible for the various sociological factors mentioned to have any influence on the principle of equality and the individual promotion of female workers.

27. In the Netherlands, one finds that in a number of sectors, certain jobs which are generally of a simple, routine kind, are done largely by women. Two reasons are given to explain the strong representation of women in the lower categories of the scale : on the one hand, the low level of their training and, on the other hand, the fact that the personnel policy of employers takes account of the possibility (still with some slight justification) that a woman considers an occupation as something temporary, to be done up until marriage. A certain change in this view of the role of woman in society has been seen in recent years. It has helped to show up the social injustices of any violation of the principle of equality. On the other hand, it has been found that sickness leave is not more significant amongst women than amongst men and it is considered that the greater frequency of changes of employment amongst women is due more to the age of female workers - lower than that of male workers - than to their sex.

III. Some measures taken for the advancement of women

28. In respect of Belgium, an overall increase in the pay of women has resulted from a number of alterations to clauses in collective agreements, such as the raising of wages fixed at a specific amount (leather industry), the reduction of the number of job categories (Philips) and the application of classification methods drawn up jointly.

More generally, a series of actions have been undertaken by the government to improve the vocational training of women. For example, retraining opportunities, traditionally reserved for male workers in the framework of improved vocational training, have been made available to women. When a woman's level of training does not give her direct access to a centre for rapid vocational training, it is possible for her to receive individual training in an ad hoc centre : similarly, for the tertiary sector, she can acquire an all-purpose office training. The Pre-training centres are also in operation. Finally, the 1971-1975 plan includes measures intended to facilitate the integration of women into a working context and to combat female unemployment.

29. In Germany, female workers can acquire job skills under the law on occupational advancement, while receiving assistance for the duration of their training. When the training has been completed, these workers can do a job requiring greater skills.

30. In France, a consultative body was set up in September 1965 under the aegis of the Minister responsible for Social Affairs. This body, which was called the "Research and Consultative Committee for Female Labour", was replaced on 16 April 1971 by the "Committee for Female Labour", a body for consultation and research on measures intended to adapt and improve the working conditions of women and their integration into a working life.

This Committee - concluding a report on the causes of wage inequality between men and women - made a certain number of proposals aimed at :

- the improved vocational training of women,
- the raising of abnormally low wages,
- the development of collective agreements and the improvement of procedures to extend them.

- the ending of any effect which motherhood might have on the level of pay for women and on their promotion,
- the development of every kind of social facility.

The French government feels it has adopted a series of measures aimed at giving women better opportunities for choice between the practising of an occupational activity and their family life by granting an indemnity for the cost of nurseries. A special effort to assist female workers has been made as regards rapid vocational training (with increasing attention being given to tertiary occupations and to the electrical and electronics industries), and also as regards vocational guidance and placement.

Lastly, the law of 16 July 1971 relating to continuous vocational training, places women, heads of families or those who have brought up three children, and who are following courses of vocational training with a view to acquiring a qualification, in the same category as workers being retrained - that is to say - as having a right to pay.

Moreover - further mention should be made of the law of 22 December 1972 (stipulating that the same criteria for promotion must be applied to workers of either sex) as being one of the measures for the protection of women.

The C.G.T. itself considers that in reality the free choice for women depends on considerations very different from that of the payment of an indemnity for costs of a nursery - as important though it may be - which is far from being the case. In fact the free choice of women is conditioned by vocational training, job opportunities close to their homes, the level of wages hours and conditions of work, the time spent in travel and the provision of social and family facilities.

31. In Luxembourg, the government is now putting the finishing touches to a bill which provides for an improvement in the position of a woman in case of motherhood, both as regards pay and job security. Realising the ever-increasing importance of part-time work for women in certain sections of the economy, the government is coming round towards the idea of adopting specific rules relating to part-time work. A study is now in progress which relates to the system of rules for this type of work, to the national insurance system and to the tax system most likely to be applicable.

32. In Italy, the trade unions have tried to improve the situation of female workers placed in the lowest grades of the system and, at same time, that of all workers who are employed to do the least skilled tasks. The unions have followed two guidelines :

- that of eliminating the lowest categories in collective agreements,
- at company level, that of "reforming tasks" in order to raise the level of vocational training. Female labour has benefitted considerably from these improvements.

The public authorities do not have any specific programmes for improving the vocational training of women. Retraining programmes which particularly concern female workers are anticipated in the textile industry in connection with the plans for the modernisation of this sector.

The establishment of a large number of crèches is laid down by the law of 6 December 1971.

33. In the Netherlands, in order to improve the situation of women at work, the public authorities have undertaken a series of actions in the field of the information for women and employers, placement (part-time) and training. In addition, an attempt is being made to facilitate the return of women to the labour market. A bill laying down that workers may not be dismissed in the case of pregnancy or marriage is being studied at present.

Finally, the government has set up a programme of courses for young workers, with special attention being given to girls. Pilot schemes are being carried out to promote household and technical instruction and it has been remarked that more women than previously are enrolling for courses which are traditionally the preserve for men. The number of women using training facilities has risen substantially. For example, between 1969 and 1971, the proportion of women receiving company training rose from 6 to 33 % of the total.

D. STATISTICAL ASPECTS : THE RESULTS OF THE COMMUNITY SURVEY ON THE STRUCTURE AND DISTRIBUTION OF WAGES

34. Since the start of the work carried out by the Commission and the Council as a follow-up to the implementation of the principle of equal pay for men and women, the fact that there have been no comparable statistics has greatly affected any appreciation of the actual situation in the six countries. For this reason, after the difficulties encountered, and incidentally not overcome, in organising a specific survey on wages of men and women, as provided for in clause 6 of the Resolution of the Conference of Member States on 30 December 1961, every attention is focused on the statistical survey on the structure and distribution of wages, also referred to in clause 6 of the Resolution.

In fact, it is known that since the Commission, within the scope of work previously done concerning the implementation of Article 119 of the Treaty, used certain national and Community statistical information relating to the average effective earnings for male and female workers, account had been taken of many elements likely to falsify any comparison such as the hours worked, the payment of overtime at a special rate, the sectoral and occupational structure of labour, the length of service and age of workers, etc ...

Thus, to be precise, the purpose of the survey on the structure and distribution of wages is to provide information principally about the connections between the level of wages and the individual characteristics of the wage-earners (sex, qualifications, age, length of service in the company, etc ...).

On the basis of the Council Regulation of 12 December 1964, the first Commission enquiry of this type was carried out by the Statistical Office of the European Communities in collaboration with the national statistical offices. It related to the earnings in October 1966 of two million industrial workers representative of a worker population of 16 million.

The initial statistical information provided by this survey has been presented and commented on by the Commission in the second chapter of its Report to the Council on the application as at 31 December 1968 of the principle of equal pay for men and women[1]. It therefore contained a

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(1) Cf. Doc. SEC(70) 2338, dated 18.6.1970 (from p. II.1 to II.24).

rather limited initial approach, which only related to the textile industry and only dealt with three different criteria : professional qualifications, length of service in the company and age. The analysis was later extended by the Statistical Office of the European Communities[1] to three other branches in which together with the textile industry one finds (in all the countries, except Luxembourg) the vast majority (more than 50 %) of female workers, i.e. : the industries for food, ready-made clothing and electrical equipment. To the three criteria used by the Commission in its report, the Statistical Office added : the size of companies concerned, the wage systems and overtime.

The results of these statistical analyses clearly show that the gap between the average hourly earnings of men and women drops considerably when distinguishing between a comparison of all the manufacturing industries, with no differentiation between the structural repercussions, and a comparison of each of the four branches of industry mentioned above which takes account of a certain number of individual criteria or other structural factors.

Thus, in the manufacturing industries, the difference of the average hourly pay of women as compared with men, 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 carried out has for the first time enabled a comparison between the extent of the differences between workers relatively equal from the point of view of age, occupational qualifications, size of companies, wage systems (only in relation to time) and the kind of hours paid for (normal hours, excluding overtime). The results are largely similar for textile industries, food and clothing where on average the smallest differences are recorded in Italy (- 13 %) and in France (- 15 %), these countries being followed by Germany (- 20 %), Belgium (- 22 %) and the Netherlands (- 27 %). For the electrical equipment industry, the smallest differences are recorded in France (- 10 %), in Italy (- 12 %) and in the Netherlands (- 12 %), these countries being respectively followed by Germany (- 20 %) and Belgium (- 21 %).[2]

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(1) Cf. "Structure and distribution of wages - 1966" - Social statistics. Special series - Vol. 8 "Synthesis for the Community" - Chapter 6 - "Some comparisons between gross hourly earnings and the structure of labour according to the sex of workers" (from p. 98 to p. 216).

(2) Luxembourg has not been included in this comparison as working women are relatively scarce.

Thus there are still quite considerable differences in hourly rates of pay, though to varying degrees. However, these differences quite clearly cannot be used as a statistical yard-stick to measure wage discriminations between men and women. Strong reservations should be made. As a simple example : each one of the groups of qualifications which it was possible to define in a uniform way on a community scale, cover several levels of qualification corresponding to a larger or smaller range of jobs. This being so, one can only partly exclude the impact of this disparity of qualifications on the differences in pay between men and women. Other factors not raised in the survey and which could also cause a wage difference include for example increases in salaries for night work (shift work), dangerous or dirty work, etc ...

However, in spite of these reservations (and the Commission does not underestimate their importance(1)), this survey on the structure and distribution of wages of industrial workers undertaken using common methods and definitions throughout, has made it possible, for the first time, to take account of the total extent of the relative positions of the different countries concerning the degree of application of the principle of equality of pay at the level of effective wages.

It is for this reason that the Commission expressed its regrets, in its last report to the Council on the state of application of Article 119 as at 31 December 1968, that the 1966 enquiry on structure only referred to blue collar workers in industry, while female workers are very numerous among the white collar workers and in the commercial and service sectors. An important step in this direction was taken by the Council when on 8 November 1971 it adopted a Regulation determining the renewal of a survey (now in progress) on structure in industry in the six original Member States, and extending it to white collar workers. Moreover, to obtain as satisfactory a knowledge as possible of the situation in the enlarged Community, it is vital, on the one hand, that the three new Member States should also agree to carry out this "industrial" survey, in the least possible time,

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(1) In order to give these reservations their proper weight, it should be remembered that some statistical observations made at the time of this enquiry at the level of certain professions entirely confirmed the conclusions reached on the basis of groups of qualifications. (Cf. aforesaid report by the Commission on the situation as at 31.12.1968, p. II.24).

even though they were not legally bound by the above Regulation; and on the other hand, it was essential that the enquiry on structure in commerce and the service industries should be carried out by the nine Member States in accordance with the principles already agreed by the Council on 19 October 1971[1].

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(1) These requirements were stressed unanimously during a meeting on 2 and 3 April 1973 of the Article 119 Special Group which is composed of representatives from governments, employers and employees associations (social partners) from the nine Member States.
(Cf. see post : "CONCLUSIONS" § 38 f), g) and h)).

E. CONCLUSIONS

35. Since 1958, the Commission, the governments of the Member States and employers and unions have worked together for the application of the principle of equal pay in male and female workers for the same work. Although undeniable progress has been made, the situation is nevertheless still far from satisfactory. It therefore becomes absolutely essential that now, more than 15 years after the signing of the Treaty of Rome, 11 years after the Resolution of the Conference of the Member States and 8 years after the final stage laid down by the said Resolution, a decisive impetus should be given in the search for a complete solution to this problem.

This solution is all the more desirable as women in the Member States are undertaking paid employment in ever increasing numbers, and it is essential that this advance in female employment should be on a healthy basis. It falls, therefore, to the Member States to bring about such conditions of life and of work, of education and employment as would enable an improvement in the position of the working woman. The Commission has always known that the solution to the problem of equal wages is an integral part of a collection of solutions to be sought in order to achieve precisely that improvement for the woman in economic society; an improvement incidentally in respect of which the Commission is going to present a certain number of proposals to the Council.

The moment has therefore come to give this new impetus to equal wages and the more so because three new countries, Great Britain, Ireland and Denmark, have unreservedly subscribed to the undertaking included in Article 119 of the Treaty of Rome, by acceding to the Community as from 1 January 1973.

It is for these reasons that the Commission has considered it desirable not to confine itself, as was customary, to a description of the new developments since its previous report, relating to the situation on 31 December 1968, but to give a succinct account of the chief developments which have taken place in the Member States since 1958 and up to 31 December 1972. This account makes it possible to gain a clearer insight into the national situations and emphasises the importance of an overall approach, which leads to all aspects of the problem being tackled through the use of varied and numerous activities.

In fact, the right to "equal wages", of sufficient and general scope, does not yet exist in some of the Member Countries; collective agreements do

not yet cover workers in all economic activities; direct discrimination, even if it is rare, can be found to occur and a large number of doubts still exist about the correct application of job classification systems and even on the question of whether some of these systems conform with the principles of Article 119.

At a more general level, women continue to occupy the lowest posts in the hierarchy and the great majority of the female work force is still concentrated in low wage branches, in spite of the technological changes which have increased the interchangeability of men and women as regards positions at work.

The Commission already considered in its "Conclusions" to the report dated 31 December 1968 that new initiatives were necessary which could be better developed on a foundation of Community co-ordination and impetus. This is necessary because the good intentions of the Member States could possibly be discouraged by the possible awareness of existing disparities between them. These initiatives should come as much from the side of the public authorities as from the employers and trade unions. This comment still remains entirely valid and lies behind the following suggestions.

A. Public authorities

36. The role and the responsibility of the public authorities in the achievement of equal wages have always been and still are of crucial importance. Although collective agreements play a very important role, they do not, as has been pointed out, cover all workers and, as a general rule, they relate to minimum wages, or basic wages, which are sometimes quite far removed from the wages actually applied at company level. On the other hand, employers and unions do not always respect Article 119 when negotiating collective agreements and it can even happen that employers do not respect clauses of principle laid down by a collective agreement. It is therefore essential that the public authorities should intervene, to the extent of course that they have not already done so, at various levels and, in particular, at the level of legislation, in order :

a) to establish the right to "equal wages", of sufficient and general scope, within the internal legal order, enabling any woman who considers herself to have been wronged to assert this right by legal means. In this connection, it should be noted that no provision of this type exists in the Netherlands[1] as yet and that the situation is vague in Luxembourg[1]:

(1) Cf. § 4, p. 9 and 10.

b) to allow women who consider themselves to have been wronged a real chance to assert their right before the competent legal authorities by prohibiting dismissals motivated by legal action of this kind;

c) to declare the complete nullity of any clause in an agreement or contract contrary to Article 119, given that, although the autonomy of employers and workers must be respected, any agreements concluded cannot override provisions on public order, and equal rights for men and women obviously constitute a basic principle of the modern State;

d) to lay down effective sanctions against any disregard for the principle of equal wages.

At the same time, the Member States ought to reinforce their administrative and supervisory action and make it conform with the principles of Article 119 and the Resolution of 30 December 1961, in particular in respect of :

e) the carrying out and, possibly, the strengthening of supervision at company level by officials who are competent in respect of labour law;

f) the refusal to extend the discriminatory provisions of collective agreements "erga omnes", or of complementary social security systems;

g) the refusal to agree to any exception in respect of the field of application and the standards laid down for the minimum legal wage which are compulsory for any particular job. Such exceptions could be a way of getting round the principle of equality.

B. Employers and Unions

37. The responsibility of employers and Trade Unions should be based on this particular framework. They should aim at :

a) signing no more collective agreements laying down direct discrimination and, obviously enough, to eliminate existing cases of discrimination;

b) including a clause in all collective agreements which would set out the practicalities for the application of equal wages and for a procedure for the settlement of any difficulties which might arise;

c) using job classification systems as objectively as possible, in particular by putting a higher value on certain specific qualities held by female workers (precision, speed, dexterity, etc.);

d) improving the situation of women by priority action aimed at raising first and foremost the lowest wages and relating some forms of wages to output;

e) informing women workers by effective means, of their rights under provisions of the law and in collective agreements in matters related to the application of the principle of equality.

Employers' organisations ought in particular to call on their members :

f) not to be content with the formal respect of the principle of equality for minimum or basic wage rates fixed in collective agreements but also to apply it to actual wages paid by companies including all bonuses;

g) to ensure, likewise at the level of actual application within companies, that women really have equal opportunities in respect of access to skilled jobs together with the same possibilities of income rises and promotion prospects in the course of their employment.

The trade unions ought particularly :

h) to support and promote legal actions aiming at the elimination of discrimination in specific cases;

i) to take special care, within companies, to ensure the correct application of the principle of equal wages, both in respect of job classification and in respect of real wages. This should be done through all the bodies or systems for staff representation : works councils or committees, staff delegates, union delegates, etc ...;

j) as far as possible to make female workers' representatives party to the negotiations relating to the problems directly concerning them, for example, on the subject of professional qualifications.

C. The Commission

38. The Commission, taking account of the considerations outlined at the beginning of the present conclusions and entrusted with the task of supervising the application of the provisions of the Treaty, also intends to strengthen and extend its role for the effective achievement of the principle of equal wages. As a result :

a) on the basis of Article 169 of the Treaty, it will start proceedings against certain Member States which have not yet complied with the formal and direct obligations imposed on them by Article 119 and made more explicit in the Resolution of 30 December 1961;

b) it will prepare a draft for a new community instrument which will specify certain details to help in achieving the principle of equal wages, especially in respect of the points raised above in par. 36;

c) in accordance with the wishes of the European Parliament, it will invite the employers and unions to meet at a European level to negotiate a framework agreement relating in particular to the points raised in par. 37;

d) in order to give further assistance in drawing up this European framework agreement, it will present such conclusions as might be selected from the study which it has had done by experts on "Classification systems in the light of the principle of equal pay for male and female workers";

e) in a more general context, it will present the Council with proposals for the grading of the employment of women based firstly, on the study "The employment of women and their problems in the Member States of the EEC" and secondly, on the results of the sociological survey now being carried out on the general working conditions of female workers.

Furthermore to put the wishes expressed unanimously by the Article 119 Special Group into concrete form, the Commission :

f) will carry out a special new study, according to sex, on the structure and distribution of wages in industry in 1972. This study will show comparisons with developments since 1966 when a previous study was undertaken. But it will also include for the first time an analysis of variations in the wages of white collar workers;

g) will prepare for the Council a draft regulation that will allow a survey to take place in the nine Member States during 1974 in order to examine the distribution of wages in commerce, banks and insurance companies;

h) intends to ask the three new Member States to agree to carry out a survey on the structure and distribution of wages in industry of the same type as that carried out in the original six in accordance with the Regulation of the Council dated 8 November 1971;

i) will ask the Council to agree to the Article 119 Special Group becoming a quadripartite body (Commission, governments of Member States, employers organisations and trade unions).