EUROPEAN COMMUNITY POLICY ON THE POSITION OF WOMEN AND ITS EFFECTS UPON THE MEMBER STATES, 1958-1981

JUNE NEILSON

A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy of the University of London

1990

London School of Economics and Political Science
University of London

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

ABSTRACT

The areas relevant to the position of women in society were identified and examined in the context of the European Community. Community policy initiatives for women were based upon the founding Treaties. Article 119 of the European Economic Community Treaty covered equal pay and this Article constituted the framework for women's policy to encompass eventually the domains of employment, social security, and education and training. Three Directives were enacted in the fields of equal pay, employment and social security to form a core of Community equality legislation. This legislation was backed up by financial provisions enabling the European Social Fund to be used for the purposes of training women entering or re-entering the labour market. However, not all the initiatives led to legislative success. But, by the end of the period under review, a coherent policy for women was apparent when a comprehensive action programme for women was proposed.

The impact of the European Community legislation for women upon the Member States was analysed. Progress was slow and variable. To monitor national developments, the Community devised a number of methods which included working parties, studies and reports, and meetings of experts. Eventually, infringement procedures were commenced to ensure

compliance from the Member States. The success of infringement proceedings was demonstrated since a number of national governments were forced to enact legislation which they might not otherwise have considered.

The existence of these Directives enabled women (and men) to institute equality cases before the national courts. A number of preliminary rulings before the Court of Justice clarified and extended the principle of equal pay.

ACKNOWLEDGEMENTS

The author would like to thank the London School of Economics and Political Science for allowing her to undertake research. Sincere gratitude must be expressed to her supervisor, Dr. P. Taylor, for his unfailing patience and invaluable advice whilst this thesis was under preparation.

Thanks must also be extended to the staff of the British Library of Political and Economic Science, the British Library, the University of London Library, King's College Library, the Institute of Education Library, the Institute of Advanced Legal Studies Library, and the London Offices of the European Parliament and the Commission of the European Communities for their assistance in unearthing obscure documents and references.

Finally, on a personal note, my husband urged the author to commence research and gave unstinting and active support. Without such encouragement, this thesis would never have been completed.

CONTENTS

FIGURES

TABLES

ABBREVIATIONS

CEDEFOP	European Centre for the Development of Vocational Training
CEE	Communauté Économique Européenne
CGT	Confédération Générale du Travail
COREPER	Committee of Permanent Representatives of the Member States
EAEC	European Atomic Energy Community
EC	European Community
ECJ	European Court of Justice
ECR	Reports of Cases before the Court of Justice
ECSC	European Coal and Steel Community
EC9	The nine countries of the European Community
EEC	European Economic Community
ESF	European Social Fund
EUA	European unit of account
ICFTU	International Confederation of Free Trade Unions
IFCTU	International Federation of Christian Trade Unions
ILO	International Labour Organisation
JO	Journal Officiel des Communautés Européennes
JOC	Journal Officiel des Communautés Européennes C
JOF	Journal Officiel de la République

	française
JOL	Journal Officiel des Communautés Européennes L
MEP	Member of the European Parliament
OECD	Organisation for Economic Co-operation and Development
OJC	Official Journal of the European Communities C
OJL	Official Journal of the European Communities L
OJ Sp Ed	Official Journal of the European Communities. Special Edition
UACES	University Association for Contemporary European Studies
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICE	Union of Industries of the European Community

CHAPTER ONE

The position of women in the European Community [1]

1.1. Introduction

This thesis is entitled European Community policy on the position of women and its effects upon the Member States, 1958-1981. A number of questions might be put in relation to the subject of the thesis. First, why should European Community policy be worthy of detailed study? Secondly, how could the study of the position of women in this context be justified? Finally, why should the time-scale of this research be confined to the period 1958-1981? Before proceeding to the detailed examination at the core of this research, it would seem necessary to explore these questions in this first Chapter to arrive at adequate reasons of justification for this study and to provide an adequate exposition of the necessary background to this research.

To return to the questions which were posed above, first, why should European Community policy be studied? Within the framework of international relations, the European Community as an international organisation has not fitted into the neat categories formulated to describe the integrative processes between states. The Community also did not constitute

an integrated transnational federal state, a single nation state. In its composition, this Community consisted of a number of individual national states which arrived at Community decisions collectively. Yet, the Community was imbued with certain powers of its own transcending national boundaries. Its anchorage in Europe meant that the Community could be regarded as a regional international organisation rather than as a world-wide international organisation. The uniqueness of the Community structure in the world has given rise to a great deal of theoretical research out of which a general theory of European integration has been attempted.

But, in recent years, there has been some evidence as typified in Wallace [2] of a different approach to the study of the European Community. This approach, more practical in nature, consisted of case studies through the analysis of Community policy-making which involved many different levels during the decision-making process. A researcher wishing to study the intricacies and workings of the European Community could adopt the case-study approach which could throw light upon the whole area. Which subject should be chosen as a case-study? It could be argued that one should choose an economic issue central to European Community concerns since the European Community was conceived within a fundamentally economic framework. But, economic issues have been the subject of much

research. A more neglected area could be found within the realms of social policy which was placed on an equal footing with economic concerns in the early 1970's. Thus, the decision was taken to adopt a case-study approach using a subject drawn from the social policy domain. Consideration was also given to the effects of that policy upon the Member States. For:

> "To date, academic research on the European Community has tended to concentrate on the decision-making structures established by the Rome Treaties to the neglect of the interaction between the national and Community levels" [3].

The second question concerned the appropriateness of the chosen subject. The position of women formed part of the social policy domain of the European Community with particular reference to the field of employment. However, issues affecting women transcended the confines of Community social policy. This aspect and the fact that the women's policy of the European Community stemmed from the Treaty of Rome rendered this subject an interesting area of study. Furthermore, at the time of commencement of this research, 1982, the subject of women and the European Community had scarcely been studied although it has since become a focal point of examination. Recognition of the development of a definite women's policy within the European Community was revealed in the literature dating from the 1980's. Indeed, the importance of

this subject was commented upon by a Member of the European Parliament [MEP]:

> "I think the evolution in the role of women is probably the most important social development of this century" [4].

The status of women and their role in society have been the subject of attention since the eighteenth century. In the twentieth century, interest has alternately flourished and declined. The question of women's suffrage caused an upsurge of interest. Once women secured the vote it seemed to be assumed that other freedoms would follow and attention declined as a result. However, since the end of World War II, the subject assumed an importance once again on the political agenda with regard both to action by governments and activities carried out by women themselves. Increasing freedom led women to demand a more equal position in society. Women's groups transending traditional political parties developed at the end of the 1960's and during the 1970's. These groups frequently focussed on one issue such as the influential British National Abortion Campaign or the Greenham Common Women's Group. Many sprang up and died away quickly. During their existence, they attempted to persuade political parties and governments to introduce reforms. This development could be traced throughout the Western World. Their influence were lasting and important.

Women's liberation and serious research into women's issues were often the subject of some derision in the 1960's and much of the 1970's. However, the 1980's witnessed a general change in attitude by Western European society towards the idea of women's liberation. This change was accompanied by the beginning of a recognition that research into the position of women formed a serious and worthwhile subject for academic research, from political, educational, sociological or historical viewpoints.

In particular, a judge of the Court of Justice, Aleck G. Chloros, considered that research into the European Community equality legislation and case-law was important because it

> "may serve as an illustration of European integration in action" [5].

Finally, the time-scale of this research needed comment. Some might argue that no time-limit should be imposed since the research should reflect the latest possible stage of development. Under such conditions, the researcher could run the risk of almost reaching the end of but never completing the research. There would always be a new event or the latest development to chronicle, examine and analyse. By imposing a time-limit, the researcher could not only avoid these

drawbacks but could also explore throughly the issues involved within a particular period. In deciding upon a time-scale, the researcher sought to establish one that provided a sufficient length of time to allow a comprehensive and detailed analysis of the subject and, at the same time, one that would provide a coherent basis for consideration of the actual policy.

Purists could argue that since the first European Community was established in 1952 any study on the European Community should commence at that date. However, this Community, the European Coal and Steel Community, which was established by the Treaty of Paris signed in 1951 [6], was purely concerned with the then two raw materials for war, coal and steel. These two industries scarcely employed any women and, so, a women's policy was not needed. Therefore, it would appear reasonable to omit this Community from the study. Since all of the European Community policy on women emanated from the European Economic Community which was founded in 1958, it would seem logical to commence the research from that date.

In relation to the closing date of research, the years 1972, 1981 and 1985 could be considered. The first date, 1972, marked the end of the original Community of six Member States and the first enlargement. However, the first major thrust of policy initiatives to improve the position of women dated

from later in the 1970's and, so, adopting the year 1972 would ignore the major developments of the 1970's and it would also constitute a rather thin piece of research. Therefore, 1972 could be rejected in favour of one of the two later dates. The second major development in European Community policy for women, the initiation of an action programme to consolidate the earlier legislative measures, took place during the period 1982 to 1985. At the end of 1985, a second action programme was established for the years 1986 to 1990. The choice of 1981 would allow a full assessment of the legislative period. But, to choose 1985 would mean that only one action programme could be examined and, furthermore, it would seem to be too early, as of yet, to assess the full effects of this first action programme. In future years, it would seem reasonable to study the two action programmes together. For all these reasons, the researcher decided that the period from 1958 to 1981 would represent a coherent period of study and would allow a sufficient time to have passed to assess the full significance of the developments. Although the cut-off date is 1981, some account of later events will be given at appropriate points in order to provide a rounder picture.

1.2. A survey of the literature

In establishing the subject of research, it would

seem appropriate, at this point, to examine the available literature. Primary source material was provided in the official publications of the European Community. Its General Reports [7] and Bulletins [8] were utilised to ascertain the relevant documents, legislative proposals and enactments. In tracing copies of the documents, particularly the earlier reports, time-consuming efforts had to be undertaken in the United Kingdom and on the continent. Of those reports which were unavailable in the United Kingdom, some were still classified as confidential in the European Community archives although copies were obtained from other sources for all but one report.

The inadequate Indexes to the Official Journal of the European Communities [9] yielded some references to the work of the Economic and Social Committee and the European Parliament. The documentation of the European Parliament, however, could be obtained from recourse to its Debates [10] and accompanying sessional indexes. References to quite a number of relevant European Community documents were often found in European Parliament Working Documents [11].

The secondary literature involved monographs and periodical articles. Many of the general works on the European Community such as Cairncross [12] and Coffey [13] included a chapter on social policy. But, works like these until recently excluded any mention of the

position of women. Some general tomes, however, particularly in recent years devoted small sections ranging from a paragraph to a couple of pages to women's issues. These descriptions were usually confined to the specific subject of equal pay. Such works included those by Evans [14], El-Agraa [15] and Swann [16].

Comparatively few works have been written on the field of European Community social policy and most of these only included a small section on the position of women. A typical example was provided by Collins [17] who produced a two-volume work on Community social policy in 1975 of which the second volume devoted a small but detailed section on the developments of equal pay [18]. In this volume, references to women were made according to the relevant article of the European Community Treaties so she did not discuss a coherent policy for women. Her work did throw some light on the early development of equal pay but since this work was published in 1975 its findings have become limited and somewhat out of date.

Up until the 1980's no works were produced on the particular subject of the European Community and women. But, since 1980 the situation changed since interest in the subject grew. The European Community itself produced a work on the subject in 1980 [19].

This volume gave a brief résumé of the major developments and practical information on the methods available to influence the decision-making process of the Community. Half of the tome, however, consisted of statistical data relating to the individual Member States. The factual information has been regularly updated in the relevant issues of two European Community periodicals entitled European File [20] and European Documentation [21]. An United Kingdom pressure group, the Rights of Women Europe group, produced a small work in 1983 [22] to alert British women to the European Community achievements with regard to women and to the money which was available from the Community. Although it provided some useful information, it was primarily conceived of as a practical handbook rather than as an academic treatise.

Knapp [23] devoted a comparative analysis to the specific issue of equal pay in the European Economic Community and in Switzerland. In the political field, Vallance and Davis [24] considered the European Community and women from the viewpoint of the representation of women in the European Parliament. Their interest in the subject stemmed from the factor that women have come to occupy a higher proportion of European Parliamentary seats than found in the national legislatures. Accordingly, the European Community policy for women formed a peripheral concern

in this volume.

Legal aspects of the Community's policy for women were examined by Landau [25] and Remuet-Alexandrou [26]. Landau's work described the relevant Community legislation and the legal powers of the European Community institutions. The core of the work consisted of a comparative analysis of the impact of this legislation upon the Member States from the legislative and court case-law viewpoints. The study by Remuet-Alexandrou concentrated on the legislative impact of the European Community legislation for women upon the Member States and the relevant cases brought before the Court of Justice. It included an overview of the situation in Greece.

In comparison to monographs, periodical literature was more voluminous. One of the Supplements to the European Community periodical, Social Europe, [27] provided an overview of ten years of European Community policy in relation to equal opportunities for women. Articles considered the European Community policy during that period and later, the part played by various European Community institutions, some specific achievements and legal aspects.

A number of periodical articles gave general accounts of European policy for women albeit from different standpoints. A factual account was provided

by Alexander [28] who laid down, in conclusion, several ways in which women could press for further progress. Although not writing in an official capacity, Quintin, a Community official, [29] tended to portray this European Community policy in a positive manner in contrast to the pessimistic picture drawn by Warner [30]. The latter concluded that European Community policy for women had failed to some degree in every respect and that the future usefulness of the policy must be cast into doubt. Burrows [31] also arrived at a pessimistic conclusion that the prevailing harsh economic climate would probably work against the successful implementation of further European Community proposals for women. Eberhardt's article [32] was designed to draw the attention of British women to the relevant European Community legislation and proposals, and the advantages which would result. A polemic approach was taken by Crankshaw [33] who drafted out a future role for women in the European Community. Unusually, Hoskyns [34] approached the subject from within the theoretical framework provided by feminist studies. A different approach was taken by Sweeney [35] who compared the achievements of the Council of Europe and the European Community with regard to women's rights from a human rights standpoint. She concluded that the European Community had been more effective than the Council of Europe in this field. Yet, with regard to this area, the European Community still possessed

limited powers.

Articles were written about the specific subject of wages and salaries, social security, the European Parliament and law. In relation to the economic sphere, the question of female wages and salaries in the European Economic Community countries was considered by an annual study day organised by the French feminist organisation, the Comité de Liaison des Associations Féminines [the Liaison Committee of feminist associations], and the findings were reported by Gregoire [36]. Clair [37] attempted to establish whether Article 119 of the Treaty of Rome on equal pay was economic or social in content. Sullerot [38] addressed herself to defining the concepts of equal work and equal pay, and reviewing the progress and the future of equal pay. Laurent [39] looked at social security matters in the context of European Community equality legislation. He pointed to the important contribution towards the establishment of equality made by the Court of Justice in its case law and the limitations which had resulted. He concluded that in this field much remained to be done.

With regard to political matters, Kohn [40] considered the results of the European Parliament elections for 1979 since 16% of the seats were won by women. This figure represented a higher proportion than that found in any of the lower chambers of the

national legislatures. The candidates and earlier compositions of the Parliament were analysed.

Law was covered in quite a number of periodical articles which examined, in the main, the cases which came before the Court of Justice on European Community legislation for women. Generally, Article 119 of the Treaty of Rome [41] and the attendant case-law were considered by Beck [42], Forman [43] and Greaves [44]. Landau [45] also assessed the effects of the European Community legislation for women in the Member States. She concluded that in this domain the unusual phenomenon had occurred whereby the law was ahead of social and economic developments unlike the usual converse situation. However, discrimination against women still existed in practice.

In relation to the body of European Community case-law, the first three cases before the Court of Justice, the three Defrenne cases [46], produced a number of articles on this subject. Wyatt wrote critically on the first two cases in two articles [47]. He concluded in relation to the second case [48] that the relationship between Community and national competences with regard to substantive law and procedure had yet to be explored. In the other article [49], he argued that the principle of equal treatment as found in the Equal Treatment Directive [50] could be regarded as directly applicable. The second case

was also examined by Crisham [51] and an article in the European Law Review [52]. The final Defrenne case was considered in the Journal of Business Law [53].

Quite a number of articles were devoted to the Court of Justice cases which orginated in the the United Kingdom. General assessments were provided by Corcoran [54] and by Szyszczak [55] who also considered the application of European Community equality legislation to British law. Steiner [56] looked at the areas of likely conflict between British and Community law with regard to equality legislation. He concluded that the British law in this respect fell short of Community law. This conclusion contrasted with that put forward by Thomson and Wooldridge [57] who argued that the United Kingdom Equal Pay Act [58] conformed in general to European Community law and that any amendments to the United Kingdom Equal Pay Act which were needed to bring that Act into line with European Community legislation were not sweeping or radical in nature. The first British case before the Court of Justice was assessed by Wyatt [59] whilst the next two cases received examination from Snaith [60] and Post [61]. Plender [62] compared these two cases to parallel litigation in the United States of America. Crisham [63] and Freestone [64] considered all three cases and pointed to the deficiencies of the United Kingdom equal pay legislation. Sex discrimination in relation to the subject of pensions

was examined by Ellis and Morrell [65] and Thomson and Wooldridge [66] considered two British Employment Appeals Tribunal cases within the context of Article 119.

Was it significant that the general articles on women and the European Community were, on the whole, written by women whilst most of the legal articles were penned by men? It should be noted, however, that the vast literature which emanated from women's studies largely ignored this subject. The emphasis with regard to women's studies was on theoretical frameworks or national studies. Some comparative works were produced but they largely ignored the regional position of the European Community.

1.3. Definition of the position of women

To return to the subject under examination, what was meant by the position of women? This policy area should be clearly defined since the emphasis differed at various periods of time. In the earlier years of the twentieth century, concern was concentrated on the political issue of women's suffrage. Later, the problems facing working women became the subject of attention. Yet, in its widest sense, the position of women transcended traditional disciplines and covered many activities. The women's liberation movement which developed throughout Western

Europe and North America at the end of the 1960's and during the 1970's was concerned with a wide-ranging set of concerns. This range of interests was indicated in the charter of the British Women's Liberation Movement since the following eight demands were laid down:

1. Assertion of the right of every woman to a self-defined sexuality.
2. Equal pay.
3. Equal education and job opportunities.
4. Free contraception and abortion on demand.
5. Free twenty-four hour nurseries under community control.
6. Legal and financial independence.
7. An end to discrimination against lesbians.
8. Freedom from intimidation by the threat or use of violence or sexual coercion, regardless of marital status. An end to the laws, assumptions and institutions that perpetuate male dominance and men's aggression towards women [67].

These demands, therefore, covered the areas of legal rights, employment, financial rights, social services, education and health.

Rendel [68] extended the coverage in her identification of eleven areas for which action was demanded:

1. Recognition of the independent legal personality of women.
2. Marriage.
3. Reproduction, conception and abortion.
4. Care of children, the elderly and the handicapped.
5. Free choice to control one's sexuality.
6. Freedom from male violence.
7. Health services.
8. Securing peace and environmental protection for future generations [sometimes referred to as third generation rights].
9. Equal access to education, training, employment and occupational pensions.
10. The ending of sexual stereotyping and sexual roles.
11. Equality in social security and taxation matters.

These areas spread across the domains of legal and political rights, employment, financial rights, social services, education and training, health and the media, encompassing the fields of politics, economic and financial affairs, social policy, education and communications. One could note that no mention was made of the right to vote since this was, presumably, taken for granted. The implications of these various points can be listed in more detail as follows.

1.3.1. Legal rights

A number of issues could be identified in relation to legal rights. Women should be able to enjoy full legal equality with men without male domination or sexual discrimination against women. A woman should be entitled to keep her independent personality in marriage matters so that she could retain her own surname on marriage and her own nationality when marrying a foreigner. In relation to her children, she should have rights including the freedom for the children to bear her or her husband's surname. Furthermore, a married woman should have the right to own property, the freedom to take a job, to open a bank account or to enter into credit commitments without the need to obtain the consent of her husband. In the event of separation or divorce, a woman should have rights in relation to income and custody over children. Generally, protection should be given in law to women against male violence including rape.

1.3.2. Political rights

Women should have the right to vote on equal terms with men, to participate in political life, to secure peace and to strive for the protection of the environment.

1.3.3. Employment

Employment matters represented the cornerstone of any policy area for women. Generally, from an initial preoccupation with equal pay, interest extended to equal opportunities in jobs at all stages from recruitment to promotion, equality in occupational pensions and the right to take maternity leave.

1.3.4. Financial rights

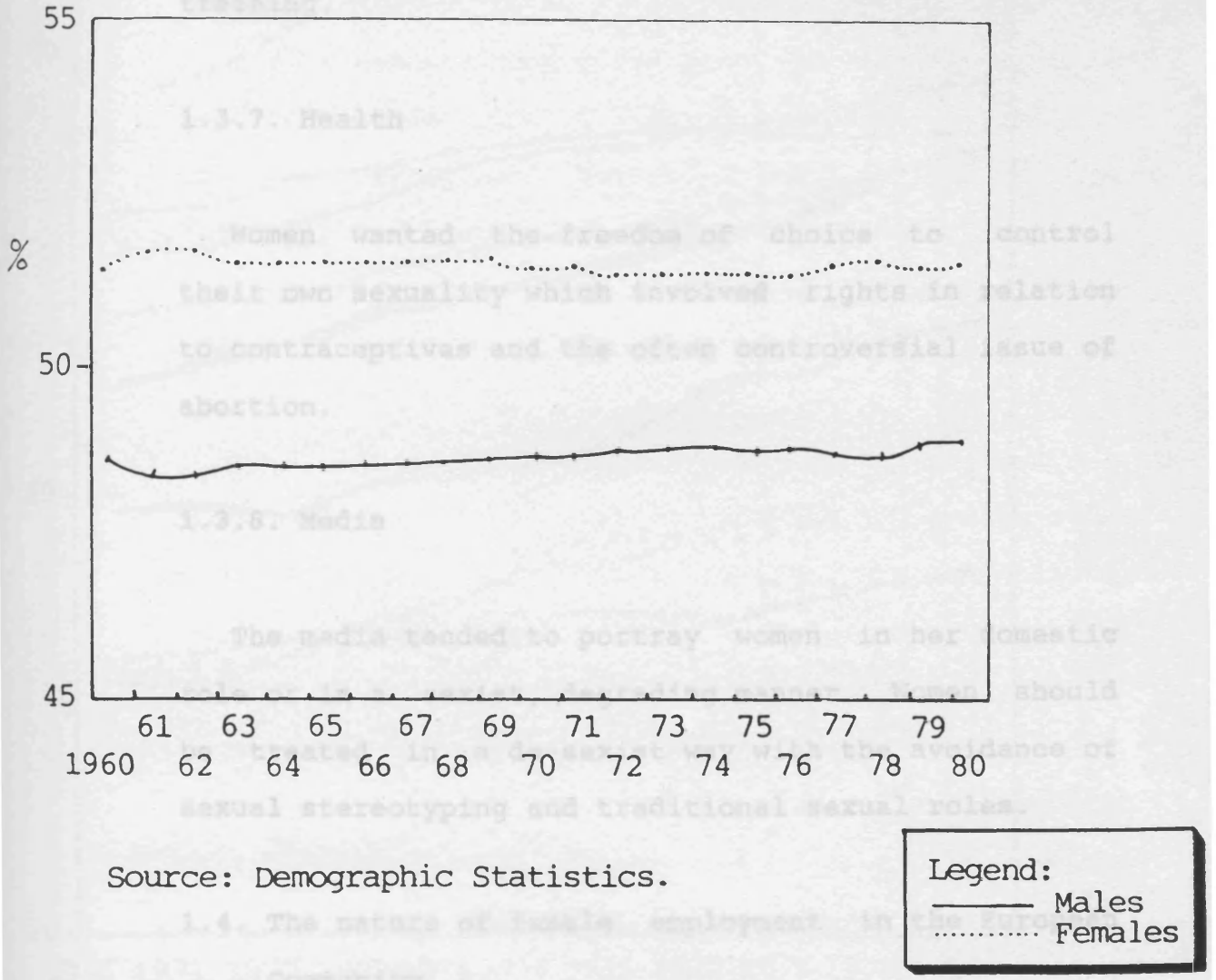
Equality in taxation and the right to enjoy financial independence were the major concerns in this domain.

1.3.5. Social services

Demand arose for women to be given the same rights as men in relation to social security matters. To enable women to take up employment, support services should be established such as crèches, nurseries, kindergartens, and help for the disabled, the sick and the elderly.

1.3.6. Education and training

There was evidence of sexual stereotyping in education in the curriculum, teaching materials, teacher attitudes, career guidance and vocational



Source: Demographic Statistics.

Figure 1.1.

THE PROPORTION OF WOMEN IN THE EUROPEAN COMMUNITY.

training. Equal opportunities and rights were thus to be established at all levels of education and training.

1.3.7. Health

Women wanted the freedom of choice to control their own sexuality which involved rights in relation to contraceptives and the often controversial issue of abortion.

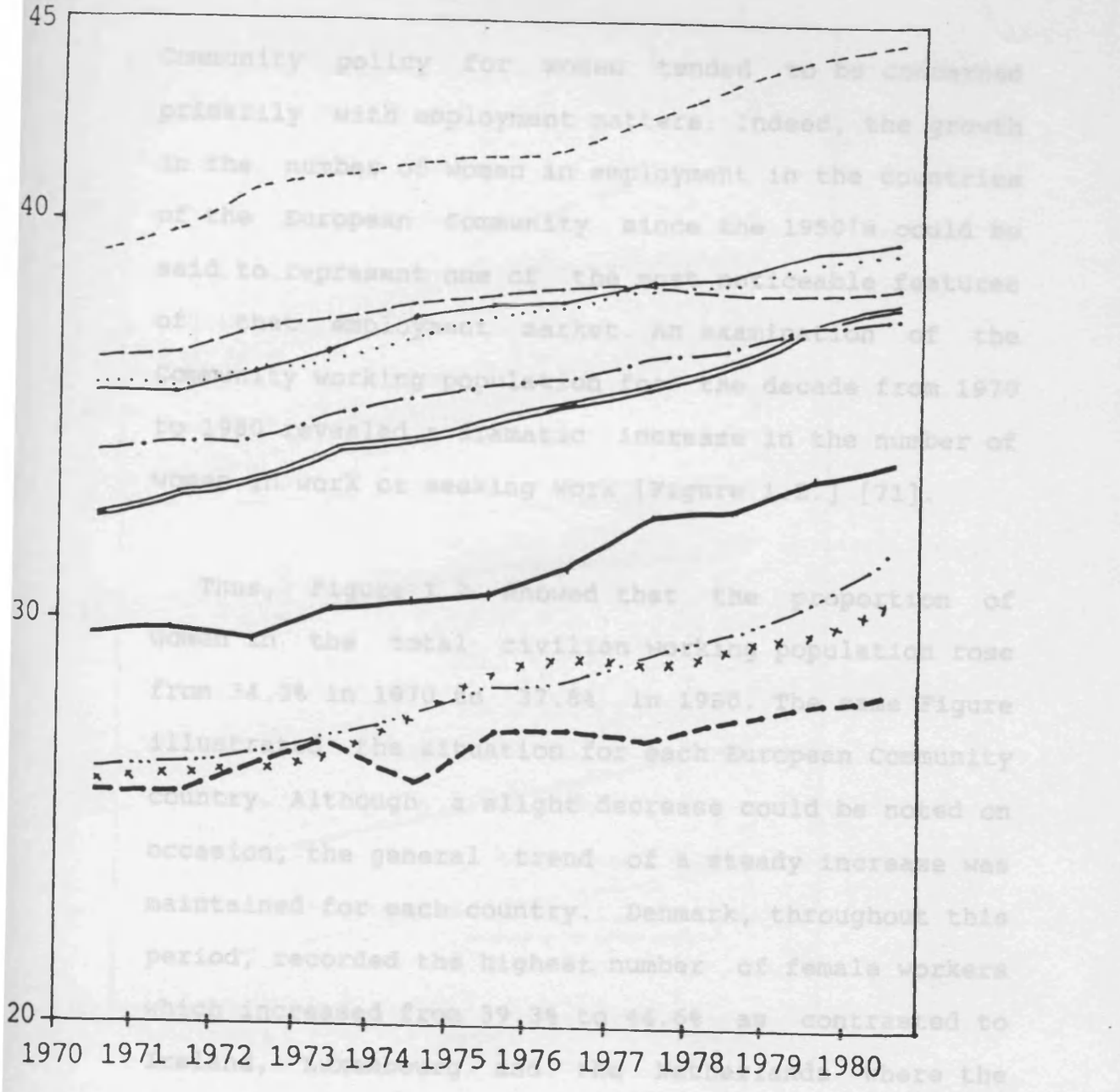
1.3.8. Media

The media tended to portray women in her domestic role or in a sexist, degrading manner. Women should be treated in a de-sexist way with the avoidance of sexual stereotyping and traditional sexual roles.

1.4. The nature of female employment in the European Community

Before examining the relevance of these areas to the European Community, a few background statistics might be helpful. Since 1960, the proportion of women in the total Community population stabilised at around 51% as Figure 1.1. [69] illustrated.

Owing to the constraints of the Treaty establishing the European Economic Community [70], European



Source: Employment and Unemployment.

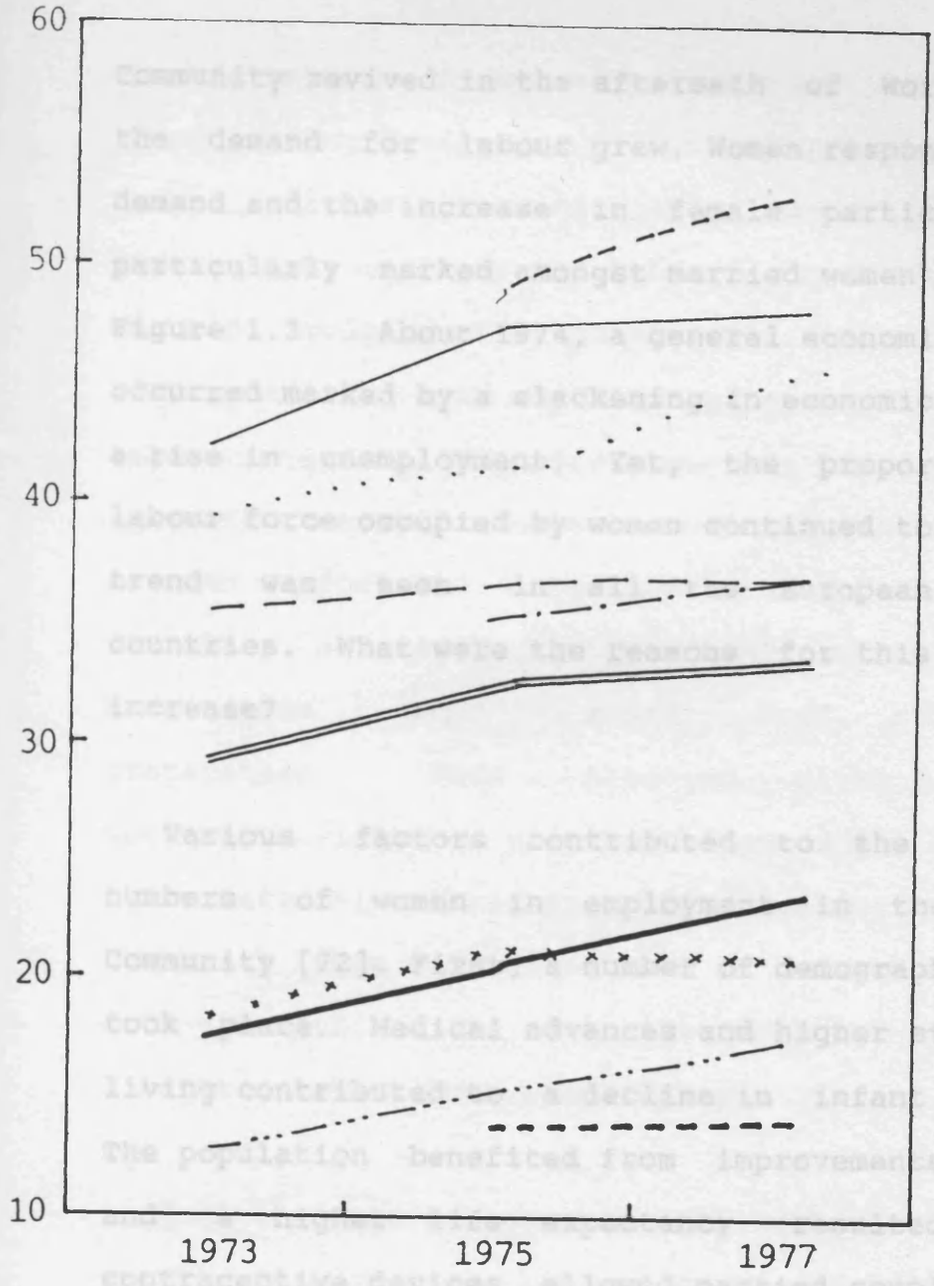
Figure 1.2.

THE PROPORTION OF WOMEN IN THE CIVILIAN WORKING POPULATION OF THE EUROPEAN COMMUNITY.

Community policy for women tended to be concerned primarily with employment matters. Indeed, the growth in the number of women in employment in the countries of the European Community since the 1950's could be said to represent one of the most noticeable features of that employment market. An examination of the Community working population for the decade from 1970 to 1980 revealed a dramatic increase in the number of women in work or seeking work [Figure 1.2.] [71].

Thus, Figure 1.2. showed that the proportion of women in the total civilian working population rose from 34.2% in 1970 to 37.8% in 1980. The same Figure illustrated the situation for each European Community country. Although a slight decrease could be noted on occasion, the general trend of a steady increase was maintained for each country. Denmark, throughout this period, recorded the highest number of female workers which increased from 39.3% to 44.6% as contrasted to Ireland, Luxembourg and the Netherlands where the lowest levels of female participation could be found. Even in these latter countries, the proportions increased respectively from 25.9%, 26.1% and 26.4% to 28.7%, 31.4% and 32.9%. In spite of these national differences reflecting variant attitudes towards women as workers, the general trend towards an increased participation by women in employment was revealed.

As the national economies within the European



Source: Labour Force Sample Survey.

Legend:

- EC9
- BELGIUM
- FEDERAL REPUBLIC OF GERMANY
- DENMARK
- FRANCE
- IRELAND
- ITALY
- LUXEMBOURG
- THE NETHERLANDS
- UNITED KINGDOM

Figure 1.3.

THE PROPORTION OF MARRIED FEMALE WORKING POPULATION TO THE TOTAL MARRIED WOMEN POPULATION IN THE EUROPEAN COMMUNITY.

Community revived in the aftermath of World War II, the demand for labour grew. Women responded to this demand and the increase in female participation was particularly marked amongst married women as shown in Figure 1.3. About 1974, a general economic recession occurred marked by a slackening in economic growth and a rise in unemployment. Yet, the proportion of the labour force occupied by women continued to rise. This trend was seen in all the European Community countries. What were the reasons for this phenomenal increase?

Various factors contributed to the increasing numbers of women in employment in the European Community [72]. First, a number of demographic changes took place. Medical advances and higher standards of living contributed to a decline in infant mortality. The population benefited from improvements to health and a higher life expectancy resulted. Modern contraceptive devices allowed married couples to plan their families so that smaller families became the norm. The birth rate steadily declined. And so, women found that around the age of thirty-five they became free of family responsibilities with the prospect of forty years more life, some thirty of which could be devoted to employment.

Technological advances accompanied these demographic changes. Housework underwent a radical

transformation from the introduction of such labour-saving devices as electrical washing machines, tumble dryers, automatically controlled cookers, dishwashing machines and hoovers. Mains water removed the old drudgery of fetching water whilst heating and cooking in the home by gas or electricity replaced labour-intensive and dirty methods based on coal or some other natural substance. Central heating provided an even comfortable home environment free from cold, draughts, and damp. Fridges and freezers, and convenience foods eased food storage and preparation. Mass produced clothes replaced home-made clothing prepared from one's own wool or other materials. Thus, the back-breaking elements of housework were removed so that it ceased to be a full-time job. At the same time, women at home became consumers rather than producers.

Social factors assisted the working women. The growth of nurseries, kindergartens and crèches aided child care whilst the spread of institutions to look after the old, chronically ill, and handicapped eased these burdens which traditionally fell upon women. The increase in owner-occupancy of houses, the need for expensive labour devices in the home and the rise of overseas holidays put pressure on families to find extra income. Other pressures resulted from a rise in the number of single-parent families partly attributable to an accompanying increase in the number

of separated and divorced couples. In the educational field, the level of women's education and training improved to increase expectation levels and to lead to the likelihood of women taking up employment. Political factors such as equal rights for citizens became accepted since the end of World War II. This equality of expectation gradually extended to the employment field.

Finally, the rise of the women's movement encouraged women to consider their individual characteristics and status. Women discovered that earning their own income from employment allowed new freedoms and increased self-awareness.

Yet, the pattern of women's employment was not ideal [73]. Women tended to be concentrated in a small range of activities such as the food and textile industries, and the service sector. Furthermore, women usually occupied low-paid jobs demanding very little training with little prospects for promotion or advancement. The majority of part-time jobs were held by women. Job segregation resulted.

The unsatisfactory nature of female employment arose out of traditional attitudes of society towards the role of a woman. For the position of a woman was conceived to be centred on the home as a housewife engaged in housework and raising a family. The man's

role was to seek a career to support a family. This sexual stereotyping commenced at an early age through the attitudes of parents and the nature of children's toys and books. It was reinforced at school in textbooks, in the curriculum and by the attitudes of the teachers. At the secondary school level, girls were forced to take domestic science whilst boys learnt woodwork, metalwork and technical crafts. Careers guidance was equally imbued with sexual stereotyping and attitudes. Girls were encouraged not to seek further qualifications but to seek a job as a stopgap between school and marriage. As a result, working women, in general, suffered from lack of training and suitable occupational qualifications. Furthermore, on returning to work after raising a family, women suffered from the lack of this initial occupational training.

Working women concentrated in unskilled jobs were subjected to considerable discrimination and inequalities. Discrimination occurred at the level of recruitment since employers believed that women were more prone to absences from work than men because it was thought that women fell ill more often than men or that they needed to look after a sick member of the family. Women were subjected to further discrimination when prospects for occupational training or promotion arose. Inequality arose from protective legislation for women such as the prohibition of dangerous jobs

and night work, restrictions on working hours, or a ban against the employment of married women. Women tended to receive lower wages than men for the same job. Rearing a family caused interruptions to the working woman's life. After raising a family, the woman on returning to a job needed retraining and suffered from her earlier disadvantages. But, a woman's income increasingly ceased to be a supplement to the family income because consumer demand grew so that the need for more income increased, a steady increase in one-parent families occurred and the rise of unemployment affected families when the male worker became unemployed.

1.5. Summary

These problems arose on a general scale in all the European Community countries. Much of this thesis will inevitably be concerned with employment but the other issues affecting the position of women will not be neglected.

The situation in the European Community with regard to its policy for women and its effects upon the Member States between 1958 and 1981 will be assessed. First, it will be necessary to establish the nature and the full extent of the European Community initiatives to improve the position of women [Chapter Two]. Next, the success or failure of these proposals

at the Community level will be described [Chapter Three].

Some account will be given of the methods developed by the European Community to implement and to monitor these legislative instruments [Chapter Four]. The effects of these successful initiatives upon the individual Member States will then be analysed [Chapter Five]. Then, the enforcement methods at the disposal of the European Community will be explored [Chapter Six]. The interpretation of European Community measures for women by the Court of Justice will be examined [Chapter Seven]. Finally, the effects upon women will be assessed [Chapter Eight] to answer the following questions. How many areas affecting women involved the European Community? Was the European Community successful in its attempts to improve the position of women? Did these Community initiatives make any practical difference to the position of women?

Footnotes

1. An explanation ought to be given of the use of the term the European Community in the singular rather than the plural sense, the European Communities. Although the three European Communities were separately established, their institutions were merged in 1967 so that they have functioned as one community for a number of years. It has become customary to use the singular term in denotation and this practice has been adopted throughout this thesis. During the examination of the earlier history in this

thesis, references have been made to the European Economic Community since at that time it existed as a separate entity and it seemed appropriate to refer to it in that manner. Many writers have tended wrongly to refer to the European Community as the European Economic Community or the Common Market. Although the latter Community has dominated the political arena, it could not be considered, strictly speaking, to constitute the whole. This sloppy practice should be discouraged.

2. Helen Wallace, William Wallace and Carole Webb eds., Policy-making in the European Community (2nd ed., Chichester, John Wiley, 1983).
3. Brigid Laffan, "Policy Implementation in the European Community: The European Social Fund as a Case study", Journal of Common Market Studies, Volume XXI, Number 4 (June 1983), p. 390.
4. Stanley P. Johnson, MEP, during an European Parliament debate. Official Journal of the European Communities. Annex. Debates of the European Parliament [hereafter Debates], Number I-266 (February 1981), p. 66.
5. Eve C. Landau, The rights of working women in the European Community (Luxembourg, Office for Official Publications of the European Communities, 1985), p. 11.
6. European Communities, Treaties establishing the European Communities. Treaties amending these Treaties. Documents concerning the Accession (Luxembourg, Office for Official Publications of the European Communities, 1978), pp. 15-201.
7. The Commission of the European Economic Community published an annual report from 1958 to 1967 known as
General Report on the Activities of the Community.
Then, on the merger of the executives in 1967, the Commission published an annual report known as
General Report on the Activities of the Communities.
From 1973, this report was termed the
General Report on the Activities of the European Communities.
8. From 1959 until the end of 1967, the Commission published an almost monthly publication known as Bulletin of the European Economic Community.
From 1968 it was re-titled
Bulletin of the European Communities.
9. Published annually by the Office for the Official Publications of the European Communities except for the alphabetical volume for 1980.
10. Published as an annex to the Official Journal of

the European Communities.

11. Issued with a running number for each session of the European Parliament.
12. Sir Alec Cairncross et al, Economic Policy for the European Community. The Way Forward (London, Macmillan for the Institut für Weltwirtschaft an der Universität Kiel, 1974), pp. 158-184.
13. Peter Coffey, "Social Policy" in Peter Coffey ed., Economic Policies of the Common Market (London, Macmillan, 1979), pp. 52-68.
14. Doreen Collins, "Social Priorities in an Enlarged Community" in Douglas Evans ed., Britain in the EEC (London, Victor Gollancz, 1973), pp. 62-63.
15. C.D.E. Collins, "Social Policy" in Ali M. El-Agraa ed., The Economics of the European Community (2nd ed., Oxford, Philip Allan, 1985), pp. 274-275.
16. Dennis Swann, The Economics of the Common Market (5th ed., Harmondsworth, Penguin, 1984), p. 283.
17. Doreen Collins. The European Communities. The Social Policy of the First Phase (2 vols., London, Martin Robertson, 1975).
18. Collins, The European Communities. Volume 2. The European Economic Community 1958-72, pp. 84-89.
19. Commission of the European Communities, Women and the European Community. Community action. Comparative national situations (Luxembourg, Office for Official Publications of the European Communities, 1980).
20. The latest number to be published was "Equal opportunities for women", European File, Number 10 (1987).
21. The latest available issue was "Women in the European Community", European Documentation, Number 4 (1984).
22. Rights of Women Europe, Women's Rights & the EEC. A Guide for Women in the UK (No place, Rights of Women Europe, 1983).
23. Blaise Knapp, L'égalité de rémunération des travailleurs masculins et féminins dans la Communauté économique européenne et en Suisse (Genève, Centre d'études juridiques européennes et Institut für europäisches und internationales Wirtschafts- und Sozialrecht, St. Gallen, 1968).
24. Elizabeth Vallance and Elizabeth Davies, Women of Europe. Women MEPs and equality policy (Cambridge, Cambridge University Press, 1986).
25. Landau, The rights of working women in the European Community.
26. Françoise Remuet-Alexandrou, "Community law and women", Women of Europe. Supplement, Number 12.
27. "New technology and social change- Ten years of Community policy on equal opportunities for men and women", Social Europe. Supplement, Number 2 (1986).
28. Morag Alexander, "The Contribution of the

European Economic Community to Equality between Women and Men", Equal Opportunities International, Volume 4, Number 4 (1985), pp. 28-31.

29. Odile Quintin, "L'égalité entre hommes et femmes: une réalisation spécifique de la politique sociale communautaire", Revue du Marché Commun, Volume 28 (Juin 1985), pp. 309-318.
30. Harriet Warner, "EC Social Policy in Practice: Community Action on behalf of Women and its Impact in the Member States", Journal of Common Market Studies, Volume XXIII, Number 2 (December 1984), pp. 141-167.
31. Noreen Burrows, "The Promotion of Women's Rights by the European Economic Community", Common Market Law Review, Volume 17, Number 2 (May 1980), pp. 191-209.
32. Eva Eberhardt, "Women and the EEC- a missed opportunity", Critical Social Policy, Volume 6, Number 1 (Summer 1986), pp. 120-128.
33. Vicki Crankshaw, "The future role of women in the European Community", New Europe, Volume 2, Number 5 (Autumn 1974), pp. 49-53.
34. Catherine Hoskyns, "Women's Equality and the European Community", Feminist Review, Number 20 (Summer 1985), pp. 70-88.
35. Jane P. Sweeney, "Promoting Human Rights Through Regional Organizations: Women's Rights in Western Europe", Human Rights Quarterly, Volume 6, Number 4 (November 1984), pp. 491-506.
36. Madame Gregoire, "Les salaires féminins dans le cadre du Marché Commun", Droit Social, Volume 21, Number 7/8 (Juillet-Août 1958), pp. 400-402.
37. Pierre Clair, "L'article 119 du Traité de Rome. Le principe de l'égalisation des salaires masculins et féminins dans la Communauté économique européenne", Droit Social, Number 3 (Mars 1968), pp. 149-156.
38. Evelyne Sullerot, "Equality of Remuneration for Men and Women in the Member States of the EEC", International Labour Review, Volume 112, Number 2/3 (August-September 1975), pp. 87-108.
39. André Laurent, "European Community law and equal treatment for men and women in social security", International Labour Review, Volume 121, Number 4 (July-August 1982), pp. 373-385.
40. Walter S.G. Kohn, "Women in the European Parliament", Parliamentary Affairs, Volume XXXIV, Number 2 (Spring 1981), pp. 210-220.
41. European Communities, Treaties.
42. David Beck, "Equal Pay and the Implementation of Article 119 of the Treaty of Rome", The Irish Jurist, New Series, Volume XIII, Part 1 (Summer 1978), pp. 112-131.
43. John Forman, "The equal pay principle under Community law- A Commentary on Article 119 EEC",

Legal issues of European integration, Number 1 (1982), pp. 17-36.

44. Rosa Greaves, "Article 119 and its Interpretation by the European Court of Justice", Northern Ireland Legal Quarterly, Volume 33, Number 3 (Autumn 1982), pp. 199-214.

45. C.E. Landau, "Recent legislation and case law in the EEC on sex equality in employment", International Labour Review, Volume 123, Number 1 (January-February 1984), pp. 53-79.

46. "Gabrielle Defrenne v Belgian State Case 80/70", Reports of Cases before the Court of Justice [hereafter ECR], 1971, pp. 445-462, "Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena Case 43/75", ECR, 1976, pp. 455-493 and "Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", ECR, 1978, pp. 1365-1389.

47. Derrick Wyatt, "Prospective effect of a holding of direct applicability", European Law Review, Volume 1, Number 5 (August 1976), pp. 399-402 and Derrick Wyatt, "Article 119 EEC: definition of "pay"", European Law Review, Volume 1, Number 5 (August 1976), pp. 414-420.

48. Wyatt, "Prospective effect of a holding of direct applicability".

49. Wyatt, "Article 119 EEC: definition of "pay"".

50. Council of the European Communities, "Council Directive of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC)" [hereafter "Equal Treatment Directive"], Official Journal of the European Communities L [hereafter OJL], Volume 19, Number 39 (14 February 1976), pp. 40-42.

51. Catherine A. Crisham, "Case No. 43/75, Gabrielle Defrenne v. Société anonyme belge de navigation aérienne with annotation", Common Market Law Review, Volume 14, Number 1 (February 1977), pp. 102-118.

52. "June 1976. The Defrenne judgment", European Law Review, Volume 1, Number 4 (June 1976), pp. 267-268.

53. "Sex discrimination in employment", Journal of Business Law, (July 1976), pp. 296-298.

54. Jennifer Corcoran, "UK Sex Discrimination and the European Court", Equal Opportunities International, Volume 1, Number 1 (1981), pp. 18-21.

55. Erika Szyszczak, "Problems of Equal Pay Within the EEC Perspective", New Law Journal, Volume 131 (January 8, 1981), pp. 39-42.

56. J.M. Steiner, "Sex Discrimination under UK and

EEC law: Two plus Four equals One", International and Comparative Law Quarterly, Volume 32, Number 2 (April 1983), pp. 399-423.

57. J.M. Thomson and F. Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", Legal issues of European integration, Number 2 (1980), pp. 1-45.

58. United Kingdom, "An Act to prevent discrimination as regards terms and conditions of employment between men and women [hereafter "Equal Pay Act 1970"], ILO Legislative Series, 1970-U.K. 1.

59. Derrick Wyatt, "Article 119 EEC: equal pay for female successor to male worker", European Law Review, Volume 5, Number 5 (October 1980), pp. 374-380.

60. Ian Snaith, "Two more equal pay cases from the United Kingdom", European Law Review, Volume 6, Number 3 (June 1981), pp. 193-198.

61. Harry Post, "New Decisions of the European Court on Sex Discrimination", Legal issues of European integration, Number 1 (1981), pp. 77-87.

62. Richard Plender, "Equal Pay for Men and Women: Two Recent Decisions of the European Court", American Journal of Comparative Law, Volume 30, Number 4 (Fall 1982), pp. 627-653.

63. Catherine A. Crisham, "The Equal Pay Principle:- Some Recent Decisions of the European Court of Justice", Common Market Law Review, Volume 18, Number 4 (November 1981), pp. 601-612.

64. David Freestone, "Equal Pay in the European Court", Modern Law Review, Volume 45, Number 1 (January 1982), pp. 81-87.

65. Evelyn Ellis and Philip Morrell, "Sex Discrimination in Pension Schemes: Has Community Law Changed the Rules?", Industrial Law Journal, Volume 11, Number 1 (March 1982), pp. 16-28.

66. Joseph M. Thomson and Frank Wooldridge, "Sex discrimination, equal pay and article 119 of the Treaty of Rome", Law Quarterly Review, Volume 93 (October 1977), pp. 499-506.

67. Feminist Anthology Collective ed., No Turning Back. Writings from the Women's Liberation Movement 1975-80 (London, Women's Press, 1981), p. 4.

68. Expounded in a paper given at the annual UACES conference held at Bradford in January 1985 [unpublished].

69. European Communities, Treaties, pp. 203-575.

70. The data related to the ten countries of the European Community and represented annual averages.

71. Civilian working population covered all people in employment and out of work excluding the armed forces. The data represented annual averages except for the data in relation to Luxembourg and EC9 which was estimated by the

Statistical Office of the European Communities.

72. Hanja R.H. Maij-Weggen, "Report drawn up on behalf of the Ad Hoc Committee on Women's Rights on the position of women in the European Community. Part II- Explanatory Statement", European Parliament Working Documents 1980-1981, Document 1-829/80-II (29 January 1981), pp. 10-11 and
Organisation for Economic Co-operation and Development [hereafter OECD], Employment of Women (Paris, OECD, 1970), pp. 13-15.

73. OECD, Employment of Women, pp. 30-40.

CHAPTER TWO

European Community initiatives in relation to the position of women, 1958-1981

2.1. Introduction

What policy initiatives did the European Community formulate in relation to the position of women during the period 1958 to 1981? These initiatives, falling within the domain of Community social policy, encompassed only the fields of employment, social services, and education and training and not the other areas of interest to women as expounded in Chapter One [see 1.3.]. The European Community was constrained by the legal basis of its founding Treaties [1]. However, the ingenuity of the European Community policy-makers in relation to women's issues will be demonstrated. Indeed, the extent of the proposals might have astonished the original Treaty negotiators. But, not all of these initiatives were implemented. Their success or failure will be explored in Chapter Three. The present Chapter will examine the nature and extent of the initiatives.

2.2. The European Community Treaties

Since the Treaties of the European Community constituted the legal basis for any policy initiative

by the Community, the Treaties themselves will be examined first to ascertain the foundations of Community policy with regard to the position of women. These Treaties established the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community. The first Community, the European Coal and Steel Community, was founded by the Treaty of Paris which was signed on the 18th of April 1951 to take effect from the beginning of 1952. The other two Communities came into existence in January 1958 as a result of two Treaties which were signed in Rome on the 25th of March 1957. As mentioned in Chapter One [see 1.1.], since the European Coal and Steel Community was concerned with coal and steel, industries which tended not to employ women, the Treaty of this Community did not deal with any specific issues relating to women. And so, this Community will not form the subject of any further discussion. Similarly, the European Atomic Energy Community in its emphasis upon atomic energy did not on the whole concern women and will not be examined. The European Economic Community alone was relevant and the provisions applicable to the position of women were contained within the social chapters of its Treaty.

Economic considerations dominated the underlying philosophy behind the European Economic Community in its conception of the creation of a common market and

freedom of movement for goods, persons, services and capital. The Treaty was therefore largely concerned with economic matters and, yet, some consideration was given to social concerns. The so-called social policy of the Community was enshrined in Articles 117 to 128 of the Treaty [2]. Of these Articles, the remarkable Article 119 [3] related to women.

2.2.1. Article 119 of the Treaty establishing the European Economic Community

Article 119, relating to equal pay, represented a specific obligation upon the Member States. Equal pay was to feature as one of the issues of the women's liberation movement in the 1960's and 1970's [see Chapter 1.3.] and, indeed, it constituted

"one of the basic principles of labour law" [4].

However, the inclusion of this Article did not reflect a far-sighted pro-female attitude amongst the Treaty negotiators or even one of the foundations for a sound social policy [5]. Its presence together with the other specific social Article, namely, 120 [6], arose for economic and not social reasons as a result of the political negotiations which led to the signing of the Treaty as a means of accommodating the economic demands of France.

At the time of the Treaty negotiations, French workers enjoyed greater rights than existed in some of the other European states. These rights which included family allowances, a forty-hour working week, paid holiday schemes, paid overtime and equal pay imposed upon employers high labour costs [7]. Although a general legislative act had not been enacted, equal pay existed by means of a variety of measures [see Chapter 5.2.1.]. Obviously, employers who did not have to pay for such rights in other countries would enjoy lower labour costs and, consequently, would be able to produce goods more cheaply so that France would find herself at a competitive disadvantage. With regard to equal pay, distortions of competition would arise since female workers would be paid less in countries where equal pay did not operate and labour costs would thus be lower than where equal pay did exist [8]. The French particularly feared this situation in the fiercely competitive textile and electronics industries which employed a predominance of female workers [9]. Indeed, women were paid at much lower wage rates than men in these industries in Italy [10] and in Germany [11]. Furthermore, during this negotiating period, the International Labour Organisation commissioned a group of experts to look at the social effects arising from European economic integration. This group reached the conclusion that distortions in competition as a result of low pay to females would be prevented when

the pay differences were reduced between men and women [12].

Conscious of this state of affairs, the French Government was anxious to avoid these competitive disadvantages and, so, equal pay formed part of a package of demands put forward by the French as a prerequisite for agreement to the Treaty [13]. However, the German negotiators argued that these labour costs fell in the same category as other competitive conditions such as import taxes and in order to create equality all the charges would have to be harmonised [14]. The recent experience of World War II dictated policy in that governments were determined to secure a peaceful Europe. France had already rejected the proposal for the European Defence Community in 1954. And so, the Benelux countries in particular were willing to grant France some of her demands in order to gain her involvement in the Community [15]. Eventually, agreement was reached in relation to these matters [16]. Thus, Article 119 on equal pay was drawn up and the European Economic Community was established.

Unlike the general vagueness of the social chapters of the Treaty, Article 119 was specific and it

"figured as a practical expedient rather than as a

principle of social justice" [17].

Against this background, this Article could be regarded more in the light of an economic measure rather than as a social provision. In fact, it represented a mixture of social and economic considerations as its future interpretation by the Court of Justice was to establish [see Chapter 7.4.2.].

However, although equal pay was included in the Treaty, detailed examination of the contents of Article 119 revealed its limitations since this was one of the areas which had been subjected to compromise during the negotiating period. What was the actual extent of Article 119? Appendix One reproduces the text of this Article which consisted of three separate elements.

The first paragraph committed the Member States to

> "ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work" [18]

during the first stage of the European Economic Community. The Treaty laid down a transitional period of twelve years divided into three stages and consisting of four years for each stage [19]. Since this transitional period commenced on the 1st of

January 1958 [20], the first stage was due to end on the 1st of January 1962. Thus, Member States were bound to implement equal pay within a mere four years.

> "This element of urgency reflects the economic significance which was attached to this objective" [21].

The French negotiating team had insisted on this time-scale [22] irrespective of the practical difficulties in attaining this goal. But, further problems arose in connection with the principle of equal pay. Equal pay could be defined in various ways. A wide definition which gave women and men a certain amount of scope to claim their rights was given in a Convention on Equal Remuneration issued by the International Labour Organisation in 1951 as

> "work of equal value" [23].

Thus, to claim equal pay workers could compare their jobs with those similar to but not identical to their own. However, this definition was not adopted by the European Economic Community and instead a narrower interpretation was agreed upon by the negotiators [24] as

> "pay for equal work" [25].

In the ensuing years, as Chapter Five will reveal [see 5.2.], considerable problems would arise from this definition when the Commission attempted to secure the practical application of equal pay by the Member States.

In its second paragraph, Article 119 defined pay and in this instance the definition broadly followed the essence of the definition on remuneration as used in the Convention from the International Labour Organisation [26]. The inclusion of the phrase

"any other consideration" [27]

in Article 119 would raise the issue of whether or not pay included payments to a pension scheme. This question would be argued in the famous Defrenne cases held before the Court of Justice [see Chapter 7.4.].

Finally, at the insistence of the French [28], a clause was added defining equal pay in relation to piece and time rates.

The problems involved in implementing and interpreting Article 119 will be explored later in this thesis [see Chapters 4.4.1., 5.2., 6.3. and Seven]. Yet, in spite of its origins, intentions and limitations, Article 119 formed the foundation of European Community policy for women through its

specific reference to equal pay.

2.3. European Community policy initiatives

Before considering in detail the policy initiatives proposed by the European Community for women, some explanation ought to be given of the different types of initiatives at the disposal of the Community. These initatives consisted of legislative proposals, financial instruments and policy papers. First, the types of legislation will be described.

Any legislation enacted by the European Community had to be based upon the founding Treaties and was termed secondary legislation. This legislation, in descending order of magnitude, consisted of Regulations, Directives, Decisions, Recommendations and Opinions. Regulations were of general application, binding in their entirety and directly applicable in all of the Member States. Of lesser significance, Directives were binding only in relation to the result obtained since the means of implementation were left to the Member States. Decisions were binding only upon the people to whom they were addressed. Recommendations and Opinions were not binding [29].

Proposals for legislation emanated from the Commission and were transmitted to the Council. These proposals were designed to advance the common

market through the harmonisation of national laws in order to create a common standard of Community provision throughout the Member States [30]. However, the Commission could issue Recommendations or Opinions on its own authority without recourse to the Council [31]. The legislative process was long and cumbersome and will be considered at the appropriate part of this thesis in Chapter Three [see 3.2.].

Legislation could provide a framework which could be strengthened in a practical way by the allocation of financial resources. Various financial instruments were created by the European Economic Community within the context of its budget. The European Social Fund was relevant to Community policy for women and will be considered in due course [see 2.9.].

Finally, the Commission could issue policy papers. These papers were prepared by independent experts or Commission officials to investigate a particular area. From these papers, problems could be identified or new areas requiring legislation could be pinpointed. As well as papers, the Commission used the power of discussions. Constant communication took place with a wide range of people, national government ministers, national civil servants, experts, appropriate bodies organised on a Community level and the social partners [32]. From these discussions whether held informally or formally within a conference, or, indeed, within

the context of a specific working party, new ideas for initatives could emerge. Discussions and studies provided the first stage of a policy initiative by the Community.

2.4. Further equal pay initiatives

Article 119 did not represent the sole initiative by the European Community in the field of equal pay. Following the signing of the Treaty, a number of legislative instruments were proposed to strengthen the legality of Article 119.

2.4.1. Recommendation on equal pay

The first instrument, a Recommendation, stemmed from the general development of the European Economic Community during its earliest years.

Economic progress within the newly-established Community was more rapid than anticipated and, so, at the instigation of the Council, the Commission drew up a Recommendation to speed up the implementation of the first stage of the common market. This Recommendation was sent to the Council on the 26th of February 1960 [33]. In this Recommendation, the Commission took the opportunity to remind the Member States about their Treaty obligations with regard to Article 119. The Member States were asked to ensure the application

of the principle of equal pay at once and as far as possible before the end of 1960 [34]. At its March [35] and May [36] meetings, the Council discussed this document and issued a Decision on the 12th of May 1960 to speed up the implementation of the objects of the Treaty [37]. Annexed to the Decision was a Declaration of Intention in which the Council

> "affirme particulièrement sa volonté de hâter la mise en œuvre des mesures de caractère social et qui sont notamment relatives à ... l'égalité des salaires masculins et féminins" [38] [particularly affirms its wish to speed up the implementation of measures of a social character and which are particularly connected to... the equality of male and female wages [39].

The Commission was invited to come up with definite proposals within three months.

Accordingly, the Commission kept to this timetable and drew up the text of a Recommendation on equal pay on the 20th of July 1960 [40]. The Recommendation extended the interpretation of the principle of equal pay and invited the Member States to take various actions to secure the implementation of equal pay. Further initiatives in the field of equal pay were to follow.

2.4.2. Resolution on equal pay

In the following year, a second legislative

instrument was proposed. Under similar circumstances to the initiation of the Recommendation, this new instrument originated in the economic development of the Community. During 1961, the Council became increasingly concerned with the need to achieve the Treaty objectives by the close of that year in relation to the end of the first stage of the transitional period. Thus, equal pay as laid down in Article 119 formed part of this concern. The methods used by the Community to make the Member States honour their Treaty obligations in relation to Article 119 will be discussed later in this thesis [see Chapter 4.4.1.]. The result of these endeavours was the proposal of a legislative instrument.

A special ad-hoc Working Party to look at the problems involved in the implementation of Article 119 was then set up and the Council subsequently discussed the findings and ideas emanating from this group. Eventually, at its meeting in November 1961, the Working Party agreed that the promulgation of a Resolution would secure the implementation of Article 119 [41]. Resolutions were not mentioned in the original Community Treaties. The first official reference to Resolutions came in the Acts of Accession of the three new Member States in 1972 [42]. Nevertheless, the lack of a legal basis did not prevent the use of Resolutions on occasion by the Community.

The Working Party put forward various measures to be included in this Resolution. First, a timetable was proposed for the gradual introduction of equal pay by the Member States. This proposal in effect postponed the implementation date of the first of January 1962 as laid down in the Treaty. A graduated timetable seemed to be the only practical way to achieve the terms of Article 119 and, by means of this solution, the Council would then be able to embark on the second stage of the transitional period of the common market. Otherwise, the non-implementation of Article 119 would hold up economic progress within the transitional period and the eventual creation of a common market. The proposed Resolution also added a new dimension in its introduction of a legal redress clause to enable men and women workers with discriminatory pay grievances to bring a case before the national courts.

Thus, within four years of the establishment of the European Economic Community, two initiatives in the field of equal pay were proposed. These initiatives extended the interpretation of the principle of equal pay, postponed the implementation date and added a legal redress requirement.

The next equal pay initiative took place in the early 1970's arising out of an upsurge of interest by

the Community in social policy.

2.5. Social policy initiatives

Most of the Community initiatives for women originated during the 1970's when the Community devoted a certain amount of attention to social policy. In order to understand the background to these initiatives, the wider developments in social policy at a Community level should be examined.

As the 1970's approached, the European Community began to realise that its social policy needed a fresh appraisal. Economic progress within the European Economic Community had been dramatic. Yet, social improvements had not kept pace with the economy as the founders of the Community had envisaged [43]. The few social provisions in the Treaty had not contributed very much towards raising the standards of living.

2.5.1. Guidelines for a Social Action Programme

The Commission undertook a certain amount of preparatory work which included the drawing up of a preliminary discussion paper on social policy [44]. Then, the Commission responded to a demand from a Summit Conference held in Paris in October 1972 that a social action programme should be formulated before

the 1st of January 1974 [45]. On the 19th of April 1973, the Commission submitted its "Guidelines for a Social Action Programme" to the Council [46]. These Guidelines were based upon three social objectives, namely,

1. Full and better employment.
2. Improvement of living and working conditions.
3. Participation of the social partners in the economic and social decisions in the Community.

How did these objectives affect women?

In relation to the first objective of full and better employment, the Commission considered the current situation concerning women at work. Women totalled one-third of the Community working population. This proportion was increasing particularly amongst married women aged between thirty-five and forty years. Yet, working women did not have the same opportunities and conditions of employment as men. The Commission, therefore, proposed that Member States should establish, where they did not already exist, national committees to deal with the problems experienced by women in employment and, also, that the Community should establish a permanent committee to aid the Commission in coordinating activities in this field at a Community level. This Community committee would evaluate the present

situation and future trends in order to report back to the Commission by the 30th of June 1974 with proposals for improvements in such matters as access to jobs, promotion, training and retraining, paid maternity leave, child care facilities, flexible working hours and social security provisions. On the basis of this report, the Commission would then submit proposals to the Council.

The second Guideline, improvement of living and working conditions, involved equal pay. The principle of equal pay was still not fully implemented in the Member States. A report on the state of affairs in the Member States to cover the situation up to the 31st of December 1972 was due. Once this report was completed, the Commission undertook to take the appropriate action provided for under the Treaty of Rome to achieve the objective of equal pay.

The third Guideline did not include any matter affecting women.

2.5.2. Social Action Programme

On the 25th of October 1973, two months ahead of the deadline set by the Summit Conference, the Commission presented the Social Action Programme to the Council [47]. This final version incorporated a great deal of the material from the earlier

"Guidelines". The Programme was to be achieved in three stages of action. The first stage, Action I, listed the proposals which the Commission would immediately put forward to the Council. This stage would be succeeded by Action II comprising the measures which the Commission considered the Council should decide for the period 1974 to 1976. Finally, Action III consisted of measures to be taken in the future.

Measures for women were proposed under each stage. Amongst the seven proposals put forward under Action I, the Commission included the enactment of a Directive on Equal Pay. In the "Guidelines", the Commission promised to take appropriate action to achieve equal pay and, thus, a Directive was thought necessary to secure the principle of equal pay in the Member States.

Action II listed twelve priorities of which the fourth related to employment problems facing women. The objective of this action sought to improve economic and psychological conditions, and social and educational infrastructures in order to achieve equality between men and women in the labour market. The immediate priority was to establish those facilities which would allow women to combine family and job commitments. The Commission elaborated on some of the reasons for the continuing differences between

the wages and the career structure of men and women. An ad hoc group would be established in order to aid the Commission in identifying the problems and the necessary actions to be taken. This group which would become a permanent working group at a later stage would assist the Commission in examining problems and possible Community actions especially in the fields of recruitment, re-entry to employment after childbirth, vocational guidance, training and retraining, child care facilities and flexible hours of working. Such a committee was proposed in the "Guidelines".

The Commission consequently undertook to put forward a number of proposals in 1974. First, the Commission proposed setting up a Community documentation centre on women's problems and a Community information service which was aimed at employers, public services, educational bodies and women's organisations to help change attitudes towards women at work. The second proposal involved the preparation of the Community contribution to the United Nations International Women's Year which was designated for 1975. Finally, a permanent working group for the problems of women's employment would be established. After consulting the Standing Committee on Employment, the Commission intended to present this first set of proposals by the end of 1974.

Under Action III, future measures, the Commission considered tackling the problems faced by unemployed school leavers, elderly workers and women re-entering employment. At that time, an increasing number of married women wished to resume employment after raising a family but faced problems owing to the lack of suitable retraining schemes. So, the European Social Fund might be utilised to assist in setting up these schemes.

Thus, this proposed Social Action Programme contained a significant change of attitude by the Community towards women. Women were no longer considered purely within the context of equal pay. The Programme proposed extending concern with equal pay to employment as a whole.

2.6. Proposal for a Directive on Equal Pay

However, the employment aspects of the Social Action Programme will be considered later in this Chapter [see 2.7.]. For the moment, the equal pay proposal within the Social Action Programme will be examined.

By 1973, it was clear from reports on the subject that Article 119 of the European Economic Community Treaty had still not been fully implemented by the

Member States. The Commission first considered the possibility of a further legislative measure on equal pay in July of that year [48] and thus a Directive on Equal Pay was included in the proposals for a Social Action Programme. The actual proposal was submitted to the Council on the 19th of November [49] before the Council had taken a decision on the Programme itself. A Directive, a binding instrument, was chosen in preference to the weaker Recommendation or Opinion. Moreover, a Directive was more appropriate than a Regulation given the inexactness of the principle of equal pay.

Of what did this proposed Directive consist? The objective of the Directive sought to

> "contribute to the implementation in all Member States of the Community of the principle that men and women should receive equal pay for equal work" [50].

The Commission regarded this principle as contained in Article 119 to be an

> "integral part of the establishment and functioning of the common market" [51].

and so Article 100 of the Treaty establishing the European Economic Community was used as the legal basis for this proposal [52]. Since the Member States had failed to adopt an uniform method of application

of Article 119, this Directive was intended first and foremost to

> "generalise certain minimum protection standards" [53]

in order to achieve a Community-wide standard of provision concerning the principle of equal pay.

Various Articles made up the proposal in a format which was to be copied in the later equality Directives. Article 1, general in nature, laid down the principle of the Directive, namely, to approximate the laws, regulations and administrative provisions concerning the application of the principle of equal pay as contained in Article 119 of the Treaty establishing the European Economic Community. To this end, Member States were required to abolish any wage discrimination from laws, regulations or administrative provisions especially in the public sector, the legal minimum wage and statutory wage-related allowances or benefits except for those which were comprised within those social security systems which were directly regulated by law [Article 3]. Article 4 applied this requirement to collective agreements, wage scales, wage agreements or individual contracts of employment. Thus, this Directive should apply at all levels of employment whether in the public or private sector.

As with the 1961 Resolution on equal pay, a legal redress clause was included. Article 2 required Member States to introduce into their domestic legal systems the necessary measures to enable any individual with a grievance in relation to the non-application of the principle of equal pay to enforce their claims before the courts. Further protection was given to the individual in Article 5 against the risk of dismissal for bringing a complaint or a claim against the employer. When this Directive was first proposed in July 1973, the Commission had intended to include a clause to grant legal aid for actions against employers [54]. However, this final version dropped the idea.

The remaining clauses dealt with supervision, information and notification. Article 6 laid down that Member States should ensure that the application of the principle of equal pay should be supervised at the level of the individual enterprise and any infringement should be punished. The information aspects were contained in Article 7 which required Member States to inform workers at their workplaces about the relevant national laws on equal pay. Finally, a standard notification section completed the proposal. Article 8 laid down the implementation period so that Member States should amend their laws within six months following notification of the measure to enter into force within one year of

notification. Member States were required in Article 9 to report back to the Commission on the provisions taken within two years after the end of the one year of notification. In conclusion, Article 10 addressed this Directive to the Member States.

Thus, this initiative, though significant in itself, represented a fairly modest proposal by the Commission. No attempt was made to define equal pay or even to widen the principle of equal pay. The definitions contained in Article 119 were taken as they stood since the Commission was intent on getting all the Member States to fully implement the equal pay principle. Equal pay was to be applied at all levels within the private and the public sectors. Thus, this measure concerned relations not between the Member States but between individuals, the employer and the workers. This all-embracing proposal was justified by the Commission since

> "equal rights for men and women obviously constitute a basic principle of any modern state" [55].

Protection of the individual was granted in this measure through the provision of legal redress in line with the 1961 Resolution and through protection against dismissal. The latter proposal was new. Furthermore, the proposal provided for supervision and notification of the measure to strengthen its

application.

The Commission did recognise that this proposal was only one part of a comprehensive programme taking in employment as a whole. This concern with employment will form the next Section of this Chapter [see 2.7.]. Over the years, a number of initiatives in the field of equal pay were thus proposed. Each successive proposal pointed to the failure of each preceding one in practice.

2.7. Employment initiatives

So far, European Community initiatives on equal pay have been considered. Yet, equal pay formed part of the wider issue of employment. What policy initiatives were proposed by the European Community with regard to the position of women in employment?

Prior to the Social Action Programme, some attention was given to the problems facing women in an employment situation. At first, this attention formed part of general studies upon employment. Realising that equal pay could not be considered in isolation, the Commission decided to examine the problems facing women in an employment situation by means of a study by a known expert in the field. The utilisation of a special study from an expert was a well-tried method by the Commission to initiate policy. And so,

an expert was invited to investigate the employment conditions of women and, in particular, to recommend improvements in relation to the position of women in the economy [56]. A French sociologist, Evelyne Sullerot, was given the task of producing a report. However, in spite of its announcement in 1970 [57], the report was not published until 1972 [58]. The delay was caused because one of the Member States was reluctant, it would seem, to give its authorisation [59]. The particular Member State was not named. Since the findings of Sullerot were incorporated into later work, they will not be examined at this stage.

As a coda to the Sullerot report, the Commission decided to apply the analysis of that report to the three new Member States following the enlargement of the European Community in 1973 [60]. Another expert, R.B. Cornu, was entrusted with the task and he produced a comprehensive report in the following year [61].

2.7.1. Ad Hoc Group on Women's Employment

The Sullerot and Cornu reports were utilised by the Commission in its work to initiate proposals to improve female employment in accordance with the Social Action Programme. Accordingly, the Commission set up the Ad Hoc Group on Women's Employment to

examine the problems faced by women in an employment situation. This Group consisted of two representatives from each of the nine Member States and it met for the first time on the 14th of February 1974. Its brief entailed the production of a report and proposals for submission to the European Community's Permanent Committee on Employment and, then, to the Council before the end of the year [62]. At this first meeting, the Group considered a synopsis of the trends in female employment and the available resources for Community projects. Its work schedule was then established [63]. The problems facing the Group included the growth of female unemployment and discrimination in unemployment benefits. The Group broke down the key problems of women's employment into seven areas, namely,

1. Vocational guidance, training and further professional training,
2. Employment in the different sectors of the economy and unemployment,
3. Access to skilled employment and promotion,
4. Re-entry into professional life after interruption,
5. Conditions of work, flexibility of working time and absenteeism,
6. Child care facilities,
7. Information aimed at developing attitudes.

These areas were divided amongst the Group so that half worked on Numbers 2 to 4 whilst the other half examined Numbers 1, and 5 to 7. Three further meetings were intended to look at these issues and a final meeting would draft a document. The work was scheduled to finish by October 1974 [64].

At its second meeting held on the 22nd of April 1974, the Group concentrated on feasible areas for Community action to achieve equality between male and female labour as well as access to skilled jobs and to include working conditions [65]. By the time of the third gathering on the 13th of June, the group was discussing the form of the legal instrument which would bring about equal opportunities and equal treatment for women in economic life. This discussion included working conditions in which improvements in working hours were examined [66].

The final meeting of the Ad Hoc Group, held between the 4th and 5th of November, also included the Joint Study Group which consisted of representatives drawn from the social partners. The two Groups considered the text of a report in the form of a draft memorandum and a first draft of a Council Directive [67]. Thus, the Ad Hoc Group completed its mandate one month later than anticipated.

Although the text of this memorandum was not

published by the Commission, its appearance elsewhere [68] revealed that much of the material was incorporated into the later Communication [69] which will be discussed in the next Section [see 2.7.2.]. In assessing female employment, the report considered that

> "In spite of new trends appearing in employment and vocational training, and in spite of some breaks with tradition, the employment of women in general, and married women in particular, still constitutes a specific problem for social policy" [70].

Various courses of action were proposed and the report advocated the need for a Directive to deal with employment since a contemporary proposal for an Equal Pay Directive was not considered to be sufficient to deal with the situation. The annex to the report comprised the draft of an Equal Treatment Directive and this draft was to form the basis for the final proposal with the notable exception of a clause guaranteeing equal access to education, namely,

> "The Member States shall take the appropriate steps to guarantee access to all persons regardless of their sex; to all levels of general education and basic and advanced vocational training in keeping with their abilities and aims" [71].

2.7.2. Communication on equal treatment between men and women workers

In the light of these detailed preparations, the

Commission utilised the reports of the experts and the working groups to draw up proposals to deal with equal treatment in employment for men and women workers. These proposals were discussed by a meeting called by the Commission of senior national employment officials on the 21st of November 1974 [72]. The Commission then submitted a Communication and a proposed Directive to the Council on the 12th of February 1975 [73]. Since these proposals were promised by the end of 1974, the Commission had slightly slipped in fulfilling its time schedule. At a press conference held on the submission day, Dr. Hillery, the Commissioner for Social Affairs, summed up the problem as follows,

> "There is a massive inertia in the minds of men and women on the position of women in society" [74].

What did this Communication and this proposed Directive contain? The Communication contained a fairly detailed analysis of the situation facing working women in the Community. This analysis took into account the previous studies undertaken by Sullerot and Cornu since the latter

> "were therefore the real starting-point for the action taken by the Commission for the benefit of working women, and provided important material for the substance of the Commission's memorandum to the Council on the equality of treatment between men and women in relation to employment" [75].

Equality of treatment for men and women in employment required the removal of inequalities. The Communication examined the origins of differences in treatment. Two steps needed to be taken to achieve equality of treatment. These two steps consisted of action to eliminate prejudice against women on the labour market and of recognition of the social factors of maternity. But, the Commission did recognise that these two objectives would be only gradually achieved.

Any action in this field mainly depended upon the Member States, the social partners and women. But, such action was also relevant to the Community for three reasons. In the first place, equality of treatment represented the foundation of and the extension to equal pay as laid down in Article 119 of the Treaty of Rome. Secondly, equality of treatment formed part of the achievement of a high level of employment which constituted one of the Community's prime objectives in the Treaty of Rome [76] Finally, equality of treatment was part of workers' solidarity so that further measures could be encouraged.

The bulk of the Communication considered different aspects of the problem of female employment with guidelines for action. First, employment as a whole was considered, examining in detail the situation of and the factors which affected women in employment. To

overcome the difficulties and apart from the proposed Directive the Commission suggested various guidelines for action to include measures to be introduced to eliminate any outdated or unjustified obstacles to the employment of women; to create equal access for men and women in all sectors of the labour market; to promote measures to help women choose their careers and later return to work effectively; to raise the levels of employment in sectors mainly staffed by women; to provide equal opportunities for promotion; to include in regional development plans the need to create jobs for men and women; and to review conditions of employment especially age limits for entry to a job.

Other guidelines for action were proposed in relation to vocational guidance, training and retraining, working conditions, women with family responsibilities and social security systems. These guidelines were laid down for the Member States and the social partners to implement. The final chapter covered three areas in which the European Community itself could take action in 1975. Firstly, the Commission presented a draft Directive annexed to the Communication and the subject of the next Section of this Chapter [see 2.7.3.]. Secondly, the Commission envisaged the use of the European Social Fund and urged Member States to search for programmes which fitted the requirements in order to promote women's

employment and for suitable pilot schemes. Meanwhile, the Commission was examining the possibility of using the Fund for limited demonstration projects of a developmental and innovative character to promote jobs for women. Finally, the Commission would seek ways of improving information about women's work in order to change attitudes.

In conclusion,

> "The achievement of equality for women at work implies a sustained effort" [77].

The Commission undertook to continue to review the situation in consultation with the social partners and the Member States and reserved the right to make proposals and Recommendations in those areas covered by the Communication. Although this document represented a remarkable and comprehensive plan of action for Member States far beyond the narrow confines of equal pay, its status as a Communication meant that it was not legally binding.

2.7.3. Proposal for a Directive on Equal Treatment

The proposed Directive [78] was designed to complement the earlier measure on equal pay [79]. A Directive was chosen in preference to the legally weaker Recommendation in the light of the experience

gained from attempts to implement the principle of equal pay as laid down in the Treaty establishing the European Economic Community since the Commission considered that a Recommendation would have little effect [80]. In initiating action, the Commission legally based this proposal upon Article 235 of the European Economic Community Treaty [81]. This Article allowed measures to be enacted in the event of the Treaty not containing the relevant powers provided that such measures satisfied one of the objectives of the Community. The use of Article 235 represented a new departure for Community equality policy.

What were the contents of this proposed Directive? The proposal was constructed on similar lines to the earlier proposal on Equal Pay. The overall aim sought to give women legal protection equivalent to that for equal pay with regard to access to employment, vocational training, promotion, and working conditions. For each of these fields, the Directive required the implementation of the principle of equal treatment to the approximation of laws, regulations and administrative provisions of Member States. Equal treatment was defined as the elimination of all discrimination based on sex or on marital or family status including the adoption of appropriate measures to provide women with equal opportunity in employment, vocational training, promotion, and working conditions [Article 1].

Articles 2 to 5 constituted the core of the Directive. Member States were required to abolish any provisions arising from laws, regulations or administrative provisions and to annul provisions of collective agreements or individual contracts of employment which were at variance with the principle of equal treatment. Furthermore, Member States should amend any laws, regulations and agreements originally drawn up to protect workers which were no longer justified owing to technical progress. These stipulations applied to access to all jobs in all sectors and branches and at all levels [Article 2] whilst Article 5 applied them to working conditions including dismissals and social security provisions. Article 3 covered the implementation of the principle of equal treatment in vocational training to apply to all levels of general education, and initial and advanced vocational training and retraining whether in institutions or on the job. Equal standards and level of general and technical education and vocational guidance, initial and advanced vocational training and retraining were to be available without discrimination based on sex or on marital or family status. Promotion formed the subject of Article 4 so that Member States should ensure that the conditions of promotion were determined and applied on the basis of equal treatment according to individual qualifications and experience regardless of sex, marital or family status.

The rest of the Directive copied the proposed Equal Pay Directive to cover legal redress, protection against dismissal, information and notification. Thus, Article 6 laid down that Member States should introduce measures into their national legal systems to enable all individuals to pursue a claim for equal treatment by legal means whilst in the following Article, Member States had to take measures to protect workers against dismissal for bringing a complaint or action in relation to the principle of equal treatment. Member States were also asked to ensure that individuals should be made aware of the provisions of this Directive [Article 8]. Finally, the Member States were required to comply with the Directive within one year of notification [Article 9] and to forward information to the Commission on these measures of compliance within two years of notification to enable the Commission to report on the situation to the Council [Article 10]. Article 11 stated that the Directive applied to the Member States.

Thus, this proposal followed the broad lines of the proposed Equal Pay Directive. It aimed to eliminate discrimination on the grounds of the sex of the worker in an employment situation. In relation to access to employment, some jobs such as night work were barred to women owing to old protective laws which might not

be any longer relevant. Discrimination was also experienced because of provisions preventing the recruitment of married women or fixing a maximum age limit which disadvantaged married women returning to employment after a break caused by raising a family. With regard to vocational training, girls were offered a limited range of occupations often with a low level of training. This limitation arose from sexual stereotyped attitudes of parents, teachers and vocational counsellors. Employers often displayed prejudice against women workers in matters of promotion and dismissals. They were reluctant to promote married women with or without children and in the event of redundancies women would be sacked before men. This proposal sought to create equality in employment through the prohibition of these disadvantages.

There were, however, certain limitations to the proposal. Although the principle of equal treatment included the provision of positive discrimination with its reference to the adoption of appropriate measures, indirect discrimination was not specified. The omission of indirect discrimination was important since it was exactly this area where employers could evade compliance with the Directive. In its coverage, the proposal did not allow for any derogations which could cause problems in jobs such as acting where the sex of the worker was a determining factor for a job

or in relation to maternity legislation or to positive discrimination measures. The provision did refer to the annulment of protective legislation where the appropriate measures were no longer justified. Member States were not, however, required to review such legislation and the clause lacked compulsion so that a loop-hole would be created. In relation to legal redress, individuals would only be able to pursue a claim in the courts

> "after possible recourse to other competent authorities" [82]

so that it might be more difficult for individuals to seek satisfaction. Aid for such claims was not included because the Community was not considered to possess the necessary authority to order Member States to provide legal aid [83]. The financial costs involved might deter many individuals from bringing a case. Unlike the Equal Pay proposal, this proposal did not provide for any supervision of the measures or penalties for non-compliance. Such omissions would weaken its effectiveness. However, in general, the proposed Directive did represent a notable advance for women at work and this measure was ahead, by and large, of national legislation in this field.

2.7.4. Study on maternal protection

Specific aspects of employment were not neglected. Out of a concern for industrial protection for women, during the course of the years 1963 and 1964, a working group entitled the "Protection of women and young workers" group and which consisted of government experts and representatives from the social partners started work on the compilation of a comparative study of the existing provisions at a national level in the field of maternity protection. The ultimate aim behind this study was to draft Community legislation to harmonise these national measures [84].

The comparative study which covered the national situations up to the end of June 1965 was scheduled for publication in that same year [85] but did not appear in print until 1966 [86]. This report examined existing international and national regulations in the field of maternal protection. Each Member State was subjected to a detailed analysis of such aspects of maternal protection as the relevant legislation and its field of application, the extent of physical and economic protection, protection against dismissal, and medical protection and control. Wide variations in practice were revealed particularly in relation to the amount of leave allowed for pregnancy and the amount of time given each day by employers to nursing mothers. These variations will be explored in more detail in Chapter Three [see 3.10.].

2.7.5. Draft Recommendation on maternal protection

The Commission decided to prepare a proposal to harmonise the different national provisions. Accordingly, in 1965, a preliminary draft of an European Community Recommendation on maternal protection was prepared [87]. On the 19th of July in that same year, a working party, composed of the social partners, considered the draft [88]. Then, the Commission adopted and issued the final form of the proposal on the 12th of January 1966 [89].

This Draft Recommendation [90] was legally based upon Articles 118 and 155 of the European Economic Community Treaty [91] since its subject matter precluded the use of Article 119 and so its origins were based on these more general provisions. Whilst Article 118 entrusted the Commission with the task of promoting close co-operation in the social field between the Member States, Article 155 empowered the Commission to draw up Recommendations on matters falling within the Treaty. Since maternal welfare did not enjoy the same level of provision in all the Member States, the Commission initiated this measure to encourage the Member States to attain a degree of harmonisation in this area.

Although maternal welfare principally concerned labour law, it also related to other fields such as

social security, social insurance, social assistance, industrial health, and public health. The Commission did not consider that each aspect should receive separate attention but thought that all these areas should be integrated within one measure. In some Member States, maternal welfare was covered in more than one law. But, this measure was designed to bring together the separate strands into one piece of legislation.

What were the contents of the proposal? First, in its field of application, this measure was intended to cover all women workers even those working at home. In the statement which accompanied the proposal [92], the Commission considered that some of the provisions ought to be applicable to unemployed women, and also to the wives of self-employed men in situations where these wives helped to run their husband's businesses.

The Draft Recommendation was also concerned with the regulation of employment, and with social security matters. With regard to the regulation of employment, the draft proposal laid down various working conditions. Pregnant women and nursing mothers were limited to eight hours work per day although a nine hour day was allowed under certain conditions. However, a maximum of ninety hours work was laid down for a two week period. Nursing mothers were allowed at least one hour per day to look after their babies.

This period was considered to be part of work-time and a loss of salary would not be incurred. Pregnant women and nursing mothers were forbidden night work although certain exceptions were permissible up to 11 o'clock in the evening and after 5 o'clock in the morning.

Various prohibitions were next outlined. Any work endangering the life or health of the mother or child was forbidden for pregnant women and nursing mothers. This provision was extended to mothers with a medical certificate during the period of six months following the birth of a child. Under these conditions, the employer was obliged to give these women another job with the same salary as before. Work was forbidden for pregnant women and new mothers when a medical certificate ordered work to stop, four to six weeks before the birth of a child, and eight weeks after a child-birth or twelve weeks should the birth be premature or should more than one child be born. Furthermore, periods of unpaid post-natal leave of limited extent was allowed subject to the particular problems encountered amongst small firms. A clause to protect pregnant women and nursing mothers against dismissal or downgrading was included although certain exceptions were permitted.

In relation to social security matters, the Recommendation laid down economic and health protection, and financing clauses. With regard to

economic protection, a number of provisions were included. An allowance equivalent to the salary was guaranteed to be paid during the child-birth and post-natality periods. An allowance of at least two-thirds of the salary was to be paid to women who were forced to stop work for medical reasons or who were not given an alternative job. An allowance for maternity expenses was granted and part of this allowance was received before the child-birth. The child-birth allowance, maternity expenses, and medical consultations were guaranteed to unemployed women. In accordance with national provisions, the wives of self-employed men should receive maternity expenses and medical consultations.

Within the area of health protection, various provisions were set out. Women were given the right to have medical consultations and treatment during pregnancy, child-birth, and the post-natal period. Employers were asked to take appropriate measures to implement the proposal by organising an adequate work-situation and by establishing the necessary services. The creation of crèches and nurseries was encouraged. As regards financing, maternity allowances and expenses, and medical charges were not borne by the employer.

The final clauses of the Recommendation were concerned with general matters. Workers were informed

of the rights which were conferred by this Recommendation. Employers were to inform the appropriate authorities of any pregnancies occuring in their workforce. These authorities had to establish adequate control and appropriate sanctions were established. In conclusion, each Member State had to inform the Commission of the measures which were adopted to fulfil this proposal one year and then three years after the notification of the Recommendation.

In the accompanying statement, the Commission stressed that particular attention was given to the fundamental problems of maintaining employment with its legal effects and its social advantages during the absences occasioned by maternity, to the prohibitions of employment, to a strict limitation of the hours of work, and to economic security during maternity. The Commission also thought that the right to post-natal leave should be guaranteed. Furthermore, the Commission took the attitude that the financing of maternity fell upon society as a whole. Such financing should not be borne by the employer but should be supported by the community.

With regard to women's policy as a whole, this proposal represented a widening from equal pay issues and, indeed, from general employment matters. The date of the Recommendation, 1965, should be borne in mind

since maternity provisions have become an acceptable part of employment law in the 1980's but this acceptability was not the case in the 1960's. Since this Recommendation was not concerned with equal pay as contained in Article 119 of the Treaty, its legal basis had to be sought in the general social provisions of the European Economic Community Treaty to justify its legality. But, to set against these advances, it must be recalled that a Recommendation was a weak instrument within European Economic Community law since it was not binding upon the Member States.

The coverage of the proposal was wide since it was intended not only to apply to all employed women but also to a certain extent to unemployed women and to those wives of self-employed men who helped in the business. Contradictions were revealed with regard to some of the proposals. Thus, the conditions in relation to the length of the working day were not particularly generous but the entitlement of nursing mothers to one hour in the working day as part of the working period was fairly advanced for the time and even for the present time in the case of the United Kingdom. Caution was again reflected with regard to the allowance of a certain amount of night work for pregnant women and nursing mothers. On the other hand, the idea of unpaid post-natal leave represented a concept which was far advanced of most of the national

provisions of the time. The other advanced ideas related to the provision of crèches and nurseries at the workplace and the concept that the financing of maternity belonged to society rather than to employers. Therefore, although its origins stemmed from an old-fashioned notion to protect women, this Recommendation, given its date, did represent an interesting and advanced piece of women's policy.

2.8. Social security initiatives

Employment initiatives by the European Community to improve the position for women thus extended far beyond Article 119 on equal pay. Equality in social security matters, however, was also considered.

2.8.1. Proposal for a Directive on Equal Treatment in Social Security matters

One social security initiative related to a proposed Directive for Equal Treatment in Social Security matters [93]. This proposal arose from the Directive on Equal Treatment [94] in which the Council affirmed that

> "Whereas the definition and progressive implementation of the principle of equal treatment in matters of social security should be ensured by means of subsequent instruments" [95].

Furthermore, in the same Directive, the Council stated that in order to ensure the progressive implementation of the principle of equal treatment in matters of social security it would adopt provisions to define the substance, scope and arrangements of such matters. The inclusion in this Directive of these statements differed from the original proposal in which the Commission merely inserted a recital that

> "Whereas social security benefits are determined on the basis of criteria which vary according to the sex of the worker" [96].

Thus, the implication seemed to indicate that the Council rather than the Commission initiated this idea of a social security proposal. Yet, Landau suggested [97] that the Court of Justice ruling in 1971 on the First Defrenne case [98], which will be discussed in Chapter Seven [see 7.4.1.] and in which the Court ruled that social security benefits could not be considered as pay according to the principle as laid down in Article 119 of the Treaty of Rome [99], prompted the Commission to propose this Directive in order to fill in the gaps of the provisions of Article 119.

Whatever the origins, the Commission took up the suggestion and announced in its Programme for 1976 that such a proposal would be completed for submission to the Council by the second half of that year [100].

As a preliminary step to drawing up a proposal, the Commission carried out a study [101] by means of a questionnaire to collect information on the existing differences between men and women in social security matters in the Member States [102]. The collected data revealed the existence of considerable sexual discrimination in favour of men both in public mandatory schemes and in private occupational arrangements [103]. This discrimination partially reflected traditional attitudes towards the economic and social position of women in that men were regarded as the breadwinners and women were consigned to an economically secondary and marginal role as housewives financially dependant upon their husbands [104]. At this stage, the Commission also involved the Working Group on the Problems of Womens' Employment which, it will be recalled, was set up as a result of the proposed Social Action Programme [105]. Thus, the collection of this information enabled the government experts and the social partners to give a more coherent opinion as the proposed Directive was drafted [106].

The Commission approved the final draft of the proposal on the 22nd of December 1976 [107] and submitted the text to the Council on the 31st of the same month [108]. Thus, the Commission fulfilled the promise which it had made in its 1976 Programme. Like the proposed Equal Treatment Directive, this proposal

cited Article 235 of the Treaty of Rome as a legal basis for action. The contents of the proposal followed the lines of the earlier two proposed equality Directives in many respects. First, the measure sought to implement the principle of equality of treatment as laid down in the Equal Treatment Directive with regard to matters of social security [Article 1]. Article 2 defined the scope and the coverage of social security in the cases of medical care, loss of earnings through sickness and through unemployment, old age, employment accident or occupational disease, and invalidity. This measure applied to all mandatory schemes which provided protection against these contingencies, to all occupational schemes which gave protection and were not already covered by Community measures, and to all social assistance arrangements which supplemented or substituted for benefits with regard to the specified contingencies. Next, the proposed Directive applied to all obligations and benefits in relation to the afore-mentioned schemes and arrangements particularly for persons covered by the scheme or arrangement, conditions of eligibility for benefits including the conditions for contributions, type and form of benefits, rate of payment including increases for dependants and the duration and conditions under which benefits could be received [Article 3].

The Commission proposed that the Directive should

be implemented in three stages. The first stage involved all mandatory social security schemes and all appropriate social assistance arrangements excluding increases for dependants which would be dealt with at the second stage. Occupational schemes would be implemented in the third stage [Article 4]. At each stage, the Member States should ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment in matters of social security should be abolished and that any provisions contrary to that principle of equal treatment in the appropriate collective agreements, individual contracts of employment, internal rules of undertakings or in rules of independent occupations and professions should be reconsidered and either declared null and void or amended [Article 5].

However, the Member States were allowed to exclude from this measure the determination of pensionable age for old-age and retirement pensions, the determination of periods of employment for pension purposes particularly those periods outside employment caused by pregnancy and childbirth, and the acquisition of benefit rights following interruption of employment, and the acquisition of rights to benefit by means of the insurance status or contribution record of a spouse. All these areas were to be kept under regular review by the Member States.

Member States should also request both sides of industry to revise any appropriate collective agreement [Article 6]. The timetable for the implementation of this proposal comprised a period of four years so that the first stage was completed within two years of notification and the next two stages were implemented one year apiece after notification. The Member States should communicate the texts of any provisions which they adopted to fulfil this proposal to include any measures undertaken as a consequence of reviewing the exclusions specified in Article 6 and, also, the reasons for continuing any such exclusion. Member States were required to submit the appropriate information to the Commission within one year after the expiry of each of the three stages so that a report could be compiled for the Council and so that the Commission was enabled to propose any necessary further measures to secure the implementation of the principle of equal treatment [Article 7]. The Directive was addressed to the Member States [Article 8].

Thus, this complex proposal in covering a complicated subject was full of conditions and limitations. The explanatory memorandum [109] which accompanied the proposal clarified certain points. Faced with such a complex matter, the Commission put forward this measure to act as the first stage in the process towards achieving the full implementation of

equal treatment in social security. Thus, the proposal was not intended to eliminate all discrimination in this field. Article 6 excluded certain areas but possible future instruments could be initiated as envisaged in Article 7. Even the proposal itself involved three stages of implementation, hence, the inclusion of the adjective, progressive, in the title.

The Commission affirmed that the principle of equal treatment as laid down in the Equal Treatment Directive was meant to apply as well to this proposal so

> "that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly by reference in particular to marital or family status" [110].

The social security proposal also applied to the same people as in the Equal Treatment Directive, namely, the potential, present and former working population to include the self-employed but non-employed people were excluded.

Matters of social security were defined in relation to the contingencies against which the schemes gave protection. The contingencies were taken from the list in Convention No. 102 of the International Labour Organisation [111] and the European Code of Social

Security of the Council of Europe [112] with the exception of widowhood, maternity and family charges. These three areas were not included in the proposal since the first two were specific to women and thus discrimination would not arise whilst the third formed part of family policy rather than working conditions so could not be included in this Directive which was solely concerned with working conditions. The Commission did state, however, that a wider definition might be used in future proposals.

The proposal covered mandatory, occupational and some social assistance schemes. Some indication of the types of supplementary or substitute schemes mentioned in Article 2 was given. These could comprise supplementary schemes providing insurance benefits by means tested payments to meet basic living standards and payments to the long-term unemployed whose insurance benefits were exhausted. All these schemes were included to accommodate the differing systems in the Member States.

However, certain major areas were excluded from the proposal. These were the very areas in which discrimination was present. With regard to the fixing of pensionable age, women tended to retire earlier than men. Moreover, in some countries, women could count the period of post-natal leave as a period of employment for the purposes of a pension. The

Commission, however, insisted in Article 6 that Member States should keep these exclusions under review.

The timetable reflected the potential difficulties which faced Member States. Increased benefits for dependants tended to be given to the men as breadwinners and head of the family and, so, this concept would have to be changed. Hence, the Member States were given a longer period to effect the necessary changes. Moreover, occupational schemes presented changes of complexity which might also involve the social partners. And so, the Commission allowed four years for these schemes to be implemented.

Reports were to be made to the Commission not only on the progress of implementation of the proposal but also on all aspects of social security which affected differences in treatment such as pension age, derived versus autonomous rights, periods of non-employment and one-parent families.

However, unlike the earlier two equality proposals, certain important omissions occurred in this proposal. This measure did not provide for legal redress or protection against dismissal for individuals who wished to bring a claim. Neither was provision made for informing workers about the contents of the Directive.

Indeed, the proposal represented a limited initiative although recognition must be accorded to the factors that the subject matter was very complex and that social security was an area where women suffered from much direct discrimination. Given these factors, the initiative represented a beginning in this area.

2.8.2. Proposal for a Directive on Equal Treatment in Occupational Social Security schemes

Since occupational schemes of social security were excluded from the final version of the Social Security Directive which was promulgated in 1978 [113], the Council requested the Commission to draw up proposals for such schemes as soon as the technical problems were resolved. At the same time, the Council undertook to come to a decision on any proposal within two years from its submission [114].

In its annual report on the social situation in the European Community for 1978, the Commission promised to formulate a draft Directive [115]. This commitment was repeated in the following year [116]. Finally, in January 1980, the Commission in conjunction with government experts commenced the task of looking at the problems that would arise when the principle of equal treatment was applied to occupational pensions

[117].

In that same year, the Commission completed a working paper on the subject of discrimination between men and women in occupational pension schemes [118]. The paper considered that the most acute sexual discrimination in occupational insurance schemes was present in occupational pension schemes. Although the paper was concerned with such schemes which supplemented statutory systems, the Commission asserted that statutory schemes considerably influenced occupational schemes and, indeed, were

> "directly or indirectly at the root of various forms of discrimination in occupational schemes" [119].

The paper systematically examined discrimination and the problems connected with its elimination in relation to persons, risks covered, conditions, benefits, financing and guarantee of rights for employees in changing schemes or temporarily changing their membership. The main findings could be briefly summarised. Women did not benefit nearly so often as men from occupational pension schemes for various reasons. These reasons were that such schemes tended not to exist in undertakings which predominantly employed female labour, certain schemes were only open to men, or were compulsory for men and voluntary for women, or they excluded part-time or temporary workers

who were mainly women, the age of enrolment sometimes differed for men and women, and women were sometimes required to serve a longer minimum period before they could join a scheme. The benefit from the death of an insured person was often excluded or subjected to more restrictive conditions when the insured person was a woman. A widow received benefit in the event of the death of her insured husband but the reverse situation seldom applied unless the widower was dependent or sick. Many schemes operated different conditions for men and women in relation to enrolment ages, qualifying periods or retirement ages. Thus, women worked for a shorter overall period in connection with their pension entitlement and, consequently, received a smaller pension than men. Also, since women enjoyed a greater life expectancy than men, their pensions were smaller.

In 1981, the Commission drew up a draft proposal for discussion purposes [120]. This draft took the form of a Regulation rather than a Directive which was put forward as second preference. The choice of a Regulation, which represented a new development for Community initiatives for women, was dictated by the subject matter of the proposal. Occupational schemes were not normally governed by public authorities so a Regulation, which was directly applicable to individuals within the European Community without the need for national implementing legislation, seemed

more appropriate and would ensure an uniform implementation in all the Member States. However, the Governments seemed reluctant to accept a Regulation. They argued that the differing nature of the existing occupational schemes in the Member States meant that a Directive was more suitable to enable the national Governments to implement the measure according to their particular circumstances. The factor that the previous equality measures were issued as Directives strengthened their argument [121].

The proposal aimed to ensure the implementation of the principle of equal treatment for men and women in occupational social security schemes. These schemes were defined as all those schemes which supplemented or replaced benefits under the statutory schemes. They covered the same areas as laid down in the Social Security Directive. The principle of equal treatment was defined in accordance with the earlier equality Directives and was amplified. A list of the types of provisions which were considered to be discriminatory was provided. Any discriminatory provisions were to be declared null and void or amended. The rest of the proposal contained standard clauses in relation to the right for individuals to institute a claim for non-compliance of this measure, protection for such individuals against dismissal for instigating a claim, and a notification clause for Member States to inform the Commission of any action taken to implement the

measure.

The draft proposal formed part of the discussions at a meeting of the Standing Liaison Group for Equal Opportunities [122] held between the 2nd and the 3rd of July 1981 [123]. However, although the final version of this proposal was planned to appear later in that year [124], it did not appear until 1983 [125] which was outside the period of review.

Thus, various initiatives were proposed by the European Community in the field of social security. These initiatives of limited scope reflected the complexity of the subject matter and the difficulties caused by the existence of differing national systems.

2.9. The European Social Fund

Besides legislative policy initiatives, the European Community also possessed financial instruments of which the European Social Fund was relevant to the position of women. After its promulgation in the Treaty of Rome [126], the Fund was subjected to a number of proposals to reform its structure and coverage. Some of these proposals concerned opportunities for training projects to assist women who were seeking employment. Prior to the examination of these particular proposals, the establishment of the European Social Fund will be

described so that the proposals in relation to women will be more readily understood.

The European Social Fund was instituted as part of the social provisions of the Treaty of Rome in order

> "to improve employment opportunities for workers in the common market" [127].

Although the Fund was regarded as

> "the Community's major weapon against unemployment" [128],

its rigid structure lacked the necessary flexibility to act as a useful tool for the purpose of employment policy. Monetary aid was only granted to Member States or to public bodies and any such grant was limited to a maximum of 50% of the costs of a project. The only projects which were eligible for financial support from the Fund involved vocational retraining and resettlement allowances to re-employ workers or aid to workers whose employment was reduced or suspended owing to the conversion of an undertaking [129]. Thus, projects to assist women were not specified or particularly intended at this stage.

However, the Treaty of Rome laid down that this assistance could be abolished or that the European Social Fund could be given new tasks at the end of the

transitional period [130] which was reached in 1970. The Commission was thus given the opportunity to consider the nature of the Fund. Eventually, after protracted negotiations, a Decision was enacted which affected women and will be discussed further in Chapter Three [see 3.6.]. In short, this Decision in relation to women laid down restrictive conditions which hardly helped to improve the employment situation for women.

But, under the third stage of the proposed Social Action Programme, the Commission put forward the suggestion that the terms of the European Social Fund should be extended so that

> "Special consideration will also be given to the problems encountered by elderly workers, unemployed school leavers and women seeking to take up employment after a period away from work" [131].

Accordingly, the Commission submitted a proposal to the Council on the 16th of April 1975 [132] to open up Article 4 of the 1971 Decision in relation to the European Social Fund [133] to a few carefully chosen areas which were causing concern. Article 4 provided for the allocation of aid to areas affected by Community actions and to certain groups of workers. In this 1975 proposal, priority would be given to various groups including women and the young who were most vulnerable in times of crisis or recession. But, this

priority was subject to restrictions since women who were unemployed or seeking employment would only be given aid in those regions which were experiencing difficulties. In other words, Article 5 of the 1971 Decision [134] in which aid was granted to certain regions, branches of the economy or groups of undertakings in difficulties was to be applicable to women workers. The Commission explained [135] that priority would be given to women according to selective criteria and for specific projects.

This initiative failed [see Chapter 3.11.] but opportunities for reform of the European Social Fund arose in 1977. Under the terms of the 1971 Decision, the Council had to review this measure before the 1st of May 1977 [136].

2.9.1. Proposal for a Decision on European Social Fund assistance for women

Eventually, the Commission drew up a proposal for a Council Decision on European Social Fund assistance for women [137] which was transmitted to the Council on the 27th of September 1977 [138]. This proposal was brief and put forward in accordance with Article 4 of the 1971 Decision that European Social Fund assistance could be granted in two instances. In the first place, assistance might be given for women over twenty-five years of age for vocational training programmes

provided that these programmes prepared the women for working life and placed them in jobs which were in keeping with the qualifications duly obtained. Assistance could also be granted for training schemes for vocational guidance counsellors, instructors and specialists.

Thus, the Commission, at last, in relation to women dropped the use of the restrictive Article 5 of the 1971 Decision in favour of the more wide ranging and helpful Article 4. Furthermore, various changes were made from the previous proposals in that the age for assistance was lowered from thirty-five to twenty-five and the second proposal of access to male jobs was dropped.

This proposal was designed to enable action to be taken to help women who were unemployed or who sought employment. The Commission explained the reasoning behind the proposal [139]. The proposal was framed to help towards the alleviation of the existing unemployment situation which faced women since a greater increase in unemployment amongst women in the previous year had occurred than for men. A prime cause for this increase concerned the inadequate nature of vocational training for women. Therefore, Community action was necessary.

However, the Fund could not help all the programmes

which were required to solve the problems affecting women's employment. So, the Commission decided to limit assistance to any action which could contribute the most towards removing specific obstacles to the employment of women. The Commission thus changed the original proposals since it had taken into account the discussions surrounding those proposals and the need to solve the problems whih were especially described in the Communication on equal treatment [140]. Research undertaken by the Commission revealed that the main obstacles to access to vocational training and employment were inadequate guidance and vocational counselling services, the concentration of women in a limited number of training and employment areas, the lack of job placement facilities and insufficient follow-up at job level. Thus, the Commission proposed that assistance would be available to women over twenty-five years of age and not thirty-five on the grounds that from this age women found it difficult to obtain a job whether for the first time or returning to work after a period of raising a family at home. Pre-training induction schemes were necessary to be followed by measures which would facilitate entry into employment. In order to assist these proposals, the Fund should also help to finance the necessary specialist training of the trainers.

Thus, a really useful proposal was at last made by the Commission which could be of practical use to

women seeking work. The length of time taken for this initiative to be made should be noted since a certain reluctance to propose the use of Article 4 of the 1971 Decision for women was revealed. Article 4 permitted the chance of solid, concrete action for women to receive suitable vocational training. Vocational training, however, only represented a means for women to seek employment since it did not actually provide any jobs. But, the chance of monetary aid for vocational training constituted a step in the right direction to improve the position of women.

2.10. Education initiatives

Policy initiatives to improve the position of women were not confined to the employment field since some attempt was made to bring about equal treatment between men and women in the areas of education and vocational training. What were these initiatives in the field of education?

The legal basis for such initiatives in this field stemmed from a Resolution of the Council and the Ministers of Education meeting within the Council [141] in which it was stated that

> "The achievement of equal opportunity for free access to all forms of education is an essential aim of the education policies of all the Member States and its importance must be stressed in conjunction with other economic and social

policies, in order to achieve equality of opportunity in society" [142].

The Commission cited this principle to justify an investigation of the problems which were experienced by girls at secondary school. It used one of its well-tried investigatory methods which involved the use of an expert to produce a report. On this occasion, Eileen Byrne [143] was entrusted with the task of investigating and drawing up a report on the equality of education and training of girls aged between ten and eighteen at the secondary level of education. Byrne's report was presented to the Commission in 1978 [144] and was subsequently published as a Commission study [145].

2.10.1. Education Action Programme

On the basis of the Byrne report, the Commission drew up in October 1978 an Education Action Programme at the Community level to give equal opportunities in education and training for girls at the secondary level of education [146]. Significantly, this initiative was presented as a Communication rather than as a definite piece of legislation since Communications did not possess any legally binding status.

This Education Action Programme was drawn up on the

same legal basis as that of the Byrne report, namely, the February 1976 Resolution on an action programme in education [147]. Reference was also made to the statement on equal educational opportunities for girls in the December 1976 Resolution on young people [148] and to the need to view equal educational opportunities for girls within the wider context of European Community action to achieve equality of treatment between male and female workers. It will be recalled that Articles 119 or 235 of the Treaty of Rome [149] were cited as the legal basis for action in the previous equality proposals. Whilst Article 119 on equal pay was not relevant in this context of education, the failure to cite Article 235 was probably deliberate on the part of the Commission as a reflection of the need for caution in initiating actions for education at a Community level.

The Commission confined the Programme to the secondary level of education because at this level choices of schools and subjects had to be made, more secondary schools than primary schools were single-sex, and puberty increased awareness of adult female and male roles. But, it recognised the powerful formative influences of pre-school and primary schooling. Pre-school education was the subject of a review by the Education Commmittee. However, the report on this subject did not consider equality for girls [150]. The Commission felt that primary schools

could be later separately examined though this did not seem to have actually happened. Furthermore, the Commission noted that external factors could also be a strong influence.

The Commission justified this initiative by pointing to the concern which was increasingly felt by educational authorities about the widespread underachievement of girls. Education should give girls and boys the right to choose their futures. Since girls were not achieving the best results for themselves, there was a need for action.

First, the document, in utilising the Byrne Report, summarised the extent, the type and the character of inequalities which arose during the second level of education and training of girls who were aged between ten and eighteen years. Then, specific areas for joint action were outlined.

Much of the Communication was devoted to an analysis of the existing state of inequalities. Barriers which restricted the development of equality could occur within the structure and organisation of secondary education, within the curriculum or within the social and psychological environment of the schools. These three barriers were examined in turn.

Firstly, the structure and organisation of

secondary schools were considered. Female single-sex schools could constitute a structural barrier to equality because their curricula and facilities could be limited, especially in relation to such male-dominated subjects as mathematics, the sciences, technical crafts and technology. These limitations were most marked in single-sex vocational and technical schools. Co-education could eradicate these barriers although a co-educational school with poor resources could reinforce sex-stereotyping. Further barriers could arise from rigid systems which required years to be repeated or which prevented transfers between courses.

The curriculum could create barriers when girls were forced to specialise at an early stage and, perhaps, the studies of mathematics and physical sciences were dropped. Furthermore, the simultaneous timetabling of technical and domestic crafts created severe barriers to equality. Thus, the postponement of specialisation and the development of a compulsory, balanced, central curriculum could assist towards laying a better foundation for later choices. A further barrier concerned teaching materials which were often sexist and which frequently emphasised sex role stereotyping.

Finally, the Commission considered the social and psychological environment of the schools and the

question of whether teachers were counteracting or sustaining traditional attitudes towards the role of the sexes. In-service training and initial teacher training programmes could be more widely used to counteract sex-stereotyping. However, the sex balance amongst teachers in relation to the different levels of education, to the subjects taught, and to the different levels of authority could exert a powerful influence on children. In recent years, the proportion of women holding senior positions in schools has declined as a result of educational re-organisation and of the introduction of co-education. A positive staff development programme was needed to arrive at a better sex balance in the teacher force.

Too little research into the position of girls in the educational system was initiated. A co-ordinated and planned programme of research was needed. All educational statistics should be divided by sex to allow monitoring of the situation.

In summing up, the Commission acknowledged that

> "The achievement of greater equality of opportunity for girls in education is a long term objective" [151].

Yet, the adaption of suitable educational structures, curricula and staff policies by the educational authorities could make a major contribution towards

the achievement of this objective. But, the Commission recognised that these areas for action were sensitive.

The Commission sought in the second part of the Communication to

> "identify specific areas in which joint action may be undertaken within the Community" [152].

The Commission proposed that a programme of action should be drawn up for the Council and the Ministers of Education meeting within the Council to consider. This programme would highlight the following areas of common concern: the management and implementation of co-education; the formulation of positive discriminatory programmes for girls in the first stage of secondary education and in vocational guidance; the design of core curricula and the introduction of new compulsory subjects such as technology and home management; the creation of new staff development policies to achieve a better sex balance of teachers particularly within the context of recruitment and promotion; the design of new training modules to increase the awareness of teachers and guidance personnel of the relevant social and psychological factors; and the improvement of data and research on educational equality for girls and the exchange of information on this subject between the Member States. A possible financial backing for the

programme was outlined.

Thus, this initiative by the European Community in the field of equality in education for females represented a cautious and limited step. In the first instance, the Programme did not encompass the whole spectrum of education but it was confined to the secondary level. Furthermore, the choice of a Communication to present the programme rather than a legislative proposal constituted a definite though realistic limitation. Finally, the chosen areas of action were limited to six. This programme was neither an attempt by the European Community to harmonise the national educational systems nor a way of establishing minimum standards. It merely outlined various fields for the Member States to consider taking action.

2.10.2. The work of the Education Committee

Further action to help females to achieve equality in education resulted at this time from the work of the Education Committee and not from the Commission. During the course of 1979, the Education Committee reached agreement on the texts of four draft Resolutions which were based on the February 1976 Resolution. The fourth draft Resolution was devoted to the question of equal opportunity for girls in education [153]. This Resolution asked the national governments to consider methods to ensure that

equality of the sexes became a more explicit and integral part of all aspects of education policy [154]. These draft Resolutions were put forward for the Education Ministers to consider and their progress will be discussed later [see Chapter 3.12.2.]. Action by the European Community in sexual equality in education was thus no longer confined to the secondary level.

In 1980, the Education Committee returned to the question of female equality in education when it produced a general report on education [155]. In this report, the Committee examined the measures which had been taken to further certain paragraphs of the February 1976 Resolution. This examination included that part of the February 1976 Resolution which related to the achievement of equal opportunity for free access to all forms of education. In taking note of the previous Community initiatives in the area of equality in education and in its recognition of differing national needs, the Committee proposed that Member States should ensure that equality between the sexes became a more explicit and integral part of all aspects of educational policy. Thus, the essence of the 1979 draft Resolution was reiterated.

Member States were asked to review and to modify the curricula so that young people of both sexes should have wider access to subjects which were

traditionally dominated by one sex; to support initiatives which would analyse and eliminate sex stereotyping in teaching materials and educational media; to promote experimentation and evaluation of specific projects or programmes to encourage and prepare girls and their parents to consider a wider range of professions; to examine ways of achieving a better sex balance in all branches of the teaching force and in educational administration at all levels; to promote, particularly through initial and in-service training, greater awareness amongst teachers and careers advisers of sex stereotyping and their responsibility to ensure that it did not influence young people in their choice of careers or subjects; to encourage research into the factors which affected equality in education and training particularly in relation to disadvantaged girls; and to ensure that educational statistics were divided by sex.

To reinforce these national measures, the Committee proposed a series of Community actions for the years 1981 to 1983. First, studies, research and exchanges of experience would be promoted with special reference to the following five areas: the effects of single-sex and co-educational secondary educational systems on girls and boys; the development of greater expertise amongst teacher trainers and careers advisers with regard to the factors and behaviour

which led to sex stereotyping; the evaluation of positive programmes and other special measures to promote equality between girls and boys in the transitional period from school to working life; the role of the mass media in developing attitudes about careers and adult life amongst young people; and the particular problems faced by ethnic and cultural groups in relation to equality of opportunity by girls in the transitional period.

Secondly, the Committee proposed that improvements should be made in the collection and dissemination of information on research and innovatory activities amongst educationalists. Finally, it was proposed that collaboration with other international organisations should be developed. Many of these proposals at national and Community level were familiar since they had already appeared in the Education Action Programme.

This report was submitted to the Council and the Ministers of Education meeting within the Council for its approval, the success or failure of which will be discussed in due course [see Chapter 3.7.1.].

2.10.3. The transitional period from school to working life

Reference has already been made to the difficult

period of transition from school to working life which was the subject of some attention by the European Community. This area also marked a convenient half-way stage between education and vocational training which will be the subject of the next Section of this Chapter [see 2.11.].

A report which resulted from the Education Committee in 1976 [156] gave some attention to the particular situation which faced girls during this transitional period [157] since the Committee recognised that, at this stage, girls were more vulnerable than boys. This situation was reflected in the generally higher unemployment figures for young women as compared to young men. Girls were faced with a restricted choice of occupations. Frequently, girls based their curricular and careers choices on traditional parental, teacher and social attitudes towards the role of woman in society and towards suitable "girls' occupations". Early choices of subjects by girls often meant that females were later ineligible for certain types of work. To change this situation, changes in attitude were needed rather than changes to organisational structures.

In its conclusions [158], the Committee stressed that the organisation and structure of schools, the content of the curriculum and the teaching should not distinguish between the needs of girls and boys.

Instead, attention should be given to the needs of each individual regardless of sex. In this way, the risks of negative assumptions by girls and their parents as to suitable careers would be reduced. The early years of secondary education up to the age of thirteen were particularly important in this respect since, at that stage, girls took important subject choices. Girls, parents and teachers needed intensified careers guidance to avoid the effects of popular beliefs about the opportunities for women in the employment field and the stereotyped roles which were portrayed by women in mass advertising.

The report ended by outlining a series of Community measures which could be undertaken [159]. Six priority themes were specified, the third of which concerned

> "the design and development of specific actions to ... ensure equal educational opportunities for girls" [160].

These priorities could be translated into a series of pilot projects and studies over a three year period.

This report was then submitted to the Council for discussion and the outcome will be examined in Chapter Three [see 3.7.2.].

The transitional period was also included in the

1980 general report on education drawn up by the Education Committee [161]. The Education Committee proposed various objectives on the transitional period of which two were applicable to girls [162]. These objectives concerned the need to offer girls further possibilities to participate in those traditionally under-represented areas of education, training and employment by females, and secondly, serious unemployment problems which faced young people and particularly girls and which could undermine the progress achieved so far in promoting equality between women and men in employment. The progress of this report will be discussed in the next Chapter [see 3.7.1.].

Some attention was thus given to the problems faced by young girls in the transitional period between school and working life.

2.11. Vocational training initiatives

Within the context of the European Community, the term vocational training encompassed occupational guidance, training and re-training for employment.

What initiatives did the European Community propose in the area of vocational training to help improve the position of women?

2.11.1. Seminar on Vocational Guidance and Training for Women Workers

The Commission recognised that an Equal Treatment Directive would not be effective unless women received an adequate level of vocational guidance and training [163]. It thus intended to initiate an action programme on vocational guidance and training for women workers. Since it was felt that the holding of a seminar on this subject would contribute in a practical way towards the realisation of such a programme [164], the Directorate-General for Social Affairs of the Commission accordingly organised an European Seminar on the subject [165]. This Seminar was held in Paris during the week of the 24th to the 28th of November 1975. It was claimed that the Seminar constituted a substantial and practical contribution to the International Women's Year [166] which had been designated by the United Nations for the year of 1975. The Seminar also formed part of the efforts by the Commission in 1975 to promote equal treatment between women and men [167].

Around sixty senior administrative and executive staff in the field of vocational guidance and training drawn from public and private administration, the economic sector, professional associations of employers, workers' trades unions and the women's movement from within the European Community attended

the proceedings. The essential objective of this Seminar was to eliminate the initial source of discrimination at the recruiting level. In operating at a practical level, the Seminar sought to examine the existing situation, to ascertain the main problems which were of current interest and any improvements which could be made, and to consider how these problems were tackled by the European Community and whether any solutions had been found in the individual Member States. Then, the Seminar would put forward proposals of action to be taken at the regional, national and Community levels by governments, local authorities, employers' organisations and trades unions in order to alleviate discrimination which was experienced by women within vocational guidance and vocational training [168].

A working group had laid the groundwork for the Seminar in devising the guidelines which had been used in collecting national reports on the present situation. These reports provided starting points for the Seminar. They revealed that responsibility for vocational guidance and training at the national level fell either on to the Ministries of Education or on to the Ministries of Labour or Manpower. Hence, differences arose according to which ministry held the responsibility. Whichever system was in operation, however, two general points emerged. First, fewer girls than boys used the vocational guidance services,

and secondly, the choice of an occupation by girls tended towards certain, "female", traditional sectors of the economy. Therefore, girls received a different vocational training from that received by boys. This situation pertained regardless of the type of vocational guidance and training systems in the Member States.

The Seminar split into four working groups. The first two groups, one German-speaking and the other English-speaking, were charged with the task of examining the type of vocational guidance and training that should be made available to women and the possible necessity for a new legislative and institutional framework. The other two working groups, an European and a French-speaking group, examined the means to achieve the principle of equality in relation to access to training and employment. Each group contributed its own conclusions and recommendations which were taken into consideration in the final summary.

The Seminar concluded that changes were needed to the current employment structure. Vocational guidance and training should be reshaped for women and men. Various proposals were put forward. First, since vocational guidance came before vocational training, the former should be provided very early in a child's life. Such guidance should be freely available to all

and it should be paid for by the State. Agencies which provided such guidance should be integrated into the national or regional employment services. Vocational training for girls should include a non-specialised preparatory year. To achieve this proposal, state intervention would seem to be necessary. For women, vocational training was continuous. The types of training which were provided needed to be changed. Training should include a certain amount of general education. Support such as crèches was necessary. Finally, vocational guidance and training needed voluntary actions by the Member States and a social consensus in relation to the role of women in society.

2.11.2. Draft Recommendation on vocational training for women

After the holding of this Seminar, consultation took place in 1976 with the social partners on the general question of vocational training for women [169]. The Commission had hoped to incorporate the conclusions from this Seminar into an action programme on vocational guidance and training for women workers. But, it was recognised that the Equal Treatment Directive [170] in eliminating the legal barriers to access to vocational training and employment by women was insufficient to ensure equal opportunities for women on the labour market. Therefore, to strengthen the provisions of this

Directive, the Bureau for Questions affecting Women's Employment within the Directorate-General for Social Affairs of the Commission started to discuss the type of European Community legal instrument which would be most suitable to improve vocational guidance and training for women [171]. Consultations were held with the social partners and government representatives during 1977 [172]. It was envisaged that this instrument would inspire the Member States to enact suitable measures [173]. This activity should be set against the Commission's general concern with vocational training. A new set of guidelines for the implementation of a common vocational training policy was drawn up with seven objectives of which the fourth objective sought to promote vocational guidance and training for women in order to help to achieve equality of opportunity for women and men in the European Community [174].

On the basis of Article 118 of the European Economic Community Treaty [175], the Commission prepared a Draft Recommendation which would encourage co-operation between the Member States in the field of vocational training for women. Various measures were outlined for the Member States to enact in order to improve the opportunities for women on entering the labour market. Action could be taken to provide parental leave, to provide support facilities such as crèches and hostels for women who wished to undertake

vocational training, to introduce such positive discrimination measures as job quotas, to encourage women to enter non-traditional "female" occupations and to encourage women to take an active role in works councils [176]. It should be noted that the proposed legal instrument was non-binding in status.

However, this Draft Recommendation was never published. The Commission announced in its Programme for 1976 that the Draft would be sent to the Council in the second half of that year [177]. This promise of submission was repeated in the successive Programme in which the Commission stated that the Draft would be prepared in the second half of 1977 [178]. But, in 1977, the Commission hoped that it would draw up formal proposals to the Council by the end of the year or early in 1978 [179]. Finally, in answer to a question during the July 1978 Question Time session of the European Parliament, Mr. Natali, the Commissioner, replied that definite proposals were intended before the end of the year. The questioner, Mrs. Dahlerup, criticised the inactivity of the Commission in this field since 1975 [180]. This proposal was absent from the 1978 and 1979 Programmmes and nothing further was recorded during the period of review. The reasons behind the failure of the Commission to submit a proposal were unknown.

2.11.3. Seminar on Equal Opportunities and Vocational

Training

Meanwhile, other initiatives arose in this field. One of the first activities to help women of the European Centre for the Development of Vocational Training [181] concerned the organisation of an international seminar on Equal Opportunities and Vocational Training. This seminar was held in Berlin between the 28th and the 30th of September 1977. Representatives from national governments and the social partners from the nine Member States of the European Community attended the seminar [182]. First, the participants examined the work which had been carried out in this area in the previous few years. Concern was expressed about the increasing proportion of females amongst the unemployed. And so, the participants demanded that the Centre should take concrete steps. The Centre was requested to carry out a survey of existing vocational training programmes for women in the Member States of the European Community and to promote innovative actions which would contribute to a change in attitudes towards the position of women in society.

2.11.4. Action programme

As a follow-up to this seminar, a working group which consisted of representatives from the national governments, the social partners, the Commission and

the Centre was established in 1978 [183]. This group drew up an action programme which contained three phases. The first phase was designed to identify recent innovations in vocational training and guidance in the Member States. Secondly, the programme involved the development of training policies in enterprises in order to improve career opportunities and promotion chances for women and to fill a wider range of jobs by women. Finally, the Centre hoped to change attitudes through the development and the dissemination of information on these initiatives [184].

The overall objective of the action programme was laid down

> "to provide wider opportunities for girls and women on the labour market by way of training designed to grant a greater access to all occupations, to jobs requiring higher qualifications and to higher responsibilities" [185].

The implementation of the first phase was begun in 1978. A tripartite national team under a coordinator was set up in each Member State to identify national innovations in vocational training and guidance in relation to the prevailing labour market situation [186]. A follow-up group established the criteria for these national surveys [187] in that the innovations should facilitate the access of women to new careers, to new occupations or to new responsibilities or they should contribute to the advancement of women by

means of vocational training [188]. The teams completed their surveys on schedule during the first half of 1979.

A two-day meeting was held to compare and evaluate the results. In line with the third phase, a detailed report on each country and a summary analysis were published to disseminate information [189]. Further reports were produced as well. At the Commission's request, a joint seminar organised by the Directorate-General for Social Affairs and Employment of the Commission and by the Centre for the participation of guidance counsellors, trainers and placement officers from the national vocational guidance and placement services [190] was held between the 15th and the 17th of September 1980. The results of these national studies on training innovations were examined by the seminar. The participants to the seminar discussed the need for changes to the social, material and vocational situation of young girls and young women, to the work of vocational guidance and placement services, and to motivation and attitudes [191]. This seminar could also be seen as forming part of the third phase of the action programme in that it acted as an instrument to disseminate information. In 1981, the Centre continued to disseminate the results, conclusions and orientation of this work [192].

The specific objectives of the second phase of the action programme were identified as follows; to verify, to evaluate and to compare the results of experimental training programmes in enterprises and, secondly, to establish an instrument which would observe developments in this field [193].

In 1978, the Centre began work on this second phase. First, it drew up a feasibility study [194]. Then, in September of that year, the first contacts were made with professional organisations and scientific institutes so that an initiative could commence in a number of companies in the following year. This initiative aimed to offer vocational guidance and training programmes which would counteract the traditional segregation of women in employment. In this way, women would be given the opportunity for promotion or access to new careers [195].

At the beginning of 1979, the feasibility study was carried out and, as a result, seventeen case studies of experimental training programmes within enterprises in Belgium, France, Germany and the United Kingdom were prepared for implementation in 1980 [196].

Four tripartite national steering groups under the supervision of the Centre were established in 1980. During the course of that year, the Centre

established the methodology and content for each national study. At the end of the year, the Centre extended this project to Denmark and prepared to extend it to Ireland and Italy. Furthermore, the Centre proposed that two of the Belgian experimental training programmes should be financed by the European Social Fund [197]. In 1981, the original four groups finished their reports and a synthesis report was prepared. The studies in the other countries were continued and a consultative conference was organised to discuss the results [198]. Again, one could note the attention paid by the Centre to the importance of disseminating information about its work.

The Centre began discussions in 1978 with the relevant sections of the Commission, and in particular with the Bureau for Questions concerning Women's Employment, to establish what specific contribution the Centre could make towards the dissemination of information about these innovations [199]. In 1979, the Centre began to prepare a brochure which could be used as an attempt to change attitudes and it also commenced consultations in order to produce a series of short television films which would present specific training innovations [200]. Examination of the first two phases of the action programme have already revealed the extent of the Centre's commitment to the dissemination of information.

Thus, it was clear that the European Community paid more attention to the question of vocational training for girls and women than to equal opportunities for girls in education. The reason could partly be explained by reference to the mandate in the European Community Treaties in relation to vocational training. The basis for action was stronger and, also, vocational training had a clear link to employment. Some initiatives were proposed although an attempt at a specific measure failed to reach the stage of submission to the Council.

2.12. Later initiatives

2.12.1. Manchester Conference

Thus, the European Community policy initiatives to improve the position of women so far examined were proposed to fulfil particular needs and were concerned with a specific aspect of women's policy such as employment or education. The advent of a new decade in the 1980's was to witness a significant change in that the Community deliberately adopted a co-ordinated policy for women. As the period under review drew to a close, the first manifestation of this change was a conference initiated by the Commission but jointly sponsored with the British Equal Opportunities Commission [201]. This conference, held in Manchester between the 28th and the 30th of May 1980, was

devoted to the theme of "Equality for Women: Assessment, Problems, Perspectives- A European Project". It brought together the national committees which were responsible for the implementation of equal treatment whether committees of women's employment or committees of equal opportunities [202], and policy-makers from the relevant national government departments [203] as well as observers from trade associations and international organisations. Through the use of a questionnaire, each Member State was responsible for drawing up a national report which formed the basis for discussions at the conference [204]. The conference aimed to act as an exchange of experience for the policy-makers and as a means to draw up a future strategy which would build upon the foundations already laid by the Community equality Directives.

As a result of discussions by the conference, two needs were identified, namely, to secure the full implementation of the Community equality legislation and, secondly, to initiate new policy areas. These two needs could be fulfilled by the adoption of five areas for action which were pinpointed to act as priorities.

First, the conference agreed that since the full implementation of the principle of equal treatment was not yet achieved there was a need for effective

strategies to be accompanied by adequate supporting measures. Enforcement of this principle could therefore be achieved by means of strengthening the role of existing national equality bodies and the relevant departments of the Commission, and creating an European Equality Commission. This Commission would co-ordinate the work of the national agencies and would ensure that the latter received better information on the nature and full extent of the relevant Community legislation. In relation to this European Community body, the West German representatives were concerned that this body might interfere with essentially national policy areas.

Secondly, taxation and social security systems were singled out because they were a disincentive for married women to seek employment. So, the Commission was asked to propose new systems in these two areas to be based on the principle of an individual man or woman regardless of status to constitute the basic unit for the purposes of benefit entitlement and assessment. A majority of the conference supported a recommendation that measures should be adopted to arrive at a flexible pension age based on a common pension age for men and women.

Occupational segregation of the labour market received some attention. The conference considered that new initiatives were needed in this field at

Community level to promote a more even mix of men and women particularly pilot schemes to train women for non-traditional jobs with increased aid from European Community funds and the drawing up of Community guidelines on positive action and ways to counter indirect discrimination. These guidelines might establish the basic principles for job evaluation schemes.

Equality of work could not be achieved unless measures were introduced to secure more equality at home. The Commission was asked to encourage Governments to increase the provision of care facilities and resources for children, the elderly and handicapped dependants and to draw up a Directive on family and parental leave, and child-care facilities.

Finally, the impact of new technology was considered since its development was mostly felt in sectors which employed high numbers of women workers. The conference proposed that women should be represented during the negotiations which introduced new technology, women should receive a fair share of the benefits which resulted from these changes and women should be encouraged to take part in the training programmes for new technology which were financed by the European Social Fund.

At the conclusion of the conference, the Employment

and Social Affairs Commissioner, Mr. Henk Vredeling, concurred with these proposals. He added that the Commission was determined to secure the full implementation of the Community equality Directives in the Member States and to introduce new Directives on equality in the occupational pensions field, and maternity and parental leave [205].

2.12.2. The Ad Hoc Committee on Women's Rights of the European Parliament

Meanwhile, the European Parliament was also concerning itself with a general overview of the position of women. The concern for women's issues had already been evident for a number of years and it culminated in the aftermath of the first direct elections to the Parliament. These elections in June 1979 brought in a group of female MEP's who were determined to secure improvements to the position of women.

As a result, an Ad Hoc Committee on Women's Rights was quickly established and was entrusted with the task of preparing a debate on women's issues on the basis of a report to be prepared by the Commission. The mandate laid down that this debate should be held before the summer break of the Parliament in 1980 [206]. The Committee began its work in December 1979 when its membership was approved

[207]. However, as the work-load of the Committee increased, the date set for the debate had to be extended, first until the end of 1980 [208] and then it was decided to wait until the report had been agreed before fixing a date for the debate [209].

During its existence, the Committee spent an impressive amount of time on the collection of data. Its working methods included the examination of a mass of documents, many of which were prepared by individual members of the Committee, the use of questionnaires, the holding of public hearings, the initiation of visits and the attendance of various Committee members at relevant conferences. Unusually for such a committee, a decision was taken in February 1980 to hold its meetings in public [210].

Such intense activity culminated in a lengthy report in January 1981 by Mrs. Maij-Weggen [211]. Maij-Weggen commenced her report with an historical survey of the position of women in employment from the pre-industrial revolution period to the present. She emphasised the role that the European Community could play and then she reviewed the measures taken by the European Community to improve the position of women to include a detailed examination of the implementation of such measures. A good beginning had been made but the situation called for more than a pre-occupation with employment and education matters. Therefore,

seven major priorities were laid down as a basis on which to develop an European policy for women. These priorities were described in detail to cover background and proposals for action in the areas of socio-economic participation, education, health care, legal status, vulnerable groups, applicant states to the European Community and the developing countries. The report concluded by looking at the institutions of the European Community, to advocate a balanced ratio between the male and female officials, the establishment of women's offices within the relevant Directorates-General under one Commissioner, a Community institute of research into women's studies, a co-ordinating body of national advisory committees and a Fund for women's policy. These proposals were incorporated into a massive motion for a resolution which constituted a detailed and exhaustive action programme.

This report was given an unprecedented full day's debate of the European Parliament on the 10th of February 1981 [212]. The debate was a remarkable occasion since some seven hours of debating time was devoted to women's issues. Furthermore, the debate took place on a Tuesday at the height of the Parliamentary session and not on a Friday which was traditionally devoted to minority topics. It could perhaps even be asserted that no other legislature debated women's issues in such detail. Indeed, since

that time, European Parliamentary debates on the same subject were much shorter.

After a heated and spirited debate, a long voting session took place and, eventually, a Resolution was passed [213]. This Resolution contained nearly sixty clauses. It began by approving the effort of the European Community in this field up to that time with the enactment of three Directives and it urged the Commission to supplement this achievement in various ways. With regard to equal pay, the Commission was asked to ensure the provision of effective statistics and to introduce a Directive to ensure equal treatment in fiscal matters. In relation to equal treatment, the Parliament requested the Commission to regularly report on the Equal Treatment Directive, to draw up a list of exempted professions from that Directive in order to avoid abuse and to harmonise protective legislation. With regard to the Directives on Equal Pay and Equal Treatment, the Commission was asked to provide for national committees to supervise reports and assist women in legal claims. The Parliament criticised the slowness of implementation of the Social Security Directive and urged an interim report on the subject. It also asked for proposals to be drawn up for equal treatment in family allowances and derived rights. For all three Directives, the burden of proof should be reversed onto the defendant in legal claims. Strong sanctions were proposed for

those Member States which did not implement these Directives in that the states concerned should not receive any regional or social funds.

In connection with the Social Fund, the Parliament urged an information campaign to increase awareness, a report on the projects, a re-appraisal of the guidelines in the light of the continuing employment crisis and the expansion of pilot projects to include "safe houses" for battered women. Generally, an information campaign on all these existing measures was advocated.

Another section related to further action that was considered necessary. The role of the Community legislation for women was not to force states to follow an uniform pattern but to create the conditions in which women could choose whether or not to work and could be granted equal opportunities as men in either respect. Because of the current economic crisis, the need was present to eliminate any remaining discrimination, so, a list of proposals was laid down to encompass reduced working hours for all workers, part-time work and work at home, parental leave, new technologies and better representation of women on decision-making bodies.

Further proposals aimed to create equal opportunities in education and vocational training.

The rest of the Resolution proposed a better system of health care with the emphasis on motherhood and to include abortion rights, European statutes for foreign workers, and dealt with women working in family concerns, and women in the applicant countries to the European Community and the developing countries. A final miscellaneous section was devoted to Community institutions, prostitution and the establishment of an European fund for women.

Thus, this Resolution amounted to a comprehensive action programme for women which went far beyond the terms of the Treaties. As such, the Resolution was described as follows:

> "This resolution is undoubtedly one of the cornerstones for new measures to assist women at Community level since it requires not only the adoption of specific measures but also an overall programme to provide a framework for such measures" [214].

The Commission did not ignore these demands by the Parliament but, on the contrary, took up many of the suggestions for the next stage of its work for women as will be discussed next.

2.12.3. A New Community Action Programme on the Promotion of Equal Opportunities for Women

Thus, the findings of the Manchester Conference and

the Ad Hoc Committee on Women's Rights of the European Parliament contributed towards a change in the attitudes of the European Community towards its policy on women. The Community realised that the changing economic and social conditions meant that new policies were necessary in order to improve the position of women. Problems facing women had to be considered as a whole rather than in isolation.

And so, the Commission, right at the end of the period under review, considered these factors and drew up a New Community Action Programme on the Promotion of Equal Opportunities for Women which was published in December 1981 [215]. In particular, the Commission recognised the influence of the European Parliament enshrined in its Resolution at the close of the work of its Ad Hoc Committee on Women's Rights.

> "This Resolution, which represents an important political standpoint, inspired much of the work in drawing up this programme" [216].

This Action Programme comprised a comprehensive policy initiative and denoted the second stage of Community action for women. The Programme was devised for the period 1982 to 1985 which was outside the time-scale of this thesis. However, it might be noted that its main objectives were to strengthen the existing Community Directives, to introduce new proposals which would supplement these Directives and

which would strengthen individual rights, and to initiate positive action programmes in order to attain equal opportunities in practice.

2.13. Summary

A large number of policy initiatives for women by the European Community were thus put forward on the basis of the Treaty of Rome's Article 119 on equal pay. The Community came to recognise that equal pay for women could not be considered in isolation and, so, the position of women in the workplace in an employment situation was taken into account and new initiatives were proposed in that field. Some attention was also devoted to education and vocational training. Finally, at the end of the period under review, efforts by the European Community culminated in a co-ordinated policy initiative as a detailed action programme for women. These changes were made in response to political and social developments within the Community. At each stage, women's issues assumed a more important place on the political agenda. The success or failure of all these initiatives will form the subject of the next Chapter.

Footnotes

1. European Communities, Treaties.
2. Ibid, pp. 311-315.
3. The text of Article 119 has been reproduced as

Appendix One.
Ibid, p. 312.

4. Efren Cordova, "Equal Pay: What needs to be done", Women at Work, Number 2 (1978), p. 10.
5. Roland Van Lint, "L'égalité des rémunérations entre les travailleurs masculins et les travailleurs féminins pour un même travail", Cahiers de Droit Européen, Volume 5, Number 4 (1969), p. 383.
6. Article 120 dealt with paid holiday schemes. European Communities, Treaties, p. 312.
7. R. Colin Beever, "The Consequences for Labour and Social Policy", Political Quarterly, Volume 34, Number 1 (January-March 1963), pp. 79 and 81.
8. John W. Bridge, "National and Transnational Regulation of Equal Pay for Equal Work in England and the European Community", Revue d'Integration Européenne/Journal of European Integration, Volume V, Number 2 (Winter 1982), p. 120.
9. Clair, "L'article 119 du Traité de Rome", p. 150.
10. J. L. Burban, "Y a-t-il une politique sociale européenne?", Cahiers de Droit Européen, Volume 12, Number 2/3 (1976), p. 184.
11. Gérard Lyon-Caen, Droit social international et européen (3rd ed., Paris, Dalloz, 1974), p. 152.
12. International Labour Office, Social Aspects of European Economic Co-operation (Geneva, International Labour Office, 1956), p. 64.
13. F. Roy Willis, France, Germany and the New Europe 1945-1967 (Revised and expanded ed., London, Oxford University Press, 1968), pp. 245-248.
14. Knapp, L'égalité de rémunération, pp. 6-7.
15. R. W. Cox, "Social and Labour Policy in the European Economic Community", British Journal of Industrial Relations, Volume 1, Number 1 (February 1963), p. 6.
16. Knapp. L'égalité de rémunération, p. 7.
17. Collins, The European Communities. Volume 2, p. 84.
18. European Communities, Treaties, p. 312.
19. Article 8.
Ibid, pp. 221-222.
20. First General Report on the Activities of the Community [EEC] [hereafter First General Report EEC], 1958, p. 9.
21. Bridge, "National and Transnational Regulation of Equal Pay", p. 122.
22. Van Lint, "L'égalité des rémunérations", p. 387.
23. Convention No. 100.
International Labour Organisation, International Labour Conventions and

Recommendations 1919-1981 (Geneva, International Labour Office, 1982), p. 42.

24. Van Lint, "L'égalité des rémunérations", pp. 384-386.
25. Article 119.
European Communities, Treaties, p. 312.
26. International Labour Organisation, International Labour Conventions and Recommendations, p. 42.
27. Article 119.
European Communities, Treaties, p. 312.
28. Van Lint, "L'égalité des rémunérations", p. 384.
29. Article 189.
European Communities, Treaties, p. 351.
30. The English translation of the European Economic Community Treaty referred to approximation rather than harmonisation.
Article 3.
Ibid, p. 220.
31. Article 155.
Ibid, p. 338.
32. A term used in the context of the European Community to indicate representatives of employers and trades unions.
33. Commission de la Communauté Économique Européenne, Recommandations de la Commission en vue de l'accélération du rythme du Traité [COM (60) 16 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1960).
34. Bulletin of the European Economic Community [hereafter Bulletin EEC], Volume 3, Number 2 (February 1960), pp. 22-23.
35. Held on the 9th and the 10th of that month.
Bulletin EEC, Volume 3, Number 3 (March/April 1960), p. 11.
36. Held between the 10th and the 12th of that month.
Bulletin EEC, Volume 3, Number 6/7 (August/September 1960), p. 27.
37. Représentants des gouvernments des États membres de la Communauté économique européenne réunis au sein du Conseil, "Décision des représentants des gouvernments des États membres de la Communauté économique européenne réunis au sein du Conseil, concernant l'accélération du rythme de réalisation des objets du traité", Journal Officiel des Communautés Européennes [hereafter JO], Volume 3, Number 58 (12 septembre 1960), pp. 1217-1220.
38. Ibid, p. 1220.
39. Own translation.
40. Bulletin EEC, Volume 3, Number 6/7 (August/September 1960), pp. 44-46.
41. Held between the 20th and the 28th of that month.

Bulletin EEC, Volume 5, Number 1 (January 1962), pp. 53-54.

42. European Communities, Treaties, p. 998.
43. Albert Coppé, "The social horizon for 1980", Bulletin of the European Communities [hereafter Bulletin EC], Volume 4, Number 1 (1971), p. 5.
44. Commission of the European Communities, "Preliminary guidelines for a community social policy programme", Bulletin EC. Supplement, Number 2 (1971).
45. Martin Vesey, "New impetus for social policies", European Community, (January 1973), p. 10.
46. Commission of the European Communities, "Guidelines for a social action programme", Bulletin EC. Supplement, Number 4 (1973).
47. Commission of the European Communities, "Social action programme", Bulletin EC. Supplement, Number 2 (1974).
48. The Economist, 1 December 1973, p. 70.
49. Commission of the European Communities, "Proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", Official Journal of the European Communities C [hereafter OJC], Volume 16, Number 114 (27 December 1973), pp. 46-47.
50. Commission of the European Communities, Proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty [COM (73) 1927 final] (Brussels, Commission of the European Communities, 1973), p. 2.
51. Commission, "Proposal concerning the application of the principle of equal pay", p. 46.
52. Article 100 stated that

> "The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market".

European Communities, Treaties, p. 295.

53. Commission, Proposal concerning the application of the principle of equal pay, p. 3.
54. The Economist, 1 December 1973, p. 70.
55. Commission, Proposal concerning the application of the principle of equal pay, p. 3.
56. Bulletin EC, Volume 4, Number 3 (1971), p. 12.

57. Fourth General Report on the Activities of the Communities [EC], 1970, p. 104.
58. Evelyne Sullerot, L'emploi des femmes et ses problèmes dans les États membres de la Communauté européenne (Bruxelles, Commission des Communautés Européennes, 1972).
59. Journal Officiel des Communautés Européennes. Annexe. Débats du Parlement Européen [hereafter Débats], Number 150 (Mai 1972), p. 90.
60. Answer to an European Parliament Written Question tabled by Lord O'Hagen to the Commission of the European Communities [WQ 54/73].
OJC, Volume 16, Number 57 (17 July 1973), p. 45.
61. R.B.Cornu, Women and employment in the United Kingdom, Ireland and Denmark (No place, Commission of the European Communities, 1974).
62. "Commission Creates "Ad Hoc Group" To Study Problems of Women's Employment", European Industrial Relations Review, Number 5 (May 1974), p. 14.
63. Bulletin EC, Volume 7, Number 2 (1974), pt. 2210.
64. "Commission Creates "Ad Hoc Group"".
65. Bulletin EC, Volume 7, Number 4 (1974), pt. 2207.
66. Bulletin EC, Volume 7, Number 6 (1974), pt. 2217.
67. Bulletin EC, Volume 7, Number 11 (1974), pt. 2213.
68. "Draft Memorandum Of The European Commission To The Council on the actions to undertake for the purpose of achieving equality between men and women as regards access to employment and vocational training and advancement as well as working conditions", European Industrial Relations Review, Number 11 (November 1974), pp. 20-31.
69. Commission of the European Communities, Equality of treatment between men and women workers (Access to employment, to vocational training, to promotion, and as regards working conditions) [COM (75) 36 final] (Brussels, Commission of the European Communities, 1975).
70. "Draft Memorandum Of The European Commission", p. 20.
71. "Recommendations Of European Commission's Study Group On Problems Of Women's Employment", European Industrial Relations Review, Number 11 (November 1974), p. 14.
72. Bulletin EC, Volume 7, Number 11 (1974), pt. 2212.
73. Commission, Equality of treatment.
74. The Times, 13 February 1975, p. 15.
75. Dr. Hillery speaking to the European Parliament.

Debates, Number 207 (October 1976), p. 115.

76. The preamble to the Treaty of Rome included a commitment to

> "the constant improvement of the living and working conditions of their peoples".

European Communities, Treaties, p. 213.

77. Commission, Equality of treatment, p. 36.

78. Commission of the European Communities, "Proposal for a Council Directive on the implementation of the principle of equality of treatment of men and women as regards access to employment, vocational training, promotion and working conditions", OJC, Volume 18, Number 124 (4 June 1975), pp. 2-4.

79. Commission, "Proposal concerning the application of the principle of equal pay".

80. Dr. Hillery speaking to the European Parliament.
Debates, Number 204 (June 1976), p. 177.

81. European Communities, Treaties, p. 384.

82. Commission, "Proposal on the implementation of the principle of equality of treatment", p. 3.

83. Burrows, "The Promotion of Women's Rights", p. 202.

84. Seventh General Report on the Activities of the Community [EEC] [hereafter Seventh General Report EEC], 1963, p. 217.

85. Eighth General Report on the Activities of the Community [EEC] [hereafter Eighth General Report EEC], 1964, p. 253.

86. Commission de la Communauté Économique Européenne, La protection de la maternité dans les six pays de la CEE (Bruxelles, Commission de la Communauté Économique Européenne, 1966).

87. Eighth General Report EEC, p. 96.

88. Bulletin EEC, Volume 8, Number 9/10 (September/October 1965), p. 35.

89. Bulletin EEC, Volume 9, Number 3 (March 1966), p. 44.

90. Commission de la Communauté Économique Européenne, Projet d'une recommandation de la Commission concernant la protection de la maternité [COM (66) 3] (Bruxelles, Commission de la Communauté Économique Européenne, 1966).

91. European Communities, Treaties, pp. 311 and 338.

92. Commission, Projet d'une recommandation, pp. 1-2.

93. Commission of the European Communities, "Proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", OJC, Volume 20, Number 34 (11 February 1977), pp. 3-4.

94. Council, "Equal Treatment Directive".

95. Ibid, p. 40.
96. Commission, "Proposal on the implementation of the principle of equality of treatment", p. 2.
97. Landau, "Recent legislation and case law in the EEC", p. 58.
98. "Gabrielle Defrenne v Belgian State Case 80/70".
99. Ibid, p. 453.
100. Ninth General Report on the Activities of the European Communities [EC] [hereafter Ninth General Report EC], 1975, p. LIII.
101. Commission of the European Communities, Proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security [COM (76) 650 final] (Brussels, Commission of the European Communities, 1977), p. 1.
102. Ninth General Report EC, p. 125.
103. Bulletin EC, Volume 9, Number 12 (1976), pt. 2432.
104. Economic and Social Committee, "Opinion on the proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", OJC, Volume 20, Number 180 (28 July 1977), p. 36.
105. Bulletin EC, Volume 9, Number 5 (1976), pt. 2436.
106. Ninth General Report EC, p. 125.
107. Bulletin EC, Volume 9, Number 12 (1976), pt. 1312.
108. Commission, "Proposal on equality of treatment in social security", p. 3.
109. Commission, Proposal on equality of treatment in social security, pp. 1-3.
110. Council, "Equal Treatment Directive", p. 40.
111. The Social Security (Minimum Standards) Convention, 1952.
International Labour Organisation, International Labour Conventions and Recommendations, pp. 533-553.
112. 1964.
Council of Europe, European Treaty Series, Number 48.
113. Council of the European Communities, "Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (79/7/EEC)" [hereafter "Social Security Directive"], OJL, Volume 22, Number 6 (10 January 1979), pp. 24-25.
114. It should be noted that the two year period contrasted with the nine months which was promised for the Social Action Programme.
Bulletin EC, Volume 11, Number 11 (1978), pt. 2.1.46.
115. Report on the Development of the Social

Situation in the European Community, 1978, p. 10.

116. Report on Social Developments, 1979, p. 9.

117. Information given by the Commission in answer to a Question during the Question Time of the European Parliament of the February 1980 session.
Debates, Number 251 (February 1980), p. 39.

118. Commission of the European Communities, "Discrimination in occupational pension schemes", European Industrial Relations Review, Number 79 (August 1980), pp. 32-36.

119. Ibid, p. 32.

120. Commission of the European Communities, "Proposed EEC Directive or Regulation on equal treatment for men and women in occupational social security schemes", European Industrial Relations Review, Number 92 (September 1981), pp. 27-28.

121. "Equality and occupational social security schemes", Ibid, p. 20.

122. This Group was set up in 1981 and it became an advisory body to the Commission.

123. Bulletin EC, Volume 14, Number 7/8 (1981), pt. 2.1.54.

124. "Equality and occupational social security schemes", p. 20.

125. Commission of the European Communities, "Proposal for a Council Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes", OJC, Volume 26, Number 134 (21 May 1983), pp. 7-9.

126. Articles 123-127.
European Communities, Treaties, pp. 313-315.

127. Article 123.
Ibid, p. 313.

128. "Equal opportunity for women", European File, Number 4 (1984), p. 9.

129. Article 125.
European Communities, Treaties, p. 314.

130. Article 126.
Ibid, p. 315.

131. Commission, "Social action programme", p. 16.

132. Commission of the European Communities, Proposal for a Council Decision on intervention by the Social Fund to encourage structural adjustment measures (Article 4 of the Council Decision of 1 February 1971) [COM (75) 126 final] (Brussels, Commission of the European Communities, 1975).

133. Council of the European Communities, "Council Decision of 1 February 1971 on the reform of the European Social Fund (71/66/EEC)", Official Journal of the European Communities. Special Edition [hereafter OJ Sp Ed], Number I (1971), p. 53.

134. Council, "Council Decision on the reform of the European Social Fund", p. 53.
135. Commission, Proposal on Social Fund to encourage structural adjustment measures, p. 4.
136. Article 11.
Council, "Council Decision on the reform of the European Social Fund", p. 54.
137. Commission of the European Communities, "Proposal for a Council Decision regarding European Social Fund assistance towards women", OJC, Volume 20, Number 250 (19 October 1977), pp. 5-6.
138. Ibid, p. 5.
139. Commission of the European Communities, Proposal for a Council Decision regarding European Social Fund assistance towards women... [COM (77) 442 final] (Brussels, Commission of the European Communities, 1977), pp. 1-5.
140. Commission, Equality of treatment, pp. 31-34.
141. This cumbersome title was devised to avoid opposition by some Member States to the concept of a Council of Education Ministers.
142. Council and the Ministers of Education meeting within the Council, "Resolution of the Council and of the Ministers of Education, meeting within the Council of 9 February 1976 comprising an action programme in the field of education", OJC, Volume 19, Number 38 (19 February 1976), pp. 4-5.
143. She had served on the United Kingdom Equal Opportunities Commission and, at this time, she acted as a consultant for the Commission.
"EEC on girls' opportunities", Times Educational Supplement, 20 October 1978, p. 2.
144. Commission of the European Communities, "Sex inequality in schools", Background reports [London], Number 67 (1978), p. [1].
145. Eileen M. Byrne, Equality of education and training for girls (10-18 years) (Luxembourg, Office for Official Publications of the European Communities, 1979).
146. Commission of the European Communities, Education Action Programme at Community level. Equal opportunities in Education and Training for girls (second level education) [COM (78) 499 final] (Brussels, Commission of the European Communities, 1978).
147. Council and the Ministers of Education, "Resolution on an action programme in the field of education", pp. 4-5.
148. Council and the Ministers of Education meeting within the Council, "Resolution of the Council and of the Ministers of Education meeting within the Council of 13 December 1976 concerning measures to be taken to improve the

preparation of young people for work and to facilitate their transition from education to working life", OJC, Volume 19, Number 308 (30 December 1976), p. 2.

149. European Communities, Treaties, pp. 312 and 384.
150. Commission of the European Communities, Pre-school education in the European Community (Luxembourg, Office for Official Publications of the European Communities, 1980).
151. Commission, Education Action Programme, p. 11.
152. Ibid, p. 2.
153. Thirteenth General Report on the Activities of the European Communities [EC] [hereafter Thirteenth General Report EC], 1979, p. 204.
154. Rory Watson, "Danish objections force second cancellation of Community summit", Times Educational Supplement, 16 November 1979, p. 19.
155. Education Committee of the European Communities, "General report of the Education Committee" in Council of the European Communities, European educational policy statements 1974-1983 (Luxembourg, Office for Official Publications of the European Communities, 1983), pp. 59-84.
156. Education Committee of the European Communities, "Report of the Education Committee to the Council and the Ministers of Education meeting within the Council" in "From education to working life", Bulletin EC. Supplement, Number 12 (1976), pp. 13-63.
157. Ibid, pp. 32-33 and 37.
158. Ibid, pp. 22-23.
159. Ibid, pp. 26-27.
160. Ibid, p. 27.
161. Education Committee, "General Report", pp. 80-84.
162. Ibid, p. 77.
163. Claude du Granrut, Vocational Guidance and Training for Women Workers (Luxembourg, Office for Official Publications of the European Communities, 1976), p. 5.
164. "European seminar on vocational guidance and training for women workers", Vocational Training Information Bulletin, Number 2/3 (September 1975), p. 39.
165. Granrut, Vocational Guidance and Training for Women Workers.
166. Ninth General Report EC, p. 119.
167. Granrut, Vocational Guidance and Training for Women Workers, p. 5.
168. "European seminar on vocational guidance and training for women workers", pp. 38-39.
169. Tenth General Report on the Activities of the European Communities [EC] [hereafter Tenth General Report EC], 1976, pp. 145-146.

170. Council, "Equal Treatment Directive".
171. Burrows, "The Promotion of Women's Rights", p. 203.
172. Eleventh General Report on the Activities of the European Communities [EC] [hereafter Eleventh General Report EC], 1977, p. 122.
173. Burrows, "The Promotion of Women's Rights", p. 203.
174. Bulletin EC, Volume 10, Number 9 (1977), pt. 2.1.26.
175. European Communities, Treaties, pp. 311-312.
176. Burrows, "The Promotion of Women's Rights", pp. 203-204.
177. "Memorandum annexed to the address on the programme for 1976", Ninth General Report EC, pp. LI-LII.
178. "Memorandum annexed to the address on the programme for 1977", Programme of the Commission for 1977, 1977, p. 42.
179. Bulletin EC, Volume 10, Number 9 (1977), pt. 2.1.26.
180. Debates, Number 232 (July 1978), p. 152.
181. This Centre, an European Community "quango", was established in 1975.
182. Sixth Report on the Activities on [sic] the European Social Fund. 1977 Financial Year [COM (78) 476 final] (Brussels, Commission of the European Communities, 1978), p. 37.
183. European Centre for the Development of Vocational Training Annual Reports [hereafter CEDEFOP Annual Reports], 1979, p. 27.
184. CEDEFOP Annual Reports, 1978, pp. 9-10.
185. CEDEFOP Annual Reports, 1979, p. 27.
186. CEDEFOP Annual Reports, 1978, pp. 10 and 17.
187. CEDEFOP Annual Reports, 1979, p. 27.
188. CEDEFOP Annual Reports, 1978, p. 17.
189. CEDEFOP Annual Reports, 1979, p. 28.
190. Ibid, p. 29.
191. CEDEFOP Annual Reports, 1980, pp. 11 and 31.
192. CEDEFOP Annual Reports, 1981, pp. 10-11.
193. CEDEFOP Annual Reports, 1980, p. 32.
194. CEDEFOP Annual Reports, 1978, p. 10.
195. Ibid, p. 18.
196. CEDEFOP Annual Reports, 1979, pp. 28-29.
197. CEDEFOP Annual Reports, 1980, p. 32.
198. CEDEFOP Annual Reports, 1981, p. [23].
199. CEDEFOP Annual Reports, 1978, p. 9.
200. CEDEFOP Annual Reports, 1979, p. 29.
201. "New equality targets for the 1980s", European Industrial Relations Review, Number 78 (July 1980), p. 6.
202. Bulletin EC, Volume 13, Number 5 (1980), pt. 2.1.24.
203. "New equality targets", p. 6.
204. Bulletin EC, Volume 13, Number 5 (1980), pt. 2.1.24.
205. "New equality targets", pp. 6-7.

206. European Parliament, "Resolution on the setting up of an ad hoc committee on women's rights", OJC, Volume 22, Number 289 (19 November 1979), pp. 56-57.
207. Debates, Number 249 (December 1979), p. 184.
208. Debates, Number I-256 (May 1980), p. 2.
209. Debates, Number I-264 (December 1980), p. 4.
210. European Parliament, The position of women in the European Community (No place, European Parliament, 1981), pp. 19-21.
211. Maij-Weggen, "Report on the position of women".
212. Debates, Number I-266 (February 1981), pp. 34-39, 39-66 and 70-89.
213. European Parliament, "Resolution on the position of women in the European Community", OJC, Volume 24, Number 50 (9 March 1981), pp. 35-50.
214. Marlene Lenz, "European Parliament activities to assist women", Social Europe. Supplement, Number 2 (1986), p. 48.
215. Commission of the European Communities, A New Community Action Programme on the Promotion of Equal Opportunities for Women 1982-1985 [COM (81) 758 final] (Brussels, Commission of the European Communities, 1981).
216. Ibid, p. 5.

CHAPTER THREE

The impact of European Community initiatives in relation to the position of women on the European Community legislative process, 1958-1981

3.1. Introduction

In the previous Chapter, the policy initiatives originated by the European Community to improve the position of women between the years 1958 and 1981 inclusive were examined. Some of these policy initiatives were successful in that they were transmitted into Community legislative instruments but some failed to reach the stage of enactment. This Chapter will be concerned with these successes and failures.

3.2. The European Community legislative process

To understand the success or failure of these Community policy initiatives a description of the legislative process is necessary. Chapter Two outlined the different types of legislative instruments available to the European Community [see 2.3.]. Legislation originated as a proposal from the Commission to the Council. The Council then requested the European Parliament and the Economic and Social Committee in matters pertaining to the European

Economic Community Treaty to deliver an opinion on the particular proposal [1]. These requests were formally received by the President of the European Parliament and by the Chairman of the Economic and Social Committee. Both bodies devised procedures to deal with these proposals.

In the case of the European Parliament, the President entrusted the proposal to the most suitable parliamentary committee. These committees were established in accordance with particular subject interests. However, when interests overlapped, other committees might also be asked for their opinions.

The committee appointed a rapporteur who was responsible for drawing up an opinion and guiding it through the committee and plenary session stages. In relation to a subsidiary committee, its opinion was drawn up by a rēdacteur. During the committee deliberations, Commission and, on occasion, Council representatives were in attendance to state their views. Eventually, a draft opinion resulted comprising a draft motion for a resolution with the textual amendments to the proposal, and an explanatory statement. The opinion represented a compromise between the different political groups and, thus, constituted

"the lowest common denominator" [2]

of viewpoints.

At the next stage, the opinion was considered by the plenary session of the European Parliament. The rapporteur opened the debate with an outline of the proposal and the reasons for the proposed response. The appointed spokesmen of each political group could then speak should they wish to put forward a viewpoint. Individual MEP'S could then speak and, finally, the appropriate Commissioner expressed the attitude of the Commission towards the opinion. A vote was taken amd the ensuing Resolution was transmitted to the Council and to the Commission. Since July 1973, the Commission has issued a statement on each opinion at the beginning of each part-session of the Parliament so that the Parliament was made aware of the official response to the opinion.

This cumbersome procedure became unwieldly as the number of proposals increased and, so, for purely technical measures a simplified procedure, termed procedure without report, was adopted in October 1976. At the beginning of each part-session, a list of opinions on such questions was issued so that MEP's could table amendments or request speaking-time. The measure was adopted without debate when no such amendments or requests were made.

The Economic and Social Committee employed a similar process. Its Chairman transmitted a proposal to the Bureau which entrusted it to the appropriate Section to draw up an Opinion. That Section then appointed a rapporteur to draft the Opinion. This draft Opinion was considered by the Section and, then, by the main Committee. The Opinion was next transmitted to the Council.

The Commission considered these opinions and, on occasion, it decided to issue an amended proposal to take into account these views [3]. Finally, the Council considered the proposal and the opinions, and took the final decision on the matter to issue a legislative instrument or to shelve the proposal in the case of determined opposition from one or more of the Member Governments.

3.3. Successful European Community initiatives

First, the successful European Community initiatives in relation to the position of women will be examined.

3.4. Equal pay legislation

The earliest policy initiatives concerned equal pay as the European Community attempted to secure the full implementation of Article 119 of the Treaty of

Rome.

3.4.1. Recommendation on equal pay

The first of these initiatives related to a Recommendation which was sent out to the Member States on the 28th of July 1960 [4]. The use of a Recommendation by the Commission did not entail the legislative process since the Commission possessed the right to issue Recommendations on its own authority. What did this Recommendation contain [5]?

First, the Commission gave an interpretation of the principle of equal pay as laid down in Article 119. The Commission considered that this Article implied the abolition of all discrimination based on the sex of the worker in relation to his or her wages. The principle of equal pay for equal work was expanded to include the following circumstances. With regard to statutory or agreed compulsory minimum salaries, such salaries should be the same for male and female workers and any such salaries paid at piece rates should be calculated on the same basis for male and female workers. Where wages were fixed by an occupational classification system, the categories and the criteria of classification should be the same for male and female workers. In relation to work paid by time, the factors which affected the cost or the yield of female labour should not be considered. No wage

differences based on the sex of the worker should be allowed where the qualifications for a certain job were the same. Finally, differences in wages based on the sex of a worker should be forbidden in individual work contracts. The Commission also re-affirmed that remuneration as defined in Article 119 covered all the pay a worker received for his work.

Next, the Commission recommended various courses of action to be taken by the Member States. All the necessary measures to implement Article 119 should be completed before the 30th of June 1961. This implementation should be ensured in the private sector, in particular, to invite and assist the social partners to apply the principle of equal pay in collective agreements, to subject official approval of such agreements where appropriate to the condition that these agreements did not contain any discrimination in wages based on the sex of the worker, and to adopt statutory or administrative measures including individual work contracts to ensure the observance of Article 119. Immediate application of the principle of equal pay should be ensured in the public and related services. Member States should organise the supervision of any measures which they proposed to take in connection with this Recommendation. Finally, Member States should inform the Commission of any such measures.

Thus, this Recommendation clarified and expanded Article 119. It could perhaps be surmised that the original definition of the principle of equal pay had been subjected to differing interpretations by the Member States. And so, in this measure, the Commission attempted to elucidate precisely the exact ramification of the principle of equal pay and its application to all possible work situations. The Commission also exhorted the Member States to take action. The implication was that the Member States were not fulfilling their Treaty obligations with regard to Article 119. It should be noted that the implementation date was six months after the date first put forward by the Commission although it was still six months ahead of the end of the first stage of the common market.

This initiative was issued as a non-binding Recommendation rather than as a Decision or a stronger legislative instrument. One reason was that Article 119 was not due for implementation until the 1st of January 1962 so a strong legislative instrument was not deemed to be necessary at this point in time. Or, perhaps it reflected an awareness on the part of the Commission of the practical difficulties in securing the implementation of the principle of equal pay.

The Recommendation was accompanied by a letter [6] from Walter Hallstein, the President of the

Commission. In this letter, Hallstein expounded a little more on the interpretation of the principle of equal pay. He stated that this principle was not implemented to any great extent in the Community and he continued with an exposition on the principle. This principle excluded sex as a criteria in wage-fixing but all other factors which were used such as professional qualification, age, seniority in a firm and family status could be taken into consideration. Protection measures for females or the economic yield of female labour such as more frequent absences which resulted in a reduction in wages should not be considered. In relation to wages paid according to time, the economic yield should be discounted. Furthermore, job classifications should be applied equally to male and female workers, whilst lower rates of pay for females or special categories for female workers were opposed to the principle of equal pay.

Thus, this first initiative in which the principle of equal pay as laid down in Article 119 of the Treaty of Rome was clarified was addressed to the Member States for the latter to take action before the end of the first transitional period of the common market.

3.4.2. Resolution on equal pay

This Recommendation was followed by a proposal from the Working Group to issue a Resolution on the subject

of equal pay. The proposal was discussed by the Council at its 58th session which was held between the 4th and the 5th of December 1961 [7]. Agreement was reached at this meeting to the issue of a Resolution subject to various amendments to its contents put forward by the Benelux countries and the legal obligations imposed on some of the governments to consult their social partners before approval could be given. In this way, final agreement would be reached at the next meeting which was scheduled for the 18th to the 21st of December. The Council asked the Working Group to re-examine the draft to take into account the points raised at the meeting and to propose alternative timetables. Accordingly, at the next meeting of the Council, a Resolution was passed by the Conference of the Member States since Resolutions did not involve the Community legislative process of consultation [8].

This Resolution contained various elements for the Member States to take action. In a similar manner to the Recommendation, the Resolution alluded to Article 119 of the Treaty of Rome whilst adding

> "the need harmoniously to implement the principle of equal remuneration for men and women workers and to provide a uniform method of application in all Member States" [9].

First, the Resolution laid down a clause for legal

redress to be available by the end of 1961. In this way, the Member States should provide for claimants to equal pay to be able to seek legal redress in the national courts. Secondly, equal pay was to be achieved by means of a progressive timetable. This timetable allowed for a gradual elimination of the differences between the wages of male and female workers so that, at first, gaps of over 15% should be reduced to 15% by the end of June 1962, then any gaps of over 10% should be reduced to 10% by the end of June 1963 and, finally, all gaps should be abolished by the 31st of December 1964. The action was to be achieved by laws or regulations or by compulsory collective agreements. The Member States undertook not to recognise as generally binding any collective agreement which did not comply with this timetable.

The bulk of the Resolution was concerned with a clarification of discrimination in relation to the principle of equal pay. Such discrimination should be abolished with particular regard to situations where compulsory minimum wages only applied to men or where such wages were fixed at different levels for men and women, where different levels of minimum wages according to the sex of a worker were fixed by collective bargaining, pay scales or wage agreements, where time or piece rates on different bases for men and women were fixed, where different categories for

men and women or the application of different classification criteria in a trade classification system were established and where differences in wages on grounds of the sex of a worker were maintained in collective bargaining, pay scales or wage agreements. Member States also recognised that any systematic downgrading of female workers was incompatible with the principle of equal pay when different qualification rules were adopted for men and women or when the criteria in job evaluation for the classification of workers were used which were not related to the objective conditions of the work. All such discrimination should be abolished in accordance with the timetable.

However, any firms or sectors which found themselves in competitive difficulties with other countries as a result of adopting equal pay could apply to the Commission for the Commission to examine the situation and to take appropriate action. Finally, the Member States agreed to co-operate in organising a statistical enquiry into the structure of wages and, as soon as possible, to make a specific statistical survey of male amd female wages. The Commission agreed to conduct enquiries with the assistance of the social partners into collective agreements and the methods of job classification applied in the Member States, and, also, to study cases which might be suitable for an international

comparison of male and female job classifications. The Member States were urged to keep to the timetable

> "so that a harmonious adaptation may be ensured in the various countries of the Community" [10].

The decision of which this Resolution formed part was hailed as

> "one of the milestones on the road towards economic union" [11].

In establishing this timetable, the Council could embark upon the second stage of the transitional period of the common market.

By its action in issuing this Resolution, the Council demonstrated the ineffectiveness of the Commission's Recommendation. But, on the other hand, the Council did not use a strong Community legislative instrument for its purpose. Indeed, the use of a Resolution was of dubious legal standing. Furthermore, the Resolution was not issued by the Council but by the Conference of the Member States. This wording was perhaps adopted because of the unusual use of a Resolution rather than a Decision or any other recognised Community legislative instrument. Moreover, in establishing a timetable for the full implementation of the principle of equal pay by the end of 1964, the Community, in fact, was revising the

Treaty of Rome which laid down that the principle of equal pay was to be achieved by the end of the first transitional period of the common market, namely, January 1962. This activity could perhaps be explained as constituting

> "un simple engagement politique [sic] et diplomatique, de caractère communautaire relatif à un aspect particulier de la politique sociale des États membres" [12] [a simple political and diplomatic agreement of Community character in relation to a particular aspect of social policy of the Member States] [13].

But, the Member States agreed to the issuing of a Resolution so they must have believed in its legal standing.

The Resolution introduced a new element in its inclusion of a legal redress clause. This inclusion represented a practical advance since to gain equal pay women needed legal machinery by means of the courts to put forward and pursue their claims.

However, the Resolution, unlike the earlier Recommendation, did not attempt to elaborate the principle of equal pay although the different types of discrimination were carefully detailed. Member States merely agreed to harmoniously implement the principle of equal pay and to provide an uniform method of application in all the Member States. Clearly, the establishment of a timetable suggested that widespread

discrimination still existed in wages even to the extent of differences which exceeded 15%.

The economic preoccupation with equal pay by the Member States was revealed in the inclusion of a clause for firms or sectors which found themselves at an economic disadvantage. Indeed, Article 119 was originally drawn up to deal with this situation.

Thus, the Resolution acted as a complementing measure to the Recommendation. Whereas the Recommendation sought to clarify the principle of equal pay about which dispute between the Member States could be implied, the Resolution was issued as a practical expedient to achieve a Treaty obligation. The Member States were anxious to embark upon the second stage of the common market but several aspects of Community policy including equal pay were impeding this progress. In establishing an equal pay agreement albeit by means of an unusual device in the form of a Resolution of the Member States the Member States could proceed to the second stage in spite of the fact that this Resolution overrode the obligations imposed upon them by the Treaty of Rome. The Member States broke one term of the Treaty in order to achieve another term. Thus, a timetable was laid down to bring about the achievement of the principle of equal pay. At the same time, the Resolution also introduced the very valuable legal redress clause, an

explanation of the types of sexual discrimination which could exist in relation to wages and agreement on various studies to be undertaken to aid the implementation of the principle of equal pay.

3.5. Social Action Programme

The next development in social policy was marked by the presentation by the Commission to the Council of the Social Action Programme on the 25th of October 1973 [14]. Agreement was reached by the Council to this Programme at its meeting of the 11th and the 12th of December 1973 [15] and a Resolution on the Social Action Programme was issued on the 21st of January 1974 [16]. In accepting the three social objectives put forward by the Commission, the Council laid down various priorities which included the following statement, namely,

> "The undertaking of action to achieve equality between men and women as regards access to employment and vocational training and advancement and as regards working conditions, including pay" [17].

This Resolution contained an expression of political will by the Council that the measures which were necessary to achieve these priorities would be enacted [18]. Furthermore, the Council promised to come to a decision quickly on any legislative proposal within five months from receiving the opinions of the

European Parliament and the Economic and Social Committee, or nine months where no consultations needed to take place [19].

Thus, the Social Action Programme as proposed by the Commission was adopted by the Council. The use of the Resolution once again could be noted although on this occasion it represented a Resolution of the Council. This activity in the social field symbolised the change in attitudes by the Member States expressed at various Summit Conferences that economic progress was not sufficient and social conditions were lagging behind the state of the economy. The Social Action Programme was thus adopted and the process of further improving the position of women was therefore pushed forward.

3.5.1. Directive on Equal Pay

In relation to women, were the proposals in the Social Action Programme accepted? Under Action I, a

proposed Directive on Equal Pay was put forward and, indeed, the proposal was submitted to the Council before a decision had been taken on the Programme itself [20].

The European Community consultation procedure was instituted and, so, the Council asked the European Parliament and the Economic and Social Committee on the 28th of November 1973 to give their opinion on the proposal. The formal request was actually made two days later on the 30th of that month [21].

The Economic and Social Committee was first to consider and approve an Opinion during its 119th plenary session on the 28th of March 1974 [22]. The Committee broadly approved the provisions of the proposal subject to certain amendments. First, the Committee wished to strengthen the principle of equal pay so that it was not restrictive by adding that the principle meant the equal treatment of men and women in respect of their conditions of remuneration to include any assessment criteria. Furthermore, the term equivalent work should be substituted for equal work. In this way, women would not be classified in special categories which resulted in low wages.

The proposal to pursue an equal pay claim before the courts was regarded with some disapproval by the Committee since it considered that many employees,

especially women, were afraid of court actions. Therefore, the Committee proposed that a body to deal with the infringement of equal pay should be established as an alternative to the courts.

In relation to the Article protecting workers against dismissal for instituting an equal pay claim, the Committee pointed out that sanctions other than dismissal could be imposed by an employer and, so, sanctions should be included in that Article.

Finally, the Committee wished to strengthen the supervision aspects of the Directive by imposing strong penalties upon offenders.

The Committee noted that this proposal formed part of a wider preoccupation by the Community with women at work and it considered that a programme for working women should be drawn up by the Commission to include such matters as vocational training, equality of opportunity, minimum social cover, public facilities such as crèches, promotion and return to work.

The European Parliament debated and passed its opinion on the 25th of April 1974 [23]. The Parliament also approved the proposal although it criticised the ineffectiveness of Article 119 and the continuing existence of wage discrimination amongst working women in particular the creation of light-work, low-paid,

wage groups for women. But, other factors constituted obstacles to genuine equality for working women such as the problems resulting from women raising a family and interrupting work, and restrictions imposed upon admission to various professions. These and other matters in relation to vocational training, retirement pensions and education should be incorporated into the specific programme for women at work to be drawn up by the Commission.

Various minor amendments to the text were proposed. The Parliament considered that a clause should be added to Article 4 to prohibit discrimination in occupational categories and in offers of employment. Similarly to the Economic and Social Committee, the Parliament wished to provide effective sanctions against dismissal and to punish offenders. However, the Parliament also proposed strengthening Article 1 in a way untenable with Community legislation and the Article in relation to informing workers by the addition of words to the effect of various other appropriate places at which workers could be informed of their rights with regard to this piece of legislation.

In taking these viewpoints into account, the Commission amended the proposal and issued an amended text on the 3rd of July 1974 [24]. In relation to Article 1, the Commission accepted the proposal of the

Economic and Social Committee that the principle of equal pay should be strengthened by adding conditions of remuneration including assessment criteria. But, the principle itself was not extended to include equivalent work as the Economic and Social Committee had proposed. The proposal of the European Parliament with regard to Article 1 was neither accepted.

Although the Commission did not wholly adopt the idea of the Economic and Social Committee to institute a body to deal with equal pay claims, the Commission did add to Article 2 a clause that equal pay claimants could apply to the courts after having the posssibility of recourse to other competent bodies.

With regard to protection against dismissal, the Commission accepted the proposal from both the Committee and the Parliament that sanctions should be added. However, the suggestion from both bodies that offenders should be punished was not adopted.

Finally, the proposal from the Parliament that a clause to prohibit discrimination in occupational categories and offers of employment was rejected but the Commission incorporated the suggestion from the Parliament in relation to informing the workers.

In accordance with the assurances given in connection with the Social Action Programme on

deciding upon proposals within certain time-limits, the Council approved the text of a Directive on Equal Pay at its session held on the 17th of December 1974 [25]. This Directive was issued on the 10th of February 1975 [26].

Its contents differed in some ways quite remarkably from the proposal and emphasised the power of the Council in the Community legislative process. However, the preamble and recitals largely followed the proposal except that the Council added a reference to its commitment in the Social Action Programme to improve the position of working women. Thus, the Directive, based legally upon Article 100 of the European Economic Community Treaty, affirmed that the principle of equal pay as contained in Article 119 was an integral part of the establishment and functioning of the common market. Furthermore, the application of this principle by appropriate laws, regulations and administrative provisions was primarily the responsibility of the Member States. The Council stated that the basic laws ought to be reinforced by standards to facilitate the practical application of the principle in order to protect all employees in the Community. Yet, in spite of the efforts to apply the 1961 Resolution on equal pay, differences continued to exist so

"the national provisions should be approximated as

regards application of the principle of equal pay" [27].

The first and the most striking difference from the proposal could be discerned in Article 1 of the Directive since the Council rejected the objective as laid down in the proposal and instead it defined the principle of equal pay. This principle meant that, for the same work or for work to which equal value could be attributed, all discrimination on grounds of sex with regard to all aspects and conditions of remuneration should be eliminated. In particular, where a job classification system was used to determine pay, the system must be based on the same criteria for men and women and must be drawn up to exclude any discrimination on grounds of sex.

To implement the principle of equal pay, Member States were required to abolish all such discrimination between men and women in laws, regulations or administrative provisions [Article 3] and to ensure that provisions contrary to that principle in collective agreements, wage scales, wage agreements or individual contracts of employment should be declared null and void or should be amended [Article 4]. Thus, Article 3 dropped the specific references which were included in the proposal to the public sector, legal minimum wage and statutory wage-related allowances and benefits.

The rest of the Directive followed broadly the lines of the proposal. Article 2 introduced a legal redress clause which required Member States to introduce into their national legal systems such necessary measures to enable all employees with an equal pay claim to pursue such claims through the judicial system after resort to other competent authorities. The Council therefore adopted the amended proposal with regard to this Article. Protection was given to employees against dismissal for bringing a complaint or a claim against an employer [Article 5] but the amended proposal was rejected in relation to the imposition of other sanctions as well as dismissal.

Supervision, information and notification clauses made up the rest of the Directive. With regard to supervision of the Directive, Member States were asked to take the necessary measures according to their national circumstances and legal systems to ensure the application of the principle of equal pay [Article 6]. But no reference was made to supervision at the level of the undertaking or sanctions against all infringements as in the original proposal. The information clause was contained in Article 7 whereby Member States were required to bring any relevant national laws to the attention of employees by all appropriate means such as at the workplace. Thus, the

amended proposal for this Article was not accepted since that had suggested specifying employment agencies and other suitable places. Finally, in relation to notification, the Member States had to comply with the Directive by putting into force the relevant laws, regulations and administrative provisions within one year of notification of the Directive [Article 8]. Then, the Member States were to transmit the texts of any such measures of compliance to the Commission within two years from the end of the notification period [Article 9]. Article 10 laid down that the Directive was addressed to the Member States.

Thus, the Equal Pay Directive enlarged and widened the scope of the earlier Recommendation and Resolution. Its objective was later summarised by the Commission as following:

> "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 generalise certain minimum standards of protection for female workers" [28].

The Directive was thus drawn up as a measure of Community harmonisation of the various national laws to create certain minimum standards in the field of equal pay. Clearly, Article 119 and the later measures had not been implemented since the Member States had continued to give varying interpretations to Article 119 resulting in differences of treatment. Hence, the

necessity for the enactment of a stronger Community legislative instrument.

The Directive went much further than the original Article 119 and the other Community measures on equal pay. In the first place and most importantly, the Directive widened the definition of the principle of equal pay to include

"work to which equal value is attributed" [29].

Thus, the European Community at last adopted the definition of equal pay as laid down in the Equal Pay Convention of the International Labour Organisation [30]. This widening represented a significantly important step since many women worked in exclusively female jobs so that comparison with men doing equal work was impossible. This new definition allowed such women much more scope to pursue equal pay claims. Yet, its introduction was not due to the Commission but to the Council. Given the strength of feeling against equal pay evinced by many employers, this issue represented a sensitive area for national governments. But, the very same national governments as represented on the Council put forward and accepted this Article. Its promulgation marked a definite step forward for the improvement to the position of women within the European Community. Furthermore, Member States were bound to adopt this definition which was

wider than that in Article 119 within the national laws on equal pay.

Moreover, by means of Articles 3 and 4, the principle of equal pay was to be adopted in all sectors of the economy, both the public and the private sectors. This adoption was in accordance with the Recommendation and the Resolution although the original Treaty of Rome had not mentioned the area of application. In this way, direct discrimination in pay was prohibited as was the common practice particularly in the public sector of awarding a head of household allowance solely to male employees.

Legal redress was first introduced in the context of equal pay in the Resolution. Its inclusion in the Directive strengthened its application particularly since claimants were given the right to go before other bodies before seeking redress in the courts. Furthermore, the granting of protection against dismissal to equal pay complainers or claimants, a new concept in Community equal pay legislation, added weight to the measure even though sanctions against an employer who dismissed an employee for such a complaint or a claim were not included in the Directive.

The supervision and notification elements of the Directive were somewhat weakened because of the

absence of sanctions against any employer who was found to be transgressing the terms of the measure and because the notification clause lacked a strong sense of compulsion.

However, in spite of these deficiencies, the Equal Pay Directive represented an advance on earlier Community legislation and extended and widened the scope and the coverage of Article 119 of the Treaty of Rome.

3.5.2. Directive on Equal Treatment

Chapter Two clearly demonstrated that equal pay could not be considered in isolation and the problems facing women in employment as a whole needed to be tackled at a Community level in order to secure a definite improvement in the position of women in the economy. And thus, employment matters were included in the proposed Social Action Programme. Under Action II of the Social Action Programme, an Ad Hoc Group had been set up and, consequently, a Communication together with a proposed Directive on Equal Treatment was submitted to the Council on the 12th of February 1975 [31].

At its meeting of the 27th of February 1975, the Council instituted the European Community consultation procedure by inviting the European Parliament and the

Economic and Social Committee to give their opinions on this proposed measure [32]. In accordance with the general assurances given in relation to the Social Action Programme, the Council requested delivery of these opinions by the end of April to enable a decision to be taken at the next meeting of the Council of Social Affairs Ministers which was scheduled for June.

The European Parliament was the first body to give its opinion. Its Committee on Social Affairs and Employment was made responsible on the 7th of March for the opinion and Lady Elles was appointed rapporteur [33]. She very quickly produced her report [34] which was adopted by the Committee on the 25th of the same month [35]. In this report, Elles pointed out that in spite of the importance of the proposed Directive procedural and administrative measures to ensure the effectiveness of this legislation, and increased information for employees, were also necessary. Unless action was taken, women would continue to be concentrated in low paid employment [36]. This report was debated in the plenary session of the European Parliament on the 29th of April [37].

In welcoming the initiative of the Commission and in approving the proposal, the European Parliament passed a Resolution [38] in which a number of points are worthy of some attention. The Parliament

emphasised the importance of better career guidance and vocational training to encourage women to enter a wider range of jobs. Effective legislation was also needed to change attitudes towards promotion. Since maternity should be regarded as a vital social function, then, better financial aid and child-care facilities to help women to return to work after raising a family should be provided and rights acquired by employment should be protected.

Various minor technical amendments and some amendments of rather more significance to the proposed Directive were put forward [39]. First, in relation to Article 2, the Parliament wished to amend all laws etc which were enacted to protect workers and which were no longer justified rather than just the laws etc which were no longer justified owing to technical progress. Then, the Parliament considered that the principle of equal treatment should be applicable to upgrading as well as to promotion in Article 4. In relation to working conditions, the Parliament proposed to exempt maternity benefits from the principle of equal treatment since all women workers and not male workers should be entitled to such benefits. Finally, the Parliament felt that Member States should establish control procedures which would ensure the objectives of the proposal.

Slower to respond, the Economic and Social

Committee discussed and approved an Opinion on the 25th of September 1975 [40]. Unlike the European Parliament, the Economic and Social Committee gave considerably detailed attention to the Communication [41]. In general, the Committee viewed the problems of unequal treatment

> "not as a new issue in the Community, but as one of the Community's perennial tasks" [42].

The exclusion of self-employed women, family policy and taxation from the Communication were criticised. The Communication should have commenced with the recognition that the right to work was a human right for both men and women to equally enjoy. Moreover, discrimination in employment would only be successfully eliminated when traditional attitudes towards the family were changed. The Committee considered that the guidelines for action as laid down in the Communication crucially failed since they were too general and not concrete in nature.

In relation to the Proposed Directive, the Committee commented that [43] the Directive only constituted one step towards solving the problems outlined in the Communication. Further measures were needed in order to arrive at the goal of the Communication. The Committee hoped that when the Directive was adopted, lists would be issued to

illustrate the means to eliminate discrimination and positive measures. The Committee provided some suggestions for a possible list to be compiled. Only a few amendments to the proposed Directive were put forward of which three might be mentioned. First, the Committee proposed a new Article 1 to the effect that the Directive was issued in accordance with the United Nations Declaration of Human Rights, the European Social Charter and the constitutions of most European Economic Community countries which all laid down the right to work. Similarly to the European Parliament, the Committee wished to review all provisions which were drawn up to protect workers in order to eliminate all those which were no longer justified. Finally, the Committee put forward an important amendment with regard to Article 7 that the burden of proof should rest with the employer when the latter took action against a female employee and the latter considered that this action was consequent upon a complaint or a claim made by her.

Although the Council looked at the proposal at its June meeting on the 17th of that month [44], it was unable to take a final decision since the Opinion of the Economic and Social Committee had not arrived and since disagreement arose over the proposal to equalise social security contributions for both sexes. Opposition to this proposal was particularly expressed by the British Minister, the Secretary of State for

Social Services, Mrs. Barbara Castle, who estimated that the cost of harmonising pension rights in Britain would amount to £1400 million [45]. But, the hope was expressed that the measure could be passed in the early part of the forthcoming Italian Presidency particularly as 1975 had been designated International Women's Year by the United Nations [46]. However, the proposal in dispute was subsequently dropped and, so, the Directive could be adopted [47]. Approval was given by the Council at its meeting held on the 18th of December and the Directive was adopted on the 9th of February 1976 [48].

What were the contents of this Directive?

Since Article 119 could not be used as the legal basis for the Directive, Article 235 sufficed. The contents differed somewhat from the proposal. Community action to achieve the principle of equal treatment for men and women with regard to access to employment, vocational training, promotion and other working conditions seemed to be necessary. Moreover, the Directive asserted that equal treatment for male and female workers constituted one of the objectives of the Community in relation to harmonising living and working conditions whilst maintaining their improvement [49]. But, the Treaty of Rome did not confer the necessary specific powers to achieve this principle and, hence, the need for the Directive.

Further measures would deal with the definition and progressive implementation of the principle of equal treatment in social security matters.

With regard to the objective of the Directive as laid down in Article 1, the Council in a similar manner to the Equal Pay Directive rejected the proposal from the Commission and substituted its own, namely, that the purpose of the Directive was to implement the principle of equal treatment for men and women in the Member States in relation to access to employment including promotion, to vocational training and to working conditions and to social security subject to Paragraph 2. Paragraph 2 promised that provisions would be adopted to define the substance, scope and arrangements for the application of the progressive implementation of the principle of equal treatment in social security matters.

Article 2 defined the principle of equal treatment to mean no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status. Thus, unlike the original proposal, the principle was widened to include indirect discrimination but it excluded any reference to positive discrimination. However, exception clauses to this principle were added by the Council. First, Member States could exclude those occupations and training for them where appropriate

when the sex of the worker constituted a determining factor. Secondly, provisions relating to the protection of women and in particular pregnancy and maternity were excluded. Thus, the Council adopted the suggestion in relation to maternity benefits from the European Parliament. Finally, any measures to promote equal opportunity for men and women were excluded.

Articles 3 to 5 comprised the core of the Directive. Member States were required to abolish any laws, regulations and administrative provisions and to declare null and void or to amend any provisions included in collective agreements, individual contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions which were contrary to the principle of equal treatment. These requirements applied to the conditions including selection criteria for access to all jobs or posts in all sectors and branches of activity and at all levels of occupations [Article 3], to access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining [Article 4] and to working conditions including the conditions governing dismissal [Article 5]. Furthermore, in relation to Articles 3 and 5, Member States were asked to revise those laws, regulations and administrative provisions contrary to the principle of equal treatment where the protection which was the source of their origins was

no longer necessary. This stipulation also applied to collective agreements. Article 4 contained an additional clause to exclude certain private training establishments in certain Member States. Otherwise, vocational guidance, vocational training, advanced vocational training and retraining should be available on the basis of the same criteria and at the same levels without any discrimination on grounds of sex.

Thus, in contrast to the proposal, the Directive did not contain a specific Article on promotion. However, the Directive extended the application of the principle of equal treatment to internal rules of undertakings and to rules governing the independent occupations and professions. Furthermore, the Directive adopted the proposal from both the European Parliament and the Economic and Social Committee that all protective legislation which was no longer necessary should be revised and, indeed, the Directive went further by extending this requirement to collective agreements. But, in relation to vocational training, the Council dropped the reference in the proposal to general education although vocational guidance was added to the coverage of the Directive. Social security of course was omitted from the Article relating to working conditions.

The rest of the Directive followed closely the lines of the proposal. Thus, Article 6 required Member

States to introduce into their national legal systems such necessary measures to enable all persons with a claim to equal treatment under Articles 3 to 5 to pursue these claims by the courts after possible recourse to other competent authorities. Protection against dismissal by an employer as a result of a complaint within a firm or legal proceedings to comply with the principle of equal treatment was granted in Article 7. Article 8 requested Member States to inform employees by all appropriate means such as the place of employment of any relevant provisions which complied with the Directive. Indeed, the wording of these three Articles almost exactly corresponded with the same provisions in the Equal Pay Directive. Finally, the Directive was to be implemented within thirty months of its notification although Member States were allowed four years from the date of notification to review protective legislation. Periodic assessment of excluded occupations should take place and the Commission was to be informed of this assessment and any laws adopted to comply with this Directive [Article 9]. Notification was to be completed within two years after the end of the thirty-month period to enable the Commission to draw up a report for the Council [Article 10]. The Directive was addressed to the Member States [Article 11]. Thus, the implementation period was extended from the one year specified in the proposal.

Many important omissions from the proposal were thus included in the Directive such as indirect discrimination, derogations from the Directive in relation to jobs where the sex of the worker was a determining factor, maternity and pregnancy provisions, and positive discrimination measures, and the review of protective legislation. But, in comparison to the earlier Equal Pay Directive, this Directive omitted a supervision clause which weakened its efficacy.

However, the Equal Treatment Directive complemented the Equal Pay Directive and legally extended the principle of equal treatment to the employment field. The assertion that one of the objectives of the Community was equal treatment for male and female workers marked an important step forward for equality. Although social security was rejected in the final version, the Directive included the promise that this matter would be subjected to legislation in due course. For the first time in relation to Community equality legislation, reference was made to indirect discrimination.

But, the strength of the Directive was weakened by the absence in Article 2 of a list of possible occupations which could be exempt from the Directive. A possible loophole was thus created for the Member States to argue over what could and what could not be

excluded. Yet, the exclusion in this Article of maternity and pregnancy provisions, and positive discrimination measures was commendable.

The Council extended the Directive in relation to the proposal to include the internal rules of firms, and the occupations and professions so that a comprehensive coverage resulted. Furthermore, all protective laws no longer justified were to be examined with a view to revision although the Member States were given a long period of time, four years, to carry out this examination. But, the Article on vocational training was weakened by the exclusion of institutions of general education.

No sanctions against employers were imposed and, indeed, the omission of a supervision clause represented a serious omission.

However, in general, the Directive should be viewed in its contemporary context since such a measure did not exist in most Member States and, thus, this piece of Community legislation, on the whole, represented a legal advance on the national situations. Given this context, the restrictions of the Directive in comparison with the original proposal could be viewed in a different light.

For working women within the Community, the

Directive represented an important advance in legal protection and, at the time, Dr. Hillery, the Commissioner for Social Affairs, called it

> "Probably the most important social achievement of 1975" [50].

3.5.2.1. Directive on Equal Treatment in Social Security matters

Before examining the rest of the Social Action Programme, the progress of the further measure as promised in the Equal Treatment Directive to deal with social security matters will be discussed since it would seem appropriate at this stage. A proposed Directive to confer equal treatment in social security matters was duly drawn up by the Commission and submitted to the Council on the 31st of December 1976 [51].

On the 14th of January 1977, the Council requested the European Parliament and the Economic and Social Committee to give their opinions on this proposal [52].

The Economic and Social Committee was the first to respond when its Opinion was approved at its plenary session held on the 22nd of June 1977 [53]. The Committee commented that little had been undertaken at

either the national or the Community level to realise equal treatment of men and women in the social security field. This Directive constituted only a first step and another Directive was needed to cover surviving dependants, family charges and one-parent families whilst maternity provisions should also be the subject of harmonisation.

So, the Committee approved of the proposal but added various comments and put forward a few amendments. The proposal was considered by the Committee to constitute an important first step towards equality between the sexes in the social security field and the Committee agreed with the Commission that differences of treatment could not be eliminated in a single measure. However, the Committee urged that the Directives should be enacted as soon as possible on the areas either excluded from the proposal or not referred in it with particular attention to be given to the social security of part-time workers. But, the removal of discrimination from the law would not automatically lead to equality and, so, further concrete steps were needed. Eventually, the social security systems of the Member States would have to be harmonised. The Committee viewed the question of retirement age as needing harmonisation and should be tackled in this Directive. Furthermore, a complete rethinking in the approach to widowhood and widowerhood was needed given the changes

in contemporary society and a study should be carried out to investigate ways of achieving independent social security rights for both spouses.

Accordingly, the Committee put forward several amendments to the text of the proposal. The first amendment related to Article 1 in that the Committee wished to amend the Article so that the purpose of the Directive was to make a first step towards the implementation in the Member States in social security matters of the principle of equal treatment as set out in the Equal Treatment Directive. Apart from several minor amendments to the text, the Committee wished to tighten up the implementation period for the Directive by adding to Article 6 that exclusion would be for a limited period and the first review would be undertaken within two years after the Directive came into force.

Finally, the Committee inserted a new Article 8 to introduce a clause of legal redress in accordance with the previous two equality Directives.

The European Parliament eventually debated the proposal and passed a Resolution during its plenary session of the 14th of November 1977 [54]. In its Resolution, the Parliament welcomed this important first step towards the achivement of the principle of equal treatment for men and women in matters of social

security. Furthermore, it noted with satisfaction that by the gradual enactment of specific Directives the European Community was taking a lead in practically recognising the general principle of equal treatment for men and women. The achievement of this principle was essential both for the personal fulfilment of each human being and for the construction of a more equitable society.

But, the Parliament urged the Commission to pursue the basic aim which was the long-term harmonisation of the national social security schemes. Although the Parliament recognised that a gradual approach was necessary, it criticised the Commission for adopting a narrower concept of social security than that used in the Community legislation on social security for migrant workers and for excluding from the proposal the determination of pensionable age for old age and retirement pensions, and the determination of periods of employment for pension purposes. Therefore, the Commission was requested to submit new proposals for these excluded areas to be based on the same pensionable age for men and women with the possibility of earlier retirement for women and that periods spent outside work owing to pregnancy or childbirth or raising a family should be regarded as reckonable for the purposes of a pension. Moreover, the Parliament stressed that effective equality of treatment in social security entirely depended upon the practical

and complete implementation of the same principle in relation to the earlier two equality Directives.

With regard to the proposed Directive, the European Parliament only submitted two amendments. Both of these amendments concerned Article 7. First, the Parliament wished to receive a copy of the report on the application of the Directive as well as the Council. Then and more importantly, the Parliament added a clause to grant legal redress in a similar way to that proposed by the Economic and Social Committee.

The Commission adopted the suggestion from both the Economic and Social Committee and the European Parliament for the need for a clause on legal redress in the measure. A modified proposal with such a clause was duly submitted to the Council [55].

But, the Council took nearly two years to reach agreement on this measure. Indeed, the delays gave rise to questioning from the European Parliament to which the Council responded that the proposal raised very serious technical problems added to which were drastic financial implications for the Member States [56]. One of these "technical problems" involved disputes over the implementation period for the Directive [57]. Eventually, the Council approved the text of the Directive at its 550th meeting [58] which was held on the 27th of November 1978 [59]. Formal

adoption followed on the 19th of December [60] and the Directive was thus finally issued [61].

In a similar manner to the earlier two equality Directives, this Directive contained many changes from the original proposal. However, in line with the Equal Treatment Directive, this Directive was legally based upon Article 235 of the Treaty of Rome. Its recitals expanded on those in the original proposal to state its coverage and, also, to affirm that it did not apply to protective provisions on maternity or to specific positive discrimination measures for women.

Article 1 of the Directive laid down that the objective behind the measure was the progressive implementation, in the field of social security and in those areas of social protection listed in Article 3, of the principle of equal treatment for men and women in matters of social security. Thus, unlike that in the original proposal, this Article did not state that the purpose of the Directive was to put into effect in the Member States the principle of equal treatment as laid down in the Equal Treatment Directive.

The coverage of the Directive was contained in Articles 2 and 3. Article 2 stated that the Directive applied to the working population to include the self-employed, those workers and self-employed persons

who became ill, had an accident or became unemployed, and those persons who sought employment, and to retired or invalided workers. But, Article 3 limited the Directive to apply to those statutory schemes which provided protection against the risks of sickness, invalidity, old age, accidents at work and occupational diseases, and unemployment and, also, any social assistance which supplemented or replaced the aforementioned schemes. Furthermore, survivors' benefits and family benefits except for those which were granted as an increase in benefit due in the above-mentioned schemes were excluded. Occupational schemes would be covered in a further measure to define their substance, their scope and the arrangements for their application with regard to the principle of equal treatment. In this way, the Directive was watered down from the proposal since both medical care and occupational schemes which were included in the original proposal were thus excluded from the final measure.

The principle of equal treatment was defined in Article 4 to mean no direct or indirect discrimination on grounds of sex by reference in particular to marital or family status in relation to the scope of and the conditions of access to the schemes, the obligation to contribute and the calculation of contributions, and the calculation of benefits to include increases due with regard to a spouse and for

dependants, and the conditions which governed the duration and retention of entitlement to benefits. Provisions which protected women for the purposes of maternity were excluded. Thus, this Article followed the proposal except that the protective clause was added to enhance the measure.

Article 5 required the Member States to take the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment were abolished. Since occupational schemes were excluded from the Directive, there was no need to make reference to the abolition of discriminatory collective agreements etc as in the proposal.

In accordance with the suggestion from both the European Parliament and the Economic and Social Committee, Article 6 introduced a legal redress clause so that persons who considered themselves wronged by failure to apply the principle of equal treatment could pursue their claims by judicial process after possible recourse to other competent authorities.

But, Article 7 listed the exclusions from the Directive to encompass the determination of pensionable age for the granting of old-age and retirement pensions, the advantages with regard to old-age pension schemes granted to persons who have

brought up children and the acquisition of benefit entitlements following periods of interruption of employment due to raising a family, the granting of old-age or invalidity benefit entitlements by the derived entitlement of a wife, the granting of increases of long-term invalidity, old-age, accidents at work and occupational disease benefits for a dependant wife, and

> "the consequences of the exercise, before the adoption of this Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme" [62].

Some of these clauses were in addition to those in the original proposal. However, as in the proposal, Member States were asked to periodically examine these exclusions. But, the Directive added with a view to ascertain whether they were justified in the light of social developments.

Notification and information clauses comprised the rest of the Directive. Article 8 required the Member States to implement the laws, regulations and administrative provisions necessary to comply with the Directive within six years of notification of the Directive as opposed to two years in the proposal. Copies of the relevant texts and the reasons for maintaining any excluded provisions were to be sent to the Commission. In Article 9, Member States were

required to send all the necessary information within seven years of notification of the Directive to the Commission so that a report on the application of the Directive could be drawn up for the Council and so that the Commission could propose any necessary further measures. Thus, these Articles followed the proposal except with regard to the length of the implementation period. Finally, Article 10 stated that the Directive was addressed to the Member States. Implementation of the Directive was thus established for December 1984.

Thus, the Directive extended the principle of equal treatment to the social security field albeit in a limited manner. It differed in many ways from the original proposal and not the least in its coverage which was restricted to certain statutory schemes and excluded occupational schemes. The inclusion in its title of "progressive" reflected its nature as a first step towards the complete implementation of the principle of equal treatment in social security matters. However, the Directive represented a very limited first step and a more restricted measure than the Commission had originally envisaged.

Its format followed the lines of the first two equality Directives and, in particular, the Equal Treatment Directive. As with the Equal Treatment Directive, this Directive was legally based upon

Article 235 of the Treaty of Rome. The principle of equal treatment followed that of the Equal Treatment Directive and, so, reference was made to indirect discrimination. Moreover, the application of the principle was very comprehensive. Furthermore, maternity provisions were exempt from the Directive. On the positive side, the Directive adopted a very wide definition of the working population in relation to the coverage of the measure. But, on the negative side, application of the Directive was restricted to certain statutory schemes and it excluded survivors' and family benefits, and pension rights. Pension rights were excluded on the grounds of the costs which would be incurred by the Member States [63]. However, the exclusion of occupational schemes, although not in accordance with the proposal, was consistent with the Community provisions on social security for migrant workers.

But, the implementation period was very long and, indeed, Burrows asserted that this period was the longest for a Directive in Community history [64]. However, the adoption of six years represented a compromise since some Member States had wanted implementation to be eight years and had given way provided that occupational schemes were excluded from the Directive [65].

Nevertheless, the Directive could be viewed as a

remarkable measure since it

> "is the first EEC Directive for the coordination of Member States' social security law" [66]

and, at the time, equal treatment was rarely found in the statutory social security schemes in the Member States so this Community measure was ahead of national legislation.

3.5.3. Action II of the Social Action Programme

Apart from the activities to help the employment situation of women, three other actions in relation to women were proposed under the second stage of the Social Action Programme.

3.5.3.1. European Community information service

The first of these actions concerned the establishment of

> "a Community documentation centre on women's problems and an information service to help change attitudes concerning women at work" [67].

The progress of the documentation centre will be examined later [see 3.9.1.]. In relation to an information service, some attention had already been given to women by the Directorate General for

Information. A specific information service within that Directorate, however, was not yet in existence. Moreover, at a symposium on "Women and the European Community" which was held in March 1976 amongst 120 women from the nine Member States, the participants strongly expressed their feelings that regular contacts were needed and that a permanent channel on communication ought to be established within the Commission [68]. In the following year, the Commission set up a special unit entitled the Information Service for Women's Organisations and Press to function within the Directorate General for Information [69]. Thus, the proposal was partially fulfilled. The work of this Service will be examined in due course in Chapter Four [see 4.2.1.2.].

3.5.3.2. European Community contribution to International Women's Year

The second action concerned the European Community contribution to the International Women's Year which was designated by the United Nations for the year 1975. In the Communication on equality of treatment [70], the Commission stated that this contribution would concentrate on the Equal Pay Directive and the European Social Fund. The latter involved developments for women under Article 5 of the Fund and the examination of the possibility of using Article 4 of the Fund to help women. In addition, the Commissioner,

Dr. Hillery, announced that the Communication itself would form part of the contribution [71]. Thus, the European Community contribution comprised the enactment of an Equal Pay Directive, a Communication on equal treatment and a proposal for an Equal Treatment Directive. Indeed, cynical observers might have concluded that the existence of the International Women's Year was the source of inspiration for Community action in this field. But, Dr. Hillery insisted that the action was taken under the Social Action Programme quite independently of the United Nations effort [72].

The third action will be discussed later [see 3.9.2.].

3.6. The European Social Fund

Under Action III of the Social Action Programme, the proposal relevant to women concerned use of the European Social Fund to finance projects with the intended practical result of women finding jobs. However, as Chapter Two has shown [see 2.9.], a number of proposals were initiated over the years to use the European Social Fund for women. The first proposal was made at the end of the transitional period of the common market but disagreement arose amongst the members of the Council as to the form that the Fund should take. The existence of two groups of viewpoints

resulted in a compromise formula between the group that wanted the Fund to act as an instrument of European Community policy and the other group which saw the Fund as a means to alleviate national deficits. So, after a period of protracted negotiations, the Council issued a Decision on the 1st of February 1971 to reform the European Social Fund [73].

The opinions of the two groups were reflected in Articles 4 and 5 of this Decision since financial aid was made possible under these two Articles. Article 4 was, at that time, not applicable to women although this situation would change in the future and, so, it was worthy of mention here. This Article could be used when the employment situation was affected by Community actions or it called for specific joint action to improve the balance between the supply of and the demand for manpower within the Community. On receipt of a proposal from the Commission, the Council would take a Decision to extend the provisions to allow certain groups of workers to be eligible for financial assistance. Article 5 was designed to help the employment situation in certain regions, branches of the economy or groups of undertakings in difficulties. Thus, this Article aimed to iron out structural or regional imbalances. Aid would be granted to eliminate long-term structural unemployment and underemployment, to train a highly skilled labour

force and for measures to absorb and reabsorb into active employment the disabled, older workers, women and young workers.

The Regulation which implemented this Decision laid down that assistance could be granted to

> "women over thirty-five years who wish to pursue a professional or trade activity for the first time or whose qualifications after a lapse of time are no longer those in demand" [74].

Thus, this measure aimed to help women who wished to return to work after rearing a family and they needed either to gain qualifications or to renew them. Women under twenty-five would be eligible for assistance under the youth category of Article 5.

However, rigidities and conditions beset this reform. Financial assistance from the Fund remained at 50% of the total costs of a project payable only to public authorities. Aid to women could only be given in the context of regions or sectors of the economy in difficulties and did not cover women aged between twenty-five and thirty-five years of age. Indeed, the Commission had proposed that one of the groups to receive Article 4 intervention should be women over thirty-five who were re-entering the employment market. But, strong opposition had arisen to this proposal at the Council level. Some Member States felt

that the problem of unemployed women only arose in wealthy countries and, so, they should pay for training since the Fund should be reserved for poorer regions and circumstances [75].

But, this reform also included one of the ideas of the Commission

> "to undertake preparatory studies and pilot schemes" [76].

These studies and schemes would receive funding up to 50% of the total cost [77]. In this way, the possibility was present for preliminary programmes to train women as a way of exploring possible future areas for Fund assistance under Article 5.

The Decision came into effect on the 1st of May 1972 and was subject to review after 5 years [78].

3.6.1. Decision on European Social Fund assistance for women

Thus, the Commission eventually submitted a proposal to the Council on the 27th of September 1977 to open up Article 4 of the 1971 Decision to train women [79]. On the 6th of October, the European Parliament and the Economic and Social Committee were asked to frame their opinions on this proposal as soon

as possible [80].

Both bodies, however, had anticipated the request from the Council. Thus, the European Parliament adopted a Resolution on the subject on the 11th of October [81] in which the proposal was accepted. Furthermore, the Parliament welcomed this initiative but it doubted whether the amount proposed for assistance would prove adequate. It called for a commitment that additional funds would be granted should the applications for assistance exceed the amount available. Moreover, the Parliament emphasised the need for Fund assistance to be used for training the trainers of female workers.

The Economic and Social Committee passed its Opinion on the proposal on the 26th of October [82]. Similarly to the European Parliament, the Committee accepted the proposal. Indeed, the measure was welcomed since the Committee itself had been repeatedly urging such action. But, given the seriousness of the employment situation particularly amongst women, the Committee considered that the amount of money proposed was totally inadequate. Furthermore, the Committee thought that any such money should be allocated as far as possible to projects of direct benefit to jobless women and that any specific training of the trainers should only be financed from such a source when money was not available from other

bodies. A considerably larger sum should be provided than that proposed and the measures themselves would not have a sufficient impact upon female employment. Society was still prejudiced against working women and offered inadequate family care facilities. For instance, many unemployed women would not be able to benefit from this money since they did not have access to nurseries, kindergartens, day-care centres, etc. European Community funds shoud be used to finance such facilities. Finally, the Committee considered that this proposal could only constitute an initial, though useful, step towards the improvement of the employment situation of women since the small amount of money to be allocated was insufficient to attain the overall objective set by the European Councils earlier in the year.

At its 479th meeting on the 28th of October 1977 [83], the Council of Social Affairs Ministers approved this proposal [84]. Accordingly, the Decision was passed on the 20th of December at the 494th meeting of the Council of Foreign Ministers [85] and duly published [86].

This Decision closely followed the lines of the proposal with some exceptions. The title itself dropped assistance in favour of the stronger action. With regard to the recitals of the Decision, they largely adopted those of the proposal except that

vocational training for women was deemed necessary not

> "to overcome specific obstacles to the employment of women" [87]

as in the proposal but

> "to overcome specific obstacles to the entry or re-entry of women into working life" [88].

Furthermore, this recital added a clause on the need to encourage the vocational adaptation of instructors.

By this measure, the European Social Fund opened up Article 4 of the 1971 Decision to operations to encourage the employment of women of or over twenty-five years of age with no or with insufficient vocational qualifications provided that these operations were for women who wished to work for the first time or after a long break or for women who had lost their jobs. These operations were to include vocational training measures aimed at preparing for working life or motivating new choices of occupation and to ease entry into occupations which presented job prospects. Thus, this Decision was narrower than the proposal in that the exact nature of the operations was specified. Assistance might also be granted for vocational adaptation operations for instructors. The Decision entered into force on the 1st of January 1978 and was to apply for three years until the 1st of

January 1981.

In this way, the European Social Fund could, at last, be utilised in a practical manner to render real assistance to unemployed women. The previous restrictive conditions of Article 5 of the 1971 Decision were abolished and Member States could thus apply for money to train women in order to result in employment. Thus, the training would include pre-training, training and retraining. Furthermore, all women of twenty-five and over could be helped and not just women of over thirty-five. Young women under the age of twenty-five would be covered in the youth category. But, the Decision limited assistance to those women who were entering employment for the first time or re-entering the labour market after a break or who had lost their jobs. In this way, it differed from the proposal which had envisaged Fund money to be used for all women who wished to be employed.

Towards the end of the three year period on the 24th of July 1980, the Commission sent a proposal to the Council to extend the terms of this Decision for two years [89]. Thus, the Commission proposed altering the expiry date of the Decision from the 1st of January 1981 to the 1st of January 1983. A two year period was chosen on the grounds that the next general review of the Fund was due to take place at the latest by the 31st of December 1982 [90]. The

nature of the Fund assistance or the Decision were not changed. This proposal merely extended the period of application. The Commission explained [91] that although the employment rate of women in the European Community had slightly risen, the proportion of women in the total number of registered unemployed had also increased. Thus, women continued to be vulnerable in the employment situation yet the demand for work by women represented an irreversible trend. And so, the European Community should respond to this demand by continuing this Fund assistance.

The European Social Fund Committee approved the proposal at its meeting held on the 27th of June 1980 [92]. In spite of the relatively minor nature of the proposal, the Council was still obliged to utilise the consultation procedure. Thus, on the 1st of August 1980, the Council decided to ask the European Parliament and the Economic and Social Committee for their opinions to be given as soon as possible [93]. The European Parliament approved the proposal on the 17th of October 1980 by using its procedure without report [94]. But, the Economic and Social Committee went through its usual channels and passed a favourable Opinion on the proposal on the 30th of October [95]. The Committee took the opportunity to comment on the worsening economic and social situation and the consequent need for increased money to be made available to the Fund.

The Council approved the proposal at its 27th of November meeting [96] and the Decision was enacted on the 4th of December 1980 [97]. Thus, the imbalance of employment within the European Community made it apparent for the necessity to pursue the specified European Social Fund assistance and, therefore, Fund operations for women were extended for two years until the 1st of January 1983.

Therefore, these two Decisions in giving financial assistance for training projects for women practically backed up the three legislative measures.

3.7. Education

Finally, two of the educational initiatives to improve the position of women were accepted by the Council although not in the form of a binding legislative instrument. These initiatives related to a report from the Education Committee and to the transitional period.

3.7.1. Action programme in education, 1980

First, with regard to the work of the Education Committee, Chapter Two described the appropriate section of the general report on education produced by this Committee in 1980 [see 2.10.2.]. This report

was submitted to the Council and the Ministers of Education meeting within the Council which met on the 27th of June 1980 [98]. Indeed, the Education Ministers had not met since December 1976. At this meeting, the Council agreed to the substance of this report and to a new action programme in education which involved an expenditure of c$9 million over a five-year period [99]. COREPER [100] was asked to look at the budgetary and legal implications of the programme [101].

One of the areas contained within this action programme related to equal opportunities in education and training for girls in second level education [102]. Six priorities were specified: the management and implementation of co-education; the design of positive discriminatory programmes for girls in the first stage of secondary education and in vocational guidance; the design of core curricula and the introduction of new compulsory subjects such as technology and home management; the creation of new staff development policies to achieve a better sex balance in the teaching force particularly within the context of recruitment and promotion; the design of new training modules to increase the awareness of teachers and guidance personnel of the relevant social and psychological factors; and the improvement of data and research on educational equality for girls and the exchange of information on this subject between the

Member States.

Thus, this action programme incorporated all the proposals which had been put forward in the Education Action Programme of 1978 as described in Chapter Two [see 2.10.1.]. Furthermore, it should be noted that the Council only gave its approval in principle to this programme [103]. However, in relation to equality in education, the acceptance, albeit in principle, of such an action programme represented a significant step forward in this field.

3.7.2. The transitional period from school to working life

Secondly, a certain amount of success was achieved in relation to the transitional period from school to working life. A report on the subject from the Education Committee as examined in Chapter Two [see 2.10.3.] was considered by the next meeting of the Council and the Ministers of Education meeting within the Council which was held on the 13th of December 1976. At this meeting, a Resolution concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life was passed [104]. It was of interest to note that the preamble to this Resolution included a reference to the European Community measures and activities in

relation to equal treatment for men and women which were the subject of the 1976 Equal Treatment Directive. This Resolution incorporated the proposals which were contained in the report from the Education Committee and, thus, the six priority themes were accepted to include the third which concerned actions to be taken to ensure equal opportunities for girls.

Pilot projects and studies which implemented these themes were established at a Community level to complement national initiatives for the three years from 1977 to 1980. At a later meeting of the Education Ministers held in January 1980, another Resolution on the transitional period [105] extended the time-scale for these projects until the end of 1981 and the accompanying evaluation studies until the end of 1982 so that these projects could be completed and evaluated in a satisfactory manner.

The December Resolution of 1976 also included amongst the Community measures a section on the organisation of workshops for teachers and trainers of teachers with regard to the transition from education to working life [106].

As described in Chapter Two [see 2.10.3.], the 1980 general report on education also contained a section on the transitional period and this report was accepted by the Council as described above [see

3.7.1.].

3.8. Unsuccessful European Community initiatives

Some of the initiatives, however, did not reach the stage of a successful legislative instrument. These initiatives concerned the Social Action Programme, maternal protection, the European Social Fund and education.

3.9. Action II of the Social Action Programme

Chapter Two examined the initiatives in relation to women proposed in the Social Action Programme [see 2.5.2.]. Under Action II of this Programme, apart from the activities to help the employment situation of women, three actions with regard to the position of women were proposed of which two failed in their original intentions.

3.9.1. European Community documentation centre

The first of these two actions envisaged the setting up of an European Community documentation centre and an information service. The progress of the information service was examined above [see 3.5.3.1.]. But, the documentation centre was rather different. The newly established Ad Hoc Group on Women's Employment was expected to consider this aspect of the

Social Action Programme and, in particular, to draw up recommendations which would ensure that such a centre could be effective in the dissemination of information [107]. Furthermore, an information campaign to alter the outlooks and attitudes towards women's work could be promoted. Such a campaign would attempt to increase awareness amongst managers in charge of training, to work with those civil servants who looked after vocational guidance and manpower services, and to contribute to the exchange of information between the Member States on matters relating to women and employment.

To effect this proposed action, a preliminary study was undertaken in 1974 [108] and further preparations took place in 1975 [109]. But, there was no evidence to suggest that a specific documentation centre was ever established other than the material collected and used by the Bureau for Questions affecting Women's Employment within the Directorate-General for Social Affairs of the Commission. The information campaign as such was not specifically mounted except for the information activities carried out by the relevant section of the Directorate- General for Information of the Commission.

3.9.2. Permanent working group for women's employment

The other action, the third under Action II,

proposed the establishment of a permanent working group to look after the field of women's employment. In fact, this group was envisaged as a permanent manifestation of the Ad Hoc Group on Women's Employment. But, such a group was not established. Once the work of the Ad Hoc Group was completed it ceased to exist. But, somewhat different in nature from the original proposal, a permanent section within the Directorate-General for Social Affairs of the Commission to look after the employment of women was established. This section was given the title of the Bureau for Questions affecting Women's Employment and its work will be examined in Chapter Four [see 4.2.1.1.].

However, at a later date, another committee was to be set up which, in a way, took over some of the duties envisaged for the permanent group although its composition was different from that of the Ad Hoc Group which presumably would have been the model for the permanent group. This Group, the Standing Liaison Group for equal opportunities, will be examined in Chapter Four [see 4.2.2.].

3.10. Draft Recommendation on maternal protection

As Chapter Two described [see 2.7.5.], the Commission drew up the final form of a Draft Recommendation on maternal protection in January 1966

[110]. On the 18th of that same month, the Commission submitted this proposal to the European Parliament and to the Economic and Social Committee [111]. The Commission, it should be noted, did not send this proposal to the Council as was the customary practice with draft legislative proposals. Even Recommendations, which were not binding, were transmitted to the Council as a rule.

What was the reaction to this Draft Recommendation from the European Parliament and from the Economic and Social Committee? On receipt of this proposal, the European Parliament entrusted it to its Social Committee which also sought the opinion of the Health Protection Committee [112]. The Health Protection Committee under its rédacteur, Gennai Tonietti, considered the proposal and approved its opinion on the 25th of March [113]. This opinion [114] was stronger than that eventually adopted by the Social Committee in that the Health Protection Committee was intent on suppressing any exceptions in the proposal. Moreover, the Health Protection Committee recommended a few other changes to the provisions which would result in a stronger measure.

Thus, in relation to working conditions, the Health Protection Committee considered that there should be no exceptions to the maximum working day of eight hours. Neither should a ninety hour working period

spread over two weeks be permissible particularly as trades unions had aspired for a long time for a forty hour week. So, the Committee proposed that a two week period of work should be limited to eighty hours. In accordance with German and Italian laws, and with the Recommendation concerning Maternity Protection of the International Labour Organisation [115], the Committee thought that nursing mothers ought to be allowed at least one and a half hours per day to look after their babies. With regard to night work, the Committee felt that, in the interests of the health of the women, night work should be totally forbidden and that there should be no exceptions.

Furthermore, to protect the health of pregnant women, the latter should stop work eight weeks before confinement and they should not be allowed to continue work until four weeks after giving birth. The exception for small firms in connection with post-natal leave should not be allowed. Protection against dismissal and down-grading should be given for twelve weeks after child-birth and not eight weeks as the draft measure proposed. The Committee wanted the Member States to give the Commission information on the appropriate measures taken every year after notification and not every three years.

In conclusion, the Health Protection Committee approved the objectives of the Recommendation and it

considered that this Recommendation represented only the first stage towards an advanced social legislative system for health protection. It thought that the Commission should reconsider the matter in a few years. Finally, taking into account the proposed alterations, the Committee approved the measure.

This opinion by the Health Protection Committee was submitted to the Social Committee which had appointed Astrid Lulling to be the rapporteur for this proposal. Lulling produced an extremely detailed and comprehensive report [116]. Lulling's report took into account the historical development of female employment. The report considered that the fundamental problem of maternal welfare was to reconcile work with child-bearing. But, this problem was not solved by this Recommendation since this measure was only concerned to harmonise the existing national regulations. This objective was criticised by the report as an inadequate limitation in that the national laws only provided partial solutions to the problems of maternity. But, the Commission had extended the national provisions in certain respects.

The Social Committee approved the proposal that this measure should apply to all working women but the Committee wished to strengthen the wording to ensure that the provision included women in the public sector.

In relation to working conditions, the Social Committee approved of the eight hour working day but, unlike the Health Protection Committee, it did not think that the exceptions should be deleted. The Social Committee considered that the provision stressed that a derogation from the eight hour day was only permissible in exceptional circumstances. However, the Social Committee did accept the proposal from the Health Protection Committee to limit the two week working period to eighty hours. With regard to the amount of time to be given to nursing mothers during work, the Social Committee took into consideration the opinion of the Health Protection Committee that this time should be increased from one to one and a half hours per day since the Social Committee thought that Community standards should at least be based on the minimum norms already acquired in one or more of the Member States. The Social Committee agreed with the Health Protection Committee that night work should be absolutely forbidden. However, the Social Committee disagreed with the Health Protection Committee over the exceptions to this prohibition and, so, the exceptions were allowed to stand. But, the Social Committee thought that work should stop at 10 o'clock in the evening and be allowed after 6 o'clock in the morning as against 11 and 5, respectively, in the proposal.

In relation to child-birth, the Social Committee pointed out that the element of compulsory leave represented an important innovation in respect of most national legislative systems. Therefore, a compulsory period of leave together with maintenance of the salary constituted an important social advance. So, on realistic grounds, the Social Committee rejected the opinion from the Health Protection Committee that women should stop work eight weeks before child-birth in favour of a period of at least six weeks before giving birth. But, in accordance with the opinion of the Health Protection Committee, the clause allowing women to continue work until four weeks before child-birth should be deleted. Furthermore, women should return to work at least eight weeks following child-birth.

In accordance with the view of the Health Protection Committee, the Social Committee also considered that employers should not be allowed to deroge from the granting of unpaid post-natal leave. In the opinion of the Social Committee, the institution of an unpaid post-natal leave period constituted the most original and advanced provision of the Recommendation. Therefore, the derogation for small employers should be deleted. Protection against dismissal and down-grading should be given for twelve weeks in line with the opinion from the Health Protection Committee and no exceptions should be

granted. The social security clauses were mostly approved by the Social Committee except that the Committee proposed to strengthen the measure by obliging, not encouraging, employers to take appropriate measures to implement the Recommendation. Finally, the Social Committee proposed that notification should take place every two years and not every three years as the original measure proposed and not every one year as the Health Protection Committee suggested.

In conclusion, the Social Committee agreed with the Health Protection Committee that the Recommendation constituted only a first stage towards new solutions for working women in society. Maternity represented a normal condition for a woman and it necessitated a special consideration.

This report from the Social Committee was considered at the plenary session of the European Parliament held on the 27th of June 1966 [117]. At the end of the debate, Mr. Levi-Sandri, Vice-President of the Commission and Social Affairs Commissioner, gave his comments on the proposed amendments from the European Parliament [118]. In particular, he concentrated on two areas, namely, hours of work and night work. He explained the reasoning behind the Commission's proposal in relation to hours of work so that those hours proposed by the Commission represented the most

practical solution to the problem. To limit the two-week working period to eighty hours as the Parliament put forward would create technical problems in certain industries such as textiles. Therefore, he could not accept this amendment.

He also expressed reservations with regard to the opinion of the European Parliament on night work. He pointed out that the national laws did allow exceptions whereas this proposed European Community measure would only permit certain carefully defined derogations. Thus, the European Community proposal represented an advance over the existing national legislation.

At the end of the debate, a Resolution [119], incorporating the opinion of the European Parliament on the measure, was passed. This Resolution stressed that this Recommendation represented a first stage towards the creation of a better situation for women workers and towards the elimination of all barriers in relation to access to employment, to equality of treatment in conditions of employment, and to a career and, thus, towards the full integration of working women in society. Furthermore, the Parliament asked the Commission to prepare a comprehensive study of the existing practices, on the social, human, moral and legal planes, which opposed the integration of women without discrimination into the economic life of society. Also, the Commission should re-examine the

employment problems of women during the maternity period. Finally, the European Parliament approved the proposed Recommendation subject to the various amendments as outlined in the above account of the report from the Social Commmittee.

Meanwhile, the Economic and Social Committee asked its Section for Social Questions to consider this Draft Recommendation and Madame Weber was appointed rapporteur [120]. Her report was then debated by the Committee at its 57th session which was held on the 27th of October 1966. A favourable Opinion on the proposal resulted [121]. The Committee considered that maternal welfare constituted an obligation for the whole of society and special regulations to protect maternal welfare had to be instituted.

However, some amendments to this draft measure were proposed. The chief amendment improved working hours for pregnant women and nursing mothers by limiting the hours of work to eight per day for a five day working week. Those exceptions which were permitted, according to the fixed provisions, should not exceed eight hours per day. Furthermore, the maximum period for a working week would not normally exceed forty-five hours. One could comment that these amendments seemed a little contradictory in that a forty-five hour week would presuppose a nine hour working day. In addition to the proposed prohibition of night work, the Committee also

proposed a prohibition of work on Sundays and public holidays which was in accordance with the situation prevailing in Germany. Exceptions to these prohibitions would only be permitted up to 8 o'clock in the evening and after 6 o'clock in the morning.

With regard to the prohibition of work, the Committee considered that pregnant women should not be allowed to work up to four weeks before child-birth and, so, that clause should be deleted from the proposal. Maternity expenses and medical consultations should be allowed for self-employed women as well as for the wives of self-employed men. In relation to health protection, employers should be compelled, by national laws or by other suitable provisions, to take appropriate measures to implement the Recommendation. Finally, in consideration of the financing clause, the Committee added a phrase that the various national laws already in force should be harmonised.

Thus, only a few changes were suggested by this Committee. However, it was of interest to note that the major amendments put forward by the Committee resembled those proposed by the European Parliament and, in particular, those relating to the prohibition of work.

What happened to this Draft Recommendation? During the debate on this measure in the European Parliament, Commissioner Levi-Sandri announced that he would

re-examine the proposal in the light of the views expressed by MEP's [122]. But, no more was heard of the proposal at an official level. However, some of the MEP's who had been involved in the Parliamentary deliberations on this measure did not forget the proposal. Over the following decade, they, and, in particular, A. Lulling, kept the subject alive through the submission of a number of Written Questions to the Commission and through interventions in appropriate debates. The outcome of this measure could be ascertained from the answers of the Commission to this questioning.

In response to a criticism by a MEP of inactivity on this matter, the Commission replied that the differing opinions of the European Parliament and the Economic and Social Committee on the measure meant that the Commission had had to undertake a detailed analysis of the proposal [123]. And so, in receiving these opinions, the Commission modified the proposal. The Commission also decided to consult all the national governments for their opinion on the matter before the definitive text was established [124]. Next, some MEP's asked when the modified proposal would be transmitted to the European Parliament so that the view of the Parliament could be expressed [125].

Gradually, the Commission was forced to admit that

the proposal had failed. The first hint of this situation was given by the Commission in 1969 when it said that, during the consultation process, some governments had expressed grave reservations as to the practical application of this measure. At that time, the Commission affirmed that it was determined to continue with this proposal [126]. Then, the Commission stated that one, unnamed, government was worried about the measure because the cost in terms of social security would be considerable [127]. Eventually, in 1971, the Commission had to confess that the measure had been abandoned [128]. But, the Commission softened the blow in its statement that it had decided to consider, in general, the entire problem of the protection of women at work.

However, the matter was not closed since MEP's still continued to ask questions to the Commission on this proposal. The situation was clarified during a debate in April 1973 when Commissioner Hillery stated that the Commission had withdrawn the Draft Recommendation since the question of maternal welfare was considered as falling within the overall matter of provision for proper working conditions for women [129]. This matter would be prominent in the drawing up of a programme for social action and the implementation of a social policy over the next few years. Later, the Commission affirmed that maternal welfare would be considered within the context of the

Social Action Programme [130]. In fact, Chapter Two revealed [see 2.5.2.] that maternal welfare was not specified in that Programme.

Dis-satisfied with the response to a later Written Question on the subject [131], the Communist and Allies Group of the European Parliament tabled an Oral Question on the protection of the mother and child in which the Commission was asked to legislate on maternal welfare [132]. In introducing the debate to discuss this Question, Mrs. Squarcialupi pointed out that the diversity of maternity benefits, which existed within the Member States, could lead to a distortion of competition which, in turn, could affect the functioning of the common market [133]. Within his reply to the debate, Vice-President and Commissioner for Employment and Social Affairs, H. Vredeling, drew attention to the wide divergence of maternal welfare provision within the Member States [134]. For example, the period of paid maternity leave varied from twelve to twenty weeks. Therefore, an attempt to legislate on the subject at the European Community level could create problems of harmonisation. Thus, he spoke as follows:

> "We must, however, consider whether it is genuinely possible to attain the objectives referred to by the honourable Members through measures of harmonisation" [135].

He alluded to the differing opinions amongst the Member States as to the duration of the maternity leave period. And so, he did not take the matter any further.

Thus, the evidence would tend to suggest that this Draft Recommendation never reached the stage of submission to the Council for its approval. The Recommendation did not seem to have gone beyond the Commission stage.

Why did this measure fail? The causes for this failure could only be postulated although it would seem that the proposal failed owing to the hostile attitude on the grounds of costs of one or more of the individual Member States. The Commission, indeed, referred in 1969 to reservations expressed by some of the Member States [136]. Moreover, Commissioner Vredeling alluded to national diversities in the provision of maternal welfare during an European Parliament debate in January 1979 [137]. The reason for disagreement amongst some of the Member States arguably stemmed from a restricted level of maternal welfare provision in those particular Member States and, consequently, a heavy financial burden would be necessary to conform with the proposal.

What was the situation in the Member States at the time of the proposal? The contemporary study on

maternity [138] analysed the national systems in operation and a wide variety of provisions was revealed. In relation to the field of application of maternal welfare, only Germany and Italy applied their provisions to all women. The other countries excluded home and domestic workers, and some excluded agricultural workers from the benefits.

With regard to breaks for nursing mothers, the situation varied from two hours per day in Italy, to at least ninety minutes per day in Germany, to sixty minutes per day in France and Luxembourg, and to an unfixed time in the Netherlands. As to the prohibition of work, the provisions which applied to all women workers prevailed in the Benelux countries, in France and in Italy. However, in Germany, dangerous, tiring, and unhealthy work, overtime, and work at night, on Sundays, and public holidays were banned whilst dangerous, tiring, and dirty work was also banned in Italy.

The periods of pre-natal and post-natal leave also widely differed. The Benelux countries did not allow any compulsory pre-natal leave whereas compulsory post-natal leave was fixed at six weeks in Belgium and in Luxembourg, and at eight weeks in the Netherlands. In the other countries, compulsory pre-natal leave varied from four weeks to three months whilst compulsory post-natal leave varied from six to eight

weeks. A period of unpaid post-natal leave was, on the whole, not included. Non-compulsory pre- and post-natal leave could also be taken in most of the Member States.

Divergences in the provision of protection against dismissal were apparent. In Italy, dismissal was forbidden during pregnancy, during compulsory and non-compulsory maternity leave, and up to the age of one year of the child. In Germany, dismissal was not permitted during pregnancy and up to four months after child-birth. In Luxembourg, dismissal was forbidden six weeks before and six weeks after child-birth. In France, severe penalties were bestowed on the employer in the event of such dismissals. In Belgium, dismissal was allowed when absence for maternity amounted to over six months. No provisions of protection existed in the Netherlands. The provision of crèches was rather limited and was confined to four of the Member States.

Thus, it would seem that the situation in the Benelux countries, in particular, would have necessitated sweeping changes to their legislation in order to adapt to this Community Recommendation. The economic costs of such a measure were suspected to be too much for some of the Member States to contemplate undertaking. In the final analysis, economic considerations seemed to have prevailed against the

measure in spite of good intentions by the lawmakers.

3.11. The European Social Fund

Before a proposal to extend to women Article 4 of the 1971 reform of the European Social Fund was submitted, a more restrictive initiative originated from the Commission as described in Chapter Two [see 2.9.]. This proposal was submitted to the Council on the 16th of April 1975 [139]. The European Parliament and the Economic and Social Committee were asked for their opinion on this measure on the 29th of the same month to be given in time for the June Council of Social Affairs Ministers [140]. So, the European Parliament held its debate on this proposal on the 13th of May 1975 during which a MEP, Mr. Adams, welcomed the proposal and in particular the factor that priority was to be given to measures designed to help workers under the age of twenty-five and women [141]. In its Resolution on this proposal [142], the Parliament criticised the restrictiveness of the proposed measure and suggested that it would perhaps be better particularly in relation to the re-employment of women and young people to facilitate the movement of manpower to sectors which were likely to provide work for the unemployed. However, the proposal failed to secure the approval of the Council [143].

Thus, this initiative failed but the political will was present to pass concrete and definite proposals to help women in this context as examined above [see 3.6.1.].

3.12. Education

Finally, what happened to many of the European Community initiatives in relation to education?

3.12.1. Education Action Programme

First, the progress of the Education Action Programme which was submitted by the Commission to the Council in October 1978 will be examined [144]. The Commission envisaged that this Programme would be discussed at the next meeting of the Education Ministers which was scheduled for the 27th of November 1978 [145]. However, at the last minute, the meeting was cancelled [146] because of a dispute between the French and the Danish Governments. The meeting would have been asked to approve a four-year £35 million action programme covering four areas of education of which one area concerned this Education Action Programme for girls. The French objected to the use of the February 1976 Resolution [147] as the legal basis for the whole programme. They argued against the legality of this Resolution for such a major item of expenditure. Such expenditure should be authorised

under Article 235 of the European Economic Community Treaty [148], an Article which provided for new initiatives not covered in the Treaty. The Danes countered that this Article could not be used in this context since it would be in conflict with their own national constitution [149]. Thus, amidst this deadlock, the meeting was called off and a further meeting was not fixed at the time [150].

The European Parliament, in a Resolution [151], expressed its deep disappointment at the cancellation of the meeting which should have discussed such important problems as the particular situation with regard to the education of young women aged up to eighteen years.

Thus, this first initiative failed to be even considered by the Council.

3.12.2. Draft Resolution on equal opportunity for girls in education

Next, the Education Committee drew up four draft Resolutions in 1979 to include one Resolution on the subject of equal opportunity for girls in education [152]. These draft Resolutions were put forward for the Education Ministers to consider at their next meeting which was fixed for the 6th of November 1979 [153]. However, the Danes caused problems as they were

in the middle of a general election and, so, it was electorally convenient for the Danish Government to maintain its rigid position that education lay outside the concern of the European Community. Thus, the meeting was cancelled [154].

Once again, the European Parliament took note of this cancellation and passed a vigorous Resolution of protest [155]. In this Resolution, the Parliament pointed to the general problem of unemployment amongst the young particularly young women and the consequent need for special educational and training systems for youth. It requested the Council to report on the measures which they intended to take beyond the stage of exchanges of information and pilot schemes to ensure effective co-operation in education to include equal opportunities for the education and training of girls and young women.

However, as described above [see 3.7.1.], the following year witnessed a successful meeting of the Education Ministers.

As a coda, outside the period of review, the Council and the Ministers of Education meeting within the Council passed a Resolution in June 1985 on an action programme on equal opportunities for girls and boys in education [156]. At last, the Commission's tenacity was rewarded by this promise of concrete

action and, furthermore, this action programme was not confined to the secondary level of education but it encompassed all the levels of education.

3.13. Summary

Thus, a number of European Community policy initiatives to improve the position of women were accepted by the Council as legislative instruments, Resolutions or as action programmes. The core of these successes, however, were the three equality Directives which established a strong foundation for Community activity in this field.

But, not all of these initiatives were successful in their effect. Generalisations could not be attempted from such a small and heterogeneous collection of policy failures. By and large, the Social Action Programme proposals with regard to the position of women were implemented except for the establishment of an European Community documentation centre and a permanent working group to look after female employment.

In relation to maternal welfare, the Draft Recommendation would seem to have represented an attempt at harmonisation in the social field ahead of its time. It should be recalled that the Social Action Programme was not produced until half a decade

or more after the Recommendation was drafted.

The European Social Fund failure was countered by eventual success. Finally, the Commission initiatives in the field of education, although modest in nature, were often frustrated by the hostile attitude of the Council and the Ministers of Education meeting within the Council. The Education Action Programme to provide for equal opportunity for girls but only in secondary education, however, was presented to the Council in the form of a Communication which did not possess any legally binding status. But, the particular Council meeting to discuss this Programme was cancelled. Postponement of another meeting occurred in the following year at which a Draft Resolution on equal opportunities for girls in education would have been discussed.

Clearly, the success or failure of a Community policy to improve the position of women was often determined by the attitude of the Council. When the political will existed such as demonstrated in the mid to the late 1970's, the enactment of three Community equality Directives resulted. However, political opposition or adverse economic conditions blocked attempts to improve the position of women.

Footnotes

1. Article 100 of the European Economic Community Treaty.
   European Communities, Treaties, p. 295.
2. John Fitzmaurice, The European Parliament (Westmead, Farnborough, Saxon House, 1978), p. 20.
3. Article 149 of the European Economic Community Treaty.
   European Communities, Treaties, p. 337.
4. Bulletin EEC, Volume 3, Number 6/7 (August/September 1960), p. 44.
5. Ibid, pp. 45-46.
6. Knapp, L'égalité de rémunération, pp. 70-71.
7. Bulletin EEC, Volume 5, Number 1 (January 1962), pp. 53-54.
8. Ibid, pp. 8-10.
9. Ibid, p. 8.
10. Ibid, p. 10.
11. Fifth General Report on the Activities of the Community [EEC] [hereafter Fifth General Report EEC], 1961, p. 12.
12. Van Lint, "L'égalité des rémunérations", p. 393.
13. Own translation.
14. Commission, "Social action programme".
15. Bulletin EC, Volume 6, Number 12 (1973), pt. 2212.
16. Council of the European Communities, "Council Resolution of 21 January 1974 concerning a social action programme", OJC, Volume 17, Number 13 (12 February 1974), pp. 1-4.
17. Ibid, p. 3.
18. Ibid, p. 2.
19. Ibid, p. 4.
20. Commission, "Proposal concerning the application of the principle of equal pay".
21. European Parliament, "Proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", European Parliament Working Documents 1973-1974, Document 262/73 (6 December 1973), p. [2].
22. Economic and Social Committee, "Consultation of the Economic and Social Committee on a proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", OJC, Volume 17, Number 88 (26 July 1974), pp. 6-9.
23. European Parliament, "Resolution embodying the Opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive on

the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", OJC, Volume 17, Number 55 (13 May 1974), pp. 43-47.

24. Commission of the European Communities, Amended Proposal For A Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty [COM(74) 1010 final] (Brussels, Commission of the European Communities, 1974).
25. Bulletin EC, Volume 7, Number 12 (1974), pt. 2426.
26. The text of the Directive has been reproduced as Appendix Two.
Council of the European Communities, "Council Directive of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (75/117/EEC)" [hereafter "Equal Pay Directive"], OJL, Volume 18, Number 45 (19 February 1975), pp. 19-20.
27. Ibid, p. 19.
28. Commission of the European Communities, 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 [hereafter Equal Pay Report 1978] [COM(78) 711 final] (Brussels, Commission of the European Communities, 1979), p. 132.
29. Council, "Equal Pay Directive", p. 19.
30. International Labour Organisation, International Labour Conventions and Recommendations, p. 42.
31. Commission, Equality of treatment.
32. European Parliament, "Communication from the Commission of the European Communities to the Council on equality of treatment between men and women workers (Access to employment, to vocational training, to promotion, and as regards working conditions)", European Parliament Working Documents 1974-1975, Document 520/74 (10 March 1975), p. [2].
33. Lady Elles, "Report drawn up on behalf of the Committee on Social Affairs and Employment on the proposal from the Commission of the European Communities to the Council (Doc. 520/74) for a directive on equality of treatment between men and women workers (access to employment, to vocational training, to promotion and with regard to working conditions)", European Parliament Working Documents 1975-1976, Document 24/75 (7 April 1975), p. 3.
34. Ibid.

35. Ibid, p. 3.
36. Ibid, p. 10.
37. Debates, Number 190 (April 1975), pp. 52-68.
38. European Parliament, "Resolution embodying the Opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive on equality of treatment between men and women workers (access to employment, to vocational training, to promotion, and as regards working conditions)", OJC, Volume 18, Number 111 (20 May 1975), pp. 14-17.
39. Ibid, pp. 16-17.
40. Economic and Social Committee, "Opinion on the communication of the Commission to the Council concerning equality of treatment of men and women as regards access to employment, vocational training, promotion and working conditions", OJC, Volume 18, Number 286 (15 December 1975), pp. 8-19.
41. Ibid, pp. 9-17.
42. Ibid, p. 9.
43. Ibid, pp. 17-19.
44. Bulletin EC, Volume 8, Number 6 (1975), pt. 2212.
45. The Times, 19 December 1975, p. 6.
46. Italy was due to take over the Presidency of the Council of Ministers on the 1st of July.
Statement by Mr. O'Leary to the European Parliament.
Debates, Number 192 (June 1975), p. 165.
47. The Times, 19 December 1975, p. 6.
48. The text of the Directive has been reproduced as Appendix Three.
Council, "Equal Treatment Directive".
49. Article 117.
European Communities, Treaties, p. 311.
50. Debates, Number 202 (April 1976), p. 44.
51. Commission, "Proposal on equality of treatment in social security".
52. European Parliament, "Proposal from the Commission of the European Communities to the Council for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", European Parliament Working Documents 1976-1977, Document 522/76 (21 January 1977), p. [2.].
53. Economic and Social Committee, "Opinion on the proposal on equality of treatment in social security".
54. European Parliament, "Resolution embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive concerning the progressive implementation of the principle of equality of treatment for men

and women in matters of social security", OJC, Volume 20, Number 299 (12 December 1977), pp. 13-15.

55. Announced by Commissioner Burke to the European Parliament.
Debates, Number 224 (December 1977), p. 13.
56. Debates, Number 229 (April 1978), p. 186.
57. Pat Healy, "Government tried to wreck directive, delegates allege", The Times, 27 November 1978, p. 2.
58. Bulletin EC, Volume 11, Number 11 (1978), pt. 2.3.28.
59. Ibid, pts. 2.1.38 and 2.1.46.
60. Bulletin EC, Volume 11, Number 12 (1978), pt. 2.1.67.
61. The text of the Directive has been reproduced as Appendix Four.
Council, "Social Security Directive".
62. Ibid, p. 25.
63. "Equal social security benefits by 1985", European Industrial Relations Review, Number 60 (January 1979), p. 11.
64. Burrows, "The Promotion of Women's Rights", p. 205.
65. André Laurent, "La Directive communautaire relative à la mise en œuvre progressive du principe de l'égalité de traitement entre hommes et femmes en matière de sécurité sociale", Droit Social, Number 6 (Juin 1979), p. 243.
66. Burrows, "The Promotion of Women's Rights", p. 204.
67. Commission, "Social action programme", p. 23.
68. Tenth General Report EC, p. 40.
69. Eleventh General Report EC, p. 34.
70. Commission, Equality of treatment, p. 36.
71. Statement on introducing the Report on the development of the social situation in the European Community for 1974 to the European Parliament.
Debates, Number 186 (February 1975), p. 56.
72. Answer to Oral Question Number 21/76 of the European Parliament.
Debates, Number 204 (June 1976), p. 177.
73. Council, "Council Decision on the reform of the European Social Fund".
74. Council of the European Communities, "Regulation (EEC) No 2396/71 of the Council of 8 November 1971 implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund", OJ Sp Ed, Number III (1971), p. 925.
75. Oral statement by Dr. Hillery before the European Parliament.
Debates, Number 169 (December 1973), p. 15.
76. Council, "Regulation implementing the Council Decision on the reform of the European Social

Fund", p. 924.

77. Ibid, p. 926.
78. Wolfgang Stabenow, "The European Social Fund" in Paul J.G. Kapteyn exec. ed., The Social Policy of the European Communities (Leyden, Sijthoff, 1977), pp. 61 and 77.
79. Commission, "Proposal on European Social Fund assistance towards women".
80. European Parliament, "Proposals from the Commission of the European Communities to the Council for - a Decision regarding European Social Fund assistance towards women...", European Parliament Working Documents 1977-1978, Document 313/77 (11 October 1977), p. [2].
81. European Parliament, "Resolution embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for: 1. a Decision regarding European Social Fund assistance towards women...", OJC, Volume 20, Number 266 (7 November 1977), pp. 15-16.
82. Economic and Social Committee, "Opinion on the proposals for:... - a Council Decision regarding European Social Fund assistance towards women", OJC, Volume 21, Number 18 (23 January 1978), pp. 24-27.
83. Bulletin EC, Volume 10, Number 10 (1977), pt. 2.3.33.
84. Ibid, pts. 2.1.27 and 2.1.31.
85. Bulletin EC, Volume 10, Number 12 (1977), pt. 2.3.35.
86. Council of the European Communities, "Council Decision of 20 December 1977 on action by the European Social Fund for women (77/804/EEC)", OJL, Volume 20, Number 337 (27 December 1977), p. 14.
87. Commission, "Proposal on European Social Fund assistance towards women", p. 5.
88. Council, "Council Decision on action by the European Social Fund".
89. Commission of the European Communities, "Proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", OJC, Volume 23, Number 214 (21 August 1980), pp. 6-7.
90. Commission of the European Communities, Proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women [COM (80) 411 final] (Brussels, Commission of the European

Communities, 1980), p. 2.
91. Ibid, pp. 8-9.
92. Bulletin EC, Volume 13, Number 6 (1980), pt. 2.1.47.
93. European Parliament, "Proposal from the Commission of the European Communities to the Council for a Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", European Parliament Working Documents 1980-1981, Document 1-357/80 (14 August 1980), p. 2.
94. OJC, Volume 23, Number 291 (10 November 1980), p. 57.
95. Economic and Social Committee, "Opinion on the proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", OJC, Volume 23, Number 331 (17 December 1980), pp. 18-19.
96. Bulletin EC, Volume 13, Number 11 (1980), pts. 2.1.26, 2.1.31 and 2.3.16.
97. Council of the European Communities, "Council Decision of 4 December 1980 amending Decisions 75/459/EEC, 76/206/EEC, 77/803/EEC and 77/804/EEC concerning European Social Fund aid measures for certain categories of persons (80/1117/EEC)", OJL, Volume 23, Number 332 (10 December 1980), pp. 17-18.
98. Bulletin EC, Volume 13, Number 6 (1980), pt. 2.1.148.
99. Paul Flather, "EEC adopts common programme", Times Higher Education Supplement, 4 July 1980, p. 6.
100. Committee of Permanent Representatives of the Member States.
101. Answer to an European Parliament Written Question [WQ No. 1020/80].
OJC, Volume 23, Number 316 (3 December 1980), p. 14.
102. Maij-Weggen, "Report on the position of women", pp. 39-40.
103. Ibid, p. 39.
104. Council and the Ministers of Education, "Resolution on young people 1976".
105. Council and the Ministers of Education meeting within the Council, "Resolution of the Council and of the Ministers of Education meeting within the Council of 15 January 1980 concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life", OJC, Volume 23, Number 23 (30

January 1980), pp. 1-2.

106. Council and the Ministers of Education, "Resolution on young people 1976", p. 3.
107. "Commission Creates "Ad Hoc Group"".
108. Eighth General Report on the Activities of the European Communities [EC], 1974, p. 123.
109. Ninth General Report EC, p. 119.
110. Commission, Projet d'une recommandation.
111. Ninth General Report on the Activities of the Community [EEC] [hereafter Ninth General Report EEC], 1965, p. 95.
112. Parlement Européen Débats compte rendu in extenso des séances [hereafter Parlement Européen Débats], Number 83 (Janvier 1966), p. 49.
113. A. Lulling, "Rapport fait au nom de la commission sociale sur le projet de recommandation de la Commission de la C.E.E. aux États membres concernant la protection de la maternité (doc. 122-II, 1965-66)" [hereafter "Report on maternal protection"], Parlement Européen Documents de séance 1966-1967, Document 69 (27 juin 1966), p. 2.
114. Ibid, pp. 20-22.
115. Article 3(1), Convention concerning Maternal Protection No. 103.
International Labour Organisation, International Labour Conventions and Recommendations, p. 698.
116. Lulling, "Report on maternal protection".
117. Parlement Européen Débats, Number 86 (Juin/juillet 1966), pp. 8-21.
118. Ibid, pp. 17-18.
119. Parlement Européen, "Résolution portant avis du Parlement européen sur le projet de recommandation de la Commission de la C.E.E. aux États membres concernant la protection de la maternité", JO, Volume 9, Number 130 (19 juillet 1966), pp. 2422-2425.
120. Comité Économique et Social, "Avis du Comité économique et social sur le "projet d'une recommandation concernant la protection de la maternité"", JO, Volume 10, Number 4 (12 janvier 1967), p. 62.
121. Ibid, pp. 62-63.
122. Parlement Européen Débats, Number 86 (Juin/juillet 1966), p. 18.
123. Written Questions Numbers 181 and 201 of the session 1967-1968.
JO, Volume 10, Number 312 (21 décembre 1967), p. 5.
124. In answer to Written Question Number 112 of the session 1967-1968.
JO, Volume 10, Number 243 (7 octobre 1967), p. 4.
125. Written Questions Numbers 288 of the session 1967-1968 and 144/69.

Journal Officiel des Communautés Européennes C [hereafter JOC], Volume 11, Number 22 (18 mars 1968), p. 7 and
JOC, Volume 12, Number 107 (18 août 1969), p. 19.

126. In answer to Written Question Number 144/69.
JOC, Volume 12, Number 107 (18 août 1969), p. 19.

127. Statement by Commissioner A. Coppé.
Debats, Number 129 (Octobre 1970), p. 35.

128. In answer to Written Question Number 502/70.
JOC, Volume 14, Number 29 (29 mars 1971), p. 23.

129. Debate on the Second Report of the Commission on certain agreements concluded within the framework of other international organizations.
Debates, Number 161 (April 1973), p. 25.

130. In answer to Written Question Number 644/72.
OJC, Volume 16, Number 57 (17 July 1973), p. 15.

131. Number 977/77.
OJC, Volume 21, Number 98 (24 April 1978), p. 14.

132. Mrs. Squarcialupi and Mr Porcu, "Oral Question (0-83/78) with debate,... by Mrs Squarcialupi and Mr Porcu on behalf of the Communist and Allies Group to the Commission of the European Communities", European Parliament Working Documents 1978-1979, Document 527/78 (14 December 1978).

133. Debates, Number 238 (January 1979), p. 248.

134. Ibid, p. 250.

135. Ibid.

136. In answer to Written Question Number 144/69.
JOC, Volume 12, Number 107 (18 août 1969), p. 19.

137. Debates, Number 238 (January 1979), p. 250.

138. Commission, La protection de la maternité.

139. Commission, Proposal on Social Fund to encourage structural adjustment measures.

140. European Parliament, "Proposal from the Commission of the European Communities to the Council for a decision on intervention by the Social Fund to encourage structural adjustment measures", European Parliament Working Documents 1975-1976, Document 73/75 (7 May 1975), p. [2].

141. Debates, Number 191 (May 1975), p. 24.

142. A. Bertrand, "Report on behalf of the Committee on Social Affairs and Employment on the proposal from the Commission of the European Communities to the Council (Doc. 73/75) for a decision on intervention by the Social Fund to encourage structural adjustment measures", European Parliament Working Documents 1975-1976, Document 74/75 (12 May 1975), p. 6.

143. Bulletin EC, Volume 8, Number 4 (1975), pt.

1106.

144. Commission, Education Action Programme.

145. Commission, "Sex inequality in schools", p. [1].

146. Bulletin EC, Volume 11, Number 11 (1978), pt. 2.1.126.

147. Council and the Ministers of Education, "Resolution on an action programme in the field of education".

148. European Communities, Treaties, p. 384.

149. Mark Jackson, "French legal challenge freezes £35m action programme", Times Educational Supplement, 1 December 1978, p. 5.

150. David Jobbins, "Education meeting cancelled", The Times, 28 November 1978, p. 7.

151. European Parliament, "Resolution on Community action in the educational field", OJC, Volume 22, Number 6 (8 January 1979), p. 59.

152. Thirteenth General Report EC, p. 204.

153. Watson, "Danish objections force second cancellation".

154. Bulletin EC, Volume 12, Number 10 (1979), pt. 2.1.152.

155. European Parliament, "Resolution on the meeting of the Council of Education Ministers", OJC, Volume 22, Number 309 (10 December 1979), pp. 59-60.

156. Council and the Ministers for Education meeting within the Council, "Resolution of the Council and of the Ministers for Education, meeting within the Council, of 3 June 1985 containing an action programme on equal opportunities for girls and boys in education", OJC, Volume 28, Number 166 (5 July 1985), pp. 1-4.

CHAPTER FOUR

European Community monitoring methods to secure the implementation of European Community measures for women by the Member States

4.1. Introduction

So far, the nature and the extent of the European Community initiatives for women have been examined as well as the success or failure of each initiative at the Community level. How did the European Community secure the implementation of the successful Community policy initiatives with regard to women at the national level amongst the Member States?

This Chapter will examine the bodies and the means by which the European Community attempted to implement and to monitor its legislative programme for women at the national level. First, the bodies responsible for implementation and monitoring and their work will be discussed. The personnel involved the different sections of the Commission and various "quangos" of the Community. Then, the means will be examined whether instruments of control or of communication. Control included such methods of administration as working parties, reports, studies and the collection of statistical data whilst communication involved persuasion through the holding

of meetings or the dispatch of letters. Finally, this process will be applied to the actual body of Community legislation for women to ascertain how the process worked in practice. Later Chapters will examine the impact of these Community policies upon the Member States and the use of legal sanctions to enforce authority [see Chapters Five and Six].

4.2. The personnel involved in implementing and monitoring European Community legislation

4.2.1. Commission of the European Community

The Treaty establishing the European Economic Community entrusted the Commission with the task, amongst others, of acting as guardian of the Community so that

> "the Commission shall:
> -ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied" [1].

With the establishment of the European Economic Community and its Commission, the latter was divided into Directorates-General to form the "civil service" of the Community. Women's affairs came under the aegis of Directorate-General V which covered the policy field of social affairs. At first, a specific section within this Directorate-General devoted to the

position of women did not exist.

The European Parliament, however, proposed as early as 1973 that a Consultative Committee and a special department of the Commission should be established to assist towards the improvement of the position of women in economic, social and civic life [2].

4.2.1.1. Bureau for Questions affecting Women's Employment

Indeed, as Chapter Three indicated [see 3.9.2.], a special section known as the Bureau for Questions affecting Women's Employment was established. Unusually, the announcement of this decision occurred during an European Parliamentary session. In making the announcement on the 17th of June 1976, Dr. Hillery, the Commissioner for Social Affairs, expressed the hope that the Bureau would be operational by the autumn of that year [3]. In fact, this schedule was maintained so that the Bureau commenced its work on the 17th of November [4]. Thus, this Bureau could then become the forum of the Commission and responsible for the definition and implementation of Community policy for problems relating to the employment of women. Its brief comprised the drafting of legislative proposals, monitoring the development of the position and the role of women in the Member States and national

initiatives to implement Community legal instruments, promoting uniformity in the application of financial measures, gathering relevant national and international data, and providing information for the national committees for women's rights [5].

> "The office is not intended to solve individual problems, but to work at Community level to achieve equal treatment for men and women at work" [6].

Further responsibilities devolved upon this Bureau over the years to follow. Thus, the Bureau became the co-ordinator for women's issues between the different departments of the Commission [7] and as such ensured that the principle of equal treatment was taken into account when policies were at the proposal stage [8]. Furthermore, the Bureau represented the Commission on an international scale when dealing with other international organisations such as the Council of Europe, Organisation for Economic Co-operation and Development, and the United Nations [9]. Its small budget enabled the Bureau to institute specific projects to make women aware of and to encourage women to take advantage of their rights, and to bring to the attention of employers, trades unions, teachers, careers advisers and families the contemporary situation of women within social and economic life [10]. The budget could also be used to finance women's employment projects at a local level [11].

However,

> "The size of the Bureau says a great deal about the importance attached to problems affecting women workers by the EEC" [12]

since the staff numbered three. In keeping a watchful eye on the activities of the Bureau, some MEP's questioned its staffing from time to time. Concern was expressed that its wide brief was carried out by a staff of one official, one assistant and one secretary [13]. In responding to this concern, the Commission agreed that the number was inadequate considering the complexity of the problems and asserted that the number of staff would be increased should the budget allow for this extra expense.

Attempts were made to increase the size of the Bureau when the European Parliament debated the budget. In 1978, a draft amendment to the 1979 budget sought to increase the staff complement of the Bureau by twelve but Parliament as a whole rejected this initiative [14]. This amendment sought to expand the jurisdiction of the Bureau so that it could be more efficient and could deal with all aspects of the Community women's policy. The Bureau should monitor not just the Equal Pay and the Equal Treatment Directives but also social security, education and European Social Fund matters. It should furthermore maintain close contacts with the national committees

on equality and the social partners in the Member States so that information and ideas could be exchanged and its monitoring role could thus be made easier. Although a similar proposal was approved by the Parliament in the following year, the final budget excluded this initiative [15]. During another debate about this time, Mrs Gredel, a MEP, pointed out that the staff members of the Bureau were looking after the problems facing one hundred and thirty million working women and she criticised the Commission for not making greater efforts in the provision of more resources for the Bureau [16].

Further criticism was expressed against the Commission by the European Parliament when a serious staff shortage affected the work of the Bureau [17]. The Commission responded that staff shortages were general and priorities had to be established.

The Ad Hoc Committee of the European Parliament concluded that

> "This Bureau is undoubtedly the most important driving force behind the policy that the European Community has pursued so far on behalf of women" [18].

However, with a staff of three and a multi-facetted brief, the work of the Bureau in relation to implementing and monitoring national activities was

inevitably limited and dependent to some extent upon national bodies for its information.

4.2.1.2. Information Service for Women's Organisations and Press

Information played an important part in implementing and in monitoring European Community policy at the national level. In the earliest years of the European Economic Community, the Joint Information Service of the European Community [later Directorate-General X of the Commission] was responsible for the transmission of information. The interests of women were not neglected in that the Joint Information Service sought to inform women about the European Community through the establishment of contacts with national women's organisations and the publishers of women's magazines [19]. These links developed further by means of the holding of conferences. Such a colloquy was held in May 1968 amongst women editors and editors-in-chief of women's journals to discuss the situation of women in the European Community [20]. The concluding session examined the ways in which permanent cooperation could be established.

The developments in women's policy inspired in the Social Action Programme [21] and the arrival of the International Women's Year in 1975 as designated by

the United Nations intensified activity. In that year, briefing sessions were held for European women's organisations and, in May, an opinion survey was commissioned [22]

> "to mark International Women's Year and, more particularly, to arrive at a better understanding of man and women's attitudes to certain problems of our society" [23].

This poll, which was claimed to be the first international survey of its kind, was taken from a sample of around nine thousand and five hundred people [24] and was designed to

> "widen interest and debate on the role of women in Europe" [25].

Two years later, the survey was repeated to test any changes [26].

Meanwhile, around one hundred and twenty women representing various organisations from the nine Member States came together in March 1976 at a symposium on "Women and the European Community" to look at various matters of interest including the 1975 survey [27]. The feelings expressed by the participants of the need to keep women informed helped towards the setting-up of a special section devoted to the interests of women within the Directorate-General for Information.

Accordingly, in 1977, the Directorate-General for Information established a small section known as the Information Service for Women's Organisations and Press [28] with a staff of three [29]. Its brief entailed the maintenance of a continuous dialogue with women's organisations [30] and the provision of information on the European Community to women's organisations, the press and researchers [31]. Various ways of fulfilling its role were adopted.

In order to foster contacts with women's organisations, seminars and conferences were held from time to time [32]. The Service could also assist various conferences in the Member States held by women's groups on European Community affairs through the provision of lecturers and written material, and, occasionally, money [33]. In this and other respects, the national offices of the Commission could provide help and one member of these information offices was made responsible for women's affairs and the spread of such contacts.

Channels of communication were used to inform the public at large and women in particular about European Community matters and its work to improve the position of women. In response to demands expressed by women's organisations [34], the Service started to publish a periodical known as Women of Europe. Since 1978, this

journal has been published bi-monthly in six (then seven) languages and has been distributed free of charge to women's organisations, journalists, trades unionists, prominent women, researchers and other interested parties. Coverage has been confined to three areas, namely, relevant Community events, actions by the governments of the Member States and the activities of national women's groups. National information has been supplied by local agents in each Member State to provide an extremely valuable corpus of knowledge. From time to time, Supplements to the journal have been issued on specific topics such as "Women in the European Parliament" and "Women and the European Social Fund". In 1980, a book was published, Women and the European Community [35].

A film, "Equal chances, Equal Opportunities", was produced in 1976 [36] in order to transmit the contents of the Equal Treatment Directive [37] and, also, to stress the importance to women of having available a wider range of occupations [38]. More than twenty thousand viewers were recorded in the first year of showing [39].

Public relations exercises were undertaken with the co-operation of women's magazines and journals in order to inform women about the work of the European Community. Thus, in 1977, the Service organised a survey on European Community affairs by means of a

questionnaire to be carried out by one popular woman's magazine in each Member State with the exception of Denmark and the United Kingdom [40]. The survey was actually carried out in 1978 [41] and resulted in feature articles in various popular magazines which usually excluded coverage of European Community matters [42]. The advent of direct elections to the European Parliament in 1979 revived interest in the European Community and the occasion was marked in this context by the holding of a reader's competition to design a publicity poster. The winning poster featured in the information campaign surrounding the elections [43].

The staff of the Service, however, remained at three in spite of an attempt by the European Parliament to increase the number of staff. During deliberations of the Community budget for 1980, a successful amendment called for an increase in staff of the Service [44]. But, similarly to the Bureau, the final budget excluded these increases.

With such a limited staff, the work of the Service was inevitably restricted but it

"has proved to be particularly important" [45]

especially since the head of the Service claimed that

> "The European Community is the only European institution to have set up a women's information service" [46].

This Service, however, provided a link with the Member States in a two-way dialogue. Furthermore, in order for females to claim their rights under European Community legislation, they must be made aware of them. In this respect, information formed part of the implementation process and the Information Service played an important, though limited, role.

4.2.1.3. Other sections of the Commission

Educational matters were excluded from the Commission's domain until 1973 when they were included within the renamed Directorate-General for Research, Science and Education. Several officials in this Directorate-General were specifically concerned with proposing improvements to and monitoring the position of women in education although a separate section was not in existence [47].

When the European Parliament considered the position of women by means of its Ad Hoc Committee on Women's Rights at the end of the 1970's, the report included a proposal that small, separate, offices for women's affairs should be established within all the relevant Directorates-General [48]. These Directorates-General could comprise those which

covered Research, Science and Education, External Relations, Economic and Financial Affairs, the Internal Market and Industrial Affairs, Agriculture, and Regional Policy. Furthermore, policy for women as a whole should be preferably co-ordinated by one Commissioner [49].

The ensuing Resolution from the Parliament [50] suggested that the Bureau and the Information Service should be strengthened by entrusting one official in these other Directorates-General with the task of considering the work of these bodies with regard to the effects upon women and, also, of co-ordinating their work with the other women's sections in order to ensure that the European Community policy on women was reflected in its own services.

Although these proposals were put forward at the end of the period under review, they reflected a commitment on the part of the European Parliament to watch over the Commission and its activities so that European Community policy was implemented in a manner that it considered suitable. In relation to women's policy, the Parliament from the earliest days of the Community kept a watchful eye and from time to time put pressure upon the Commission.

Thus, a special section or Directorate-General for women was not created by the Commission although the

Bureau tended to perform a general role in overseeing women's policy as a whole. Implementation policy in this domain was thus diffused according to the particular subjects.

4.2.2. Standing Liaison Group for equal opportunities

The Commission was assisted in its implementation and monitoring role by committees and a number of "quangos". One such committee resulted from the Manchester Conference which brought together the various national bodies involved with equal opportunities [see 2.12.1]. A decision was taken to put this gathering onto a more permanent footing. And so, a meeting was held in January 1981 to facilitate the co-ordination necessary to achieve a permanent committee [51]. As a result, a Standing Liaison Group for equal opportunities was established amongst the representatives of the different national committees or commissions which were responsible for looking after the employment of women or equal opportunities. The formation of this Group could almost be considered as a manifestation of the proposal in the Social Action Programme that the European Community should set up a permanent committee to help the Commission in the co-ordination of Community activities in women's employment [see 2.5.2.].

The first meeting of the Group took place from the

21st to the 24th of May 1981. At this meeting, the agenda included the preparation of a new action programme for women and discussions on current Community work with regard to women to include employment, the effect of new technologies and the reorganisation of working time [52].

The Group was given advisory status and it met again between the 2nd and 3rd of July 1981 to discuss a number of items [53]. In following on from the May meeting, the Group looked at the situation of women as affected by unemployment, new technologies and changes in working hours. Opinions were given on an outline Community policy on part-time work and a proposed Directive for Equal Treatment in Occupational Social Security schemes. A new programme for action on equal opportunities for young people for the period 1982 to 1984 was also examined. Finally, the proposed Directive to protect workers against lead was looked at to ascertain any likely effects on women workers.

Thus, this Group advised the Commission on equal opportunities. At a later stage, but outside the period under consideration, the Group gained a more permanent status as the Advisory Committee on Equal Opportunities for Men and Women [54]. This Committee constituted a consultative body and was formally structured to continue and to enlarge upon the work undertaken by the Standing Liaison Group.

4.2.3. The European Foundation for the Improvement of Living and Working Conditions

Various "quangos" of the European Community aided the Commission in its implementation and monitoring role for women. In relation to employment matters, The European Foundation for the Improvement of Living and Working Conditions was set up by a Council Regulation in 1975 [55]. This "quango", established in Dublin, was given the aim

> "to contribute to the planning and establishment of better living and working conditions through action designed to increase and disseminate knowledge likely to assist this development" [56]

and the task of developing and pursuing ideas on the medium- and long-term improvement of living and working conditions. At a practical level, the Foundation was charged with various information roles, namely, to organise exchanges of information and experience, to establish an information and documentation system, to arrange contacts between universities, study and research institutes, economic and social adminstrations and organisations, to set up working groups, to conclude study contracts, to participate in studies, to promote and provide assistance for pilot projects, to carry out studies, and to organise courses, conferences and seminars.

Against this background, the Foundation was required to draw up an annual work programme.

In meeting for the first time between the 6th and the 7th of May 1976, the Board of Governors of the Foundation examined a draft of the first work programme [57]. This programme included attention to certain categories of workers such as women. However, it would appear that the European Foundation, in its earliest years, did not actually carry out research on specific categories of workers [58] and, furthermore,

> "the research projects of the European Foundation... rarely set out to deal specifically with questions relating to women" [59].

But, during the period under review, certain research activities of the Foundation did include investigations into women. These activities were carried out mainly in the area of working conditions rather than living conditions. The areas involved physical and psychological constraints at work, shiftwork, new forms of work organisation and new technology.

All these types of research which were undertaken by the European Foundation represented rather specific aspects of working conditions. Nevertheless, this type of detailed study could be of great use to the

Commission by highlighting possible problem areas which needed new legislative proposals. Since most of this research by the Foundation took place from 1979 to 1981, legislative implementation would fall outside the period under review. However, the experience gained could be utilised by the Commission when planning new initiatives in policy. But, the information roles of the Foundation in relation to women were not fulfilled during this period under review.

4.2.4. European Centre for the Development of Vocational Training

Another "quango", the European Centre for the Development of Vocational Training [hereafter CEDEFOP] was established to implement the vocational training policy of the European Community and this "quango" was also relevant to the position of women. The idea of a vocational training centre originated in the Social Action Programme as part of the measures to implement a common vocational training policy [60]. The Council's Resolution on the Social Action Programme included a clause to set up an European Vocational Training Centre [61]. Accordingly, the Centre was created by a Council Regulation which was passed in February 1975 [62]. This Regulation laid down that the objective of the Centre was

> "to assist the Commission in encouraging, at Community level, the promotion and development of vocational training and of in-service training" [63].

Established in Berlin, the Centre received its official opening in March 1977 [64]. It was given a three-fold task which included some attention to vocational training for women. Hence, the Centre was asked to

> "support the Commission in carrying out a number of operational tasks (exchanges or research studies) or in formulating special measures for the training of women and young people" [65].

At one of the first meetings of the Management Board of the Centre, the Board decided, in response to the concern of the European Community, to adopt as one of its priority tasks for the 1977 work programme

> "the improvement of vocational training for girls and women, through the achievement of greater equality of opportunity" [66].

Vocational training for women became one of CEDEFOP's chief concerns. When the Management Board of the Centre met on the 18th of January 1978 to approve the work programme for 1978, it decided to continue all the outstanding work which included work in relation to vocational training for women [67]. Women were considered to form one of the three target groups [68] and they continued to form an important part of the

work of the Centre. In 1980, the Centre re-affirmed that one of its priorities related to the development of training activities in order to achieve equal treatment for women and men in employment [69]. In the following year, the work of the Centre continued to be concerned with equal opportunities and, in particular, innovative forms of training for women [70].

To achieve its work programme, CEDEFOP carried out research, conducted studies and surveys, initiated exchanges of ideas and experience between experts and vocational training institutes in the Member States, and disseminated information. Indeed, its work was largely examined in Chapter Two [see 2.11.3.-2.11.4.].

The Centre also contributed to the work of the Ad Hoc Committee on Women's Rights of the European Parliament. However, although this Committee praised the work of the Centre, it did criticise the lack of knowledge about its research work in the Member States [71]. The Committee considered that the information and publicity function of the Centre was just as important as its research work. Furthermore, it was the duty of the Commission to ensure that the information policy of CEDEFOP was effective enough for the Centre's task to be fulfilled. In the Resolution which ensued, the European Parliament proposed that special activities in relation to the position of women should be arranged by the Centre [72].

Thus, CEDEFOP performed an useful, if somewhat specialised, role with regard to promoting vocational training for women. Its work, of course, was limited by the amount of available financial resources but, within these confines, the Centre initiated experimental programmes, held exchanges of experience and disseminated information about its activities amongst the relevant bodies. The criticism from the European Parliament was probably quite accurate in relation to knowledge about the Centre amongst the general public. But, the Centre viewed its information role in a narrow, albeit positive, light that information should be disseminated amongst the practitioners and administrators in the field of vocational training. They were the people who could learn and implement new ideas. In carrying out its various roles, the Centre thus backed up the work of the Commission.

4.3. The means involved in implementing and monitoring European Community legislation

As well as various bodies, the European Community had at its disposal a number of means by which implementation and monitoring of the passage of European Community legislation by the Member States could take place. These involved instruments of control and communication of which the first included

the establishment of working parties, undertaking reports and studies, and the collection of statistical data. The powers to undertake these activities were entrusted to the Commission in accordance with Article 213 of the Treaty of Rome. This Article stated that

> "The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it" [73].

Ad-hoc working parties were utilised by the Commission from an early date to check upon national progress. These working groups tended to be composed of representatives of the Commission, national governments, national civil servants and the social partners although, sometimes, not all of these elements might be called upon to sit upon these groups. As experts in a particular field in question, the participants to the groups provided specialist knowledge and experience of a national situation to be put to good effect.

Another useful method concerned the drawing up of reports and studies. Specialists, whether individual or institutional, were requested by the Commission to investigate the national position in a particular policy area. The Commission also undertook reports by means of detailed questionnaires to various national agencies in order to ascertain the state of affairs

within the Member States.

Finally, a particular policy could be illuminated by the collection of statistical data from the different European Community countries. In this case, the Commission sought assistance from the Community's own Statistical Office to accomplish this task.

Communication also formed part of this implementation and monitoring process through the dispatch of letters and oral persuasion by holding consultative meetings with national government experts, with national ministerial representatives and/or the social partners. These two-way dialogues could assist the Commission.

4.4. The implementation and monitoring of European Community legislation for women

So far, the instruments for implementation and monitoring European Community legislation have been described. How did these apply to the actual corpus of Community legislation for women as described in Chapter Three? Each area will be examined in turn commencing with equal pay.

4.4.1. The implementation and monitoring of equal pay

4.4.1.1. Article 119 of the European Economic Community Treaty

Article 119 of the European Economic Community Treaty in relation to equal pay [74] did not constitute part of the negotiating package to be conveniently forgotten once the Treaty of Rome had been signed since this Treaty conferred upon the Commission the role of guardian of its provisions. Faced with this responsibility, the Commission committed itself to pay special attention to the social provisions in the Treaty, particularly equal pay [75]. This commitment was repeated on a later occasion [76].

At first, the Commission relied upon studies, the collection of statistical data and consultation to monitor the situation. The first study, which was carried out in the first year of the European Economic Community, looked at the ways in which the principle of equal pay applied in practice in the Member States [77].

Next, the Comission turned its attention to the ratio existing between male and female wages in collective agreements since at that time, 1959, male and female workers often received wages set at different rates. Male workers always received a higher wage than females [78]. To help in this matter, the Commission turned for advice to the social partners. First, representatives from the employers met on the

14th of October 1959 [79] and, then, the representatives from the two trades unions, ICFTU and IFCTU [80], met on the following day. The participants at these two meetings gave their views on possible branches of industry and other sectors which could be used for a proposed study into the relationship between male and female wages. A further meeting took place on the 17th of December [81] at which the two trades unions and the employers' organisations associated with UNICE [82] drew up a list of industries. These industries comprised food, textiles, clothing, electrical and electronic engineering, mechanical engineering, paper and board, chemicals, ceramics, and tobacco, and some services.

Accurate statistical data on wages enabled the Commission to make comparisons, expose areas needing improvements and check on progress towards the implementation of equal pay. During the period from 1958 to 1959, the Statistical Office of the European Community was entrusted by the Commission with the task of comparing male and female salaries [83]. In order to compare national data, the Office contemplated launching a statistical survey [84]. Experts met together to investigate the feasibility of such a survey [85] amd the social partners were asked to assist in drawing up a plan for such a study [86].

As a result, a study of average earnings was

published in 1961 [87]. In this study, the Statistical Office collected together all the available statistical information from the national statistical offices and national Ministries of Labour. A diversity of sources was thus used, special and annual surveys, and three-monthly series of statistics, and from different periods which varied from 1957 up to 1959. Since definitions and methods were not identical, inter-country comparisons could not be made [88].

Almost from the beginning of the European Economic Community, the Commission sought implementation of Article 119 through consultation by persuading groups at meetings. One such meeting was held between the 7th and the 8th of October 1959 with representatives from the national Ministries of Labour and Social Security to examine the interpretation of Article 119 [89]. Another meeting held by the Commission with the social partners on the 20th of September 1960 examined the practical difficulties involved in implementing equal pay and the progress which had been achieved by the Member States [90].

However, this activity was not sufficient and, indeed, as described in Chapter Two [see 2.4.] other legislative initiatives quickly followed. These actions and the need to keep to the timetable laid down in Article 119 prompted the Council to examine the state of implementation of equal pay during the

course of 1961. A first examination took place at the 47th session of the Council held between the 29th and the 30th of May [91]. Apparently, the French Government was anxious for the full implementation of Article 119 to be achieved [92]. In spite of avowals by the other Member States that equal pay was a reality in their own countries, the French were not convinced. And thus, at their instigation, the Council expressed a wish for a working party to be established to survey the situation.

The Commission, accordingly, drew up a communication which set out a mandate for a Working Group on Equal Pay [93]. This communication was approved by the Council at its 48th session which was held on the 12th of June 1961 [94] and a press announcement was duly made [95].

The Working Group was composed of two representatives from each Member State to be appointed by the Governments and two representatives from the Commission to total fourteen members [96]. This Group was given the following mandate:

1. To collect information on the application of Article 119 in each Member State to include submissions from each Government.
2. To collect information on collective agreements in each Member State. The methods used to

establish job classification and qualifications, distinctions between males and females in wage grades and designation of posts and any other discrimination would be examined.

3. To collect data on actual salaries in order to find out definite problems experienced by industry.
4. To analyse the legislative situation in each country especially legal appeals and to consider the possibility of eventual legislation and reinforcement of control.

The additional task was given to the Group of establishing the bases and methods for a statistical study which would allow the best comparative information possible to assess the application of equal pay. The Commission gave an undertaking to provide regular reports on the activities of the Group to the Council.

In meeting for the first time on the 5th of July 1961, this Group was chaired by Lionello Levi Sandri who was Chairman of the Social Affairs Group of the Commission [97]. Another four meetings would be held before the Group issued a report on its findings [98]. To speed-up the work, two sub-groups to cover the legal and statistical situations were established with a mandate to report to the main Group before the 30th of September [99]. This timetable was a tight

schedule to fulfil.

The sub-group of legal experts, to comprise between six and twelve members, was set up with the mandate

> "to analyse legislative and regulating statutes with regard to the relations between male and female salaries, the provision for legal appeals and the situation of jurisprudence in the Member States and secondly to compare the interpretations of article 119 given by the Governments and the Commission" [100].

In using a report complied by the Commission, the sub-group suggested alterations to the text [101] during its only meeting on the 19th of July 1961 [102].

The Working Group also established a sub-group of government statistical experts with a similar number of members as for the other sub-group

> "to investigate the available data in order to determine actual differences in pay between males and females and to reveal the difficulties involved in such an assessment and then to arrive at the bases and methods for a specific statistical study on equal pay" [103].

These bases and methods would facilitate the comparability of male and female earnings and, hence, the rates of inequality in pay. This sub-group met twice on the 20th of July and the 19th of September 1961 [104]. At these meetings, the sub-group used

the findings from the afore-mentioned 1961 statistical survey [105]. But, the experts expressed doubts about the feasibility of their task because of the difficulties of comparing data at an international level as well as the other problems in comparing wages in a meaningful manner [106]. However, this sub-group chose a small number of industries and the Statistical Office of the European Community undertook to carry out a preliminary survey to ascertain the viability of a full-scale enquiry. Another survey which looked at salary indices over the previous few years was examined by the sub-group since the data collected allowed estimates to be made of the growth in male and female wages.

At the meeting of the full Group on the 18th of September 1961, experts from the social partners were present to discuss national information on collective bargaining [107] and the results of the proposed statistical survey which was considered by the Commission in 1959 and was discussed earlier in this Section [108].

The findings of the Working Group were given to the Council by the Commissioner, Lionello Levi Sandri, during its 52nd session which was held between the 25th and the 27th of September 1961 [109]. So, the Council agreed to include the subject on the agenda of its next meeting.

Although the Working Group and its two sub-groups stressed that their findings were not completed, the Commission, nevertheless, drew on their work to compile a report on the situation in each Member State. This report was submitted to the Council on the 12th of October 1961 [110]. In this report, the Commission re-affirmed its position on Article 119 in accordance with its 1960 Recommendation [111] and insisted that governments had to fulfil their Treaty obligations in two ways. First, Member States should be obliged to give female workers the right of legal redress. Secondly, governments should include a clause, where possible, to guarantee the application of the principle of equal pay and to declare null any clause to the contrary. Social partners were urged to eliminate any reference to the sex of a worker in pay matters in collective agreements.

The Council looked at this report at its 53rd session which was held between the 23rd and the 25th of October 1961 [112]. It concluded that it would return to the subject after it had considered the practical suggestions made by the governments, the Commission and the Working Group. Indeed, as examined in Chapter Three [see 3.4.2.], a Resolution was eventually passed by the Council.

Meanwhile, work continued on the proposed survey.

Case studies were carried out in France, Germany and Italy during 1961 [113] and these case studies were later applied to the Benelux countries [114]. A few representative enterprises were selected and the analysis was confined to those jobs carried out both by male and female workers so that the basis for fixing wages and the relationship between male and female salaries could be assessed [115]. The practical problems of such an undertaking were revealed since it was difficult to find instances of male and female workers doing the same job.

4.4.1.2. Resolution on equal pay

After the Resolution on equal pay was issued by the Council in December 1961 [116], the Commission continued to monitor the situation in accordance with the timetable set out in the Resolution. So, the Commission did not dissolve the Working Group but continued its services under the title of Special Group Article 119 [117]. As each of the three deadlines laid out in the Resolution approached, the Commission relied upon this Group to undertake the necessary groundwork.

A familiar pattern became established and was exemplified in the sequence of events surrounding the first deadline. Just before the first deadline of the 30th of June 1962, the Special Group Article 119 met

on the twentieth of that month [118]. The brief of the Group comprised drawing up a detailed questionnaire to ascertain the progress made by the Member States for dispatch to the various national governments and to the social partners. At the meeting in June, the Group decided that the returns should be sent in before the 30th of September 1962. The Group also looked at the state of the proposed statistical surveys. A further meeting of the Group held on the 9th of November under the chairmanship of Lionello Levi Sandri examined the draft report and made various suggestions for improvements to the text [119].

Thus, this first report since the Resolution covered the state of implementaton of equal pay in the Member States in the first six months of 1962 and it was submitted by the Commission to the Council on the 19th of December 1962 [120]. In this report, the Commission concluded that some Member States had not fulfilled their obligations. It gave a warning that legal proceedings might be instituted in accordance with Article 169 of the Treaty of Rome [121] in order to secure compliance with the Resolution from the Member States. The Council was invited to remind the Member States of this possibility and to request Member States to conform with the Resolution. Although this report was accepted by the Council at its 96th session which was held on the 21st of February 1963,

these proposals from the Commission were ignored [122].

The second date was fixed for the end of June 1963 and the Group met on the 25th of March 1963 to draw up the questionnaire [123]. This meeting was followed up with another meeting held on the 23rd of April 1963 at which the social partners were present to express their views on the form of the questionnaire [124]. The ensuing report to cover progress from July 1962 to the end of June 1963 was transmitted to the Council by the Commission on the 22nd of January 1964 [125]. The Commission considered that the findings were similar to those of the first report, namely, that some progress could be noted but that the timetable had not been achieved by all the Member States. In discussing this report at the 122nd session of the Council which was held between the 6th and the 7th of February 1964 amongst the Labour Ministers [126], the Commission insisted that Member States would have to adopt new measures in order to comply with the final deadline of 1964 [127].

As the final deadline of the Resolution approached in 1964, the Commission reminded the governments and the social partners several times during that year [128]. Well in advance of this final date, the Group met on the 18th of September 1964 to examine a communication from the governmental

delegates on the situation and to draw up the questionnaire [129].

Thus, this third report [130] in accordance with the wishes of the Special Group attempted to review the situation from 1960 and to include an account of the activities of the European Community institutions. The Commission noted that considerable progress had been achieved by the Member States since 1961. This progress was partly attributable to the enactment of the 1961 Resolution. But, in the final analysis, none of the Member States had fulfilled their obligations. At a later Council meeting, the Commission urged action [131]. However, the Council did not examine this report until its 201st meeting which was held on the 19th of December 1966 [132]. During the discussions on this report, further information on the situation in the Member States up to the spring of 1966 was supplied by each national representative.

The Council Resolution of 1961 also contained a commitment by the Member States to participate in a statistical survey of wages and another survey on the structure and distribution of wages. A Working Group, "Statistical Survey on male and female wages", comprising representatives from governments and from the social partners met for the first time on the 11th of May 1962 to prepare the first survey [133]. This Group took the decision to limit the survey to a few

industries and to those which employed a high proportion of women. The cotton spinning and weaving, ceramics and electronics industries were selected. The next task involved the selection of suitable jobs. The Group decided to choose jobs in firms with less than fifty employees and those firms which employed a high percentage, at least 80%, of females amongst the workforce. Each Member State would set up a national working group to draw up a list of suitable jobs.

When these national lists were examined by the Group, it was found that variances were present from the principles adopted at the May meeting. The German representatives thought that the survey should only be carried out in firms where jobs were equally carried out by males and females. But, the other experts disagreed with this viewpoint and concurred with that put forward in a Resolution adopted by the European Parliament [134]. This Resolution stated that the principle of equal pay as laid down in Article 119 of the Treaty of Rome meant that equal work was not confined to jobs done both by males and females. Different solutions were put forward and the decision was reached to carry out the survey in three industries on the bases of male, female and mixed jobs. Three sub-groups were set up, one for each industry, composed of experts in each field to advise on uniform criteria. Work on this proposed survey continued [135]. At a meeting held between the 8th and

the 10th of January 1964, the experts opposed a sampling survey but agreed on the number of jobs to be used [136].

Meanwhile, the Statistical Office prepared a questionnaire to allow the collection of individual data [137]. This questionnaire sought to establish the following factors, activity, sex, age, status, number of people in the company and seniority. All of this data would assist comparisons between groups of workers. The findings of the sub-groups in relation to the choice of jobs and, also, information on wages formed the subject of two documents which were examined at a meeting of the Working Group on the 29th of April 1964 [138]. After discussions at some depth, the experts came to an unanimous agreement that the choice and type of jobs were insufficiently representative within the whole workforce to have any statistical meaning. But, they did recommend that a survey on the structure and distribution of wages would allow a better statistical approach and efforts should be concentrated in this direction. In accepting these recommendations, the Commission sent a report on the subject to the Council in June 1964 [139]. When the Special Group met on the 18th of September [140], it came to the same conclusion as the experts [141]. At the 145th session of the Council held on the 15th of October 1964, the Council examined this subject and concurred that this survey should be postponed

[142]. Furthermore, the Council concluded that work should be pursued on the other survey.

During this period, two studies were also undertaken by a specialist international institute at the instigation of the Commission. The first study, which was commissioned in 1962, sought to establish the methods of job classification which were used to draw up systems of salary grading [143]. The social partners had already drawn up reports which analysed the contractual regulation of male and female wages in collective agreements. And so, the Commission secured agreement from the Special Group to use this documentation for this new study. Analysis revealed the existence of two different methods of job classification in collective agreements. One method was based upon a classification of occupations and jobs on the basis of the salaries paid whilst the other method was based on a hierarchy of jobs separately established. The study attempted to match actual collective agreements with these methods. But, the Commission later admitted that unsatisfactory results were obtained because the available information was limited [144].

The second study looked at the practical application of fixing wages by carrying out a series of documentary surveys in all the Member States except Luxembourg [145]. Since only two enterprises were used

in each country, the results could not be regarded as general.

Both these studies were the subject of much criticism on the grounds of the methods used and the results obtained [146]. But, since the studies were inevitably limited in nature, general conclusions could not be made. Indeed, these two studies provided an illustration of the problems involved in attempting to study the practical situation of equal pay.

During this period from July 1961 up to the end of December 1964, the Working Group and its sub-groups held some twenty meetings [147]. The Commission, thus, established a sound practical system to monitor the situation in relation to equal pay in the Member States. From its beginnings as an ad-hoc expedient, the Working Group on Equal Pay became an indispensable adjunct to Commission activities with regard to equal pay. In its composition of national experts, this Group provided a core of specialist knowledge about the state of affairs in each Member State and about the subject of equal pay as a whole. The Commission was able to tap this knowledge in a practical manner and to use the Group to undertake all the necessary work which was involved in gathering information and monitoring. The Group constituted a practical working solution to the Commission in the Commission's guise as guardian of the European Community Treaties and, in

particular, Article 119 of the Treaty of Rome in relation to equal pay. Monitoring, thus, consisted of the Working Group drawing up a questionnaire for dispatch to the relevant bodies and collating the ensuing information for its inclusion in a report to be submitted by the Commission to the Council. Incidentally, these reports gradually increased in bulk.

4.4.1.3. Implementation and monitoring of equal pay, 1965-1973

However, although the timetable of the Resolution expired at the end of December 1964, the Commission had discovered that its monitoring methods had served some usefulness and, so, the Working Group continued its work. Moreover, the European Parliament in its Resolution on the 1964 report on equal pay requested the Commission to produce an annual report on the situation relating to equal pay [148]. In taking up this idea, the Commission proposed that a new report should be produced to cover the years up to the 31st of December 1966 and the Council gave its agreement to this suggestion [149].

So, the Special Group Article 119 met on the 15th of March 1966 and devoted its time to a consideration of the developments in equal pay since the end of 1964 on the basis of descriptions given by each national

section [150]. These developments were written up for submission to the Commission before the 25th of March 1966. A questionnaire was sent out at the beginnning of 1967 [151] and the ensuing report in draft form was considered by the Special Group at its meeting held on the 19th of June 1967 [152]. Suggestions from the Group were transmitted to the Commission. On the 7th of July, the Special Group and the social partners met together to examine the draft report, put forward amendments to that text and to propose a future work programme [153]. The report was completed on the 18th of August 1967 [154]. It would seem that some progress had been achieved but the full implementation of the principle of equal pay was far from a reality.

In meeting on the 21st of December 1967, the Council of Social Affairs reviewed ten years of social policy [155]. During the discussions, the Commissioner, Lionello Levi Sandri, reminded the Council of the wish of the European Parliament to be annually informed of the situation on equal pay in the Member States. The Council actually looked at the latest report on equal pay on the 29th of February 1968 and, unusually, its conclusions were officially published [156]. The Council concluded that although the principle of equal pay had not been applied completely by all the Member States, progress could be noted which underlined the willingness of national ministers to adopt the necessary measures to

ensure the full implementation of this principle. The Council requested the social partners not to allow discrimination in any future collective bargaining negotiations. The Commission was requested to join with the Special Group Article 119 and to utilise the findings of the statistical survey and other methods to draw up a general overview of the situation which would allow general conclusions to be reached.

Meanwhile, work proceeded on the statistical survey on the structure and distribution of wages. At a meeting of the Council held on the 12th of December 1964, the Council issued a Regulation to organise this survey for industry [157]. The survey took as its legal basis Article 213 of the European Economic Community Treaty [158]. The Regulation laid down the definitions and uniform methods to be used. The survey was to be carried out in October 1966 in industry. Although sampling methods were used for average and large firms, all the workers were surveyed in small firms. Such factors as wages, hours worked, overtime, night work, family work and allowances, social security, sex, age, civil status, number of children, professional qualifications, seniority, system of wages, and nature of salaries were ascertained. The statistical offices in the Member States were given responsibility for the collection of data on the basis of a standard questionnaire from the Commission. The Commission determined the technical methods, dates for

the survey and methods of return.

This survey which was the first of its type to be carried out on an international level using the same methods and the same time-scale covered two million workers [159] which represented about one in eight of the total European Community workforce [160]. A Working Group developed the methods to be used. However, this survey constituted a mammoth undertaking and its findings were not published until February 1971 in eight volumes of data [161].

The questionnaire for the next report on equal pay was issued in 1968 [162] to cover developments up to the 31st of December 1968. This report was not issued until June 1970 [163]. The lateness could be explained since the Commission wanted to use the results of the above-mentioned statistical survey. But, the results were the same as for previous reports in that some progress had been made but full implementation was not yet achieved.

Twelve years after the enactment of the Treaty of Rome, the Special Group Article 119 met again between the 5th and the 6th of October 1970 to examine the 1968 report on equal pay and the statistical survey on the structure and distribution of wages [164]. The next meeting of the Group would concentrate on four industries in which women dominated the workforce. The

intention of the Commission was for the Group to look at the draft of a new questionnaire to review the situation up to the end of 1970. But, this report was never produced and, so, the date was extended to the 30th of June 1971 [165]. But, since some returns were so late in arriving, the Commission decided to extend the date until the end of 1972 to coincide with the enlargement of the European Community. In this way, the opportunity could be taken to survey the whole field since 1958. This report [166] provided a comprehensive overview of the historical development in equal pay. The Commission noted that in spite of progress the situation

"is nevertheless still far from satisfactory" [167]

and the Commission expressed its anxiety to find a solution in consideration of the lengthy period involved and the increasing numbers of women entering employment. Public authorities were asked to ensure legal redress, protection against dismissal in case of complaints, to declare null any discriminatory agreements, to institute sanctions where appropriate and to extend supervision. The Commission requested the social partners to eliminate discrimination against women. In accordance with wishes expressed by the European Parliament [168], the Commission undertook to invite the social partners to meet and negotiate an European agreement. The Commission also

promised to prepare a draft legislative instrument.

Meanwhile, another specialist study was undertaken in that non-Community experts investigated indirect discrimination against women in job classification systems [169]. The results appeared as Classification systems in the light of the principle of equal pay for male and female workers [170].

Also, a second statistical survey was instituted by a Council Regulation of November 1971 [171]. On this occasion, the survey was to be carried out in October 1972 and the coverage was extended from manual workers to include also non-manual workers. Some items were dropped and other new items appeared in the questionnaire. The Special Group Article 119, which met between the 2nd and the 3rd of April 1973, wanted the three new Member States to participate in this and future surveys [172]. Eventually, the data was published [173]. At this meeting in April, the Group also updated the national returns in relation to equal pay [174], The Group suggested a change in structure so that it became a quadripartite group to represent the interests of the Commission, the governments of the Member States and the social partners since the last-named were only allowed to be present on the second day of proceedings [175]. The Commission agreed to seek the approval of the Council for this change [176] although there was no evidence to suggest that

this change ever took place.

The final equal pay report covered the situation in the three new Member States in accordance with the pattern adopted in the 1972 equal pay report and it utilised national returns up to the end of 1973 [177]. Although this report was not published until the 17th of July 1974, its findings were made available at the meeting of the Group held on the 29th of March 1974.

Other statistical surveys continued to be undertaken. In January 1974, a survey was initiated to cover earnings in wholesale and retail distribution, banking and insurance in the nine Member States for the month of October 1974 [178]. Finally, a survey was instituted in March 1978 to cover earnings in industry and the services for the period of October 1978 or April 1979 or October 1979 and the whole of 1978 or 1979 [179].

Over the years, the Commision thus developed an effective and efficient monitoring system to ascertain the state of implementation of the principle of equal pay as laid down in Article 119 of the Treaty of Rome. From its use at the beginning as an ad-hoc temporary expedient, the Working Party (under various titles) provided an extremely useful means for undertaking the necessary groundwork. The Working Party in its composition of national experts could and did bring

the national dimension into the situation. Its use extended to statistical matters since the Commission found it useful to utilise this means in this field.

A familiar pattern became established to monitor the state of equal pay. The Working Party met to sort out the form of the questionnaire which was then dispatched to the national governments amd to the social partners. The Working Party later considered the returns and the draft report. The final report was submitted to the Council.

These reports gradually increased in bulk and took a longer time to be issued. From only a few months for the 1961 equal pay report to be compiled, the months became years for the later reports.

4.4.2. The implementation and monitoring of the equality Directives

Chapter Three examined the legislative progress of the Social Action Programme with regard to Community actions to improve the position of women [see 3.5.]. How did the Commission ensure the implementation and the monitoring of these equality Directives?

Article 191 of the European Economic Community Treaty laid down that

> "Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification" [180].

To check on the implementation of the three equality Directives by the Member States, the Commission utilised a familiar administrative method of drawing up a report in response to the returns from a questionnaire which was dispatched to the national governments.

4.4.2.1. Directive on Equal Pay

The Directive on Equal Pay obliged the Member States to implement this measure within one year after notification [181]. Thus, implementation of the Directive should have taken place by February 1976. So, the Commission requested the Member States to provide information on the steps they had taken to comply with this Directive [182]. A progress report had to be supplied by the Member States to the Commission three years after notification, namely, the 12th of February 1978 [183].

In order to gather information, the Commission together with representatives from the Member States, from women's movements, from the social partners and from the European social partners prepared the text of a questionnaire in November 1977 [184]. This text was given to the Special Group on Article 119 for its

opinion at its meeting which was held on the 25th of November [185]. Thus, the Commission continued to use this Special Group. The revised version of the questionnaire was thence dispatched to the national governments and to the European social partners. Each government was requested to make a choice between the submission of a separate reply or a tripartite reply and to prepare these answers with the national commissions or committees on women's employment [186].

After the dispatch of the questionnaire, the Commission awaited the replies. But, when the deadline was reached, not one reply had been received [187] although all the answers arrived by the following month [188]. Analysis of the returns took place and a draft report was prepared for the attention of the Special Group Article 119 at its meeting held between the 26th and the 27th of September 1978 [189]. In the light of the views expressed by this Group, the Commission revised the document.

An extremely detailed report was issued on the 16th of January 1979 [190] to cover the legal situation, the state of equal pay in collective agreements, national monitoring and control, statistical data, judgments by the Court of Justice and the conclusions of the Commissions. The Council received this report on the 18th of the same month [191] for discussion and comment at its meeting of the 15th of May [192].

In this report, the Commission noted that some progress had been made but that the Member States were still not fully complying with the principle of equal pay. So, the Commission proposed various steps for further action. Infringement procedures would be initiated against any Member State which failed to comply with the Directive. The social partners would be requested to meet at the European level in order to find ways of eliminating indirect discrimination particularly by means of systems of job classification. This subject was both difficult and complex and, indeed, the Commission had earlier in the Equal Pay Report for 1972 [193] promised to initiate such action. An ad hoc working group of the social partners would be set up within the mandate of the Special Group Article 119. Finally, the Commission considered that the enactment of the Equal Treatment Directive would facilitate the full implementation of the Equal Pay Directive.

The ad hoc working group on equal pay and job classification was established by the Commission in 1979 [194] and the Commission prepared a working paper on the subject of job classification to form the basis for discussion by this group [195]. When the report on this subject was issued in 1981 [196], the principal sources of discrimination were pin-pointed as occupational classification and job-evaluation

systems.

4.4.2.2. Directive on Equal Treatment

The Directive on Equal Treatment came into effect on the 12th of August 1978 and Member States were expected to inform the Commission of any measures which were taken to implement this Directive [197]. Two months after the deadline, an enquiry from a MEP revealed that reports had only been sent by five out of the nine Member States, namely, Belgium, Denmark, Ireland, Italy and the United Kingdom and that these replies were undergoing analysis [198]. In November of that year, letters of reminder were dispatched to those countries which had still failed to send in a report, namely, France, the Federal Republic of Germany, Luxembourg and the Netherlands [199].

Member States were required to submit a report to the Commission within two years from the date of effect, namely, by the 12th of August 1980 [200]. In drawing up its report, the Commission collected information through drafting and sending out a detailed questionnaire to the national governments, national committees or commissions on women's employment, and the European social partners [201]. The content of the questionnaire derived from two objectives. First, the wish to highlight any transgressions by the Member States and, secondly, to

activate a Community-level action when any useful solutions had been found by a Member State to a problem.

Discussions of the draft report took place on the 25th of November 1980 with a group of government experts and on the following day with representatives of the social partners [202]. Amendments to the report were made in the light of these discussions and the report was eventually published in February 1981 [203].

In this report, the Commission asserted that

> "The achievement of equal treatment is an objective of society requiring a sustained effort from all the social proponents" [204].

But, the Commission was forced to conclude that

> "Whilst very substantial efforts have been made to give effect to the Directive, considerable areas of uncertainty remain" [205].

Indeed, the report revealed that most of the countries failed in some way to implement the Directive partly owing to the feeling that attitudes to women in an employment situation would take a very long time to change. Furthermore, the report showed that

> "the position of women in working life has not

improved, mainly because of the economic crisis" [206].

However, the Commission believed that legislation only represented one step on the way to achieving practical equality and, so, the Commission laid out its plans for further action. In the first place, an assurance was given that all the necessary measures including legal action would be taken to secure a full implementation of the Directive. Similarly to the Equal Pay Directive, the Commission would request the social partners to meet at an European level to explore ways of abolishing discrimination and to lay down the basis for equal treatment programmes. Thirdly, the Commission would establish at the Community level ways of dealing with those vocational training activities which were excluded from the Directive and those protective measures which needed abolition or revision. Finally, positive action would continue through the use of the European Social Fund, and education and information policies, and new sectors for action would be defined in consultation with national equal opportunities committees, national governments, and the social partners.

Interest in the progress of these two equality Directives was shown by the Council since at the meeting held between the 6th and the 7th of April 1981 by the Ministers of Social Affairs and Employment

these two Directives were examined [207]. Furthermore, the Council of Employment and Social Affairs Ministers looked at the progress of the Equal Treatment Directive at its meeting held on the 10th of June 1981 [208]. The Ministers at the latter meeting concluded that application of the principle of equal treatment had to be assessed within the context of the national legal systems. In paying tribute to the contribution made by the European Parliament and to national efforts, the Council considered that the situation augured well for future developments. But, the Council expressed the hope that a more even sexual balance could be achieved at different levels of the workforce and particularly within the staff of the European Community itself. The Council invited the Member States and the Commission to cooperate in order to achieve the full implementation of the principle of equal treatment.

The Commission thence instructed a consultant in cooperation with various national experts to conduct an analysis of all existing national protective laws and to ascertain for each example whether scientific or medical grounds warranted the need for the continuance of such protection [209]. Once the study became available early in 1981, the Commission undertook to take appropriate measures in cases where special protection did not seem to be justified.

4.4.2.3. Directive on Equal Treatment in Social Security matters

The third equality Directive, the Directive on Equal Treatment in Social Security matters, imposed an unusually long period of implementation upon the Member States of some six years from notification [210]. However, the Commission did not wait until the end of that period to collect information on the state of progress achieved by the Member States. In June 1979, the Commission issued a letter of reminder to all Member States [211]. In this letter, the Commission suggested that the principle of equal treatment in social security matters needed progressive implementation in order to meet the deadline of 1984. For the following year, the Commission intended to request from Member States information on any relevant measures which had been adopted and any which were in progress. Then, the Commission announced its intention in 1981 to investigate the problems of implementation with national representatives so that the Directive would be fully in operation by 1984 [212]. But, the actual date of implementation was outside the period under review although the eventual issue of an interim report could be noted [213].

Thus, the Commission followed similar procedures to those adopted to deal with the monitoring of Article

119 of the European Economic Community Treaty in relation to equal pay in order to monitor these three equality Directives. Not only did the Commission issue letters to the national governments but it also relied upon the questionnaire and report medium to check on progress. Ad hoc working parties also continued to be used by the Commission. These devices presumably worked since they formed a familiar adjunct to Commission activities in this field for some twenty years.

4.5. The European Social Fund

As well as legislation, the European Community could also utilise measures of financial assistance to be granted to the Member States in particular instances. One such measure of relevance to women concerned the European Social Fund. How did the Community monitor the use of this financial means of support?

The Commission depended upon the formally-constituted European Social Fund Committee to allocate European Social Fund assistance. Once the Fund was reformed in 1971 [214], an annual report was produced to ascertain the use made of the Fund [215]. Guidelines were laid down each year by the Commission for the practical application of each category of Fund assistance since demand tended to be

greater than the amount of available resources. As early as the second year of operation of the reformed Fund, 1973, the guidelines drawn up by the Commission gave preference to any application involving women workers [216].

But, it soon became apparent that there were no applications in the category to aid women and, so, the matter was raised in the European Parliament [217]. The Commission was asked to issue a circular to the relevant national and local bodies on the possibilities invoked by the existence of the Fund and, also, to launch an information campaign. However, the Commission defended itself in answering that it had made every effort to publicise the applicabliity of the Fund to women workers.

When the Commission published its Communication on equal treatment in 1975 [218], the opportunity for a reminder about this form of assistance arose. Member States were urged to seek out possible applications under Article 5 of the reformed Fund [219] or pilot projects under Article 7 of the Regulation which implemented the reformed Fund [220]. The following possible three areas were highlighted [221]:-

1. Restructuring of sectors through the utilisation of technical advances.
2. Declining regions where the dominant industry

often employed many women.

3. Pilot schemes limited to thirty workers offered scope for schemes aimed at women workers.

Article 4 of the reformed Fund was extended to women workers in 1977 [222] and, so, the scope for assistance to female workers greatly increased. Any application for this category of assistance was vetted by the European Social Fund Committee. At first, however, proposals for women workers remained embarrassingly low in number and in quantity. Since the Commission had strongly striven for the establishment of this new category of assistance, it was determined to encourage applications [223].

During the early months of the next year of operation, 1979, another low level of applications occurred so Commissioner Vredeling drew attention to this shortfall at a meeting of the Council of Social Affairs held on the 15th of May 1979 [224]. Letters of reminder were also dispatched to Ministers of Labour and Social Affairs of the Member States to urge them to send in appplications particularly in consideration of an economic background of a higher than average increase in unemployment amongst women workers. A special supplement to Women of Europe on the European Social Fund was produced to reach a wider audience [225]. The Commission also extended the deadline for applications [226] and the Member States

began to respond with a number of suitable applications. Since that time, the number of applications greatly exceeded the amount available for this category so the Commission did not need to produce any more extra publicity within this context.

Thus, monitoring of this form of financial assistance was carried out by the Commission in co-operation with the European Social Fund Committee. Member States were encouraged to use this women's category of the Fund through the issue of publicity material and direct letters of reminder. In this way, the Commission performed an active role in implementation and monitoring.

4.6. Summary

The monitoring of the implementation of European Community measures for women by the Member States illustrated the historical development of this process. As guardian of the European Economic Community Treaty, the Commission was responsible for ensuring that adherence to and the impact of this Treaty by the Member States were respectively maintained and achieved. Since Article 119 of that Treaty was concerned with equal pay, women's affairs in that context were monitored from the commencement of that Community and as such provided an illuminating illustration of the process.

Monitoring involved the use of ad hoc working parties of national experts, the drawing up of reports by means of detailed questionnaires, the commissioning of specialist studies, the collection of statistical data, the dispatch of letters and the holding of consultative meetings.

Eventually, small specialist sections within the Commission were created to deal with different aspects of women's policy. These sections comprised the Bureau for Questions affecting Women's Employment within the Directorate-General for Social Affairs and the Information Service for Women's Organisations and Press within the Directorate-General for Information. The two sections, small in staff, were entrusted with enormous mandates far beyond their capabilities. To carry out their tasks, they were assisted by various "quangos" and advisory committees as well as the watchful eye of the European Parliament.

The actual monitoring process in relation to each European Community measure for women was examined. Article 119 of the European Economic Community Treaty on equal pay provided a striking example of the early monitoring system by the Commission and its subsequent development. Indeed, the use of the ad hoc working party on equal pay continued for some twenty years. Monitoring of the three equality Directives drew on

this earlier experience and revealed a familiar process.

The success or failure of this monitoring process will form the subject of the next Chapter.

Footnotes

1. Article 155.
   European Communities, Treaties, p. 338.
2. European Parliament, "Resolution on the 6th General Report of the Commission of the European Communities on the activities of the Communities in 1972", OJC, Volume 16, Number 37 (4th June 1973), p. 38.
3. During a debate on Oral Question Number 150/76.
   Debates, Number 204 (June 1976), p. 178.
4. Bulletin EC, Volume 9, Number 11 (1976), pt. 2217.
5. The Times, 18 June 1976, p. 5.
6. Commission of the European Communities, "Encouraging equality for women. The Community Record", Background reports [London], Number 53 (1978), p. 3.
7. Florence Morgan, "The European Community and Work for Women", Women of Europe. Supplement, Number 2, p. 15.
8. Odile Quintin, "Community structures responsible for promoting equal opportunities", Social Europe. Supplement, Number 2 (1986), p. 37.
9. Alexander, "The Contribution of the European Economic Community to Equality", p. 30.
10. Maij-Weggen, "Report on the position of women", p. 170.
11. Alexander, "The Contribution of the European Economic Community to Equality", p. 30.
12. Burrows, "The Promotion of Women's Rights", p. 207.
13. Question Number 12 of the October 1977 Question Time.
    Debates, Number 221 (October 1977), p. 170.
14. Draft amendment no. 147.
    Debates, Number 235 (October 1978), pp. 92 and 242-243.
15. Draft amendment no. 254.
    Debates, Number 247 (November 1979), pp. 135 and 399-400.
16. Debate on the Thirteenth General Report and the

Commission's work programme for 1980.
Debates, Number 251 (February 1980), p. 277.
17. Written Question Number 555/80.
OJC, Volume 23, Number 213 (20 August 1980), pp. 20-21.
18. Maij-Weggen, "Report on the position of women", p. 170.
19. Sixth General Report on the Activities of the Community [EEC] [hereafter Sixth General Report EEC], 1962, p. 304 and
Seventh General Report EEC, p. 353.
20. Bulletin EC, Volume 1, Number 7 (July 1968), p. 54.
21. Commission, "Social action programme".
22. Ninth General Report EC, p. 24.
23. Commission of the European Communities, Men and women of Europe. Comparative attitudes to a number of problems of our society [X/608/75] (Brussels, Commission of the European Communities, 1975), p. 1.
24. Ibid.
25. Ibid, p. 3.
26. Commission of the European Communities, European men and women in 1978. A comparative study of socio-political attitudes in the European Community [X/72/79] (Brussels, Commission of the European Communities, 1979).
27. Tenth General Report EC, p. 40.
28. Fausta Deshormes, "Why information for women?", Social Europe. Supplement, Number 2 (1986), p. 71.
29. Burrows, "The Promotion of Women's Rights", p. 207.
30. Morgan, "The European Community and Work for Women", p. 16.
31. Burrows, "The Promotion of Women's Rights", p. 207.
32. Thirteenth General Report EC, p. 34.
33. Commission, Women and the European Community, p. 31.
34. Morgan, "The European Community and Work for Women", p. 16.
35. Commission, Women and the European Community.
36. Commission, "Encouraging equality for women", p. 4.
37. Bulletin EC, Volume 10, Number 2 (1977), pt. 2.1.18.
38. Commission, "Encouraging equality for women", p. 4.
39. Eleventh General Report EC, p. 122.
40. Commission, "Encouraging equality for women", p. 4.
41. Commission, European men and women in 1978.
42. Twelfth General Report on the Activities of the European Communities [EC], 1978, p. 34.
43. Morgan, "The European Community and Work for Women", p. 16.

44. Draft amendment no. 254.
Debates, Number 247 (November 1979), pp. 135 and 399-400.
45. Maij-Weggen, "Report on the position of women", p. 171.
46. Deshormes, "Why information for women", p. 71.
47. Maij-Weggen, "Report on the position of women", p. 171.
48. Ibid.
49. Ibid, p. 177.
50. European Parliament, "Resolution on the position of women", p. 49.
51. Bulletin EC, Volume 14, Number 1 (1981), pt. 2.1.23.
52. Bulletin EC, Volume 14, Number 5 (1981), pt. 2.1.45.
53. Bulletin EC, Volume 14, Number 7/8 (1981), pt. 2.1.54.
54. Quintin, "Community structures responsible for promoting equal opportunities", p. 38.
55. Council of the European Communities, "Regulation (EEC) No 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions", OJL, Volume 18, Number 139 (30 May 1975), pp. 1-4.
56. Article 2.1.
Ibid, p. 1.
57. Bulletin EC, Volume 9, Number 5 (1976), pt. 2223.
58. The European Foundation for the Improvement of Living and Working Conditions, A Review of European Foundation Studies 1977-1984. Implications for Women (Luxembourg, Office for Official Publications of the European Communities, 1986), [Preface], p. [i].
59. Ibid, [Preface], p. [ii].
60. Commission, "Social action programme", p. 15.
61. Council, "Council Resolution on a social action programme", p. 2.
62. Council of the European Communities, "Regulation (EEC) No 337/75 of the Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training", OJL, Volume 18, Number 39 (13 February 1975), pp. 1-4.
63. Ibid, p. 1.
64. Eleventh General Report EC, p. 123.
65. Address by Mr. H. Vredeling.
"Berlin Centre inauguration", Vocational Training, Number 1 (1977), p. 3.
66. Maria Pierret, "Equality of opportunity and vocational training", Vocational Training, Number 3/4 (1977), p. 2.
67. Bulletin EC, Volume 11, Number 1 (1978), pt. 2.1.21.
68. CEDEFOP Annual Reports, 1978, p. 8.

69. CEDEFOP Annual Reports, 1980, p. 7.
70. CEDEFOP Annual Reports, 1981, p. 6.
71. Maij-Weggen, "Report on the position of women", p. 40.
72. European Parliament, "Resolution on the position of women", p. 49.
73. European Communities, Treaties, p. 376.
74. Ibid, p. 312.
75. First General Report EEC, p. 82.
76. Third General Report on the Activities of the Community [EEC] [hereafter Third General Report EEC], 1959, p. 195.
77. Second General Report on the Activities of the Community [EEC], 1958/1959, p. 117.
78. Commission de la Communauté Économique Européenne, Rapport de la Commission au Conseil sur l'état d'avancement des travaux relatifs à l'Art. 119 C.E.E. [hereafter Equal Pay Report 1961] [COM (61) 142 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1961), p. 5.
79. The first meetings with the social partners were held separately for the trades unions and for the employers. Soon, they met jointly with the Commission.
Bulletin EEC, Volume 1, Number 5 (December 1959), p. 55.
80. Respectively International Confederation of Free Trade Unions and International Federation of Christian Trade Unions.
81. Bulletin EEC, Volume 3, Number 1 (January 1960), pp. 45-46.
82. Union of Industries of the European Community.
83. Office Statistique des Communautés Européennes, "Statistiques des salaires masculins et féminins dans les 6 pays de la Communauté Européenne", Statistiques Sociales, Number 1 (1961), p. xxiii.
84. Bulletin EEC, Volume 3, Number 8/9 (October/November 1960), p. 38.
85. Office Statistique, "Statistiques des salaires masculins et féminins", p. xxiii.
86. Third General Report EEC, p. 200.
87. Office Statistique, "Statistiques des salaires masculins et féminins".
88. Bulletin EEC, Volume 4, Number 7/8 (July/August 1961), p. 90.
89. Bulletin EEC, Volume 1, Number 5 (December 1959), p. 55.
90. Bulletin EEC, Volume 3, Number 8/9 (October/November 1960), p. 38.
91. Fifth General Report EEC, p. 263.
92. The Times, 14 July 1961, p. 11.
93. Commission, Equal Pay Report 1961, Annexe I, p. 1.
94. Bulletin EEC, Volume 4, Number 6 (June 1961), pp. 42-44.

95. Bertrand Motte, "Rapport intérimaire fait au nom de la commission sociale sur l'égalisation des salaires masculins et féminins", Parlement Européen. Documents de séance 1961-1962, Document 68 (11 octobre 1961), p. 8.
96. Commission, Equal Pay Report 1961, Annexe I, pp. 1-2.
97. Bulletin EEC, Volume 4, Number 7/8 (July/August 1961), p. 71.
98. Commission, Equal Pay Report 1961, p. 3.
99. Ibid, p. 2.
100. Own translation from the original report. Ibid, Annexe II, p. 1.
101. Ibid, p. 4.
102. Motte, "Rapport intérimaire sur l'égalisation des salaires masculins et féminins", p. 10.
103. Own translation from the original report. Commission, Equal Pay Report 1961, Annexe II, pp. 1-2.
104. Motte, "Rapport intérimaire sur l'égalisation des salaires masculins et féminins", p. 10.
105. Office Statistique, "Statistiques des salaires masculins et féminins".
106. Commission, Equal Pay Report 1961, pp. 11-13.
107. Bulletin EEC, Volume 4, Number 7/8 (July/August 1961), p. 71.
108. Commission, Equal Pay Report 1961, p. 3.
109. Bulletin EEC, Volume 4, Number 11 (November 1961), pp. 69-70.
110. Commission, Equal Pay Report 1961. In spite of the fact that copies of this and the later equal pay reports were transmitted to the European Parliament for its examination, the reports were mostly considered to be confidential and this designation has continued. Copies of the earlier reports were not available in British European Documentation Centres or even the London Office of the Commission. Eventually, the reports for 1961 up to 1964 were obtained, albeit with great difficulty, by the Information Unit of the London Office. But, the 1966 and 1968 reports were not permitted to be released from the Archives of the European Community perhaps because they contained the national returns in full. However, some idea of the contents of these reports could be gleaned from the summaries in the European Parliament reports.
111. Bulletin EEC, Volume 3, Number 6/7 (August/September 1960), pp. 45-46.
112. Bulletin EEC, Volume 4, Number 12 (December 1961), pp. 67-69.
113. Commission, Equal Pay Report 1961, p. 13.
114. Commission de la Communauté Économique Européenne, Rapport de la Commission au Conseil sur l'état d'application de l'article 119 au 30 juin 1963 [hereafter Equal Pay Report 1963]

[V/COM (64) 11 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1964), p. 3.

115. Commission de la Communauté Économique Européenne, Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1964 de l'Article 119 CEE et de la Résolution adoptée par la Conférence des États membres le 30 décembre 1961 [hereafter Equal Pay Report 1964] [V/COM (65) 270 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1965), pp. 62-63.
116. Bulletin EEC, Volume 5, Number 1 (January 1962), pp. 8-10.
117. Commission de la Communauté Économique Européenne, Rapport de la Commission au Conseil sur l'état d'application de l'Article 119 à la date du 30 juin 1962 [hereafter Equal Pay Report 1962] [V/COM (62) 321 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1962), p. 1.
118. Bulletin EEC, Volume 5, Number 8 (August 1962), p. 31.
119. Bulletin EEC, Volume 6, Number 1 (January 1963), p. 43.
120. Commission, Equal Pay Report 1962.
121. European Communities, Treaties, p. 345.
122. Bulletin EEC, Volume 6, Number 4 (April 1963), p. 17.
123. Bulletin EEC, Volume 6, Number 5 (May 1963), p. 27.
124. Bulletin EEC, Volume 6, Number 6 (June 1963), p. 29.
125. Commission, Equal Pay Report 1963.
126. Seventh General Report EEC, p. 327.
127. In answer to Written Question Number 30 of the session 1964-1965 of the European Parliament. JO, Volume 7, Number 115 (18 juillet 1964), p. 1837.
128. Eighth General Report EEC, p. 253.
129. Bulletin EEC, Volume 7, Number 11 (November 1964), pp. 34-35.
130. Commission, Equal Pay Report 1964.
131. Ninth General Report EEC, p. 237.
132. Tenth General Report on the Activities of the Community [EEC] [hereafter Tenth General Report EEC], 1966, pp. 251 and 356.
133. Commission de la Communauté Économique Européenne, Rapport de la Commission au Conseil sur l'état des travaux concernant la préparation de l'enquête statistique sur les salaires masculins et féminins [V/COM (64) 225 final] (Bruxelles, Commission de la Communauté Économique Européenne, 1964), pp. 1-3.
134. Parlement Européen, "Résolution sur l'état d'application, dans les differents États membres à la date du 30 juin 1962, de l'article

119 du traité de la C.E.E. (égalité des rémunérations entre les travailleurs masculins et les travailleurs féminins pour un même travail), JO, Volume 6, Number 106 (12 juillet 1963), p. 1920.

135. Sixth General Report EEC, p. 185 and Seventh General Report EEC, pp. 216 and 349.
136. Commission, Rapport sur la préparation de l'enquête statistique sur les salaires masculins et féminins, pp. 3-4.
137. Commission, Equal Pay Report 1964, p. 59.
138. Commission, Rapport sur la préparation de l'enquête statistique sur les salaires masculins et féminins, p. 4.
139. Ibid.
140. Bulletin EEC, Volume 7, Number 11 (November 1964), pp. 34-35.
141. In answer to Written Question Number 86 of the session 1964-1965 of the European Parliament. JO, Volume 7, Number 207 (12 décembre 1964), p. 3537.
142. Bulletin EEC, Volume 7, Number 12 (December 1964), pp. 36 and 38.
143. Commission, Equal Pay Report 1964, pp. 63-64.
144. In answer to Written Question Number 190/68 of the European Parliament. JOC, Volume 11, Number 120 (27 septembre 1968), pp. 7-8.
145. Commission, Equal Pay Report 1964, p. 64.
146. Ibid, pp. 64-66.
147. Ibid, p. 56.
148. Parlement Européen, "Résolution sur l'application de l'article 119 du traité de la C.E.E.", JO, Volume 9, Number 130 (19 juillet 1966), p. 2439.
149. Bulletin EEC, Volume 10, Number 8 (August 1967), p. 64 and Tenth General Report EEC, p. 251.
150. Bulletin EEC, Volume 9, Number 5 (May 1966), p. 25.
151. Berkhouwer, "Rapport fait au nom de la commission des affaires sociales et de la santé publique sur l'application du principe de l'égalité des rémunérations entre les travailleurs masculins et féminins", Parlement Européen Documents de séance 1968-1969, Document 26 (8 mai 1968), p. 5.
152. Bulletin EEC, Volume 10, Number 8 (August 1967), p. 64.
153. Bulletin EEC, Volume 10, Number 9/10 (September/October 1967), p. 60.
154. Commission des Communautés Européennes, Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1966 du principe d'égalité entre rémunérations masculines et féminines (art. 119 du Traité instituant la CEE et résolution de la conférence des Etats

membres du 30 décembre 1961) [SEC (67) 3204 final] (Bruxelles, Commission des Communautés Européennes, 1967).

155. Bulletin EC, Volume 1, Number 2 (February 1968), p. 38.

156. Représentants des gouvernements des États membres réunis au sein du Conseil, "Conclusions adoptées par les représentants des gouvernements des États membres, réunis au sein du Conseil, le 29 février 1968, en ce qui concerne l'état d'application au 31 décembre 1966 du principe de l'égalité des salaires masculins et féminins", JOC, Volume 11, Number 34 (17 avril 1968), p. 10.

157. Conseil de la Communauté Économique Européenne, "Règlement No 188/64/CEE du Conseil du 12 décembre 1964 relatif à l'organisation d'une enquête sur la structure et la répartition des salaires dans l'industrie", JO, Volume 7, Number 214 (24 décembre 1964), pp. 3634-3635.

158. European Communities, Treaties, p. 376.

159. Office Statistique des Communautés Européennes, Structure et répartition des salaires 1966 (Luxembourg, Office Statistique des Communautés Européennes, 1971), Volume 1, p. 12.

160. Ibid, Volume 8, p. 8.

161. Ibid, Volumes 1-8.

162. Second General Report on the Activities of the Communities [EC], 1968, p. 314.

163. Commission des Communautés Européennes, Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1968 du principe d'égalité entre rémunerations masculines et féminines (Article 119 du Traité instituant la CEE et résolution de la Conférence des États membres du 30 décembre 1961) [SEC (70) 2388 final] (Bruxelles, Commission des Communautés Européennes, 1970).

164. Bulletin EC, Volume 3, Number 12 (December 1970), p. 59.

165. Fifth General Report on the Activities of the Communities [EC] [hereafter Fifth General Report EC], 1971, p. 189.

166. Commission of the European Communities, Report of the Commission to the Council on the application of the principle of equal pay for men and women situation on the [sic] 31 December 1972 (Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States of 30 December 1961) [hereafter Equal Pay Report 1972] [SEC (73) 3000 final] (Brussels, Commission of the European Communities, 1973).

167. Ibid, p. 40.

168. Parlement Européen, "Résolution sur l'état d'application, au 31 décembre 1968, du principe de l'égalité des rémunérations entre les

travailleurs masculins et féminins", JOC, Volume 14, Number 45 (10 mai 1971), p. 11.

169. Fifth General Report EC, pp. 189-190 and Sixth General Report on the Activities of the Communities [EC], 1972, p. 144.

170. Commission, Equal Pay Report 1972, p. 44.

171. Council of the European Communities, "Regulation (EEC) No 2395/71 of the Council of 8 November 1971 on the organisation of a survey on the structure and distribution of wages and salaries in industry", OJ Sp Ed, Number III (1971), pp. 921-923.

172. Bulletin EC, Volume 6, Number 4 (1973), pt. 2212.

173. Statistical Office of the European Communities, Structure of earnings in industry 1972 (13 vols., Luxembourg-Brussels, Statistical Office of the European Communities, 1975-1977).

174. Commission, Equal Pay Report 1972, p. 2.

175. Bulletin EC, Volume 6, Number 4 (1973), pt. 2212.

176. Commission, Equal Pay Report 1972, p. 45.

177. Commission of the European Communities, Report of the Commission to the Council on the application of the principle of equal pay for men and women in Denmark, Ireland and the United Kingdom situation on the [sic] 31 December 1973 (Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States of 30 December 1961 [hereafter Equal Pay Report 1973] [SEC (74) 2721 final] (Brussels, Commission of the European Communities, 1974), p. 3.

178. Council of the European Communities, "Regulation (EEC) No 178/74 of the Council of 21 January 1974 on the organization of a survey of earnings in wholesale and retail distribution, banking and insurance", OJL, Volume 17, Number 21 (25 January 1974), pp. 2-3.
The findings were published as Statistical Office of the European Communities, Structure of earnings in wholesale and retail distribution, banking and insurance in 1974 (10 vols., Luxembourg, Statistical Office of the European Communities, 1977-1979).

179. Council of the European Communities, "Council Regulation (EEC) No 495/78 of 6 March 1978 relating to the organization of a survey of earnings in industry, wholesale and retail distribution, banking and insurance", OJL, Volume 21, Number 68 (10 March 1978), pp. 3-4.
The findings were published as Statistical Office of the European Communities, Structure of earnings 1978/79- Principal results (10 vols., Luxembourg, Statistical Office of the European Communities, 1982-1986).

180. European Communities, Treaties, p. 352.
181. Article 8.
Council, "Equal Pay Directive", p. 20.
182. Tenth General Report EC, p. 145.
183. Article 9.
Council, "Equal Pay Directive", p. 20.
184. Commission, Equal Pay Report 1978, p. 3.
185. In answer to Written Question Number 948/77 of the European Parliament.
OJC, Volume 21, Number 88 (11 April 1978), p. 17.
186. Commission, Equal Pay Report 1978, p. 3.
187. Information given by the relevant Commissioner during the course of a debate on Oral Question Number 88/77 of the European Parliament.
Debates, Number 226 (February 1978), p. 87.
188. In answer to Question No. 20 of the March 1978 Question Time of the European Parliament.
Debates, Number 228 (March 1978), p. 166.
189. In answer to Question No. 35 of the November 1978 Question Time of the European Parliament.
Debates, Number 236 (November 1978), p. 260.
190. Commission, Equal Pay Report 1978.
191. Bulletin EC, Volume 12, Number 1 (1979) pt. 2.1.49.
192. Bulletin EC, Volume 12, Number 5 (1979), pts. 2.1.47 and 2.1.65.
193. Commission, Equal Pay Report 1972, p. 44.
194. OECD, The Integration of Women into the Economy, 1985, p. 72.
195. In answer to Written Questions Numbers 1562/79 and 1348/80 of the European Parliament.
OJC, Volume 23, Number 110 (5 May 1980), p. 58 and
OJC, Volume 23, Number 352 (31 December 1980), p. 19.
196. Commission of the European Communities. Ad Hoc Working Group on Equal Pay, Indirect Discrimination by use of Job Classification Systems [V/660/80] (Brussels, Commission of the European Communities, 1981).
197. Article 9.
Council, "Equal Treatment Directive", pp. 41-42.
198. In answer to Oral Question Number 52/78 of the European Parliament.
Debates, Number 234 (October 1978), p. 66.
199. Commission of the European Communities, "The Commission moves on discrimination against women", Background reports [London], Number 16 (1979), p. 2.
200. Article 10.
Council, "Equal Treatment Directive", p. 42.
201. Commission of the European Communities, Report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal

treatment for men and women as regards -access to employment and promotion -access to vocational guidance and training -working conditions (Council Directive 76/207/EEC of 9 February 1976) [hereafter Equal Treatment Directive Report] [COM (80) 832 final] (Brussels, Commission of the European Communities, 1981), p. 4.

202. Ibid, p. 6.
203. Ibid.
204. Ibid, p. 4.
205. Ibid, Conclusions, p. i.
206. Ibid, Conclusions, p. x.
207. Bulletin EC, Volume 14, Number 4 (1981), pt. 2.3.4.
208. Bulletin EC, Volume 14, Number 6 (1981), pts. 2.1.60 and 2.3.20.
209. In answer to Written Question Number 1024/80 of the European Parliament.
OJC, Volume 23, Number 288 (6 November 1980), p. 23.
210. Article 8.
Council, "Social Security Directive", p. 25.
211. In answer to Written Question Number 272/79 of the European Parliament.
OJC, Volume 22, Number 301 (3 December 1979), p. 2.
212. In answer to Question No. 39 of the April 1981 Question Time of the European Parliament.
Debates, Number I-270 (April 1981), p. 175.
213. Commission of the European Communities, Interim report on the application of Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [hereafter Social Security Report] [COM (83) 793 final] (Brussels, Commission of the European Communities, 1984).
214. Council, "Council Decision on the reform of the European Social Fund".
215. Annual reports tended to be published as COM Documents.
216. Commission of the European Communities, Second annual report on the activities of the new European Social Fund (No place, Commission of the European Communities, no date), p. 54.
217. Written Question Number 776/74 of the European Parliament.
OJC, Volume 18, Number 122 (2 June 1975), pp. 22-23.
218. Commission, Equality of treatment.
219. Council, "Council Decision on the reform of the European Social Fund", p. 53.
220. Council, "Regulation implementing the Council Decision on the reform of the European Social Fund", pp. 926-927.
221. Commission, Equality of treatment, p. 32.

222. Council, "Council Decision on action by the European Social Fund".
223. Doreen Collins, The Operation of the European Social Fund (London, Croom Helm, 1983), pp. 37-38.
224. Commission of the European Communities, Eighth Report on the Activities of the European Social Fund [hereafter Eighth ESF Report] [COM (80) 365 final/2] (Brussels, Commission of the European Communities, 1980), p. 39.
225. Florence Morgan, "Women and the European Social Fund", Supplement to Women of Europe, Number 1 (1978).
226. Commission, Eighth ESF Report, p. 39.

Date	Name and Address in block letters	Signature
17 Nov	Suwie Pujeh Kings House 16 Soho Sq.	Suwie Pujeh

EUROPEAN COMMUNITY POLICY ON THE POSITION OF WOMEN AND ITS EFFECTS UPON THE MEMBER STATES, 1958-1981

JUNE NEILSON

Volume 2

CHAPTER FIVE

The impact of European Community measures for women upon the Member States

5.1. Introduction

Chapter Three described the successful European Community initiatives for women. What was the impact of these upon the Member States? This Chapter will explore the effect of each legislative and financial measure at a national level. Did the Member States implement these measures by enacting new laws or were existing national laws adequate? How far did the Member States comply with the relevant European Community legislation?

Assessment will be made of the appropriate legislation, namely, Article 119 of the European Economic Community Treaty, the 1961 Resolution on Equal Pay, the Equal Pay Directive, the Equal Treatment Directive, and the Social Security Directive, and the use made of the European Social Fund. Chapter Six will then examine the steps taken by the Commission when a Member State failed to fulfil its obligations in relation to compliance with this body of European Community law.

5.2. The impact of equal pay upon the Member States

Table 5a The impact of Article 119 upon the Member States

Member State	Article 119
Belgium	
Denmark	
France	x
Germany FR	x
Ireland	
Italy	x
Luxembourg	
The Netherlands	
United Kingdom	x

Notes: x National legislation conformed to the Article

The extent of conformity by the Member States with Article 119 can be illustrated as shown in Table 5a.

Insert at the end of Para 1 of 5.2.1

What was the impact of the European Community measures on equal pay upon the Member States?

5.2.1. Article 119 of the European Economic Community Treaty

The European Economic Community Treaty which contained Article 119 on equal pay [1] was signed in 1957. At this time, none of the six Member States of the European Economic Community [2] possessed a specific statute relating to equal pay although certain rights for women to equal pay existed in some of the countries. These rights stemmed for the most part from the different constitutions which conferred varying degrees of equality upon men and women.

Equal rights to pay either through a national constitution or a national law did not exist in Belgium, Luxembourg or the Netherlands. Equality was accorded to French citizens by means of the Constitution of 1958. This Constitution stated that France

> "shall ensure the equality of all citizens before the law" [3].

The French Government maintained that this clause implied equality and equal pay for women [4]. Also, in

France, various enactments established a right to equal pay. An Ordinance passed on the 24th of August 1944 and intended to introduce a temporary increase in wages also established that the minimum wage rate for women should equal that for men [5]. Later, an Order of the 29th of July 1946 repealed the provisions which had allowed lower rates of pay for women than for men and it also set the same rate of average minimum and maximum wages for women and men [6]. Finally, a Decree of the 23rd of August 1950 laid down a nationally guaranteed minimum wage at a compulsory rate without any differentiation of sex for all workers over eighteen except for caretakers and domestic staff [7]. In the same year, an Act relating to collective agreements [8] not only laid down a strict equality in wages so that women did not receive less than the minimum rate but, also, it decreed that

> "Every national collective agreement [9] shall contain provisions regarding ...
> 2 (d) the modes of applying the principle 'equal pay for equal work' in the case of women and young persons" [10].

The constitution of the Federal Republic of Germany went one step further than the French Constitution since its Basic Law of 1949 stated not only that

> "All persons shall be equal before the law" [11]

but also that

> "Men and women shall have equal rights" [12]

and

> "No one may be prejudiced or favoured because of his sex" [13].

Furthermore, case law affirmed that these rights applied to equal pay.

Italy, however, possessed equal pay rights from its Constitution. This Constitution of 1947 stated that

> "All citizens are invested with social status and are equal before the law, without distinction as to sex" [14]

and

> "Female labour enjoys equal rights and the same wages for the same work as male labour" [15].

Thus, only Italy had a legal right to equal pay explicitly in its Constitution although the right to equal pay was established in France and Germany. Therefore, Article 119 could be regarded as a piece of legislation ahead of its time.

How did the Member States implement the terms of

Article 119? Governments proved slow and reluctant to legislate on the subject of equal pay. Italy, France and the Federal Republic of Germany claimed that the right to equal pay was enshrined in their constitutions and legislation was therefore unnecessary [16]. The attitude displayed by the Belgian Government could be taken as typical of the Benelux countries [17] in that the Government refused to enact specific equal pay legislation on the grounds that the establishment of equal pay depended upon the collective bargaining process, that is, the relationship between employers and trades unions [18]. The Government did not wish to interfere with this state of affairs. However, the Government in conjunction with the National Labour Council [19] did exert pressure upon the joint committees [20] to apply the principle of equal pay. In 1961, the Minister of Labour sent out a letter to the joint committees to remind them that before the end of the year Article 119 had to be strictly applied and that each committee had to insert a clause on the equal pay principle into its particular agreement [21]. Indeed, like France, Germany and Italy, none of the three Benelux countries took any steps to pass legislation on equal pay.

5.2.2. Recommendation on equal pay

This failure to implement Article 119 led to the

issuing of a Recommendation on equal pay by the Commission in 1960 [22]. As Chapter Three described [see 3.4.1.], much of the Recommendation was concerned with clarifying the principle of equal pay. This clarification also created problems since the Member States did not adopt an uniform interpretation of the principle of equal pay as laid down in Article 119. The French Government shared the viewpoint of the Commission as expanded in this Recommendation in that the principle meant that all discrimination based on sex should be eliminated in the determination of pay [23]. So, when a job was carried out by a man or a woman then the wages should be the same and equal pay should apply even in circumstances where a job was first carried out by a man and then taken over by a woman. The Government of Italy concurred with this interpretation but with a restrictive reservation that the principle of equal pay did not apply at the level of individual wage agreements. The Benelux countries, however, insisted on a very narrow meaning that the principle of equal pay only applied when jobs of an identical nature were carried out by men and by women at the same time in the same firm and in the same conditions. The Belgian Government insisted that jobs were identical when they were carried out simultaneously. The Federal Republic of Germany shared this restrictive attitude but lessened the severity by stating that simultaneity should not be over-emphasised.

Table 5b The impact of the Resolution on equal pay upon the Member States, 1961 - 1964

Member State	Legal Redress	Equal Pay
Belgium		
France		
Germany FR	x	
Italy	x	
Luxembourg		
The Netherlands		

Notes: x National legislation conformed to the measure

any violation of the Constitution could warrant a court case for restitution. Moreover, a certain amount of case law in practice backed up this theoretical right since a number of cases had been brought before the courts [26]. One such judgment by the Corte di Cassazione on the 30th of August 1960 declared that Article 37 of the Constitution meant the elimination of all differences of pay based exclusively on sex and that women could invoke this right as a legal norm [27]. So, employers could not pay men higher wages than women. Furthermore, by the terms of two interconfederal agreements [28] signed in 1945, collective agreements were required to include a clause affirming that women carrying out work traditionally male were entitled to have the same pay as men [29]. Case law had affirmed this right [30].

But, collective agreements fixed minimum wages and, at the time of the Resolution, the gap in minimum wages between male and female workers varied between 15 and 25% [31]. Moreover, some collective agreements in industry had adopted techniques of objective evaluation of jobs so that the professional scales of pay were separated into male and female grades and discriminatory wage rates resulted [32]. Once a single classification was adopted for both sexes, the situation improved although differences of up to 7.2% between male and female wages still existed [33].

However, the interconfederal agreements for industry of the 16th of July 1960 restructured the grading system so that a new single job classification system was introduced [34]. This established eight grades for industrial workers and six grades for office workers to replace the previous arrangement of four male grades and three female grades for industry and four grades for male and female office workers [35]. The consequences of this re-organisation resulted in the concentration of women in grades four, five, seven and eight which were the lowest paid. This state of affairs prompted the alarm of the Commission [36].

Improvements were noted. An interconfederal agreement of the 22nd of March 1962 reduced these eight industrial grades to five and, thus, eliminated the female grades [37]. Agreements concluded for the metallurgy and metal engineering industries on the 20th of October 1962 and the 17th of February 1963 eliminated all the grades below ordinary manual workers and regraded its women workers [38]. But, the Government lacked the powers to cancel discriminatory collective agreements [39].

In response to the 1961 Resolution, the Government sent out circulars and organised meetings [40]. The trades unions were made responsible for informing the Minister of Labour on the state of equal pay.

Consequently, the Government asserted that equal pay had been achieved with a very few exceptions. But, gaps were found in situations where no collective agreements existed or where old discriminatory agreements were still in force. Moreover, equal pay did not apply to home workers who formed an important part of the labour force in Italy [41].

In the Federal Republic of Germany, the right to legal redress existed from the equal rights section of the Basic Law since any violation of the Basic Law could be the subject of legal action [42] and from a Works Act of 1952 [43]. This protection was supported by various decisions in relation to equal pay before the Federal Labour Court [44]. Also, a decision of the German Federal Court given on the 15th of January 1955 declared that collective agreements established legal norms and, therefore, they should conform to Article 1 of the Basic Law. The Basic Law was directly applicable and could be invoked before the courts. Therefore, any collective agreement with a clause on equal pay was legally enforceable. This protection was extended to employment in the public sector by another decision taken on the 6th of April 1955 [45]. Another decision of the Federal Labour Court in 1961 asserted that the equal rights Article of the constitution also applied to individual work relations [46].

Case law also clarified other areas of pay. A Court decision in 1955 declared that for work paid on a time basis the wage depended upon the unit of time worked and not the result achieved [47]. But, for work paid by piece rates output ought to be the sole criteria. A second decision in that year re-affirmed this declaration. However, a judgment from the Federal Labour Court some time after the Resolution laid down that setting a wage by time for women at a reduced level to that for men was not acceptable and was, in fact, incompatible with Article 3 of the German constitution [48]. Payment on a time basis was not for the result but for the length of time worked. Unscrupulous employers claimed that women produced less than men and, so, should be paid less. This judgment also covered piece-work. Since pay by piece rates was regulated by the result, then employers could pay women less when they produced less than their male counterparts. But, when women produced the same as men then their wage should be the same. When jobs were created specially for women to pay them lower rates than men then the principle of equal pay would be infringed.

Since only a small number of workers were not covered by collective agreements [49], direct discrimination in wages was largely eliminated. Under case law, discriminatory collective agreements had been declared void [50]. By 1961, nearly all these

discriminatory agreements had been modified to result in a single wage grade in place of separate grades for men and women [51]. But, the Government did not have the power to cancel discriminatory collective agreements [52] although the Minister of Labour had the theoretical power to deny "erga omnes" [53] to a collective agreement which did not conform to Article 3 of the Basic Law [54].

However, indirect discrimination resulted from the introduction of a single salary grade between 1955 and 1964 [55] since this system grouped workers according to the physical attributes of the work, difficult, heavy or light [56]. It was thus easy for employers to place their female workers into the lowest pay category belonging to light work whilst the male workers were grouped in the higher grades relating to difficult and heavy tasks. In practice, the light work grade was given a salary at a lower rate than the minimum of any other category. The Government put forward the argument that this situation was not discriminatory since any man employed in the light work type would receive the same pay as a woman and, similarly, a woman working in the higher grades would receive the same pay as a man. But, both instances were rare and did not disguise the discriminatory nature of the system [57]. Examples of this form of discrimination could be found in metallurgy where the salary for light work was fixed at a rate of between

90 and 93% of the grade above of unqualified worker. The corresponding rates were 75% in agriculture and between 73 and 88% in the food industry [58]. Another type of discrimination was also widespread whereby the job classification system created categories for women below unskilled workers at a lower level than their actual work merited [59].

Although the French Government claimed that legal redress was granted under the Constitution by means of the preamble establishing equal rights, no cases had been brought in practice to substantiate this claim [60]. The Act of 1950 on collective agreements allowed persons to seek legal redress for any transgressions of the Act [61]. So, women subject to these collective agreeements enjoyed the right to legal redress.

In relation to discrimination in pay, a severe male labour shortage existed in the early 1960's and employers tended to increase male wages without a corresponding rise in those of female workers [62]. Furthermore, some old agreements showed a discrepancy of over 15% in wages [63] but the Government responded by denying them the powers of "with extension" [64].

The French Government maintained that indirect discrimination did not occur but the trades unions

pointed to the existence of discrimination in that emphasis tended to be placed on male characteristics such as strength at the expense of the female quality of dexterity with the consequent result that women were concentrated at the lowest levels of pay [65]. The French Government disagreed with this claim [66]. Certain jobs were carried out almost entirely by women contrary to the French Government's contention that there were no job categories for women alone.

In Belgium, legal protection was only granted [67] to those individuals subject to a collective agreement with royal decree [68] provided that the agreement included a clause on equal pay. Then, a case could be brought before the tribunals.

Collective agreements fixed minimum rates of pay and male rates of pay tended to be set at a higher level than the corresponding rate for female workers. The difference frequently reached between 20 and 25%. After the passing of the Resolution, the Belgian Minister of Employment and Labour requested the joint committees to implement its contents and timetable [69]. Pressure was exerted by this Minister since any collective agreement which did not comply was refused permission to submit that agreement to receive binding force. No exceptions to this decision were made. Furthermore, all the chairmen of the joint committees had to give periodic reports to the

Minister. But, progress was slow. Whilst some sectors adopted the principle of equal pay, others continued to maintain differences of 25% in pay particularly where a prepondance of female workers existed [70]. Two months before the end of 1964, the Minister of Employment and Labour appealed to the President of the joint committees to look again at those areas which had not attained the terms of the Resolution [71]. As the Government of Belgium maintained its attitude that equal pay formed part of the collective bargaining system, then results inevitably would be limited.

Furthermore, after the Resolution was passed, some collective agreements introduced a job classification system independent of sex [72]. Women thus de facto received lower wages than men since grades at the lowest level were created for women. This practice was particularly prevalent in industries employing large numbers of women [73] such as the metal engineering industry. Non-specialist jobs were subdivided into seven classes and the previous minimum salary for an ordinary labourer was set at class four so that the lowest, least paid categories from one to three were assigned to women workers. By the end of 1964, most of these categories had disappeared [74].

Collective agreements "erga omnes" in Luxembourg included the right to tribunal protection [75]. They

were applicable to around 60 to 65% of the total workforce [76]. At the time of the Resolution, direct discrimination was evident averaging about 10% difference between male and female wages. But, a gradual improvement could be observed and all these discriminatory rates disappeared by the end of 1964 [77]. The hierarchical structure for jobs and the job nomenclature were the same for men and women so indirect discrimination did not result.

The situation improved through the enactment of a Grand Ducal Decree on the 22nd of April 1963 [78]. This Decree introduced a compulsory minimum wage for all workers except domestic servants and agricultural workers. This wage rate was set at an equal level for men and women. Furthermore, women could invoke equal pay claims before the tribunals. Another Law passed in the same year gave this right to women in the public sector [79].

In the Netherlands, the Government claimed that those collective agreements subject to College of Arbitrators [80] approval conferred a theoretical right for individuals to seek legal redress [81].

During the period under examination, collective agreements in the Netherlands covered around 77% of the total manpower. At the time of the Resolution, the gap between male and female wages could be as

much as one-third [82]. The following years witnessed some progress in reducing this gap but some collective agreements did not always respect the timetable as laid down in the Resolution. In the first year after the Resolution, a number of agreements set the wage rates for female workers in excess of the agreed 15% gap [83]. But, pressure could be exerted since the College of Arbitrators refused to approve any agreement which did not respect the timetable. One of the problems concerned the restrictive interpretation given by the Dutch Government to the equal pay principle. The Government also adopted a somewhat unhelpful attitude by insisting that any collective agreement which had been concluded for a fixed period could not be modified during that time so that female salaries under these conditions could not be improved until the time of the next negotiation of the agreement. The College of State Mediators provided that the same minimum wage should be paid to men and women doing the same job under the same conditions in the same enterprise [84]. Furthermore, the Dutch Government was the only government which had the right to cancel a discriminatory collective agreement [85]. The Government, however, seemed to be reluctant to carry out this power in line with its generally negative attitude towards the achievement of equal pay. Objective criteria was employed in job evaluation and such criteria was independent of sex so indirect discrimination did not arise [86].

The Resolution did include a clause to allow any Member State experiencing difficulties in the implementation of its terms to request from the Commission permission for the particular cases to be scrutinised. In spite of all the deficiencies outlined above, no Member State seemed to take advantage of this exemption. Instead, the Governments asserted that discrimination did not exist and the situation was in accordance with the Resolution.

At the end of the time-scale set out in the Resolution, it was quite clear that Member States had not fulfilled their obligations whether with regard to legal redress or in the eradication of discrimination in pay scales. Full legal protection did not exist in France, Belgium, Luxembourg and the Netherlands. Examples of direct discrimination in wages were still to be found in most of the Member States. Female salaries at between 85 and 87% of the male rate were common in the textile, clothing and electrical industries in Belgium and these three industries employed 80 to 85% of the total female labour [87]. Gaps of 15 to 20% existed in the leather industry in Germany [88]. Instances of indirect discrimination could also be found in Italy, Germany, France and Belgium.

5.2.4. Developments in equal pay, 1965-1973

Table 5c The impact of the Resolution on equal pay upon the Member States, 1965 - 1973

Member State	Legal Redress	Equal Pay
Belgium	x	
Denmark		
France	x	
Germany FR	x	
Ireland		
Italy	x	
Luxembourg		
The Netherlands		
United Kingdom	x	

Notes: x National legislation conformed to the measure

Table 5c illustrates the impact in each Member State.

Insert at end of Paragraph 1

Since the Commission continued to monitor the situation after the end of 1964, was any progress noted between the years 1965 and 1973?

In Italy, the gaps in wages were gradually reduced and disappeared by the early 1970's [89]. By 1972, instances of indirect discrimination largely disappeared with the removal of women-only grades except in some sub-sectors of agriculture [90].

In the Federal Republic of Germany, a Works Constitution Act of 1972 not only strengthened the right to legal redress [91] but it also helped to remove direct discrimination from collective agreements [92]. Indeed, direct discrimination disappeared by the end of 1968 [93]. From 1969, the Government tried to persuade the social partners to sort out these problems within a general study of the whole question of job evaluation [94]. Although the two sides came to an agreement on the method to be used, the practice of light work grades and, thus, indirect discrimination was still widespread in 1972.

In France, the right to legal redress was gradually strengthened. A law which was enacted in 1971 required the signatories of collective agreements to establish procedures to settle any disputes [95]. Then, in 1973, the Decree which implemented the equal pay Act

applied to all employees and laid down the conditions by which disputes could be settled [96]. In this way, full legal protection was achieved. Direct discrimination in collective agreements was not found after the end of 1968 [97]. In 1972, an equal pay act was passed which declared all direct discrimination to be void [98].

In Belgium, a general right for workers in Belgium to make legal claims to secure equal pay was secured in a law passed in 1965 [99] and this right was strengthened by a Royal Decree of 1967 [100]. It was striking that this Decree cited Article 119 as the basis for the right, thus,

> "In conformity with the provisions of Article 119 of the Treaty Establishing the European Economic Community, approved by the Act of 2 December 1957, any female employee shall be entitled to institute legal proceedings in the competent court to demand the application of the principle of equal pay for equal work whether performed by male or female employees" [101].

Clearly, the Community achieved some measure of influence in this context even although the measure was enacted well after the final date of implementation of the Community Resolution. The right established in this Royal Decree was re-affirmed in the Labour Act of 1971 which applied to all workers and employers [102]. The gaps in salary rates slowly decreased partially as a result of government pressure

which, in turn, was responding to European Community initiatives. Wage discrimination [103] and some instances of indirect discrimination in a few sectors of the food industry [104] were still in evidence in the early 1970's.

In Luxembourg, the right to legal redress was established by a law enacted on the 12th of June 1965 [105]. This law stated that all collective and work agreements should contain provisions to lay down the method of applying the equal pay principle and to confer the right of bringing a legal claim [106]. Another Law of the 12th of March 1973 revised the minimum wage to apply to all employees of normal physical and intellectual aptitude without distinction of sex except for domestic servants and agricultural workers [107].

In the Netherlands, the Minimum Wage and Minimum Leave Allowance Act of the 27th of November 1968 established a general compulsory minimum wage for all employed persons aged between twenty-four and sixty-five without any distinction by sex [108]. But, this Act did not apply to those people who worked under one-third of the normal working week. As Sullerot pointed out, women formed a larger number of the part-time workforce than men [109]. Furthermore, individual claims were allowed but this Act only applied to minimum wages so full legal protection was

not conferred by this measure.

In 1965, against a worsening economic situation, the employers took the opportunity to postpone any further steps towards the implementation of equal pay in spite of protests from the trades unions [110]. The employers pointed out that equal pay had not been achieved in the other Community countries. The Government shielded its position by stating that it was prepared to eliminate all gaps between wages provided that the data existed to allow an equal interpretation and application in all the Member States. The Commission, on its part, considered that the Dutch Government should honour its Treaty obligations which were paramount over economic factors and interpretations.

By 1972, direct discrimination was still in existence in a few collective agreements although the wage differences and the number of females affected were less than in previous years [111]. This state of affairs persisted and yet, the Dutch State, alone out of all the Member States, had the power to cancel any discriminatory collective agreement. Thus, the Dutch Government showed a less than eager attitude towards equal pay implementation in spite of European Community obligations and in spite of possessing powers to exert considerable pressure upon the employers.

Thus, the period was marked by improvements but the Commission concluded in 1972

> "Although undeniable progress has been made, the situation is nevertheless still far from satisfactory" [112]

and the complete implementation of equal pay did not exist in any of the Member States.

Some changes had taken place in the situation relating to legal protection. Both Belgium and France had enacted laws which established the right to legal redress. Although the right had been strengthened in Luxembourg, general protection was still far from a reality in that country and in the Netherlands.

Some improvements had taken place in relation to pay. Collective agreements in the Member States did not cover all workers so gaps could be found. Direct discrimination could still be found in 1972 in Belgium, France, Italy and, particularly, the Netherlands. In Belgium, differences of 5% in male and female wages existed amongst some 800 women workers [113] whilst in France the trades union CGT [114] pointed to differences in the publishing industry [115]. In Italy, the trades unions cited examples of discrimination amongst homeworkers. The

worst situation could be found in the Netherlands where a number of collective agreements showed differences of pay ranging from 3.5% in the laundry industry to between 10 and 22% in bakeries [116]. Indirect discrimination was still in existence particularly in the light work categories in the Federal Republic of Germany. During this period, France was the only country in the European Community to have introduced an equal pay act.

Although it was not possible to speculate as to what would have happened if Article 119 and the Resolution had not been passed, it would seem that the Governments did take some notice of these Community initiatives. The fact that the Resolution was not entirely implemented was not surprising given the state of collective bargaining at that time. Equal pay was an economic matter at the hands of the social partners and not subject to legislation [117]. A certain amount of progress was achieved which might not have happened in the absence of Community legislation or pressure.

Enlargement of the European Community in 1973 [118] meant that the three new Member States were bound to adopt the terms of the European Economic Community Treaty and the Resolution. Did these countries comply with these terms?

Tables 5a and 5c show the level of compliance by each Member State.

Insert at end of last paragraph

discrimination in daily, weekly and monthly wages. The terms of this agreement included allowances, supplements, piece-work and bonus rates, and extended to non-civil servants in the public sector. But, the agreement did not apply to those workers not covered by agreements. Denmark lacked a detailed professional classification system [126] and indirect discrimination did not seem to exist.

Ireland did not have legal protection. The Joint Labour Committees in Ireland fixed minimum rates of pay for different professions and these rates were given statutory effect through Employment Regulation Orders [127]. Different rates were laid down for men and women. The public sector provided for one salary scale for single men and women and a higher salary grade for married men [128]. In January 1973, although the minimum salary was usually the same, the maximum grade involved differences of 20%. Widespread discrimination similarly existed in the private sector. From 1959, women received lower salary increases than men so that by 1970 differences in salaries averaged about 15%. Changes took place in the early 1970's. Differences in public sector pay were removed from the 1st of July 1973 and, in the same year, the National Agreement for the private sector eliminated sexual differences in pay. A tendency existed for skilled jobs to be reserved for the men and for the lower-paid unskilled jobs to be given to

the women [129]. This practice was common in collective agreements and Wage Council Orders.

Legal protection was established in the United Kingdom through its Equal Pay Act of 1970 [130]. Minimum legal wages were fixed by some seventy-two Wage Councils and three Agricultural Wage Boards to which statutory effect was granted [131]. At the time of accession, these wage rates were often fixed at different levels for males and females in spite of the passing of the Equal Pay Act in 1970. Slow progress was noted although this Act required the removal of discrimination in this field by 1975. By 1960, equal pay was achieved in the British public sector amongst the non-manual civil servants, local authorities, Post Office, National Health Service and public utility workers [132]. In the private sector, one to two million manual workers were not covered by collective agreements whilst most non-manual workers were not organised or covered by collective agreements but relied on individually negotiated salaries. Discrimination was widespread until the advent of the 1970 Equal Pay Act which required all discrimination in collective agreements to be phased out by the end of 1975 [133]. Any discriminatory agreement or wages regulation order or agricultural wages order could be referred by the Secretary of State to the Industrial Arbitration Board for amendment. Thus, this Act allowed a great deal of progress to be made. Piece

rates tended to be fixed in accordance with time rates [134]. So, when time rates were discriminatory then piece rates would be the same. The number affected by these methods of wage-fixing was unknown but the Equal Pay Act of 1970 was intended to also apply to these areas. The Act also required the removal of discrimination from professional classification systems. Skilled jobs sometimes were occupied by men so that women filled non-qualified jobs at lower wages for instance in the seed crushing industry [135].

Thus, United Kingdom possessed an equal pay act which conferred legal protection and theoretically eliminated discrimination from wages. Although the Danish Government and social partners asserted that equal pay was fully operational by means of the 1973 national wages agreement, the workers did not have general legal protection to claim equal pay. The right to legal redress was also lacking in Ireland whilst direct discrimination was still in existence.

The Commission commented that

"it is clear that the situation in each of the three countries is not yet completely satisfactory" [136].

5.2.5. Directive on Equal Pay

Table 5d The impact of the Directive on Equal Pay upon the Member States

Member State	Articles of the Directive						
	1	2	3	4	5	6	7
Belgium		x			x	x	x
Denmark		x	x		x		
France	x	x		x	x	x	x
Germany FR	x	x	x	x	x	x	
Ireland	x	x	x	x	x	x	
Italy	x	x	x	x	x	x	
Luxembourg	x	x			x	x	
The Netherlands					x	x	
United Kingdom		x	x		x		

Notes: x National legislation conformed to the Article

application of the Act and the reporting of infringements [141]. Penalties ranged from a fine to a prison sentence and any refusal by an employer to co-operate with attempts by an inspector to discover the pay arrangements of an undertaking could result in a fine [142]. Only France complied with the intention behind the notification Article since notices about the Act had to be displayed at places of work and recruitment [143]. Penalties involving fines could be imposed on employers for failing to display notices [144]. The Comité du Travail féminin also distributed information on the Act [145].

But, problems of compliance arose in relation to the elimination of sexual discrimination in wages from national legal provisions since a housing allowance was granted only to heads of household in the mining industry [146].

In Ireland, an equal pay act was passed in 1974 [147]. This Act largely complied with the terms of the Directive. In relation to protection against dismissal, an employer dismissing an employee solely on the grounds of equal pay was deemed guilty of an offence and was liable to a fine [148]. The employee could take legal action but the burden of proof fell upon the employer. Such court action could result in an employer paying a fine, an additional amount of money to be paid to the employee as compensation to

consist of arrears of pay up to one hundred and four weeks pay and possible reinstatement of the employee. As an alternative, the Labour Court could conduct an investigation as a result of a complaint and similar penalties could be imposed [149]. Failure to carry out a decision of the Labour Court within two months could result in a fine and compensation to the employee. With regard to inspection, the equality officers could be approached to investigate an individual enterprise [150]. They were empowered to enter premises, to inspect work in progress and to demand records and documents. Obstruction was regarded as an offence and a fine could follow. As regarding notification, widespread dissemination of brochures took place and information was also transmitted by the media [151].

A Grand-Ducal Decree on equal pay was enacted in Luxembourg in 1974 [152] and, again, it mostly complied with the Directive. Protection against dismissal was provided since any employer dismissing an employee had to notify the latter in writing of the reasons for the dismissal and should these prove unfair then the employee could claim damages [153]. Should the reasons be illegal or irregular on economic and social grounds then the dismissal was deemed to be exercised unfairly. The Inspection du Travail et des Mines was made responsible for supervision of the Decree [154]. No formal notification was provided although the Directive itself received wide publicity

in the trades unions journals and feminist publications [155].

However, implementation problems arose in connection with discriminatory household allowances. A Law dating from 1963 laid down that a head of household allowance could only be granted to a female civil servant when her spouse suffered from a disability or illness or when his income fell below the minimum wage [156]. But, all male married civil servants automatically received this allowance. Furthermore, the Decree required collective agreements to include a clause guaranteeing the application of the principle of equal pay and laid down that any agreement which resulted in a lower rate of pay for one sex as opposed to another would be automatically null and void [157]. But, some collective agreements granted household allowances according to discriminatory conditions [158].

United Kingdom was the first European Community country to enact an equal pay measure as its Act dated from 1970 [159]. Protection against dismissal was included since the Act declared that it was illegal to dismiss any person who asserted his or her rights to equal pay. Such a person could apply to the courts for damages [160]. Employees of twenty-six weeks standing possessed a general right not to be unfairly dismissed [161]. An industrial tribunal could award compensation

or order reinstatement. Failure to comply might result in further compensation. No administrative supervision of the Act was established [162]. Although official notification was not included in the Act, the Government mounted an intensive advertising campaign in national and local papers whilst guides and leaflets were made available in employment offices [163].

But, the Act failed in relation to the definition of the principle of equal pay since it stated that equal pay should be paid where women performed like work to men in the same employment or work of equal value when a job evaluation scheme existed [164]. In drawing up the Act, the legislators had considered other definitions of equal pay and had rejected them in favour of the one adopted [165]. Furthermore, the Act did not provide for the abolition or nullity of collective agreements although the Central Arbitration Committee could eliminate any discrimination in any agreement which had been submitted to it [166].

After the enactment of the Directive, both Denmark and the Netherlands passed equal pay measures. The Danish Act enacted in 1976 [167] provided protection against dismissal in that when an employee was dismissed as a result of an equal pay claim then the employer had to pay a fixed amount of compensation which was based on the length of time worked and the

circumstances surrounding the case up to a maximum of twenty-six weeks pay [168]. Reinstatement was not mentioned. The Government asserted that state control as required by the Directive was contrary to Danish practice and the legal system so supervision was left to the trade organisations although the Council for Equality kept the implementation of the principle under review [169]. Notification did not extend beyond the widespread dissemination of brochures [170].

However, the Act required every employer to pay equal wages for the same work to women and men at the same workplace and excluded work of equal value so this did not comply with the Directive [171]. Furthermore, the Act did not contain a clause to declare a discriminatory collective agreeement null and void [172].

The Dutch law of 1975 [173] failed to implement fully the Directive since it only applied to the private sector [174]. Some protection against dismissal already existed in that an employer wishing to dismiss an employee had to seek the prior authorisation of the Director of the Regional Employment Office [175]. In general, the latter did not give approval in cases where an employer wished to end an employment contract because a female employee wished to assert a right to which she was entitled by law. Supervision was left to the Equal Pay Commission

which could investigate an individual enterprise when requested and could issue a reasoned opinion on a situation but no penalties were laid down [176]. In relation to notification, a brochure on the Act contained a detachable section which enabled an employee with a complaint to seek easily the opinion of the Equal Pay Commission [177]. This brochure enjoyed wide distribution and television was also utilised.

Particular problems of compliance arose in relation to the elimination of discrimination. The minimum wages law not only excluded workers, mostly female, who were employed for periods under a third of the normal working time but it also limited the entitlement to a minimum wage to married heads of households and unmarried heads of households with dependent children under the age of eighteen [178]. This limitation had brought about protests and a petition to the European Parliament on the discriminatory effect on married women [179]. Furthermore, a few collective agreements still maintained minimum holiday pay only for adults and young male married workers, and a head of household allowance only for males [180]. However, these were on the decline.

The Belgian Government chose not to enact a law in accordance with its thinking that equal pay rested

with the social partners. Instead, a Royal Decree of the 9th of December 1975 [181] gave binding force to Collective Agreement No. 25 of the 15th of October 1975 [182]. But, this Decree only applied to the private sector and, so, the Directive was invalidated. Some protection againt dismissal was provided in that an employer could not end or amend an employment following a complaint or a legal action [183]. When the employers's reasons for dismissal did not have any bearing upon the complaint then the burden of proof fell upon the employer. Reinstatement of an employee involved payment of the remuneration lost and when reinstatement did not occur then an employee had to be paid compensation of six months' pay or an amount equivalent to the loss of pay suffered. The Inspection des lois sociales undertook the supervision of the Agreement [184]. Furthermore, notification was laid down so that the text of the Agreement had to be annexed to a works regulations [185]. Management boards of undertakings also received copies of a relevant brochure prepared by the Commission du Travail de Femmes and the Commissariat général à la promotion du travail et le Ministère de l'Emploi et du Travail.

But, the Commission du Travail des femmes supplied evidence of discrimination. A Royal Decree of 1967 granted a household allowance to all married male civil servants but only to female married civil

servants when they had dependent children [186]. Similar discrimination occurred in a Royal Decree of 1965 granting removal expenses to civil servants [187]. In the transport sector, free travel tickets were given to wives of male employees but not to the husbands of female employees. A working party was established in 1976 in the Service des relations collectives du travail of the Ministry of Labour to examine all collective agreements for instances of discrimination [188]. Nevertheless, direct discrimination was still to be found in the food and paper industries and discriminatory household allowances existed in the health services [189].

Both Italy and the Federal Republic of Germany cited their constitutions as fulfilling the Directive although Italy did enact an equal pay measure in 1977 [190]. Protection against dismissal existed in Italy since any claim or legal action to secure equal pay resulting in dismissal was illegal [191]. Works Inspectors were responsible for supervising equal pay [192]. Publicity was left to the trades unions to disseminate information at their meetings [193].

With regard to protection against dismissal in the Federal Republic, in accordance with the Civil Code, dismissal of an employee for defending his interests or asserting his rights was contrary to public policy and was null and void [194]. Furthermore, an Act of

1972 laid down that any dismissal for lodging a complaint or instituting legal proceedings to secure the principle of equal pay was null and void [195]. Since implementation of equal pay was guaranteed by the courts there was no need of administrative control [196]. But, the Government did request the central organisations of the social partners to comply with the terms of the Directive when collective agreements were applied and agreement was reached. As it was not a national custom to inform employees through the medium of works notices, the Government forwarded the text of the Directive to the federations of parties to collective agreements for observance [197].

Thus, most of the Member States implemented the Directive in various ways but partial adhesion to the spirit of the Directive resulted for nearly all of the Member States. Given the endless difficulties with regard to matters surrounding equal pay, this conclusion could have been anticipated. Although included amongst the social provisions of the Rome Treaty, equal pay represented a socio-economic factor largely dependent upon the collective bargaining system of a country rather than the latter's legislative process.

The various problems and situations which arose with regard to the legal implementation could be summarised. In general, Belgium and the Federal

Republic of Germany failed to enact an equal pay law whilst the Dutch legislation only applied to the private sector. Difficulties arose in connection with the definition of equal pay since some Member States preferred a more restricted principle than required by the Directive. To establish equal pay for women through the comparison of women's jobs with male jobs of equal value was difficult since in many cases no equivalent male jobs existed.

The Netherlands was the only country which failed to fully establish the right to legal redress. Some countries failed to eliminate direct discrimination from national provisions and collective agreements in spite of statements from the Governments of the Benelux states and France that no statutory provisions existed contrary to the equal pay principle [198]. Allowances such as the head of household were frequently given on a discriminatory basis based on outmoded concepts of the male acting as the breadwinner of the family and supporting a non-working wife. Examination revealed, however, that instances of indirect discrimination were still widespread. Governments put forward the argument that job evaluation was based upon the nature of the work and not upon the sex of the worker. Nevertheless, women workers could be found in large numbers in the bottom poorly paid categories because they lacked training and because more emphasis was placed upon physical

strength rather than dexterity or precision. Although minimum wages were set at the same level for men and women, men often received higher rates of pay than women owing to such factors as hidden bonuses. Labour Inspectors and equal opportunities commissions could play an important part in seeking out and eradicating such practices.

Differences were particularly noted in relation to the new elements of the Directive contained in Articles 5 to 7. With regard to Article 5 on protection against dismissal, a strong element of protection was conferred in Germany and Italy. Some nations granted compensation and reinstatement in cases of dismissal. But, in nearly all cases, the burden of proof fell upon the employee. Supervision of equal pay by Works Inspectors at factory level took place in Belgium, France, Italy and Luxembourg but no formal administrative control existed in the other states. Lack of adequate control could mean that unscrupulous employers could defy the law more easily and thus weaken the position of women. Notification was mostly by informal methods of dissemination which could perhaps result in women being unaware of their rights and fail to bring claims. Improvements were most marked in the three new Member States and in the Netherlands.

Indeed, given these difficulties, it was perhaps

not surprising that an attempt was made to secure a temporary waiver from compliance with the Directive. On the 6th of February 1976, Ireland filed a request for an official partial and temporary exemption [199] from certain sections of the Directive [200] on the basis of Article 135 of the European Community Act of Accession [201]. This exemption was to be limited to the private sector for a maximum period of two years and it arose because certain employers complained that economic problems amounting to some £20 million would arise from the implementation of equal pay [202].

However, the resolve of the Commission to secure the implementation of equal pay was demonstrated since five days after receipt of the request the Commission refused it on the grounds that Irish women had a legal right to equal pay and the granting of any dispensation might set a dangerous precedent [203].

The Commission concluded 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" [204].

However, one indirect effect of the Equal Treatment Directive was the strengthening of rights to equal pay through the enactment of equal treatment laws by the Member States. Rights to legal protection were

improved and direct discrimination almost disappeared.

The Belgian Act of 1978 [205] provided a typical instance in that the principle of equality of treatment included remuneration [206]. Any individual or representative organisation of workers and employers could bring an action in the appropriate court to secure compliance with the principle [207]. All provisions contrary to this principle were null and void [208]. Protection against dismissal for instituting a case was given [209]. The burden of proof rested upon the employer and compensation could be granted. Penalties ranging from fines to prison sentences could be imposed on employers for any violation of the Act [210]. Supervision of the Act rested with the Inspection des lois sociales and special officials [211].

The Irish Act [212] strengthened the clauses dealing with legal redress since a dispute could be submitted to equality officers whilst the Employment Equality Agency could conduct investigations [213].

Various matters were enhanced in Italy through its equal treatment act [214]. A female worker was entitled to the same remuneration as a male worker when the services required were equal or of equal value [215]. Occupational classification systems had to adopt the same criteria for male and female

Table 5e The impact of the Equal Treatment Directive upon the Member States

Member State	Articles of the Directive							
	1	2	3	4	5	6	7	8
Belgium							x	
Denmark		x	x			x	x	
France						x	x	
Germany FR			x					
Ireland	x		x	x	x		x	
Italy			x	x			x	
Luxembourg								
The Netherlands								
United Kingdom						x	x	

Notes: x National legislation conformed to the Article

The impact can be illustrated as shown in Table 5e.

Insert at end of Paragraph 1

At the time of the enactment of the Directive, the United Kingdom had already legislated on equal treatment by means of its Sex Discrimination Act of 1975 [226] whilst France also in 1975 had enacted two laws which partially dealt with the subject [227]. Did this legislation comply with the Directive?

Although the British Act was comparable to the Directive in certain ways, problems of compliance did arise. Its coverage was wider in that it included equal treatment in education and the provision of goods, facilities, services and premises [228]. But, discrimination resulted because the Act only applied to those self-employed workers who had entered into personal employment contracts [229].

Since the British Act preceded the Directive, a different approach was taken with regard to the definition of the principle of equal treatment. Discrimination was defined as treating someone less favourably than a person of the opposite sex to include a married person of one sex receiving less favourable treatment than one of another sex [230]. Reference was thus made to marital status but family status, however, was not specified. The British Government argued that the Act eliminated this sort of discrimination [231]. Moreover, the Government as opposed to the Equal Opportunities Commission felt that this definition complied with the Directive

[232]. Although indirect discrimination was not used in the British Act, examples were cited in the accompanying handbook. The United Kingdom Government stated that such examples included excessive minimum height requirements and maximum age-limits of thirty for civil service recruitment [233].

However, the Act infringed the Directive by its exclusion of private households, and companies and partnerships with five or less workers [234]. Other exceptions were allowed for various reasons [235] and a long list resulted. Exclusions outside the armed forces could be amended or abolished by an Order through the two Houses of Parliament. The Equal Opportunities Commission had to be consulted before an Order was passed but its advice did not have to be taken [236]. Furthermore, although the Act included protection [237], a clause on positive discrimination was lacking. But, employers, the Manpower Services Commission, Industrial Training Boards and vocational training bodies put into operation special training schemes for one sex. These schemes applied where low numbers of people were recruited in the previous twelve months or to encourage one particular sex to take advantage of opportunities [238]. Subsidies were granted to employers to train girls as technicians and executives, and to train women returning to work. The Equal Opportunities Commission pointed out that these schemes only covered training and did not affect

access to jobs [239].

The core of the Directive, Articles 3 to 5, also created problems. Although the British Act included a clause to annul discriminatory individual employment contracts [240], the Act did not annul discriminatory collective agreements, internal company rules and articles of professional associations so that the Directive was infringed [241]. Infringement also occurred since the Act did not include a provision to eliminate discrimination in measures which were enacted before this Act. In relation to individual Articles, the Directive was also infringed. The British Act did not provide for the protection of pregnant women or for the formal abrogation of conflicting measures [242]. The Government abolished prohibitions against men entering midwifery and holding governorships of women's prisons. Also, some collective agreements might contain discrimination with relation to part-time workers [243]. But, the Act went further than the Directive since training was defined as the inclusion of all forms of education or instruction [244]. In this way, all educational establishments were included except for single sex schools offering general education with no vocational or technical training [245]. Discriminatory advertisements were also prohibited [246].

Various methods of legal redress existed to include powers entrusted upon the Equal Opportunities Commission to give assistance and advice to complainants, to conduct investigations and to issue non-discrimination orders [247]. Although prison sentences and fines could be granted in cases of discrimination [248], the burden of proof lay upon a complainant [249]. Protection against dismissal was also provided [250]. Furthermore, the burden of proof lay with an employer [251] and compensation for a complainant could result [252].

The French legislation only partially complied with the Directive. One law covered the public sector [253] whilst the other dealt with the private sector [254]. In relation to coverage, the law for the private sector excluded promotion. Furthermore, the French Government claimed that equal treatment with regard to vocational training was covered in a 1971 law [255]. This claim was disputed by the Commission who considered that a specific legal instrument eliminating discrimination in this area had not been enacted in France [256]. With regard to the terms and conditions of employment, the French legislation only covered pay and dismissal matters.

The French laws did not contain a definition of the principle of equal treatment although the preamble to the French Constitution provided for general equal

rights [257]. The law on the private sector did, however, prohibit discrimination with regard to access to employment and dismissal on the grounds of family situation [258]. Indirect discrimination and marital status were not mentioned in these French laws.

Certain difficulties also arose in relation to exceptions since a general exception clause was not included. Moreover, supervisors and teachers in Legion of Honour establishments had to be female [259]. Furthermore, recruits to employment in the private sector could be refused for legimitate reasons [260]. The courts would be used to test legimitate reasons case by case [261]. Although the French legislation did comply with the clause on protection, a clause on positive discrimination was lacking. But, certain practical measures were taken. The French Government gave priority to employment and training schemes for single women with dependent children [262]. The Commission on Women's Employment argued however, that the finance for such schemes was so far lacking.

Further problems of compliance arose in relation to the core of the Directive. First of all, the French laws did not abolish discriminatory laws or contrary provisions. Moreover, the law for the private sector prohibited discrimination on grounds of sex in the

hiring of staff except for legitimate reasons [263]. This clause was viewed by the Committee on Women's Work as a means of evasion since it was left up to the courts to adjudicate on legitimacy [264]. This law did not cover promotion although protection was given to pregnant women. The measure on the public sector only prohibited direct discrimination. Some exceptions were allowed with respect to age limits for some officials [265]. France possessed a law dealing with training [266] which was not contrary to equal treatment. However, the law did not specify equal treatment and, thus, it was not acceptable to the Commission. With regard to working conditions, in the private sector, the prohibition of discrimination only covered dismissal [267]. Other forms of discrimination existed in relation to leave for adoption of children in both sectors [268] and leave to look after sick children in the private sector.

Legal redress was allowable in that an employee could lodge a complaint before a criminal or civil court [269]. A trades union could institute legal proceedings to defend the interests of an occupation. In the public sector, action could be brought by an individual or a group defending the collective interest before the administrative tribunals or the Council of State. Burden of proof lay with the complainant [270]. The situation varied in relation to protection against dismissal. An individual or a group

defending the collective interest could institute an action [271]. For the private sector, damages could be awarded. In the public sector, damages and the annulment of an illegal administrative decision might result.

Some of the other Member States subsequently enacted equal treatment laws within the implementation period. These nations comprised Ireland [272] and Italy in 1977 [273], and Belgium [274] and Denmark in 1978 [275]. A more complete state of implementation could be expected from these four states. What was the actuality in practice?

The Irish Act [276] complied with much of the Directive. However, problems arose in relation to Article 2. Marital status was included [277] but family considerations were implied rather than laid down [278]. However, the prohibition of indirect discrimination was included and covered compliance with inessential requirements for a job [279]. But, the Act excluded the armed and police forces, prison service, private households [280] and jobs where the sex of a person was an occupational qualification [281]. This list went further than the Commission deemed necessary and thus caused infringement [282]. A protective clause was not included. But, in relation to positive discrimination, training for an occupation by one sex was allowed provided that no or

very few workers of that sex had been employed in that occupation in the previous twelve months [283]. The opportunity was taken to institute programmes of vocational training for women in non-traditional female occupations and for women returning to work [284].

With regard to the core of the Directive, although the Act correctly abolished discriminatory laws and contrary provisions [285], Ireland did not take any practical steps to survey the actual situation. The Act complied with the coverage of these Articles [286] and, indeed, in relation to Article 3, the Act also included access to professional organisations [287], employment agencies [288] and advertisements [289]. Pregnant women were not expressly provided for although the general provision relating to marital status [290] might give protection.

But, the Act failed to provide adequate legal redress. Equal treatment disputes could be referred to the Labour Courts [291] but this provision did not apply to the occupations excluded from the Act so that an infringement of the Directive occurred. Claims could be brought by individuals, groups, trades unions and employers's organisations. The Labour Court delivered a ruling as to whether or not discrimination had occurred [292]. It could recommend a course of action or award compensation. The Court could rule in

a particular case that a number of women, all women of a group or all women were entitled to equal treatment. Prison sentences and fines could be imposed upon the employer for not implementing a Labour Court ruling [293]. The Equal Employment Agency was imbued with various powers [294]. It could seek a High Court injunction for cases of persistent discrimination, serve non-discrimination notices, initiate proceedings and conduct investigations. It could refer cases to the Labour Court in instances where an individual could not be expected to put a case or where a general principle was at stake. Burden of proof lay with the complainant but was reversed in cases of dismissal [295].

In relation to Article 7 concerning protection against dismissal, cases could be brought before the Labour Court or a court of law [296] and the burden of proof lay upon the employer. The Labour Court could order the dismissed person to be reinstated with no break in service or to be reinstated in another job or to be granted compensation of a maximum of one hundred and four weeks wages. An employer might have to pay substantial fines.

The Italian Act [297] went further than the Directive in that its coverage extended to the content of vocational guidance and training, pay, age limits and leave of absence to look after a child

[298]. Furthermore, the definition of the principle of equal treatment included the prohibition of discrimination during pregnancy [299] although the Italian Labour Union argued that discrimination on the grounds of marital status in recruitment was widespread [300]. Direct discrimination was also prohibited through pre-selection procedures, the press or any publicity [301].

But, the Act did not cover all aspects of the Directive. A clause on positive discrimination was not provided although the Government and the Unione Italiana del Lavoro asserted that the Act itself constituted an act of positive discrimination [302]. Although the Act did abolish discriminatory laws and contrary provisions [303], Italy did not carry out a practical survey. Generally, the core of the Directive was covered [304] but discrimination existed for such matters as child adoption leave and parental leave [305].

Claims for legal redress could only be brought for discrimination with regard to access to employment [306] and, thus, the Directive was infringed. In such instances, an individual or a trades union acting on the individual's behalf could bring a case before the local magistrate who acted as a labour judge. This magistrate convened the parties to the dispute and arranged a hearing. If he was satisfied that

discrimination had occurred then he could issue an order. Appeals could be made against the order and failure to comply with such an order could lead to the imposition of prison penalties. Public servants had to bring a case before the administrative tribunals. Unusually, the burden of proof lay upon the employer [307]. Protection against dismissal was provided under the Italian Constitution [308].

The Belgian Act [309] revealed some positive attributes in that it was the only national law to adopt the definition of the principle of equal treatment as given in Article 2 of the Directive [310]. In relation to indirect discrimination, the Act also prohibited discrimination in notices of employment [311]. Moreover, with regard to access to employment, the Act extended the coverage to include those persons who disseminated job offers or advertisements [312]. Pregnant women were also protected from discrimination [313]. Various acts which had banned women from access to a number of jobs were repealed in August 1979 [314]. Only the Belgian Act attempted a definition of the term working conditions [315].

But, the Act did not comply with the Directive in a number of ways. The implementation of equal treatment to vocational guidance and training was dependent upon the issue of a decree of definition and

this decree was not issued within the time-limit of the Directive [316]. Moreover, the question of annual leave was deferred to receive separate action in a special Royal Decree. This Decree was enacted in 1980 without using the 1978 Act as a legal basis and its application was only valid for one year [317].

Although the Act covered marital and family status [318], in practice, discrimination arose in connection with the granting of household and residence allowances to male employees in the public sector [319]. Furthermore, a long list of exceptions was authorised [320]. The list included the police, customs and the land registry. Exceptions were to be made by Royal Decree following consultation with various bodies [321]. Moreover, the Government asserted that following consultation with certain bodies a Royal Decree would be issued listing the areas of positive discrimination to be excluded from the Act [322]. This Decree did not appear. The Commission on Women's Employment recommended the inclusion of training courses for women in areas not covered in the school curriculum and, also, educational and vocational guidance to allow women to gain qualifications which would enable them to compete with males in the job market [323].

Although the Belgian Act included a clause to declare discriminatory provisions null and void,

articles of professional associations did not seem to be included [324]. A survey was carried out into the content of collective agreements [325]. Some collective agreements seemed to contain discrimination in the way in which criteria for job classification was evaluated. In relation to working conditions, discrimination was practised in the public sector since female employees alone were entitled to leave to bring up children [326].

The Act provided for legal redress [327] even to the extent for quick legal action for cases relating to admittance to vocational training so that the claimants did not lose a year to enter training [328]. But, this procedure depended upon the enactment of an implementing Royal Decree which had not been effected in the period under discussion. In general, actions could be brought in the private and public sectors by individuals, by representative organisations of employers and trades unions, and by representative organisations of self-employed persons [329]. The King was authorised to entrust special committees with the task of delivering opinions to the relevant courts on these disputes [330]. No such committee, however, was established by 1981. Burden of proof lay with the employee except when the employee had suffered dismissal or amendment of the conditions of employment for bringing a case [331]. Penalties ranged from prison

sentences to fines [332].

In relation to protection against dismissal, an employer was not allowed to dismiss an employee or change the conditions of employment when a person had filed a complaint with him or the Inspectorate of Social Legislation, or when the latter had taken action or when a court action had been brought by the worker or someone else on the worker's behalf [333]. In such cases, the burden of proof fell upon the employer. A worker could seek job reinstatement and the employer could be sentenced to pay compensation of six months pay or an amount to cover the prejudice suffered.

Positively, the Danish Act [334] extended the definition of the principle of equal treatment to include the prohibition of discrimination during pregnancy [335]. Moreover, with regard to indirect discrimination, the Act prohibited discrimination in job advertisements [336]. Furthermore, only Denmark included a clause on exceptions which accorded with the Directive [337]. The Act laid down that exceptions were authorised when the sex of the worker constituted a determining factor. Such an exception could be authorised after the opinions of the Minister of Labour and the Equal Treatment Commission were sought. The few exceptions that were authorised were of a temporary nature and a continual assessment was

maintained [338]. In relation to positive discrimination, the Act allowed the Minister of Labour in consultation with the Equality Council and appropriate ministries to depart from the terms of the Act in promoting equal opportunities for men and women [339]. Particular attention was to be paid to the removal of inequalities which affected such aspects as access to employment and vocational training. Various derogations were allowed [340]. Different heights for men and women were laid down in connection with admission to the police force. Male or female deputy inspectors were appointed in Copenhagen schools. Finally, a women's centre was allowed to recruit only from females.

With regard to the abolition of discriminatory laws and contrary provisions, the Act correctly applied this provision [341] whilst the Government also took practical steps to ensure compliance through the amendment of discriminatory laws [342]. These laws concerned agricultural workers, paid domestic help and seamen.

But, the Act infringed the Directive in that equal treatment with regard to access to vocational guidance, training, further training and retraining [343], and conditions of employment and dismissal [344] were limited to the same workplace so discrimination could occur where different

undertakings were involved. However, people running guidance and training facilities had to observe equal treatment so all sorts of educational establishments were covered [345]. Discrimination in advertisments for training was also prohibited [346]. No reference was made to the content of training. Moreover, a very wide interpretation of the term conditions of employment was intended [347]. However, the Act did not apply to collective agreements which included a clause guaranteeing the principle of equal treatment [348]. Some of these agreements applied only to men or only to women so different conditions of employment resulted. Possible discriminating effects could therefore arise.

The right to bring an action in Denmark varied. Cases could be brought before the ordinary courts by employees [349], self-employed persons and candidates for vocational training [350]. Any person covered by a collective agreement containing an equal treatment clause could request the trades union to take the matter before the relevant industrial authority. The burden of proof lay upon the complainant but compensation could be awarded [351] and the penalties imposed consisted of prison sentences and fines [352]. In relation to protection against dismissal, a worker involved in such legal actions could not be reinstated but could be awarded compensation of up to twenty-six weeks wages according to the period of

employment and the circumstances of the case [353].

The other three Member States, Germany, Luxembourg and the Netherlands, had not legislated by the imposed deadline and therefore infringed Community obligations. Germany relied upon its existing provisions which were inadequate. The Basic Law did confer equal treatment in principle [354] whilst other acts also dealt with equal treatment [355]. Equal treatment to vocational training was not laid down in the legislation although the Government claimed that the Basic Law covered this field [356]. The Commission disagreed with this assertion [357]. Furthermore, the legislation which dealt with working conditions [358] did not apply to the self-employed. Discrimination also existed with regard to special leave granted only to female workers to look after sick children [359]. The Basic Law also made void any laws, regulations, administrative provisions, articles of professional associations, collective agreements and occupational agreements contrary to the principle of equal treatment [360]. Discriminatory individual contracts were covered in other laws [361].

No laws in the Federal Republic included the definition of the principle of equal treatment, indirect discrimination, marital or family status, or positive discrimination. The Government argued that the court judgments based on the Basic Law

established that discrimination based on sex was prohibited and, so, legislation was unnecessary [362]. Moreover, the Government asserted that the distinction between direct and indirect discrimination was alien to German legal practice [363]. The Government felt that it was not necessary to refer specifically to marital and family status since they formed part of discrimination which was dealt with in the Basic Law [364]. With regard to positive discrimination, voluntary affirmative action plans were drawn up for firms to adopt [365]. Pressure was not put upon the firms, however, to carry out such plans. Grants were made available for women to enter vocational training and pilot schemes.

Legal redress was not wholly available. A worker could put his case to a member of the works council so that a solution could be sought with the management [366]. Alternatively, a worker could bring a case before the industrial tribunals [367]. Employees in the public sector could bring cases before the administrative tribunals [368]. Cases had to be brought by individuals although a worker could request trades union assistance in bringing cases before the industrial tribunals. However, discriminatory job offers were not covered. Burden of proof once again fell upon the injured party [369].

Protection against dismissal only extended to the

private sector in Germany. A worker could not suffer prejudice for filing a complaint [370]. The law on protection against dismissal gave added protection. Damages could result but not reinstatement [371].

Luxembourg and the Netherlands did not possess any suitable equal treatment legislation although the Government of Luxembourg put forward the argument that a 1979 Law allowed equal access to training [372]. Furthermore, in Luxembourg, discrimination in the public sector existed with regard to head of household allowances [373] and leave to look after children [374].

Member States were also required to examine protective legislation in relation to Articles 3 and 5 of the Directive and to ensure adequate notification of the Directive amongst the work force. With regard to protective legislation, any existing protective laws which did not seem to be well founded had to be revised within four years of notification of the Directive, namely, by the 12th of February 1980. Protective measures covered such aspects as hazardous ventures [coal mines, digging, building, etc], dangerous substances [lead, paints, etc], general conditions [night work, Sunday and holiday working] and transport [shipping]. Revision and repeal were carried out in Belgium, Denmark, Germany, Ireland, Italy, the Netherlands and the United

Kingdom. France and Luxembourg did not undertake any such examination [375].

In relation to notification, not one country included this Article in its legislation. All relied upon the mass media for dissemination of information. Guides, pamphlets and booklets were drawn up by the governments, ministries, the equal treatment committees and trades unions and transmitted to employment offices, the social partners, libraries, etc. Campaigns were conducted in the mass media, and meetings and seminars were held [376].

Thus, the Commission concluded in its report that

> "whilst very substantial efforts have been made to give effect to the Directive, considerable areas of uncertainty remain and some elements of the Directive have only been implemented in part" [377].

Three Member States failed to pass any legislation at all within the period of implementation whilst the other countries only implemented certain aspects of the Directive.

Problems in implementing the Directive occurred because of deficiencies in the measure itself. As the principle of equal treatment was not precisely defined in the Directive, Member States experienced

difficulties particularly with regard to the identification and definition of indirect discrimination. The question of family status raised problems. Women were traditionally entrusted with the task of rearing the family and were given leave for that purpose. This leave was denied to men. On the other hand, men were regarded as the head of household and, consequently, were given special advantages.

The exclusion clause resulted in the Member States producing long lists of excluded occupations. This state of affairs was at variance with the intention of the Directive. Some countries laid down a general exclusion clause although the Directive stated that a list should be specified. The Commission maintained a strict interpretation of this clause. Furthermore, not all the countries carried out a review of these excluded occupations.

Similarly, the clauses on protective legislation with regard to access to jobs and working conditions were exploited by the Member States. The situation varied widely although some countries carried out an assessment. Trades unions expressed worries that the abolition of some protective laws of benefit to all workers would result in increased risks and harmful effects on the work force.

A systematic review of collective agreements should be carried out in each Member State to root out discrimination. Some countries instigated such a review. Discrimination was revealed with relation to job classifications, special leave for women and head of household allowances for men. The insertion of equality clauses in collective agreements should be encouraged.

Pregnant women should be allowed access to employment but not all Member States included such a provision. Problems of definition remained in relation to training and working conditions. Not all Member States guaranteed equal access to training. Discrimination in working conditions existed in relation to special leave for women to bring up a family and head of household allowances payable only to men.

Attitudes will take time to change since women were still regarded as secondary elements of the employment market and men were looked upon as head of the household. Employers put forward objections that women were expensive to employ and were prone to absenteeism. Male workers felt threatened by a possible influx of female workers. Female workers were reluctant to enter a male-dominated world. Trades unions were not used to the fight for equal

treatment. The economic crisis of the 1970's led trades unions to concentrate their efforts on preserving jobs. Equal treatment committees needed adequate funds for their tasks.

In its enactment, the Directive did have the indirect effect of strengthening the rights to equal pay in the Member States. The Directive revealed obsolete protective legislation and the obstacles remaining relating to access to some jobs and training. The Commission ended its report optimistically with the statement that

> "recognition of the principle of equal treatment under law has, nevertheless, made appreciable progress at all levels" [378].

5.4. The impact of the Social Security Directive upon the Member States

The third equality Directive, the Directive ensuring equal treatment in statutory social security matters [379], had to be implemented within six years. By way of contrast, it will be recalled that the other two equality Directives were required to be implemented within one year and thirty months respectively. This Directive raised many problems for the Member States. These problems stemmed from the inherently discriminatory nature of many of the

national social security systems. Laurent summed up the situation as follows-

> "equal treatment for men and women is not the rule in statutory social security schemes" [380].

In enacting the Directive in December 1978, the Council was aware of these problems and consequently laid down the long period of six years for Member States to comply with the terms of the Directive. Since the Social Security Directive had to be implemented by December 1984 which fell outside the period under review, a preliminary assessment of the position of each Member State could only be attempted.

What was the impact of this Directive upon the Member States? At the time of the enactment of the Directive, widespread differences in relation to social security schemes existed in the Member States. By 1981, only three Member States, Denmark, France and Italy, possessed legislation which, by and large, complied with the terms of the Directive. Varying degrees of discrimination existed in the legislation of the other six Member States. First, the situation in Denmark, France and Italy will be examined.

In Denmark, a number of social security legislative measures covered the fields of the Directive [381].

Three Laws related to sickness benefits. The first, a Law on hospitals, was enacted in June 1974. In March 1976, a Law on national sickness insurance was passed. The third Law relating to daily allowances in case of illness or confinement was enacted in February 1978. This Law was amended in June 1980 when a Law on social assistance was passed. Laws on invalidity and old age pensions were passed in December 1978. Supplementary pensions for employees were made available by means of a Law passed in May 1978. Insurance against accidents at work was secured in a Law which was enacted in March 1978. An act passed in November 1978 related to child and other family allowances. Finally, a Law on job placement and unemployment insurance was enacted in August 1980.

In its report to the Commission, the Danish Government claimed that these laws applied the principle of equal treatment in accordance with the Social Security Directive [382]. Remaining areas of discrimination in the social security legislation related to the fields excluded from the scope of the Directive.

Similarly to the Danish situation, the French Government considered that its legislation complied with the terms of the Directive [383]. Further legislation was not thought to be necessary. However, Byre pointed to a possible source of indirect

discrimination in relation to the rights of part-time workers to claim sickness benefits [384]. The qualifying condition for sickness benefits was fixed at the same level for male and female workers. Yet, part-time workers could be excluded from such benefit since, in many cases, they did not meet the qualifying condition. In practice, discrimination occurred since the majority of part-time workers were female. Other areas of discrimination in the French legislation, like the Danish, were covered by the exclusions from the Directive [385]. By and large, therefore, the French legislation seemed to accord with the Directive.

Unusual amongst the Member States, the Italian Act on equal treatment in employment included the field of social security [386]. Indeed, this Act went further than the Social Security Directive in its inclusion of family allowances and widow's pensions, and by taking some steps towards the creation of a common retirement age. Article 11 of this Act applied the principle of equal treatment to pensions arising out of invalidity and old age [387]. Thus, this Article extended benefits to husbands of female employees. Its application encompassed employees in the private and public sectors, the self-employed and the liberal professions. Increased benefits for family dependents had been payable only to the male worker. This Act extended the right to claim such benefits and family

supplements to female workers [388]. In cases where both the male and female workers claimed for dependent children then the benefits would be payable to the parent who had care of the child.

Female workers in Italy retired at the age of fifty-five, five years earlier than their male counterparts. Often, the women found that they did not attain the forty years of contributions which were necessary to secure a full pension. The 1977 Act allowed women to work until they reached the age of sixty to enable them to gain a full pension [389]. Firms in the private sector were forbidden to force women to retire before they had reached their full pension entitlement. In practice, however, not many women claimed this right [390]. Indirect discrimination also existed in that pensions were based on the last five years earnings. Since women tended to earn less than men, a lower pension resulted for the former. Part-time workers who worked under twenty four hours a week could not claim this period of employment towards a pension. Most of these workers were women. Maternity leave periods could not be counted towards a pension unlike the period of compulsory military service for males.

The Act included two Articles which dealt with industrial accidents and occupational diseases. The first, a general provision, extended the right to

survivors' benefits to husbands of female workers [391]. The other only applied to agriculture and it gave men and women equal rights to claim benefit [392].

Indirect discrimination remained since many social security benefits were based upon the level of earnings [393]. As the average earnings of women tended to be less than males, then the former were entitled to a lower amount of benefit. Therefore, the legislative situation in Italy seemed to be in accordance with the Directive.

The six other Member States could be divided into two groups. The first group consisting of Belgium, the Netherlands and the United Kingdom passed social security laws after the enactment of the Directive. Discrimination was not totally eradicated and, indeed, in Belgium and the Netherlands some of the legislation worsened the position of women.

At the time of the enactment of the Social Security Directive, widespread discrimination existed in the Belgian social security system. This discrimination stemmed in part from the Belgian interpretation of the concept of a dependent. In Belgium, a dependent was taken to mean the wife and or children of a male worker. The idea of a male acting as a dependent upon his wife was alien to the Belgian

system.

During the course of 1980, Belgium enacted three Royal Decrees to eliminate this discriminatory concept of a dependent [394]. The first Royal Decree of the 23rd of January 1980 applied on a general scale. This Decree widened the definition given to a worker with a dependent to include a female worker with a dependent husband. The other two Royal Decrees dealt with specific social security schemes of which the first enacted on the 16th of May applied to health care schemes. This Decree established the principle of equal treatment for men and women in relation to the treatment of dependents by allowing men to be treated as dependents in the same manner as women. Either the husband or the wife could be responsible for the housework and therefore constituted a dependent upon the other spouse who acted as the breadwinner. In the event of a separation between the husband and the wife, any children would be treated as a dependent upon the parent who provided for their upkeep. The third Decree passed on the 30th of June applied to health care and disability schemes. This Decree also dealt with dependency in its stipulation that either a husband or a wife could act as a dependent. A dependent was defined as someone holding responsibility for the housework.

However, discrimination was not eradicated from the

sickness benefit scheme [395]. One of the Articles of the Royal Decree of November 1963 on the provision of protection against sickness and invalidity did not comply with this Directive. This Article related to working women who left work to enable their working husbands to qualify for the maximum old-age pension. Necessary changes to this law would entail changing the law on pensions as well. So far, these changes had not taken place.

Other problems existed in other areas of social security. Differences in old age pension benefits were experienced in that a married man with a dependent wife received more money than single men, married men without a dependent wife, and women [396].

Serious problems arose with regard to unemployment benefits. A Royal Decree of December 1963 created two categories of unemployed, heads and non-heads of households [397]. Higher benefits accrued to the former category. An amendment to this Royal Decree in December 1980 actually worsened the situation through the creation of three categories, heads of household, single persons and working couples. At the end of the first year of receiving benefit, the second and third categories were entitled to a lower benefit than heads of households. After another year, the former's entitlement was reduced to a flat rate. Furthermore, the concept of head of household was expanded to

include cohabiting couples. Discrimination was accentuated since 39% of unemployed men were heads of households in comparison to 5% of unemployed women [398]. Consequently, this situation was reported to the Commission. No changes took place. Another form of discrimination existed in relation to the treatment of couples and single people [399]. The former received less favourable treatment in that the female of the couple was forced to pay higher taxes. This inequality was magnified since the majority of Belgian unemployed women formed part of a working couple relationship. Furthermore, unemployed women were subjected to a lower maternity leave allowance [400]. In spite of the enactment of these Decrees, various problems of discrimination remained for the Belgian Government to tackle. By the end of 1981, this situation was not changed.

A similar discriminatory situation existed in various social security schemes in the Netherlands. The problematic concept of dependency was also present. The Government, however, in making changes in the period after the enactment of the Social Security Directive actually worsened the position of women in some instances.

A woman could not claim an old age pension until her husband reached the age of sixty-five even when she was older than he [401]. This stipulation was

based on the idea that the husband constituted the breadwinner of the family. However, it clearly contravened the Directive. To settle the problem, the Government instituted a consultative period which ended on the 1st of January 1981. This consultation was followed up with a legislative proposal which was submitted to the Economic and Social Council for its opinion.

Three unemployment benefit schemes were in operation. The Government planned to amalgamate the three schemes into one and at the same time to abolish any discriminatory provision. Discrimination existed in relation to the supplementary benefit scheme. The benefits were paid to the husband as the breadwinner of the family. A woman claiming such benefit had to supply proof that she was the breadwinner.

Since 1980, the position of women was worsened by changes which took place [402]. Benefits paid to part-time workers became based on earnings so that the level of benefit fell below the standard rate. This situation affected women who formed the majority of part-time workers. Secondly, the discriminatory breadwinner concept was introduced into disability schemes. Certain groups, mostly women, continued to be excluded from the right to claim disability benefits. These groups included home and domestic workers and the wives of men working outside the country.

One improvement was made. Married women became entitled to claim invalidity pensions from the 20th of December 1979 [403]. Both husbands and wives could claim for dependent children.

Problems remained to be settled. Generally, increased benefits for dependent spouses could only be paid to the male workers [404]. The Commission expressed its concern that the breadwinner concept was not eradicated from the relevant social security schemes [405].

The United Kingdom Government asserted that the United Kingdom Social Security Act of 1980 would result in equal treatment by the end of 1984 [406]. This Act improved the entitlement of married women to claim social security benefits. Previously, married women claiming increased benefits for dependent children under the national insurance and industrial injury schemes had to prove that their husbands were not able to financially support themselves. From November 1983, this stipulation would be partially removed. However, a condition existed until November 1984 that the husband's earnings should not exceed the amount of the increased benefit. The Act would also mean that a married woman would be able to claim for increased benefits to support her husband. These benefits related to unemployment, sickness, industrial

injury and maternity schemes. Previous to the Act, a woman had to show that her husband was incapable of financial self-support. However, the same two-stage procedure applied as for dependent children. Other changes took place. Increased awards for daughters at universities and female relatives acting as unpaid housekeepers would be phased out by November 1983. These awards were only payable for female dependents. New awards were not made after November 1981. In relation to child carers, increased amounts of money were paid when the child carer was female. This stipulation would be eliminated. From November 1983, it would be possible for a man or a woman to claim supplementary benefit and family income supplement [407].

Some problems remained. The Act did not confer equality of treatment in relation to increases for an adult dependent worker under the invalidity pension and unemployment supplement schemes [408]. Free health care during visits to other European Community countries could only be claimed by a husband for a dependent wife. The reverse only applied when the husband was infirm. Women could only receive non-contributory invalidity pension benefits when they showed that they could not undertake household duties [409]. Invalid care allowances were not payable to married or cohabiting women [410]. Thus, it would seem that the Act of 1980 only partially alleviated

discrimination in the United Kingdom social security system.

Therefore, this first group of three countries needed to make changes to comply with the Directive by the end of 1984. Each country enacted social security laws after the passing of the Social Security Directive. Some of these laws went some way towards eradicating discrimination but others followed a retrograde direction. Major changes were needed in each of these countries.

The second group of countries, the Federal Republic of Germany, Ireland and Luxembourg, were examining the state of their legislation to ascertain whether any changes were necessary.

In Germany, the Government announced that the appropriate legislation of the Republic would be examined to see whether reforms were needed [411]. Article 3 (2) of the Basic Law of the Federal Republic prohibited discrimination between men and women [412]. In accordance with this Article, the statutory accident and pension insurance schemes did not contain any element of discrimination [413]. However, some discrimination seemed to exist in connection with the salary tables which were used to compute the insurance levels for pensions and public sector insurance [414]. Different tables for the sexes were used. These

differences would have to be eliminated.

Various forms of discrimination existed in the Irish social security system particularly with regard to the concept of dependency. Increased social security benefits were payable to male workers with dependent wives [415]. A female worker could only claim these increases when her husband was an invalid or was wholly or partially maintained by her. Another type of discrimination arose with regard to flat-rate unemployment, invalidity pension, occupational injury and disability benefits. Married women received a lower rate of benefit than other workers [416]. Furthermore, in relation to unemployment benefits, married women dependent upon their husbands received benefit for a shorter number of days than other workers [417]. Yet, in this context, discrimination against single women and widows was removed in October 1978.

An inter-departmental working party was established by the Irish Government to study the principle of equal treatment in relation to social security [418]. A report resulted and the Government then looked at the ways in which reforms could be made.

Some improvements took place in April 1979 [419]. First, social security contributions were changed

since they had been based on different rates for males and females. The alterations resulted in the same rates and ceiling points applicable to male and female workers. However, this alteration did not eliminate all discrimination. Changes were made to unemployment benefit. The entitlement of married dependent woman to unemployment benefit was increased from one hundred and fifty-six to three hundred and twelve days. Since other workers could claim benefit for three hundred and ninety days, discrimination still remained.

By 1981, discrimination still existed. The Government took some steps to improve the situation but full compliance with the Directive was not attained.

Unlike the other Member States, the Government of Luxembourg entrusted the task of implementing the Directive upon its Committee on Women's Employment [420]. The Social Security Section of this Committee was given the brief of studying the Directive to ascertain any possible effects and to propose any measures for Luxembourg.

Various problems seemed to arise. Domestic servants working under sixteen hours a week, mostly women, were excluded from sickness benefits [421]. Changes would be needed to the scheme to comply with the Directive. Discriminatory dependency conditions prevailed in

relation to joint insurance and survivor's benefits schemes. A widow of an insured male worker received benefits whereas a widower could only claim benefit when he had been ill when his wife died and, also, when she had contributed the major part of the family income. Indirect discrimination could be discerned against women in relation to unemployment benefit.

Thus, these problems needed to be tackled before compliance with the Directive would be achieved.

A final assessment could not be made before the end of 1984, the deadline for implementation of the Directive. Inevitably, the findings up to the end of 1981 only represented a partial picture. The idea behind the six-year implementation period was to allow the Member States to gradually align their legislation. However, the Member States did not respond in this way. Three Member States seemed to have achieved equal treatment in social security matters. The others seemed to be making but slow progress. This period coincided with a worsening of the economic climate and a dramatic increase in unemployment. Governments were faced with difficult economic problems to solve. Against this background, the Directive will have many obstacles to overcome before implementation could be achieved.

5.5. The impact of the European Social Fund upon the

Member States

So far, this Chapter has considered the impact upon the Member States of the European Community's legislative measures for women. Apart from legislation, the European Community made available financial resources by means of the European Social Fund to aid the position of women. What use did the Member States make of this Fund?

5.5.1. The 1971 reform

The European Social Fund was made available to assist women by means of the 1971 [422] and 1977 [423] reforms. Under the terms of the 1971 reform, grants could only be made available to aid women in accordance with the restrictive nature of Article 5 [424]. What use was made of this aid by the Member States?

In practice, specific applications from the Member States for this type of financial aid were rare. Yet, for Article 5 as a whole, applications for assistance exceeded the budget. Accordingly, the Commission was forced to lay down priorities. In line with its policy to aid women, the Commission included programmes for women as a priority category [425]. In spite of this earmarking, the Commission was forced to admit that specific applications for women's

projects were not made [426]. The Commission considered that some applications may have involved women but was unable to give any examples. During the years from 1971 to 1977, the annual reports of the European Social Fund did not give any information or breakdown on how many (if any) women benefitted from the European Social Fund.

Against a background of increasing unemployment amongst women, the European Parliament took up the matter. The Commission was urged to publicise the existence of Article 5 amongst national and local bodies in order to encourage suitable projects [427]. On reviewing the situation, the Commission pointed to a number of reasons to account for this lack of use [428]. At the time, training projects especially designed for women were rare. Publicity was not very widespread. The conditions surrounding the measure were too complex. Indeed, several proposals were rejected for not fulfilling all the criteria.

Thus, this first reform of the European Social Fund failed to have any impact upon the Member States in connection with women's projects. The Member States did not avail themselves of the potential opportunities of this provision.

5.5.2. The 1977 reform

Table 5.1. The European Social Fund budget in relation to women

Year	Budget for women	Total budget*
1978	8	569.5
1979	18	695.5
1980	20	909.5
1981	22	963.0

Notes: Amounts expressed in terms of millions of European units of account
* Does not include transfers from previous years

Source: Annual Reports of the European Social Fund

Table 5.2. Applications for women's projects from the European Social Fund

Member State	Year 1978	1979	1980	1981*
Belgium	0.007	0.006	0.480	0.785
Denmark	0.446	0.431	0.450	0.524
France	4.792	2.462	4.750	4.733
Germany F.R.	0.066	24.293	61.210	89.863
Ireland	0.007	0.232	0.320	0.589
Italy	2.053	2.376	2.950	4.113
Luxembourg	0.000	0.000	0.000	0.000
The Netherlands	0.301	0.781	0.950	1.504
United Kingdom	0.019	0.678	0.460	0.941
Total	7.691	31.259	71.48$	103.052

Notes: Amounts expressed in terms of millions of European units of account

$ Actually 71.67

Sources: Answer to Written Question of the European Parliament, OJC, Volume 24, Number 240 (18 September 1981), p. 8

* European Parliament Working Documents 1983-1984, Number 1-1229/83/C (5 January 1984), p. 222

Table 5.3. Number of applications for women's projects to the European Social Fund

Member State	Year 1978	1979	1980	1981*
Belgium	1	1	2	4
Denmark	1	1	1	1
France	8	32	2	3
Germany F.R.	2	14	7	4
Ireland	1	5	1	1
Italy	2	5	7	5
Luxembourg	0	0	0	0
The Netherlands	1	2	1	1
United Kingdom	1	2	1	6
Total	17	62	22	25

Sources: Answer to Written Question of the European Parliament, OJC, Volume 24, Number 240 (18 September 1981), p. 8

* European Parliament Working Documents 1983-1984, Number 1-1229/83/C (5 January 1984), p. 222

The 1977 reform [429] which removed the restrictiveness of the 1971 reform took effect from the 1st of January 1978 with a later renewal [430].

What was the impact of this reform upon the Member States between the years 1978 to 1981? The amount of money allocated for women's projects and the total budget of the European Social Fund for these years can be tabulated as illustrated in Table 5.1. This Table showed that the women's element almost trebled during these four years in comparison to the almost doubling of the total allocation. The increase in the women's budget could be ascribed to the Commission's commitment to provide practical assistance to improve the position of women in employment. It was the Commission which pressed for and which obtained increased budgetary commitments for the women's category.

Table 5.2. illustrated the applications for the period under discussion. The first year revealed a modest beginning. Applications amounted to nearly eight million EUA [431]. It must be pointed out, however, that this figure represented only seventeen actual applications [Table 5.3.] of which eight totalled nearly five million EUA [Tables 5.2. and 5.3.]. All the Member States except for Luxembourg submitted at least one application. However, the spread amongst the Member States was uneven. France

dominated the applications accounting for 62% of the total followed by Italy with 27%.

In the second year, 1979, the women's budget was more than doubled from eight million to eighteen million EUA [Table 5.1.]. However, the Member States failed to respond. By April, the time of the first deadline for applications, the Member States had only submitted applications totalling four and a half million EUA.

> "It must be remarked with regret, however, that the volume of eligible applications under this heading [i.e. women] at present falls short of the budgetary provision" [432].

Commissioner Vredeling raised the issue at the Council of Social Affairs meeting held on the 15th of May. Letters were subsequently sent out to the national ministers urging a greater response in the light of the higher than average increase of unemployment amongst women [433]. As Collins pointed out, this situation was embarrassing to the Commission [434]. The latter had urged strongly that Article 4 should be utilised to assist women. The Member States did not initiate enough applications so the Commission was forced to put pressure upon them to generate applications. Accordingly, the deadline for applications was extended [435]. However, the Member States did respond to this appeal so that the

applications totalled over thirty million for the year [Table 5.2.].

The Commission made other attempts to encourage the Member States to apply for financial assistance in this area. In conjunction with national women's organisations, the Commission launched an information campaign [436]. European Regional Information Days were held to interest national trades unions. Regular information was publicised in Women of Europe, including a special Supplement on the subject [437]. Representatives of the Member States met in Lyon to discuss the practicalities of training projects [438]. It was hoped that these efforts would result in a more even distribution of Community aid amongst the Member States.

As a result of this activity, no further problems in securing applications occurred. During the remainder of the period under review, applications greatly outnumbered the amount available [Tables 5.1. and 5.2.]. This difference between the applications and available budget was greater than for the difference between the applications and budget as a whole. Demand for the women's category increased each year. Whereas in 1980, the applications exceeded the available appropriations by over three times, the difference amounted to over four times in 1981 [Tables 5.1. and 5.2.]. This growth in demand pertained in

Table 5.4. Approval of applications from the European Social Fund

Member State	Year 1978	1979	1980	1981
Belgium	11.49	15.94	29.30	23.19
Denmark	14.31	14.70	19.43	24.48
France	86.49	134.82	194.96	141.78
Germany F.R.	57.43	52.88	107.96	74.64
Ireland	44.44	58.13	79.69	105.72
Italy	233.48	281.23	327.15	341.01
Luxembourg	0.23	1.00	0.93	0.56
The Netherlands	9.81	19.32	18.30	12.67
United Kingdom	111.95	196.43	236.50	249.05
Total	569.63	774.45	1,014.22	973.10

Notes: Amounts expressed in terms of millions of European units of account

Source: Annual Reports of the European Social Fund

spite of an increase in the budgetary provision for this area.

The applications represented a very uneven spread amongst the Member States [Table 5.3.]. Three countries dominated this category. France put forward the largest number of applications in the first year, followed by the Federal Republic of Germany and Italy. The Commission expressed its disappointment at this uneven response [439]. In the second year, the Federal Republic overtook France in accounting for nearly 80% of the total applications. Apart from these three countries, the other Member States with the exception of Luxembourg submitted only a small number of applications. The fruits of the Commission's work could be seen in the fourth year as a fairer balance was achieved. United Kingdom headed the table with six applications, Italy came next with five, the Federal Republic and Belgium had four and France submitted three. A different picture emerged, however, when one considered the applications from a monetary viewpoint. From that standpoint, the Federal Republic applied for nearly ninety million EUA [Table 5.2.], 87% of the total. Italy and France asked for over 4 million each. Luxembourg did not submit one application within this period.

Following a set procedure, European Social Fund money was usually allocated twice a year. The

Table 5.5. Approval of applications for women's projects from the European Social Fund

Member State	Year 1978	1979	1980	1981
Belgium	0.01	0.01	0.47	0.78
Denmark	0.45	0.39	0.00	0.00
France	4.79	2.35	3.63	3.02
Germany F.R.	0.07	12.10	13.85	13.28
Ireland	0.01	0.23	0.22	0.45
Italy	2.05	2.29	2.50	3.77
Luxembourg	0.00	0.00	0.00	0.00
The Netherlands	0.30	0.45	0.16	0.49
United Kingdom	0.02	0.66	0.12	0.87
Total	7.70	18.48	20.95	22.66

Notes: Amounts expressed in terms of millions of European units of account

Source: Annual Reports of the European Social Fund

applications were considered first by the European Social Fund Committee. Final approval was given by the Commission usually in July and December. Three distributions were necessary in 1979 owing to the slow initial response from the Member States.

The Commission did not lay down a quota system for the Member States. Distribution of Fund money was based solely on the eligibility of the applications. Thus, the actual distribution amongst the Member States was extremely uneven in line with the unevenness of the applications [Table 5.5.]. In the first year, France dominated the allocation in receiving over 60% of the total. Italy gained over 25%. All the other Member States except for Luxembourg received some assistance. For the next three years, the Federal Republic of Germany received the most money, amounting to 65.5%, 66.1% and 58.6% respectively of the total. Two other countries did well in this period in that France received 12.7%, 17.3% and 13.3% and Italy's share reached 12.4%, 11.9% and 16.6% of the total. This uneven distribution pertained in spite of the Commission's efforts to publicise the existence of this category of assistance. Vredeling commented that he would prefer to see all parts of the Community represented and not just one Member State [440].

How did this distribution compare with the

Table 5.6. The proportion of female unemployed in the European Community

Member State	Year 1978	1979	1980	1981
Belgium	60.3	62.4	62.4	57.9
Denmark	45.2	49.3	45.8	41.8
France	52.7	53.1	54.6	51.5
Germany F.R.	50.8	52.4	52.0	48.7
Ireland	20.8	22.9	23.9	23.5
Italy	41.5	43.9	46.0	47.6
Luxembourg	43.5	49.3	51.9	46.8
The Netherlands	33.7	37.0	35.5	32.0
United Kingdom	29.5	30.7	31.3	28.9
EC 9*	42.8	44.8	45.0	42.2

Notes: Annual averages expressed as a percentage
* Total for the European Community

Source: Employment and Unemployment, 1983

distribution of the total appropriations from the European Social Fund? Table 5.4. showed the total figures and percentages. A slightly different pattern emerged in that four countries received a large proportion of the Fund. Italy easily gained the most for each year in question but second to Italy came the United Kingdom which hardly featured in the women's section. France and the Federal Republic also did well.

One might expect the countries with a higher number of unemployed women to apply for European Social Fund resources in order to reduce the unemployment figures. In practice, did this happen? Table 5.6. showed the number of women unemployed for each country. Belgium headed the unemployment table but scarcely featured in the European Social Fund's women's category. It is true that France, the Federal Republic and Italy recorded high levels of unemployment but these levels of around 40 to 50% were almost attained in Denmark and Luxembourg. Ireland and the United Kingdom had the lowest level of unemployment but they commanded a reasonable amount of Fund resources after the top three were taken into account. There did not seem to be any correlation between the unemployment rates and the level of Fund assistance.

Why was the women's category of the European Social

Fund so unevenly distributed between the Member States? First, the conditions for applying to the Fund were rigid and complex [441]. Aid was only granted to group training programmes and not to individuals. Eligible schemes were mostly restricted to those initiated by governments or local governments. In the private sector, firms or individual organisations wishing to apply to the European Social Fund had to secure financial backing from a public authority. The Fund would then match the grant from the government body. Every application had to be made through a specified government department in each Member State using the official application form. Not surprisingly, applications tended to fall into two categories, one from national and local government bodies and the other, lesser in number, from private organisations.

> "Current procedures lack flexibility and could therefore hamper innovation in vocational training" [442].

Secondly, Italy dominated the allocations from the earliest days of the Fund. Its government officials were accustomed to the bureaucratic machinery. The Commission commented in 1981 how the applications matched those from previous years [443]. Obviously, once an organisation came to terms with the intricacies of the system it continued along the same lines. Projects tended to be similar in character from one year to the next.

Other reasons could be found. The state of vocational training varied from country to country according to tradition. Germany, for instance, had a long tradition of this type of training and, accordingly, found the Fund to be a natural outlet for funding. Vocational training for women was a relatively new idea particularly for programmes to train women for new occupations. Countries were slow to adjust although some like France developed the opportunities which the Fund offered.

How many women were aided by this category of Fund assistance? Unfortunately, the statistical data was not very accurate and the 1981 figure was not available. However, one could estimate that for the four years under review around sixty thousand women benefitted from this resource.

5.5.3. Preparatory studies and pilot schemes

Women could also be assisted from the Fund by means of preparatory studies and pilot schemes. When the Fund was reformed in 1971, the Commission took the opportunity to introduce these categories although the budgetary element remained small [444]. These studies and schemes were intended as a preliminary step [445]. They would enable new uses of the Fund proper to be found and to help trainers to be more effective.

Priority was given to pilot schemes in preference to preparatory studies. For pilot schemes, priority was given to schemes which were innovatory in character. These included schemes which would lead to the creation of employment opportunities for women in jobs in which they were under-represented. Pilot schemes were limited to help a maximum of thirty people [446].

A number of pilot schemes for women were undertaken. The first occurrence came in 1976. Many of these schemes originated in France. One such scheme retrained women in secretarial skills, a traditional female occupation, but a remarkable record was achieved [447]. 85% of the participants found jobs within one month of the end of their training. Some of the schemes led to direct use of Fund money for instance three programmes in 1978 [448]. A joint pilot scheme in the United Kingdom organised by the Training Services Agency and the Engineering Training Board attempted to demonstrate the feasibility of training young women to become technicians in the engineering industry [449].

This category of aid was used by some of the Member States to open up new avenues for women. France and the United Kingdom were the main promoters of these schemes. Small amounts of money were involved. Nevertheless, projects for women took up 15.6% and 21% of the total in 1976 and 1978. Over one hundred

thousand EUA was allocated for women's projects.

Eventually, preparatory studies to aid women were put forward. The first assistance for a preparatory study to aid women was granted in 1974 [450]. This study involved the re-integration of women aged thirty-five within the labour market. A follow-up to this study took place in 1976 to test the response of the women on obtaining a job [451]. Other similar studies were initiated. One study in 1975 involved the training of vocational guidance counsellors who in their turn would be responsible for training women [452].

An interesting study in 1976 into the problems facing women attempting to enter management in the textile industry [453] resulted in a number of recommendations. These recommendations aimed at the improvement of promotion prospects for women. Over one million EUA was spent on women's projects.

The Commission thus made concerted efforts to interest the Member States into applying to the European Social Fund for women's training projects. However, this element must not be over-estimated. The woman's area as such represented a mere fraction of the total budget. In the absence of accurate statistics, one could only estimate as to how many women were helped. The Commission estimated that

around 31% in 1979 [454], just over 30% in 1980 [455] and a little over 30% in 1981 [456] of the total beneficiaries of the Fund were women. Indeed, one MEP asked the Commission to break down the Fund statistics by sex for each sector. This would enable the European Parliament to assess whether male and female workers were equally benefitting from Fund resources [457]. It would seem that over one million women received training through this source of funding. These figures were not inconsiderable.

The distribution of Fund assistance amongst the Member States was uneven and the spread did not accord with the unemployment figures. Complex regulations and national characteristics of training might be attributable for this disparity. The Federal Republic, for example, had a long tradition of vocational training and it was very successful in attracting Fund resources. Not surprisingly, its Government commented that

> "The Fund does play a role in supporting and stimulating measures for girls and women" [458].

The Commission, clearly, played a major role in this activity in attempting to aid women. Its endeavours were impressive. The amount of money allocated to women and the number of women helped were not inconsiderable. Without this aid, many women

would not have received the training necessary for them to re-enter the job market. Fund money represented a practical contribution whereby women could receive the training necessary for them to enter the job market.

5.6. Summary

This Chapter explored the impact of Community legislative and financial measures upon the Member States. It was shown that this impact was uneven and variable. In relation to equal pay, most of the Member States enacted legislation to fulfil the terms of the Equal Pay Directive. However, this legislation was shown to be defective in some manner when the detail was examined. The Commission concluded that most states did not fulfil their legal obligations. A similar situation arose with regard to the other two equality Directives. The Equal Treatment Directive contained complex Articles and all the states failed to implement fully the essence of the Directive. The Social Security Directive was problematic in that the implementation period fell outside the period under review. An initial examination revealed many deficiencies and even instances where states were enacting discriminatory laws after the enactment of this Directive.

In relation to the use made of European Social Fund

Tables 5a to 5e illustrate the extent of the conformity of the national legislation to the European Community measures. The gaps and omissions can be clearly seen with respect to both equal pay and equal treatment. Whereas a number of countries complied with Article 119 of the European Economic Community Treaty, none were able to implement fully the terms of the 1961 Resolution on equal pay. A strong element of compliance was revealed in relation to the Equal Pay Directive but the Equal Treatment Directive was infringed by almost all of the Member States.

However, tables can only be used to illustrate the true extent of legal compliance by the Member States with respect to the European Community legislation. They can not show other areas of relevance when considering the impact of Community measures upon the national states. For example, in relation to equal pay, non-legal factors would also be important. The attitude that equal pay depended upon the collective bargaining process adopted by the Belgian Government, meant that it would not interfere or enact any meaningful legislation. Indirect discrimination was shown to be well entrenched whether through the establishment of "women only grades" at the lowest level of pay as in Italy or Luxembourg or establishing systems of pay in accordance with different physical characteristics as adopted in Germany and France. Although the Netherlands was the only Member State which had the power to cancel any discriminatory collective agreement, the Dutch Government was reluctant to use its powers in line with its restrictive attitude towards implementing the principle of equal pay. All these factors contributed towards assessing the impact of equal pay at the national level.

resources, it was shown that use was patchy and uneven. A few Member States dominated the allocations. At first, an embarrassing lack of applications for the women's area meant that the Commission had to encourage applications. However, over one million women would seem to have benefitted during the period under review.

Faced with this situation of failures to implement fully the Community legislation on women, how did the Commission seek to ensure compliance from the Member States? Chapter Six will thus explore this question and the means at the disposal of the Commission to enforce Community legislation.

Footnotes

1. European Communities, Treaties, p. 312.
2. Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands.
3. Title 1, Article 2.
   Jean Blondel, The Government of France (2nd ed., London, Methuen, 1974), p. 265.
4. Commission, Equal Pay Report 1972, p. 8.
5. Commission, Equal Pay Report 1964, p. 21.
6. France, "Arrêté du 29 juillet 1946 portant relèvement des salaires", Journal Officiel de la République française [hereafter JOF], Number 176 (29 et 30 juillet 1946), pp. 6759-6760.
7. France, "Décret no 50-1029 du 23 août 1950 portant fixation du salaire national minimum interprofessionnel garanti", JOF, Number 200 (24 août 1950), p. 9062.
8. France, "Act No. 50-205, respecting collective agreements and proceedings for the settlement of collective labour disputes 11 February 1950", ILO Legislative Series, 1950-Fr. 6.
9. A collective agreement which was binding on all in a particular industry.
10. Article 31g.

France, "Act No. 50-205", p. 4.

11. Article 3 (1).
Basic Law of the Federal Republic of Germany (No place, Press and Information Office of the Government of the Federal Republic of Germany, 1977), p. 14.

12. Article 3 (2).
Ibid.

13. Article 3 (3).
Ibid.

14. Article 3.
Italian Republic. Constitutional administration (Roma, Presidency of the Council of Ministers Information and Copyright Service, 1976), p. 139.

15. Article 37.
Ibid, p. 147.

16. Commission, Equal Pay Report 1961, pp. 4, 7 and 8.

17. Belgium, Luxembourg and the Netherlands.

18. Commission, Equal Pay Report 1962, p. 3.

19. This body was established in 1952 as an advisory body to the government and it consisted of representatives from the social partners.
Campbell Balfour, Industrial Relations in the Common Market (London, Routledge and Kegan Paul, 1972), p. 66.

20. Collective agreements were concluded by joint committees who were the only bodies allowed to fix wages.
Commission, Equal Pay Report 1962, p. 3.

21. Commission, Equal Pay Report 1961, p. 6.

22. Bulletin EEC, Volume 3, Number 6/7 (August/September 1960), pp. 45-46.

23. Commission, Equal Pay Report 1961, pp. 4-5.

24. Bulletin EEC, Volume 5, Number 1 (January 1962), pp. 8-10.

25. Italian Republic, p. 147.

26. Commission, Equal Pay Report 1961, p. 4.

27. Knapp, L'égalité de rémunération, p. 29.

28. These national agreements were concluded between an employers' organisation, the Confederation of Industry and the trades unions.
Commission, Equal Pay Report 1964, p. 33.

29. Commission, Equal Pay Report 1972, p. 20.

30. A decision of the 30th of August 1960 declared that a higher salary could not be paid to a man in comparison with a woman under the terms of a collective agreement. In the following year, a case judgment affirmed that a collective agreement which allowed inequalities in wages between male and female workers was void.
Knapp, L'égalité de rémunération, pp. 29-30.

31. Commission, Equal Pay Report 1961, p. 9.

32. Commission, Equal Pay Report 1964, p. 41.
33. Commission, Equal Pay Report 1961, pp. 9-10.
34. Commission, Equal Pay Report 1964, pp. 33-34.
35. Commission, Equal Pay Report 1972, p. 23.
36. Commission, Equal Pay Report 1963, p. 17.
37. Commission, Equal Pay Report 1964, p. 35.
38. Commission, Equal Pay Report 1963, p. 18.
39. Commission, Equal Pay Report 1972, p. 10.
40. Commission, Equal Pay Report 1964, p. 37.
41. Ibid, pp. 37-38 and 41, and
Commission, Equal Pay Report 1972, p. 20.
42. Article 19, Number 4.
Basic Law of the Federal Republic, p. 22.
43. Article 51.
Germany F.R., "Works Constitution Act 11 October 1952", ILO Legislative Series, 1952-Ger.F.R. 6, p. 12.
44. Commission, Equal Pay Report 1961, p. 7.
45. Ibid, pp. 25-26.
46. Commission, Equal Pay Report 1962, p. 6.
47. Knapp, L'égalité de rémunération, pp. 25-26.
48. Commission, Equal Pay Report 1964, pp. 13-15.
49. Commission, Equal Pay Report 1962, p. 5.
50. A Federal Labour Court decision of 15 January 1955 declared that the collective agreement in question violated the Basic Law since it provided for female workers to receive a salary at only 75 to 80% of the rate of the male workers for the same job.
Knapp. L'égalité de rémunération, p. 25.
51. Commission, Equal Pay Report 1961, p. 7.
52. Commission, Equal Pay Report 1972, p. 10.
53. Collective agreements with legally binding effect.
54. Commission, Equal Pay Report 1962, p. 5 bis.
55. Commission, Equal Pay Report 1972, p. 22.
56. Commission, Equal Pay Report 1961, pp. 7-8.
57. Commission, Equal Pay Report 1962, p. 5.
58. Commission, Equal Pay Report 1963, p. 10.
59. Commission, Equal Pay Report 1972, p. 22.
60. Commission, Equal Pay Report 1961, p. 4.
61. France, "Act No. 50-205", p. 4.
62. Commission, Equal Pay Report 1961, pp. 8-9.
63. Commission, Equal Pay Report 1962, p. 7.
64. Act No. 50-205 laid down an "extension of the contract" procedure which allowed the Minister of Labour to declare that a particular collective agreement had binding status on employers and workers even when the latter had not been party to the negotiations or had not agreed to the outcome.
Balfour, Industrial Relations in the Common Market, p. 60.
65. Commission, Equal Pay Report 1962, p. 8.
66. Commission, Equal Pay Report 1972, p. 27.
67. Commission, Equal Pay Report 1962, p. 4.
68. Collective agreements given compulsory legal

status by order of the monarch.
Commission, Equal Pay Report 1964, pp. 5-6.

69. Commission, Equal Pay Report 1962, pp. 3-4.
70. Commission, Equal Pay Report 1963, p. 6.
71. Commission, Equal Pay Report 1964, p. 8.
72. Commission, Equal Pay Report 1962, p. 16.
73. Commission, Equal Pay Report 1963, pp. 7-8.
74. Commission, Equal Pay Report 1972, p. 22.
75. Commission, Equal Pay Report 1962, p. 12.
76. Ibid, p. 11.
77. Commission, Equal Pay Report 1964, p. 45.
78. Luxembourg, "Arrêté grand-ducal du 22 avril 1963 portant nouvelle fixation et réglementation du salaire social minimum", Mémorial A, Number 22 (27 Avril 1963), pp. 263-264.
79. Luxembourg, "Loi du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'État", Mémorial A, Number 36 (29 Juin 1963), pp. 506-562.
80. Body entrusted with the overseeing of collective agreements.
81. Commission, Equal Pay Report 1962, p. 13.
82. Commission, Equal Pay Report 1961, p. 11.
83. Commission, Equal Pay Report 1962, pp. 13-14.
84. Sullerot, "Equality of Remuneration for Men and Women", pp. 89-90.
85. Commission, Equal Pay Report 1972, p. 10.
86. Ibid, p. 24.
87. Commission, Equal Pay Report 1964, p. 7.
88. Ibid, p. 18.
89. Commission, Equal Pay Report 1972, p. 20.
90. Ibid, p. 24.
91. Article 84 (1) laid down that every employee could make a complaint to the competent authorities in the establishment when discrimination had occurred.
Germany F.R., "Works Constitution Act", ILO Legislative Series, 1972-Ger.F.R. 1, p. 35.
92. Article 75 (1) stated that there should be no discrimination when applying collective agreements.
Ibid, p. 30.
93. Commission, Equal Pay Report 1972, p. 19.
94. Ibid, p. 23.
95. France, "Act No. 71-561 to amend certain provisions of Chapter IV bis of Part II of Book I of the Labour Code respecting collective industrial agreements, and certain provisions of Part II of Act No. 50-205 of 11 February 1950, as amended, respecting the procedure for mediation", ILO Legislative Series, 1971-Fr. 3.
96. Article 1.
France,"Décret no 73-360 du 27 mars 1973 portant application de la loi no 72-1143 du 22 décembre 1972 relative à l'égalité de rémunération contre les hommes et les femmes,

et détermination des contraventions différentes aux dispositions de la dite loi", JOF, Number 75 (29 mars 1973), p. 3456.

97. Commission, Equal Pay Report 1972, p. 20.

98. Article 3.
France, "Act No. 72-1143, respecting equal remuneration for men and women", ILO Legislative Series, 1972-Fr. 3, p. 1.

99. Belgium, "Act respecting the protection of workers' remuneration, 12 April 1965", ILO Legislative Series, 1965-Bel. 2.

100. Belgium, "Royal Order No. 40, respecting the employment of women, 24 October 1967", ILO Legislative Series, 1967-Bel. 3.

101. Article 14.
Ibid, p. 3.

102. Belgium, "Labour Act, 16 March 1971", ILO Legislative Series, 1971-Bel. 2.

103. Commission, Equal Pay Report 1972, p. 19.

104. Ibid, p. 22.

105. Luxembourg, "Act respecting collective labour agreements, 12 June 1965", ILO Legislative Series, 1965-Lux. 1.

106. Article 4 (iii).
Ibid, p. 2.

107. Article 1.
Luxembourg, "Loi du 12 mars 1973 portant réforme du salaire social minimum", Mémorial A, Number 15 (15 Mars 1973), p. 386.

108. The Netherlands, "An Act to make provision for a minimum wage and a minimum leave allowance (Minimum Wage and Minimum Leave Allowance Act), 27 November 1968", ILO Legislative Series, 1968-Neth. 1.

109. Sullerot, "Equality of Remuneration for Men and Women", p. 90.

110. Commission, Equal Pay Report 1964, pp. 47-48 and 75-76.

111. Commission, Equal Pay Report 1972, p. 10.

112. Ibid, p. 40.

113. Ibid, p. 19.

114. Confédération Générale du Travail.

115. Commission, Equal Pay Report 1972, p. 20.

116. Ibid, p. 21.

117. During the 1960's, trades unions concentrated on various issues which excluded claims for equal pay because few women belonged to unions and their position was consequently weak.
Cox, "Social and Labour Policy", p. 12.

118. By the addition of Denmark, Ireland and the United Kingdom.

119. Article 40 (1) of the 1937 Irish Constitution.
J.M.Kelly, The Irish Constitution (2nd ed.,

Dublin, Jurist, 1984), p. 446.
120. United Kingdom, "Equal Pay Act 1970".
121. Commission, Equal Pay Report 1973, p. 52.
122. Ibid, pp. 14 and 16.
123. Ibid, p. 44.
124. Ibid, p. 46.
125. National agreements were concluded every two years between the employers' and workers' confederations.
Ibid, p. 16.
126. Ibid, pp. 18-19.
127. Ibid, pp. 20-21.
128. Ibid, p. 40.
129. Ibid, p. 19.
130. United Kingdom, "Equal Pay Act 1970".
131. Commission, Equal Pay Report 1973, p. 21.
132. Ibid, p. 15.
133. United Kingdom, "Equal Pay Act 1970".
134. Commission, Equal Pay Report 1973, p. 18.
135. Ibid, p. 19.
136. Ibid, p. 51.
137. The text of this Directive has been reproduced as Appendix Two.
138. France, "Act No. 72-1143".
139. France, "Décret no 73-360".
140. Article 24 o et p.
France, "Loi no 73-680 du 13 juillet 1973 modifiant le code du travail en ce qui concerne la résiliation du contrat de travail à durée indeterminée", JOF, Number 165 (18 juillet 1973), p. 7764.
141. Article 5.
France, "Act No. 72-1143", p. 1.
142. Articles 3 au 5.
France, "Décret no 73-360", p. 3456.
143. Article 6.
France, "Act No. 72-1143", p. 1.
144. Article 4.
France, "Décret no 73-360", p. 3456.
145. Remuet-Alexandrou, "Community law and women", p. 18.
146. Article 23.
France, "Décret no 46-1433 du 14 juin 1946 relatif au statut du personnel des exploitations minières et assimilées", JOF, Number 138 (15 juin 1946), p. 5279.
147. Ireland, "An Act to ensure equal treatment, in relation to certain terms and conditions of employment, between men and women employed on like work", ILO Legislative Series, 1974-Ire. 1.
148. Section 9.
Ibid, pp. 6-7.
149. Section 10.
Ibid, pp. 7-8.
150. Section 6.
Ibid, p. 3.

151. Commission, Equal Pay Report 1978, p. 30.
152. Luxembourg, "Règlement grand-ducal du 10 juillet 1974 relatif à l'égalité de rémunération entre les hommes et les femmes", Mémorial A, Number 55 (12 Juillet 1974), pp. 1275-1276.
153. Articles 15 et 16.
Luxembourg, "Loi du 24 juin 1970 portant réglementation du contrat de louage de services des ouvriers", Pasinomie Luxembourgeoise, Volume XLII (1970), p. 472.
154. Article 5.
Luxembourg, "Règlement grand-ducal du 10 juillet 1974", p. 1276.
155. Commission, Equal Pay Report 1978, p. 31.
156. Article 9 (2).
Luxembourg, "Loi du 22 juin 1963", p. 509.
157. Article 4.
Luxembourg, "Règlement grand-ducal du 10 juillet 1974", p. 1276.
158. Remuet-Alexandrou, "Community law and women", p. 23.
159. United Kingdom, "Equal Pay Act 1970".
160. Remuet-Alexandrou, "Community law and women", p. 28.
161. Schedule 1, Sections 22, 4 (1) and 106, 17-2.
United Kingdom, "Trade Union and Labour Relations Act 1974", pp. 1761 and 1770.
162. Remuet-Alexandrou, "Community law and women", p. 28.
163. Commission, Equal Pay Report 1978, p. 31.
164. Section 1.
United Kingdom, "Equal Pay Act 1970", p. 1.
165. "Same work" was rejected as being too narrow. "Equal value" would have entailed laying down legislation on the determination of the value of a job. It was thought that this would have been an extremely difficult and expensive process.
C.A.Larsen, "Equal pay for women in the United Kingdom", International Labour Review, Volume 103, Number 1 (January 1971), p. 3.
166. Commission, Equal Pay Report 1978, p. 23.
167. Denmark, "Act respecting equal wages for men and women", ILO Legislative Series, 1976-Den. 1.
168. Article 3.
Denmark, "Act respecting equal wages", p. 1.
169. Commission, Equal Pay Report 1978, p. 27.
170. Ibid, p. 30.
171. Article 1.
Denmark, "Act respecting equal wages", p. 1.
172. Landau, The rights of working women in the European Community, p. 53.
173. The Netherlands, "An Act to lay down rules for the entitlement of workers to a wage that is equal to the wage earned by workers of the

other sex for work of equal value", [hereafter "Equal Wages for Women and Men Act"], ILO Legislative Series, 1975-Neth. 1.

174. Article 17.
Ibid, p. 4.

175. Article 6 (1).
The Netherlands, "Decree to issue the Extraordinary (Employment Relations) Decree", ILO Legislative Series, 1945-Neth. 1, p. 4.

176. Article 10.
The Netherlands, "Equal Wages for Women and Men Act", pp. 2-3.

177. Commission, Equal Pay Report 1978, p. 31.

178. The Netherlands, "Minimum Wage and Minimum Leave Allowance Act".

179. Remuet-Alexandrou, "Community law and women", p. 25.

180. Commission, Equal Pay Report 1978, p. 63.

181. Belgium, "Arrêté royal rendant obligatoire la convention collective de travail no 25, conclue le 15 octobre 1975 au sein du Conseil national du travail, relative à l'égalité de rémunération entre les travailleurs masculins et les travailleurs féminins", Moniteur belge, Volume 145 (25 décembre 1975), p. 16447.

182. Belgium, "Convention collective de travail no 25 du 15 Octobre 1975 relative à l'égalité de rémunération entre les travailleurs masculins et les travailleurs féminins", Ibid, pp. 16448-16449.

183. Commission, Equal Pay Report 1978, p. 24.

184. Ibid, p. 27.

185. Ibid, p. 30.

186. Articles 1-2.
Belgium, "Arrêté royal attribuant une allocation de foyer ou une allocation de résidence au personnel des ministères", Moniteur belge, Volume 137 (9 février 1967), p. 1283.

187. Commission, Equal Pay Report 1978, p. 19.

188. Ibid, p. 87.

189. Ibid, p. 59.

190. Italy, "Act No. 903, respecting equality of treatment as between men and women in questions of employment", ILO Legislative Series, 1977-It. 1.

191. The Government stated that this was in accordance with Article 37 of the Constitution.
Commission, Equal Pay Report 1978, p. 26.

192. Ibid, p. 28.

193. Ibid, p. 31.

194. Article 138 of the Civil Code.
Ibid, p. 25.

195. Article 84 (3).
Germany, "Works Constitution Act", p. 35.

196. Commission, Equal Pay Report 1978, p. 27.

197. Ibid, p. 30.

198. Ibid, pp. 19-20.
199. Social policy: Employment of women file. Data room, London Office of the Commission of the European Communities.
200. Bulletin EC, Volume 9, Number 2 (1976), pts. 2107, 2211 and 2425.
201. European Communities, Treaties, p. 1104.
202. Social policy: Employment of women file. Data room, London Office of the Commission of the European Communities.
203. The Times, 12 February 1976, p. 7.
204. Commission, Equal Pay Report 1978, p. 143.
205. Belgium, "Economic Reform Act", ILO Legislative Series, 1978-Bel. 2.
206. Article 128.
Ibid, pp. 3-4.
207. Articles 131 and 132.
Ibid, pp. 4-5.
208. Article 130.
Ibid, p. 4.
209. Article 136.
Ibid, p. 5.
210. Article 141.
Ibid, p. 7.
211. Article 137.
Ibid, p. 6.
212. Ireland, "An Act to make unlawful in relation to employment certain kinds of discrimination on grounds of sex or marital status, to establish a body to be known as the Employment Equality Agency, to amend the Anti-Discrimination (Pay) Act of 1974 and to provide for other matters related to the aforesaid matters" [hereafter "Employment Equality Act"], ILO Legislative Series, 1977-Ire. 1.
213. Sections 19 and 39.
Ibid, pp. 7 and 14.
214. Italy, "Act No. 903".
215. Article 2.
Ibid, p. 1.
216. Article 19.
Ibid, p. 4.
217. Article 16.
Ibid, p. 4.
218. Article 18.
Ibid, p. 4.
219. United Kingdom, "An Act to render unlawful certain kinds of sex discrimination and discrimination on the grounds of marriage, and establish a Commission with the function of working towards the elimination of such discrimination and promoting equality of opportunity between men and women generally; and for related purposes" [hereafter "Sex Discrimination Act 1975"], ILO Legislative Series, 1975-U.K. 1.

220. Section 75.
Ibid, pp. 36-37.
221. Section 57.
Ibid, p. 28.
222. Section 77 (3).
Ibid, p. 38.
223. Section 4.
Ibid, p. 6.
224. Section 65.
Ibid, p. 31.
225. The text of this Directive has been reproduced as Appendix Three.
226. United Kingdom, "Sex Discrimination Act 1975".
227. France, "Act No. 75-625, to amend and supplement the special rules in the Labour Code as to the employment of women, Section L.298 of the Social Security Code 1", ILO Legislative Series, 1975-Fr. 2 and
France, "Loi no 75-599 du 10 juillet 1975 portant modification de l'ordonnance no 59-244 du 4 février 1959 relative au statut général des fonctionnaires", JOF, Number 160 (11 juillet 1975), p. 7124.
228. Sections 22 and 29.
United Kingdom, "Sex Discrimination Act 1975", pp. 17 and 21.
229. Section 82.
Ibid, pp. 38-41.
230. Sections 1 (1) and 1 (3).
Ibid, pp. 4-5.
231. Commission, Equal Treatment Directive Report, p. 20.
232. Ibid, p. 12.
233. Ibid, pp. 16-17.
234. Sections 6 (3) and 11.
United Kingdom, "Sex Discrimination Act 1975", pp. 7 and 12.
235. Section 7.
Ibid, pp. 8-10.
236. Section 80 (2).
Ibid, p. 38.
237. Section 2 (2).
Ibid, p. 5.
238. Sections 47 and 48.
Ibid, pp. 24-25.
239. Commission, Equal Treatment Directive Report, pp. 70-71.
240. Section 77.
United Kingdom, "Sex Discrimination Act 1975", pp. 37-38.
241. Commission, Equal Treatment Directive Report, p. 32.
242. Ibid, p. 90.
243. Ibid, p. 158.
244. Section 82 (1).
United Kingdom, "Sex Discrimination Act 1975", p. 38.

245. Section 26.
Ibid, p. 20.
246. Section 38.
Ibid, p. 22.
247. Sections 75, 59 and 67.
Ibid, pp. 36-37, 29 and 33-34.
248. Sections 59 and 61.
Ibid, p. 29.
249. Section 63.
Ibid, p. 30.
250. Section 4.
Ibid, p. 6.
251. Commission, Equal Treatment Directive Report, p. 193.
252. Section 65.
United Kingdom, "Sex Discrimination Act 1975", p. 31.
253. France, "Loi no 75-599".
254. France, "Act No. 75-625".
255. France, "Act No. 71-575 to organise continuing vocational training as part of life long education", ILO Legislative Series, 1971-Fr. 1.
256. Commission, Equal Treatment Directive Report, p. 22.
257. Article 2.
Blondel, The Government of France, pp. 265-266.
258. L122-125.
France, "Act No. 75-625", p. 1.
259. Commission, Equal Treatment Directive Report, p. 46.
260. L122-125.
France, "Act No. 75-625", p. 1.
261. L122-130.
Ibid, p. 3.
262. Commission, Equal Treatment Directive Report, p. 65.
263. L122-125.
France, "Act No. 75-625", p. 1.
264. Commission, Equal Treatment Directive Report, p. 81.
265. Article 1.
France, "Loi no 75-599", p. 7124.
266. France, "Act No. 71-575".
267. Commission, Equal Treatment Directive Report, p. 141.
268. Title II.
France, "Loi no 76-617 du 9 juillet 1976, portant diverses mesures de protection sociale de la famille", JOF, Number 160 (10 juillet 1976), p. 4150 and
Commission, Equal Treatment Directive Report, pp. 149-150.
269. Ibid, pp. 187-188.
270. Remuet-Alexandrou, "Community law and women", p. 45.
271. Commission, Equal Treatment Directive Report, p. 203.

272. Ireland, "Employment Equality Act".
273. Italy, "Act No. 903".
274. Belgium, "Economic Reform Act".
275. Denmark, "Act respecting equality of treatment as between men and women with regard to employment, etc." [hereafter "Equality of Treatment Act"], ILO Legislative Series, 1978-Den. 3.
276. Ireland, "Employment Equality Act".
277. Section 2.
Ibid, p. 2.
278. Commission, Equal Treatment Directive Report, p. 18.
279. Section 2 (c).
Ireland, "Employment Equality Act", p. 2.
280. Section 12.
Ibid, p. 5.
281. Section 17.
Ibid, pp. 6-7.
282. Commission, Equal Treatment Directive Report, pp. 49-50.
283. Section 15.
Ireland, "Employment Equality Act", p. 6.
284. Commission, Equal Treatment Directive Report, pp. 66-67.
285. Section 10.
Ireland, "Employment Equality Act", p. 5.
286. Sections 3 and 6.
Ibid, pp. 2 and 4.
287. Section 5.
Ibid, p. 4.
288. Section 7.
Ibid, p. 4.
289. Section 8.
Ibid, pp. 4-5.
290. Section 2.
Ibid, p. 2.
291. Section 19.
Ibid, p. 7.
292. Section 22.
Ibid, p. 8.
293. Section 24.
Ibid, pp. 8-9.
294. Sections 39-48.
Ibid, pp. 14-15.
295. Commission, Equal Treatment Directive Report, p. 189.
296. Sections 25-27.
Ireland, "Employment Equality Act", pp. 9-11.
297. Italy, "Act No. 903".
298. Articles 1-4 and 6.
Ibid, pp. 1-2.
299. Article 1.
Ibid, p. 1.
300. Commission, Equal Treatment Directive Report, p. 18.
301. Article 1.

Italy, "Act No. 903", p. 1.

302. Commission, Equal Treatment Directive Report, p. 67.

303. Article 19.
Italy, "Act No. 903", p. 4.

304. Articles 1-4, 6 and 10-14.
Ibid, pp. 1-3.

305. Article 7.
Italy, "Act No. 1204, respecting the protection of working mothers", ILO Legislative Series, 1971-It. 1, p. 3.

306. Article 15.
Italy, "Act No. 903", p. 3.

307. Commission, Equal Treatment Directive Report, p. 190.

308. Article 37.
Landau, The rights of working women in the European Community, p. 81.

309. Belgium, "Economic Reform Act".

310. Article 116.
Ibid, p. 1.

311. Article 121 (1).
Ibid, p. 2.

312. Articles 120-121.
Ibid, p. 2.

313. Article 118.
Ibid, p. 1.

314. Commission, Equal Treatment Directive Report, p. 80.

315. Article 128.
Belgium, "Economic Reform Act", pp. 3-4.

316. Article 124.
Ibid, p. 3.

317. Royal Decree of 8 January 1980 on vacations of wage workers.
Landau, The rights of working women in the European Community, p. 50.

318. Article 118.
Belgium, "Economic Reform Act", p. 1.

319. Articles 1-2.
Belgium, "Arrêté royal attribuant une allocation de foyer", p. 1283.

320. Commission, Equal Treatment Directive Report, pp. 41-43.

321. Article 122.
Belgium, "Economic Reform Act", p. 2.

322. Article 119.
Ibid, pp. 1-2.

323. Commission, Equal Treatment Directive Report, p. 64.

324. Article 130.
Belgium, "Economic Reform Act", p. 4.

325. Commission, Equal Treatment Directive Report, p. 93.

326. Article 1.
Belgium, "Arrêté royal relatif aux absences de longue durée justifiées par des raisons

familiales", Moniteur belge, Volume 145 (29 mai 1975), p. 6765.

327. Article 131.
Belgium, "Economic Reform Act", p. 4.

328. Article 134.
Ibid, p. 5.

329. Article 132.
Ibid, pp. 4-5.

330. Article 135.
Ibid, p. 5.

331. Article 136 (2).
Ibid, p. 5.

332. Article 141.
Ibid, p. 7.

333. Article 136.
Ibid, p. 5.

334. Denmark, "Equality of Treatment Act".

335. Article 1 (1).
Ibid, p. 1.

336. Article 6.
Ibid, p. 1.

337. Article 11 (1).
Ibid, p. 2.

338. Commission, Equal Treatment Directive Report, pp. 43-44.

339. Article 11.
Denmark, "Equality of Treatment Act", p. 2.

340. Commission, Equal Treatment Directive Report, p. 65.

341. Article 7.
Denmark, "Equality of Treatment Act", p. 1.

342. Commission, Equal Treatment Directive Report, p. 29.

343. Article 3 (1).
Denmark, "Equality of Treatment Act", p. 1.

344. Article 4.
Ibid, p. 1.

345. Article 3 (2).
Ibid, p. 1.

346. Article 6.
Ibid, p. 1.

347. Commission, Equal Treatment Directive Report, p. 148.

348. Ibid, p. 149.

349. Article 9 (3).
Denmark, "Equality of Treatment Act", p. 2.

350. Commission, Equal Treatment Directive Report, p. 187.

351. Article 8.
Denmark, "Equality of Treatment Act", p. 1.

352. Article 12.
Ibid, p. 2.

353. Commission, Equal Treatment Directive Report, p. 203.

354. Article 3.
Basic Law of the Federal Republic, p. 14.

355. For the private sector, Article 75 (1).

Germany, F.R., "Works Constitution Act", p. 30.
For the public sector, Article 67 of the Federal Law of 15 March 1974 on staff representatives.
Landau, The rights of working women in the European Community, p. 57.

356. Commission, Equal Treatment Directive Report, p. 26.
357. Ibid, pp. 118-119.
358. For the private sector, Article 75 (1).
Germany, F.R., "Works Constitution Act", p. 30.
For the public sector, Article 67 of the Federal Law of 15 March 1974 on staff representatives.
Landau, The rights of working women in the European Community, p. 57.
359. Commission, Equal Treatment Directive Report, p. 157.
360. Article 3 (2).
Basic Law of the Federal Republic, p. 14.
361. Article 75 (1).
Germany, F.R., "Works Constitution Act", p. 30.
362. Commission, Equal Treatment Directive Report, p. 13.
363. Ibid, p. 16.
364. Ibid, p. 19.
365. Ibid, pp. 68-69.
366. Article 84 (1).
Germany, F.R., "Works Constitution Act", p. 35.
367. Article 85 (1).
Ibid, p. 35.
368. Commission, Equal Treatment Directive Report, p. 191.
369. Commission, Equal Treatment Directive Report, p. 192.
370. Article 84 (3).
Germany, F.R., "Works Constitution Act", p. 35.
371. Commission, Equal Treatment Directive Report, p. 205.
372. Ibid, p. 117.
373. Article 2.
Luxembourg, "Loi du 22 juin 1963", p. 506.
374. Article 9 (2).
Ibid, p. 509.
375. Commission, Equal Treatment Directive Report, pp. 175-185.
376. Ibid, pp. 206-210.
377. Ibid, p. i.
378. Ibid, p. x.
379. The text of this Directive has been reproduced as Appendix Four.
380. Laurent, "European Community law and equal treatment for men and women in social security", p. 375.
381. Commission, Social Security Report, Annex 1, p. 2 and
I. van den Heuvel, "The implementation to date

of the third Directive ('Social Security', target date -1984),", European Parliament Working Documents 1983-1984, Document 1-1229/83/C (5 January 1984), p. 58.

382. Commission, Social Security Report, Annex 1, p. 2.
383. Ibid, Annex 1, p. 4.
384. Angela Byre, First report of the network of experts set up to monitor the application of Community equal treatment legislation (No place, Commission of the European Communities, 1984), p. 37.
385. Commission, Social Security Report, Annex 1, p. 4.
386. Italy, "Act No. 903".
387. Ibid, p. 3.
388. Article 9.
Ibid, p. 3.
389. Article 4.
Ibid, pp. 1-2.
390. Byre, First report of the network of experts, pp. 37-38.
391. Article 11.
Italy, "Act No. 903", p. 3.
392. Article 10.
Ibid, p. 3.
393. Byre, First report of the network of experts, p. 37.
394. Commission, Social Security Report, Annex 1, p. 1.
395. Heuvel, "The implementation of the third Directive", p. 63.
396. Commission of the European Communities, Comparative tables of the social security schemes in the Member States of the European Communities. General scheme (12th ed., Brussels, Commission of the European Communities, 1982), p. 66.
397. Heuvel, "The implementation of the third Directive", pp. 64-65.
398. Commission, Social Security Report, Annex 2, p. 1.
399. Byre, First report of the network of experts, p. 35.
400. Commission, Social Security Report, Annex 2, p. 1.
401. Ibid, Annex 1, p. 9.
402. Byre, First report of the network of experts, p. 38.
403. Commission, Social Security Report, Annex 1, p. 9.
404. Ibid, p. 5.
405. Ibid, Annex 2, p. 2.
406. Ibid, Annex 1, pp. 10-12.
407. Heuvel, "The implementation of the third Directive", p. 69.
408. Commission, Social Security Report, Annex 2, p.

2.

409. Byre, First report of the network of experts, p. 39.
410. Heuvel, "The implementation of the third Directive", p. 69.
411. Commission, Social Security Report, Annex 1, p. 4.
412. Basic Law of the Federal Republic, p. 14.
413. Heuvel, "The implementation of the third Directive", p. 65.
414. Remuet-Alexandrou, "Community law and women", p. 69.
415. Byre, First report of the network of experts, p. 37.
416. Heuvel, "The implementation of the third Directive", p. 66.
417. Byre, First report of the network of experts, p. 37.
418. Heuvel, "The implementation of the third Directive", p. 66.
419. Commission, Social Security Report, Annex 1, pp. 5-6.
420. Ibid, Annex 1, p. 4.
421. Byre, First report of the network of experts, p. 38.
422. Council, "Council Decision on the reform of the European Social Fund".
423. Council, "Council Decision on action by the European Social Fund".
424. Council, "Council Decision on the reform of the European Social Fund", p. 53.
425. Commission, Second annual report on the activities of the new European Social Fund, pp. 53-54.
426. Ibid, p. 35.
427. Written Question Number 776/74.
OJC, Volume 18, Number 122 (2 June 1975), pp. 22-23.
428. Commission, Equality of treatment.
429. Council, "Council Decision on action by the European Social Fund".
430. Council, "Council Decision of 4 December 1980".
431. European unit of account.
432. Commission of the European Communities, Seventh Report on the activities of the European Social Fund [hereafter Seventh ESF Report] [COM (79) 346 final] (Brussels, Commission of the European Communities, 1979), p. 21.
433. Commission, Eighth ESF Report, p. 39.
434. Collins, The Operation of the European Social Fund, pp. 37-38.
435. Written answer to Question Number 55 of the November 1979 Question Time of the European Parliament.
Debates, Number 248 (November 1979), p. 236.
436. H. Maij-Weggen, "Position of women with respect to the review of the European Social Fund",

European Parliament Working Documents 1983-1984, Document 1-1229/83/C (5 January 1984), p. 212.

437. Morgan, "Women and the European Social Fund".
438. Commission, Eighth ESF Report, p. 42.
439. Commission of the European Communities, Ninth Report on the activities of the European Social Fund [hereafter Ninth ESF Report] [COM (81) 343 final] (Brussels, Commission of the European Communities, 1981), p. 31.
440. In answer to Question Number 55 of the November 1979 Question Time of the European Parliament. Debates, Number 248 (November 1979), p. 236.
441. Melanie Davis, "Women and the European Social Fund", Supplement to Women of Europe, Number 6 (1981), p. 2.
442. Commission of the European Communities, Supplement to Ninth European Social Fund Report: National reports on the activities of the European Social Fund in the Community countries [hereafter Supplement to Ninth ESF Report] [COM (82) 211 final] (Brussels, Commission of the European Communities, 1982), p. 3.
443. Commission of the European Communities, Tenth Report on the activities of the European Social Fund [hereafter Tenth ESF Report] [COM (82) 420 final] (Brussels, Commission of the European Communities, 1982), p. 39.
444. Article 7.
Council, "Regulation implementing the Council Decision on the reform of the European Social Fund", pp. 926-927.
445. Commission of the European Communities, "Guidelines for the management of the European Social Fund during the period 1979 to 1981, and transitional guidelines for 1978", OJC, Volume 21, Number 116 (19 May 1978), p. 9.
446. Davis, "Women and the European Social Fund", p. 10.
447. Commission of the European Communities, Fifth report on the activities of the European Social Fund [hereafter Fifth ESF Report] [COM (77) 398 final] (Brussels, Commission of the European Communities, 1977), p. 38.
448. Commission, Seventh ESF Report, p. 49.
449. Commission, Sixth ESF Report, Annex XI.
450. Commission of the European Communities, Third Report on the activities of the new European Social Fund [COM (75) 355 final] (Brussels, Commission of the European Communities, 1975), p. 3.
451. Commission, Fifth ESF Report, p. 38.
452. Commission of the European Communities, Fourth report on the activities of the European Social Fund [COM (76) 338 final] (Brussels, Commission of the European Communities, 1976), p. 16.

453. Commission, Fifth ESF Report, p. 59.
454. Commission, Eighth ESF Report, p. 44.
455. Commission, Ninth ESF Report, p. 34.
456. Commission, Tenth ESF Report, p. 41.
457. Written Question Number 959/81. OJC, Volume 24, Number 309 (30 November 1981), p. 24.
458. Commission, Supplement to Ninth ESF Report, p. 19.

CHAPTER SIX

The enforcement of European Community measures for women upon the Member States

6.1. Introduction

Chapter Five examined the impact of the European Community legislative measures for women upon the Member States. The conclusion was reached that all the Member States failed in some way to honour their obligations in this respect. How did the European Community ensure compliance from the Member States? What means did the European Community possess to achieve this end? This Chapter will consider the legal sanctions at the disposal of the European Community and its effects upon the Member States with regard to the Community legislative measures for women. These sanctions involved the Commission and the Court of Justice in accordance with the powers of infringement invested by the Treaty of Rome.

6.2. The European Community infringement procedures

First, the infringement procedures will be analysed. As guardian of the European Community Treaties, the Commission was imbued with the power to initiate infringement proceedings against a Member State which failed to carry out its Treaty

obligations in relation to the correct implementation of a Community piece of legislation. The infringement proceedings were rather complex and involved a number of stages which culminated in an action brought before the Court of Justice.

The first stage of the infringement procedure commenced when the Commission sent out a letter of formal notice to the erring Member State. This letter contained the details of any deficiencies of the particular national legislation in question. The government of that Member State was required to comment on the various infringements within sixty days. If a government failed to reply or if the comments were not satisfactory to the Commission then the second stage of infringement would be instituted.

This second stage involved the issuing of a reasoned opinion.

> "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty [i.e. The EEC], it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations" [1].

Similarly to the first stage, the government of the Member State was allowed a certain period of time to reply to a reasoned opinion. Failure to amend national legislation to accord with a reasoned opinion

could result in an action before the Court of Justice.

> "If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice" [2].

The third stage, a case before the Court of Justice, could then take place. Accordingly, the Court of Justice examined the evidence and issued a judgment.

> "If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice" [3].

Thus, under this Treaty, the Member State was obliged to comply with such a judgment by amending its legislation. This ultimate legal sanction in the hands of the Court of Justice was clearly a powerful weapon to be used against Member States.

6.3. The enforcement of equal pay upon the Member States

What were the effects of these infringement procedures upon the Member States in relation to the Community's legislative measures for women? This examination will concern Article 119 of the European Economic Community Treaty, and the Equal Pay and the

Equal Treatment Directives.

6.3.1. Article 119 of the European Economic Community Treaty

First, Article 119 of the European Economic Community Treaty will be considered for the period 1958 to 1972. Chapters Four and Five examined the efforts of the Commission to secure the full and correct implementation of the equal pay principle as expounded in Article 119. The inadequacies of the legislation of the Member States with regard to the adoption of the principle of equal pay were revealed. The Commission could have instituted infringement proceedings and, indeed, these were threatened as early as 1963 [4]. The European Parliament was also concerned and a parliamentary resolution of 1968 on equal pay urged the Commission to initiate infringement proceedings [5].

Yet, in spite of its own conclusions and pressure from the European Parliament, the Commission desisted from infringement proceedings. Why did the Commission not apply this sanction? Possibly, the Commission might have been reluctant to use such a powerful legal weapon in case the young Community could not bear any ensuing strain. During this period, the Community was developing its own structure and system out of the six disparate nations. It was

perhaps considered that a Court action might shake this seemingly fragile superstructure. The situation in 1965, when France withdrew from Community activities for a period, demonstrated the weak fabric of the Community. These factors might have contributed towards the Commission's decision to refrain from utilising such a strong legal weapon to solve this particular issue.

By 1970, the twelve years of interim measures to establish the common market were completed. The next few years were marked by the negotiations which culminated in the first enlargement of the European Community in 1973. Thus, a different situation faced the Commission in the early 1970's. A strong and thriving economic community brought about a sense of optimism and confidence.

Against this background, the mood of the Commission changed. When the Commission reviewed the developments towards equal pay, it concluded that the principle of equal pay was not yet fully implemented in any Member State [6]. So, legal proceedings in accordance with Article 169 of the European Economic Community Treaty would be instituted against any Member State which failed to comply with the terms of Article 119. Press reports at the time speculated that such proceedings would be initiated against Luxembourg and the Netherlands, and that, eventually, the three new

Member States might be subjected to Article 169 proceedings [7].

Consequently, the Commission instituted infringement proceedings by means of the issue of a letter of formal notice to Luxembourg on the 16th of October 1973 and to the Netherlands on the 31st of October 1973 [8]. The grounds for infringement against Luxembourg related to the right of legal redress [9]. This right was granted to civil servants in 1963 and to workers under collective agreements in 1965. However, there did not seem to be a legal right for those working women who were not civil servants and who were not covered under collective agreements to bring equal pay claims before the courts. The situation was more serious in the Netherlands because the Government failed to introduce a general provision into Dutch law to incorporate the principle of equal pay [10].

Subsequently, Luxembourg introduced a Grand-Ducal Regulation on equal pay in 1974 [11]. As Article 6 of this Regulation conferred a full right to legal redress for equal pay disputes [12], the infringement proceedings were dropped [13]. The Dutch Government argued that the wage difference between male and female workers was as bad in other countries as in the Netherlands but the differences in the other states were hidden in the official statistics [14].

Furthermore, the Dutch always regarded general equal pay laws to be legal window dressing. Nevertheless, the letter could not be ignored

> "and the Dutch, after long delays and much foot-dragging, seem ready at last to comply" [15].

The Dutch seemed to have decided to announce that an equal pay bill was under preparation [16]. This bill became law in 1975 [17] and infringement proceedings ceased [18].

Thus, the Commission demonstrated the success of this procedure to enforce Treaty provisions. Both countries were forced to introduce legislation to comply with Article 119. Yet, the general failure of the Commission to act strongly in this matter was criticised by the Court of Justice judges.

> "The effectiveness of this provision [i.e. Article 119] cannot be affected by the fact that... the joint institutions have not reacted sufficiently energetically against this failure to act" [19].

6.3.2. Directive on Equal Pay

In its report on the Equal Pay Directive, the Commission concluded that all the Member States failed in practice to implement the Directive [20]. The Commission continued by stating that it would initiate infringement procedures against any Member State which

still did not completely apply the Directive.

Accordingly, Mr. Vredeling, the Commissioner for Employment and Social Affairs, initiated infringement proceedings on the 22nd of March 1979 [21]. He stressed that these legal procedures could only deal with the legal aspects of the Directive since the practical implementation of equal pay rested with the Member States themselves. Letters of formal notice were issued to seven Member States, Belgium, Denmark, France, the Federal Republic of Germany, Luxembourg, the Netherlands and the United Kingdom [22]. Ireland and Italy were excluded. The measures adopted by these states were thought to comply with the Directive. These letters of notice contained the details of the infringements by the Member States [23]. Member States were requested to reply to the Commission within sixty days [24]. A time-limit was laid down since otherwise governments might be tempted to ignore the letter. It also strengthened the sanction machinery.

What was the nature of these infringements which were revealed in Chapter Five [see 5.2.5.]? Firstly, the Federal Republic failed to pass an equal pay law. In Germany, the right to equal pay derived from a general equality article in the German constitution. The German Government did not enact a specific equal pay measure since it considered that the constitution

was adequate.

The Equal Pay Directive was intended to apply to all workers but not all the national measures gave a complete coverage. The Dutch law of 1975 only covered workers in the private sector so public sector employees were excluded from its provisions.

Problems arose in connection with an adequate implementation of the principle of equal pay to include work of equal value. The 1976 Danish Act laid down that the principle of equal pay applied to the same work, a principle which was regarded as being too restrictive. According to the United Kingdom Act, work of equal value only pertained when a job evaluation scheme existed. Workers not under job evaluation schemes could not apply for equal pay for work of equal value. The restriction of this stipulation may be gauged by the factor that only 25% of British firms operated job evaluation schemes.

Other deficiencies could be found in relation to collective agreements. Germany and Denmark did not seem to possess any machinery to check that firms were complying with equal pay. As well, the Danish law did not contain a clause to abolish discriminatory clauses in collective agreements.

An old problem of discriminatory head of household

allowances was not resolved in Belgium, France and Luxembourg. Discrimination arose since these allowances were paid to all male workers but female workers only received them under certain, specific, restricted circumstances. Owing to the nature of these allowances, they were regarded as an element constituting pay and, therefore, subject to the terms of the Equal Pay Directive. In Belgium, household allowances were granted to all married male employees in the government and health services but female married employees were only entitled to claim them when they had dependent children. Head of household allowances were paid in the government service in Luxembourg to all male employees but a female employee was excluded unless her husband was ill, was disabled or when his income fell below the minimum wage. Discriminatory household allowances or housing benefits were also in existence in Luxembourg in certain collective agreements in the banking and insurance sectors and the steel industry [25]. A housing allowance was given to male employees in the French mining industry [26].

Thus, all these Member States were cited for one infringement with the exceptions of the Federal Republic which incurred two and Denmark with three citations. The Commission chose a certain number of the more serious instances of infringement as a basis for these letters of notice. Not all the examples

inscribed in the report of the Equal Pay Directive were cited. Presumably, the Commission's legal staff only selected the more serious infringements in order to enforce the Directive upon the Member States. As these infringement proceedings involved certain costs, a financial element might enter into the decisions. It would be more cost-effective to concentrate on definite clear-cut examples rather than choosing many minor instances.

What was the response from the different Member States upon receiving these letters of notice? Various countries did take steps to deal with the criticisms expressed in the letters [27]. France, for instance, abolished the discriminatory nature of the housing allowance which was paid in the mining industry by means of a Decree which was passed on the 2nd of May 1979 [28]. In taking note of this measure, the Commission shelved infringement proceedings on the 5th of December 1979 [29].

At last, the German Government came to the realisation that the German constitution was insufficient to render the terms of the Equal Pay Directive. On the 13th of August 1980, the European Communities Harmonisation Act was enacted in the Federal Republic to implement the Equal Pay and the Equal Treatment Directives [30]. This Act actually amended the Civil Code rather than constituting a

separate piece of legislation. Did this Act implement the Equal Pay Directive? As a first point, the Act only applied to the private sector so infringement occurred. However, the broad principle of equal pay accorded with the Equal Pay Directive [31].

The Act did not specifically mention a worker's right of action to claim equal pay but an implicit right seemed to be present. Entitlements to compensation for discrimination on grounds of ignoring the prohibition of discrimination were not allowed after two years [32]. This clause seemed to imply that workers could bring legal actions. Similarly, the section of the Act dealing with disputes led to the same conclusion. Unusually, the burden of proof fell upon the employer. An employer could not discriminate against a worker because the latter had exercised his legal rights [33]. Workers were thus given protection against dismissal for bringing a legal action to claim equal pay. A worker who suffered such discrimination could claim compensation but no penalties were imposed upon the employer [34]. On receiving notification of this Act, the Commission shelved its infringement proceedings against the Federal Republic on the 10th of December 1981 [35]. Detailed examination of the Act was to lead to further infringement proceedings.

Thus, two countries took action as a consequence of receiving a formal letter of notice. Yet, the

timetable which was laid down in the Equal Pay Directive was ignored. It was a clear indication of the powerful sanction element of the infringement proceedings that these two countries introduced legislative measures in response to the first stage of infringement.

However, Denmark and the United Kingdom were not convinced of the Commission's citations in the letters of notice. Denmark replied that its equal pay act did contain the correct definition of the equal pay principle and centred its argument around the Danish term for the same work. The Government maintained that this Danish term "samme arbejde" could be translated as the same work and as work of equal value. No further action was taken for a while. In its reply, the British Government asserted that the United Kingdom legislation complied with the terms of the Equal Pay Directive [36].

As four Member States did not satisfy the Commission that they had correctly implemented the Equal Pay Directive, the second stage of infringement was commenced. On the 19th of May 1980, the Commission issued reasoned opinions against Belgium, Luxembourg, the Netherlands and the United Kingdom [37]. Meanwhile, the Netherlands was actually engaged in passing an appropriate measure through the Dutch Parliament. The Law of the 2nd of July 1980 extended

the principle enshrined in the Equal Pay Directive to apply to the public sector and to the commercial services governed by public law [38]. Furthermore, protection was given to a worker in that an employer could not terminate an employment relationship because a worker had lodged a complaint [39]. Any such termination would be deemed null and void. In taking note of this measure, the Commission eventually ceased its infringement actions on the 10th of December 1981 [40]. Belgium, Luxembourg and the United Kingdom did not take any steps to comply with the reasoned opinion and, so, the Commission initiated the final stage of infringement, an action before the Court of Justice.

Legal proceedings were brought before the Court of Justice by the Commission against Belgium and Luxembourg on the 16th of March 1981 [41] and against the United Kingdom on the 18th of March 1981 [42]. What was the basis for these proceedings? Belgium had failed to eliminate discrimination from household allowances in the public and health services [43]. The citation against Luxembourg stated that Luxembourg had not eliminated discrimination from head of household allowances in the government service [44]. In both cases, the countries were considered to have failed to fulfil their obligations under Article 119 of the European Economic Community Treaty as well as the Equal Pay Directive. The Commission asserted that these allowances constituted an element of pay within

the meaning of Article 119. In both countries, these allowances discriminated against married women on the grounds of sex. The case against the United Kingdom concerned its failure to implement the principle of equal pay for work to which equal value was attributed according to Article 1 of the Equal Pay Directive [45].

The Member States were required to pay the legal costs of these proceedings. This factor could be regarded as a strong incentive to the Member States to take appropriate action to conform to Community legislation. Thus, Belgium took steps to abolish the discriminatory nature of household allowances through the enactment of a Royal Decree of the 10th of September 1981 [46]. This Decree conferred household allowances in the public service on all married employees unless the male and female of a couple were both employees [47]. In that case, the allowance would be paid to one of the couple. Furthermore, on the basis of this Decree, collective agreements in the health services were amended so that discriminatory household allowances were abolished [48]. In November 1981, the Commission shelved the case against Belgium [49].

As the other two countries did not take any action, the Court of Justice continued with the legal proceedings. Although the judgments against Luxembourg

and the United Kingdom were made in 1982 outside the period of review [50], it could be noted that the Court of Justice judged in the Commission's favour in both cases. Both countries were forced to enact legislation to meet the Court's judgments. At a later period, again, outside the period under review, new infringment proceedings were instituted against Denmark and the Federal Republic.

Thus, infringement proceedings could be said to be a successful weapon for the Commission to force erring Member States to conform to Community legislation. In the case of the Equal Pay Directive, Member States were obliged to enact measures which they would not have introduced without a strong element of compulsion. Even the first stage, the formal letter of notice, resulted in appropriate legislation. The governments were thus forced to take note of Community objectives and to comply with its legislation.

6.4. The enforcement of the Equal Treatment Directive upon the Member States

Member States were required to implement the second equality Directive, the Directive on Equal Treatment, by the 12th of August 1978. Already, in November of that year, the Commission issued a reminder to those countries which were not fulfilling their obligations

[51]. In particular, the Federal Republic and the Netherlands had failed to enact or to propose any equal treatment legislation. A further reminder was dispatched by the Commission to these two states in March 1979 [52]. The situation in Germany was far from satisfactory. Its Government was still at the stage of considering what sort of measures needed to be taken in spite of the fact that legislation should have been passed by the preceding year. The Dutch Government had gone one step further in that a bill had been drafted but this bill had not yet been adopted by the Parliament [53].

A number of interesting points could be made. First, the Commission used these letters of reminder as an informal device before the formal infringement proceedings were instigated. The Commission presumably utilised this means in order to encourage the Member States to conform to European Community laws. The fact that it failed to have any immediate effect only pointed to the enforcement effect of the infringement procedures. Another point concerned the timing of these letters since they were issued ahead of the formal report of the Directive.

Dissatisfied with the prevarications of these two countries, the Commission initiated infringement proceedings. On the 10th of May 1979, a letter of formal notice was sent to the Federal Republic and to

the Netherlands [54]. Both countries replied by July of that year. The Netherlands responded first on the 4th with notification of a draft law. Five days later, the German Government replied to the Commission, also, with news of a draft law. As a result of these replies, further information was sought from the Governments [55].

After some time had elapsed, these draft laws were enacted. The Dutch Act was passed in March 1980 [56] and a further Law was enacted in July 1980 [57]. In August 1980, the German Act was passed [58].

What was the nature of these national laws? In the first place, the titles of the German and the first Dutch Acts should be noted. The short title of the German Act was called the "European Communities Harmonisation Act" whereas the Dutch Act was entitled "An Act to harmonise Netherlands legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women". Both Acts were thus passed to accord with European Community legislation. In both cases, the Acts amended the Civil Codes of the countries rather than implementing new legislation.

The Dutch legislation largely complied with the Equal Treatment Directive but certain problems arose in connection with the first Act. Firstly, indirect

discrimination was not defined in this Act although the Government did state that the use of the term "family breadwinner" could constitute indirect discrimination [59]. Moreover, no attempt was made to define marital or family status. And, no reference was made to discrimination against pregnant women [60].

Although the Act laid down that equal treatment did not apply in cases where the sex of a worker constituted a determining factor [61], a list of such cases was not given. It would seem that such exceptions would have to be decided case by case [62]. The explanatory memorandum accompanying the Act cited such examples as singers, actors and examining officers. The Dutch Government believed that a list of exceptions was not required by the Directive and, furthermore, such a list would be difficult to compile [63]. The Commission adopted a different viewpoint in considering that the omission of a specified list of exceptions infringed the Directive. Further problems arose since a periodic review of exceptions was not specified.

Furthermore, the Act did not expressely state the right of legal redress for discrimination. It was implicit in the Act in that actions could be taken by individuals under the terms of the Dutch Civil Code [64]. When a dispute arose, individuals could apply

to the Committee on Equal Treatment for Men and Women for an opinion [65]. The Committee instituted an inquiry and informed the applicant and the employer in writing of its opinion with reasons. The Committee was also empowered to ask the Minister of Social Affairs to institute an inquiry [66]. The opinion of the Committee could be given to the Minister and employers, employers' and workers' organisations, organisations concerned with working life, and, even, the works council [67]. Complaints could also be made by bodies corporate which enjoyed full legal capacity and whose work included the promotion of interests of persons entitled to lodge complaints. Job advertisements were covered in this respect. The burden of proof lay with the complainant [68]. No penalties were instituted against an employer [69].

The Act stated that the termination of a contract by an employer in the event of a worker lodging a complaint would be null and void [70]. A worker was entitled to invoke this nullity and to claim reinstatement but the employer was not liable for damages.

In keeping with the other countries, the Act did not include a notification clause. Pamphlets on the Act were sent to employers and workers by the authorities and the Act received publicity on television [71].

Problems of compliance arose with the German Act since it was restricted to the private sector [72]. The public sector, independent occupations and professions, and the self-employed were all excluded from this Act. The Federal Republic argued that the Directive did not apply to employment in the public sector although this consideration did not take into account the omission of the independent occupations and the self-employed. These restrictions infringed the Directive. Moreover, the Act only prohibited discrimination with regard to the establishment of an employment relationship, promotion and dismissal [73]. Vocational training was excluded [74] so another infringement was incurred. Furthermore, the Act did not contain a reference to indirect discrimination or to marital or family status [75]. The Government felt that it was unnecessary to refer to marital or family status.

Although the Act permitted differential treatment where a particular sex was an essential condition for an activity [76], a list of such activities was not given. So, individual cases would have to be decided in the courts [77]. Furthermore, the Act did not allow for a periodic review of exclusions to be made. In practice, difficulties were experienced since, for instance, men were prohibited from the profession of midwifery. This situation infringed the Directive.

Problems also arose with regard to the core of the Directive since a law on maternity protection granted leave following maternity leave only to the mother [78]. Discrimination thus resulted contrary to the Directive. However, a general stipulation on the nullity of any discriminatory provisions was also lacking.

An individual with a complaint was entitled to apply to the Works Council for a solution [79]. A worker in the private sector could bring an action before the Labour Court for a violation of the 1980 Act [80]. Trades union members could call upon their representative to assert their rights before an administrative tribunal [81]. Unusually, the burden of proof lay with an employer [82]. Compensation could be granted but not employment or reinstatement [83]. An employer could not discriminate because a worker exercised his rights [84]. If dismissed, an employee did not have the right to be reinstated [85].

But, the Act did accord with the Directive in relation to a notification clause. A copy of this Act had to be displayed in an appropriate place in an undertaking [86]. The Act was also given publicity in the media.

Thus, pressures from the Commission resulted in

these legislative measures. Without the infringement procedure these acts would probably not have been enacted. On receiving notification of these acts, the Commission suspended infringement proceedings against the Netherlands [87] and the Federal Republic [88]. However, detailed examination of the legislation led to further infringement proceedings in 1982 [89].

Meanwhile, Luxembourg also failed to enact equal treatment legislation and, so, the Commission sent a letter of formal notice to that country on the 19th of July 1979 [90]. Replying on the 30th of October, the Government stated that it did not have any plans to introduce an equal treatment measure [91]. Clearly, Luxembourg was flagrantly not fulfilling its Treaty obligations. Consequently, the Commission proceeded to the next stage of infringement proceedings by issuing a reasoned opinion against that country on the 26th of March 1980. This time, the Government of Luxembourg acquiesced and in its reply of the 25th of April the Government included notice of a draft law. The Commission sought further information and comment on the 23rd of July. This draft bill eventually became law on the 8th of December 1981 [92].

Did this equal treatment Act of Luxembourg correctly apply the terms of the Equal Treatment Directive? In fact, the Act essentially reproduced the

Directive to include even the wording of the title. A few minor problems arose. Although the terms indirect discrimination and discrimination by reference to marital or family status were used, they were not defined [93]. In accordance with the Directive, a list of occupations excluded from the provisions of the Act was given [94]. These exclusions comprised night work, mines, the army, police force and gendarmerie, customs officers, postal workers, prison and forest wardens, military bands, process-servers and holders of religious office. After consultation with appropriate professional bodies and the Committee on Work of Women took place, other exceptions might be specified [95]. A Grand-Ducal regulation would then be passed. In this regulation, cases would be designated to which reference to the sex of the worker could be made. But, the Act did not institute a periodic review of such exceptions.

Any disputes could be brought by an individual before the competent court in the private sector and the appropriate Board in the public sector [96]. If a complaint concerned the application of the principle of equal treatment under a collective agreement, then a trades union could intervene [97]. Proof for any of these disputes lay with the complainant although penalties could result [98]. Dismissal for bringing a complaint would be regarded as unjust [99] and damages could be awarded [100] but not reinstatment of the job

[101].

A notification clause was not included but supervision of the Act was entrusted to the Labour and Mines Inspectorate, and the Employment Administration [102].

As this Act reproduced the essence of the Directive, the Commission shelved the infringement proceedings [103]. Clearly, the constant pressure exerted by the Commission forced the Government of Luxembourg to enact legislation. At first, it seemed apparent that the Government had no intention of drafting an equal treatment law. The success of the infringement process may be gauged by the fact that the Luxembourg Government adopted almost totally the sense of the Directive. Thus, the Federal Republic, Luxembourg and the Netherlands were forced to enact equal treatment legislation.

What was the situation in the other six Member States? Unlike the three afore-mentioned countries, these six Member States enacted equal treatment laws. However, the Commission was not convinced that any of them fully conformed with the terms of the Equal Treatment Directive. After a

> "preliminary analysis of the measures adopted pursuant to the Directive" [104],

the Commission, in July 1980, commenced infringement proceedings. Letters of formal notice were sent out to Ireland on the 29th of that month and to Belgium, Denmark, France, Italy and the United Kingdom on the following day [105]. These letters contained specific details of any infringement incurred by the Member States.

What was the nature of these infringements? Problems arose in relation to the application of the principle of equal treatment. The Danish Act restricted this principle in relation to vocational training and working conditions to the same workplace. The British Act excluded equal treatment from employees in private households and small businesses whilst certain types of employment were excluded from the terms of the Irish Act.

Further infringements were also noted with regard to exceptions to the Directive. In Ireland, the profession of midwifery was only open to women. In the United Kingdom, men could enter that profession but with certain restrictions. In France, certain occupations in the public sector could only be entered by males or by females. On occasion, separate recruitment occurred for each sex with different requirements.

The Belgian Act stated that a separate decree would define vocational guidance and training. This decree had not been enacted and was thus cited as an infringement of the Directive.

Difficulties also arose in relation to the conditions of employment. The Italian legislation only applied equal treatment to certain conditions of employment. For instance, only women workers were entitled to claim special parental leave. In the Belgian public sector, only women were allowed leave to bring up children. Furthermore, in Italy, only women were entitled to three months leave following the adoption of a child.

The British Act did not seem to contain a clause declaring discriminatory collective agreements null and void or to monitor the rules governing access to trades and professions.

Finally, the Irish legislation contained restrictions on the right to claim legal redress. This right did not apply to the exceptions specified in the Act.

It should be noted that these infringement proceedings were initiated before the Commission drew up its formal report on the Equal Treatment Directive.

Similarly to the Equal Pay Directive, the Commission did not institute infringement proceedings in relation to all the deficiencies in the national legislation.

As the national governments did not comply with these formal letters of notice, the Commission took the matter one stage further. Reasoned opinions were issued in May 1981 against Belgium [106], Italy [107] and France [108]. Later in the same year, in October, reasoned opinions were sent out to Ireland [109] and to the United Kingdom [110]. A reasoned opinion was dispatched to Denmark in 1982 outside the period of review.

These opinions related to the issues which were raised in the letters of notice [111]. In the case of Belgium, two grounds were outlined. Firstly, Belgium had failed to give effect to Article 4 of the Directive in relation to vocational training. Also, leave for bringing up children was only granted to women employees in the public sector. Italy failed to give equal treatment to working conditions since exceptions had been made. Women alone were entitled to three months leave after a child had been adopted. This infringed Article 5 of the Directive. The French legislation violated Article 3 of the Directive since exceptions could be made to equal treatment with regard to recruitment in the public sector and

different requirements for males and females were laid down. Three grounds were laid against Ireland. Certain exceptions were made to the principle of equal treatment. Midwifery was open only to women and the Irish Act imposed restrictions on the right of legal redress. A number of infringements were incited against the United Kingdom. Contrary to Article 2 of the Directive, employment in private households and businesses with five or less were excluded from the British Act. Also, the British Act did not fully apply to the self-employed to contravene Articles 3 to 5 of the Directive. Furthermore, no provision was made to nullify contrary clauses in collective agreements. Finally, restrictions on access to the midwifery profession were in operation.

How did these countries react to these reasoned opinions? Belgium responded positively by enacting three Royal Decrees [112]. The first Decree, passed on the 27th of July 1981, related to parental leave. The second Decree, also of the same date, concerned the status of State employees. This second Decree inserted a "recital" to the effect that

> "All discrimination based on sex should be removed from statutory provisions" [113].

Thus, child leave was granted equally to male and female employees in the public sector. These two

Decrees came into force on the 1st of September 1981 [114]. The texts of both Decrees were transmitted to the Commission in September of that year. In this way, the infringement proceedings against Belgium in relation to parental leave were shelved.

> "It can be seen, then, that Commission intervention has benefited [sic] all men and women, with State employee status without the matter having had to be brought before the Court of Justice" [115].

However, the third Royal Decree enacted on the 16th of October 1981 to deal with the question of equal access to vocational guidance and training was more problematic. The Decree laid down that vocational guidance and training only applied to apprenticeships for a trade or occupation in undertakings and departments in the private and public sectors [116]. Educational establishments were excluded. This exclusion infringed the Directive and, so, the Commission brought a case before the Court of Justice in 1982.

In 1982, France enacted a public servants law which resulted in the shelving of infringement proceedings [117]. But, on examining the detail of this law, the Commission initiated new infringement proceedings in that year. In Italy, the Government failed to pass amending legislation and a Court action resulted in 1982 [118]. The Commission issued another formal

notice letter on the 4th of May 1981 against Italy in connection with legal redress. This matter also formed part of the 1982 Court action.

The Irish Government enacted regulations in 1982 to meet the points of issue in the reasoned opinion [119]. These regulations enabled the Commission to suspend infringement proceedings. However, a case was brought before the Court in 1982 against the United Kingdom which had failed to amend its legislation [120]. A new formal letter of notice was sent in 1982 over the matter of exceptions to the Directive [121].

Thus, the Member States were gradually forced to align their laws to equate with the Equal Treatment Directive. Often, this alignment took place before the Court of Justice stage was reached. The Commission, it should be noted, was engaged in continuous monitoring of national legislation. More than one infringement proceeding could be brought against a country. It would seem that one particular clause appeared satisfactory at one stage and, yet, a year or two later, would form the grounds for an infringement proceeding. The Equal Treatment Directive represented a more complex set of measures than was present in the Equal Pay Directive. Therefore, one would expect to find the Member States getting into difficulties when implementing the Equal Treatment

Directive.

Zorbas concluded that in relation to the infringement proceeding,

> "the Commission operates effectively and discreetly" [122].

6.5. Summary

This Chapter examined the legal enforcement of European Community legislative measures for women upon the Member States. Legal enforcement was made possible by means of infringement procedures which involved the Commission and the Court of Justice. The nature of the infringement procedures was described and, then, they were applied to Article 119 of the European Economic Community Treaty, and to the Equal Pay and the Equal Treatment Directives.

As was demonstrated, the infringement procedures constituted an effective legal weapon. With regard to Article 119 of the European Economic Community Treaty, the Member States showed a marked reluctance to implement fully the terms of that provision. Equally, the Commission revealed, at first, restraint in its use of infringement procedures. The first stage of infringement, a letter of formal notice, was not instituted by the Commission until 1973, fifteen

years after the signing of the Treaty. This letter was invoked against two Member States. And, as a result, both countries enacted equal pay legislation in 1974 and 1975 respectively so the infringement proceedings were dropped. Thus, once the Commission commenced infringement proceedings, compliance by the Member States followed.

The Commission was not slow to use infringement procedures in relation to the two equality Directives. Within one year of the publication of the report on implementation of the Equal Pay Directive, a letter of formal notice was sent to seven Member States for failures of implementation. Two states took steps to implement appropriate legislation and infringement proceedings were dropped. Four countries were subject to the second stage of infringement, the issue of a reasoned opinion. One of these countries was actually concurrently engaged in enacting an equality law so its infringement proceedings were dropped. Failure by the other three states to take suitable measures resulted in the initiation of the final stage of infringement, an action before the Court of Justice. Since one country passed a Royal Decree to take into account this infringement, the case against it was shelved. Judgments by the Court eventually led to the passing of relevant legislation in two of the states. Outside the period under review, further infringement proceedings were instituted.

Before the report on the Equal Treatment Directive was published, the Commission issued letters of reminder to two states which had failed to enact any equal treatment legislation. Subsequently, a letter of formal notice was issued and both countries did enact equal treatment legislation. It was noticeable that these Acts included in their titles the wording to the effect of harmonisation with the European Communnity. Thus, the direct influence of the Commmunity could be clearly discerned. These enactments resulted in a temporary shelving of infringement proceedings against these two countries. But, the Commission had to issue a reasoned opinion before one state could be forced to draw up legislation. Since this law mostly reproduced the essence of the Equal Treatment Directive, another example of the effect of the European Community, the Commission shelved infringement proceedings.

Although the six other Member States enacted equal treatment legislation, the Commission also issued letters of formal notice to them in advance of the report on the Equal Treatment Directive. Inaction by these Member States led to the sending out of reasoned opinions by the Commission and some results could be noted. One state issued two Royal Decrees which complied with the Equal Treatment Directive and, so, infringement proceedings were stopped. But,

another Royal Decree from that same state resulted in a case before the Court of Justice. Outside the period under review, further infringement proceedings were brought against some of the other Member States. However, the terms of the Equal Treatment Directive were complex and were more extensive than those of the Equal Pay Directive and, thus, compliance by the Member States was more difficult to attain.

Various points could be made. The Commission constantly monitored the state of the national equality legislation. Furthermore, not all the deficiencies in this legislation formed the basis for infringement proceedings. The situation was complicated since the enactment of fresh legislation often led to further infringement proceedings.

Thus, infringement proceedings were an effective weapon in forcing the European Community countries into a state of compliance with the Community equality legislation. It could be argued that without infringement proceedings the situation might have been quite different. Some Member States might not have enacted any legislation at all whilst the equality legislation in some of the other countries might have failed to comply fully with the provisions of the equality Directives. Therefore, infringement proceedings, by and large, achieved the desired result of forcing the Member States to comply with the

European Community legislative measures for women. Finally, it must be noted that for the period under consideration the infringement proceedings were not yet completed.

Footnotes

1. Article 169 of the European Economic Community Treaty.
   European Communities, Treaties, p. 345.
2. Ibid.
3. Article 171 of the European Economic Community Treaty.
   Ibid, p. 346.
4. Commission, Equal Pay Report 1962, p. 18.
5. European Parliament, "Résolution sur l'application du principe de l'égalité de rémunérations entre les travailleurs masculins et féminins", JOC, Volume 11, Number 55 (5 juin 1968), p. 8.
6. Commission, Equal Pay Report 1972, p. 44.
7. Marion Bywater, "Europe's watchdog on equal pay for women bares its teeth", The Times, 20 August 1973, p. 14.
8. Jean Boudard, "Equal pay", Social Europe. Supplement, Number 2 (1986), p. 106.
9. Commission, Equal Pay Report 1972, p. 9.
10. "Time Holland went Dutch", The Economist, 1 December 1973, pp. 69-70.
11. Luxembourg, "Règlement grand-ducal du 10 juillet 1974".
12. Ibid, p. 1276.
13. Boudard, "Equal pay", p. 106.
14. "Time Holland went Dutch", p. 70.
15. Ibid.
16. Ibid.
17. The Netherlands, "Equal Wages for Women and Men Act".
18. Boudard, "Equal pay", p. 106.
19. "Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena Case 43/75", p. 475.
20. Commission, Equal Pay Report 1978, pp. 143-144.
21. Commission, "The Commission moves on discrimination against women", p. 1.
22. In answer to Written Question Number 590/79.
    OJC, Volume 22, Number 288 (19 November 1979), p. 19.
23. Bulletin EC, Volume 12, Number 3 (1979), pt. 2.1.42.
24. Commission, "The Commission moves on

discrimination against women", p. 1.
25. Warner, "EC Social Policy in Practice", p. 153.
26. Commission, "The Commission moves on discrimination against women", p. 2.
27. Fourteenth General Report on the Activities of the European Communities [EC], 1980, p. 137.
28. France, "Arrêté du 2 mai 1979 relatif aux prestations de logement des membres du personnel des exploitations minières et assimilées des anciens membres et de leurs ayants droit", JOF, Number 124 (30 mai 1979), pp. 1255-1256.
29. Remuet-Alexandrou, "Community law and women", p. 18.
30. Germany F.R., "Act respecting equality of treatment for men and women at the workplace and the maintenance of claims in the event of the transfer of establishments (Labour Law (European Communities Harmonisation) Act)", ILO Legislative Series, 1980-Ger.F.R. 3.
31. Article 1.3.
Ibid, p. 1.
32. Article 1.1.
Ibid, p. 1.
33. Article 4.
Ibid, p. 2.
34. Article 1.2.
Ibid, p. 1.
35. Remuet-Alexandrou, "Community law and women", p. 30.
36. Melanie Davis, Women's rights: European and UK Law (London, Commission of the European Communities, 1981), p. 7.
37. Bulletin EC, Volume 13, Number 5 (1980), pt. 3.3.2.
38. Landau, The rights of working women in the European Community, p. 85.
39. Ibid, p. 87.
40. Remuet-Alexandrou, "Community law and women", p. 25.
41. Cases 57/81 and 58/81 respectively.
OJC, Volume 24, Number 86 (16 April 1981), pp. 3-4.
42. Case 61/81.
OJC, Volume 24, Number 85 (15 April 1981), p. 4.
43. OJC, Volume 24, Number 86 (16 April 1981), p. 3.
44. Ibid, p. 4.
45. OJC, Volume 24, Number 85 (15 April 1981), p. 4.
46. Belgium, "Arrêté royal modifiant l'arrêté royal du 30 janvier 1967, attribuant une allocation de foyer ou un allocation de résidence au personnel des ministères", Moniteur belge, Volume 151 (30 septembre 1981), pp. 12084-12086.

47. Article 2.
Ibid, p. 12084.
48. Landau, The rights of working women in the European Community, p. 49.
49. OJC, Volume 25, Number 1 (5 January 1982), p. 8.
50. OJC, Volume 25, Number 180 (17 July 1982), p. 3 and
OJC, Volume 25, Number 200 (4 August 1982), p. 2.
51. Commission, "The Commission moves on discrimination against women", p. 2.
52. Bulletin EC, Volume 12, Number 3 (1979), pt. 2.1.42.
53. Commission, "The Commission moves on discrimination against women", p. 3.
54. Commission, Equal Treatment Directive Report, pp. 211-212.
55. Bulletin EC, Volume 13, Number 7/8 (1980), pt. 3.3.1.
56. The Netherlands, "An Act to harmonise Netherlands legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women (Men and Women (Equal Treatment) Act)" [hereafter "Men and Women (Equal Treatment) Act"], ILO Legislative Series, 1980-Neth. 2.
57. Landau, The rights of working women in the European Community, p. 85.
58. Germany, "European Communities Harmonisation Act".
59. Commission, Equal Treatment Directive Report, p. 16.
60. Landau, The rights of working women in the European Community, p. 87.
61. Article 1.
The Netherlands, "Men and Women (Equal Treatment) Act", p. 1.
62. Commission, Equal Treatment Directive Report, p. 52.
63. Remuet-Alexandrou, "Community law and women", p. 55.
64. Landau, The rights of working women in the European Community, p. 88.
65. Article 6 (1).
The Netherlands, "Men and Women (Equal Treatment) Act", p. 2.
66. Article 6 (3).
Ibid.
67. Article 6 (4).
Ibid, pp. 2-3.
68. Commission, Equal Treatment Directive Report, p. 191.
69. Landau, The rights of working women in the European Community, p. 89.
70. Article 1.
The Netherlands, "Men and Women (Equal

Treatment) Act", p. 1.

71. Commission, Equal Treatment Directive Report, p. 209.
72. Remuet-Alexandrou, "Community law and women", p. 41.
73. Article 1.1.
Germany, "European Communities Harmonisation Act", p. 1.
74. Commission, Equal Treatment Directive Report, p. 26.
75. Ibid, p. 19.
76. Article 1.1.
Germany, "European Communities Harmonisation Act", p. 1.
77. Commission, Equal Treatment Directive Report, p. 54.
78. Remuet-Alexandrou, "Community law and women", p. 42.
79. Article 84 (1).
Germany, "Works Constitution Act", p. 35.
80. Landau, The rights of working women in the European Community, p. 60.
81. Commission, Equal Treatment Directive Report, p. 192.
82. Article 1.1.
Germany, "European Communities Harmonisation Act", p. 1.
83. Landau, The rights of working women in the European Community, pp. 60-61.
84. Article 1.4.
Germany, "European Communities Harmonisation Act", p. 2.
85. Landau, The rights of working women in the European Community, p. 61.
86. Article 2.
Germany, "European Communities Harmonisation Act", p. 2.
87. Remuet-Alexandrou, "Community law and women", p. 54.
88. Ibid, p. 40.
89. Ibid, pp. 61 and 63.
90. Thirteenth General Report EC, pp. 111-112.
91. Commission, Equal Treatment Directive Report, p. 211.
92. Luxembourg, "Act respecting equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions", ILO Legislative Series, 1981-Lux. 1.
93. Article 2 (1).
Ibid, p. 1.
94. Article 2 (2).
Ibid.
95. Article 3 (2).
Ibid, p. 2.
96. Article 7.
Ibid, pp. 2-3.

97. Commission, Equal Treatment Directive Report, p. 190.
98. Article 9.
Luxembourg, "Act respecting equal treatment for men and women", p. 3.
99. Article 8.
Ibid.
100. Article 9.
Ibid.
101. Commission, Equal Treatment Directive Report, p. 204.
102. Article 10.
Luxembourg, "Act respecting equal treatment for men and women", p. 3.
103. Remuet-Alexandrou, "Community law and women", p. 52.
104. Commission, Equal Treatment Directive Report, p. 211.
105. Bulletin EC, Volume 13, Number 7/8 (1980), pts. 2.1.47 and 3.3.1.
106. Bulletin EC, Volume 14, Number 5 (1981), pt. 3.3.2.
107. Remuet-Alexandrou, "Community law and women", p. 52.
108. Ibid, p. 44.
109. Bulletin EC, Volume 14, Number 10 (1981), pt. 3.3.2.
110. Remuet-Alexandrou, "Community law and women", p. 58.
111. Ibid, pp. 61-63.
112. Gerassimos Zorbas, "Some examples of Commission intervention on equality", Social Europe. Supplement, Number 2 (1986), p. 132.
113. Ibid.
114. Ibid.
115. Ibid.
116. Remuet-Alexandrou, "Community law and women", pp. 36-37.
117. Ibid, p. 44.
118. Ibid, pp. 51-52.
119. Ibid, p. 46.
120. Ibid, p. 58.
121. Ibid, p. 63.
122. Zorbas, "Some examples of Commission intervention on equality", p. 152.

CHAPTER SEVEN

The interpretation of European Community measures for women

7.1. Introduction

The interpretation of European Commmunity legislative measures for women by the courts could also strengthen the enforcement of such legislation. In this respect, an important contribution was made by the Court of Justice in its role as

"the supreme guardian of Community law" [1].

By means of a device known as a preliminary ruling in accordance with Article 177 of the European Economic Community Treaty [2], the Court of Justice interpreted Community law [3]. Preliminary rulings could only be given to national courts or tribunals of the Member States. When these courts considered a case which involved an interpretation of European Community law, they could ask the Court of Justice to give guidance on any aspect of that law. Community law overrode national law should any conflict between the two arise [4]. A national law could not take supremacy over the European Community Treaties.

7.2. The European Community preliminary ruling

procedure

A brief description of the preliminary ruling procedure might be helpful [5]. A national court or tribunal put forward a request for a preliminary ruling. This request was received by the Registrar of the Court of Justice. The Registrar notified the parties of the original case, the Commission and the Member States of each request. Written observations on the case could be made by any of the recipients of the notification. A two-month deadline was imposed for written observations to be submitted. The Commission tended to respond but it was less common for the Member States to put forward observations. A Judge-Rapporteur was appointed for each case and he submitted a preliminary report. The Court could then decide whether a preparatory enquiry was necessary. This completed the written procedure.

The next step involved oral proceedings. Arguments were heard from the parties to the case, probably the Commission and possibly the Member States. The Advocate-General considered the facts and prepared an opinion. The Court adjourned and the Judges prepared their decision on the basis of a proposal from the Judge-Rapporteur. Once the judgment was declared, it was at once transmitted by the Registrar to the national court which made the original enquiry. These proceedings took, on average, about nine months. The

judgment was binding on the court or tribunal [6]. This judgment could be used as a basis for applying the particular law in future cases. Other courts of the Member States could also invoke this judgment without the need to make a reference to the Court of Justice. The Court could be asked to give a fresh interpretation. These preliminary rulings resulted in an uniform interpretation of the Community legislation which contributed towards the development of a common Community law [7].

7.3. Preliminary rulings in relation to the position of women

Were preliminary rulings used to decide upon differences between European Community and national legislative measures for women? It will be shown that a number of rulings were successfully used to test the meaning and extent of the principle of equal pay as enshrined in Article 119 of the European Economic Community Treaty. Three cases were brought before the Court in the early 1970's. Then, from the latter part of that decade, the number steadily increased. These preliminary rulings were extremely important in enforcing the principle of equal pay.

> "It is the second category of actions [i.e. preliminary rulings] that has most enriched Community rules and contributed to the uniform interpretation of basic notions in the field of equality of remuneration" [8].

7.4. The three Defrenne cases

> "The scope and meaning of the concept of "equal pay" as defined in Article 119 has been determined by the Court of Justice in 3 cases" [9].

These three cases arose from action instigated by Gabrielle Defrenne, an air hostess, before the Belgian courts to claim equal pay. Miss Defrenne complained of her unfair treatment to her trades union, the Association of Airline Staffs, and her plight came to the notice of a Belgian female labour lawyer, Eliane Vogel Polsky [10]. This lawyer was inspired by a strike of Belgian female munitions workers for equal pay since the latter paraded banners bearing the slogan "Give us Article 119". The strike coincided with the period when the European Court of Justice was beginning to assert the supremacy of European Community law over national legislation. Polsky came to the conclusion that Article 119 of the European Economic Community Treaty on the principle of equal pay might take precedence over any national equal pay laws and, thus, enable women to cite the Community Article directly in the national courts. She first attempted to interest the Commission of the European Economic Community in the matter but to no avail. Next, she decided to bring a test case before the Belgian courts. However, Belgian trades union

officials were uncooperative. They argued that equal pay was not suited to court action and it should be left to negotiations by the trades union as part of the collective bargaining process. In practice, many trades unions did not take account of women workers and there were many instances of negotiated wage rates which were discriminatory for women workers. Eventually, Polsky came across Miss Defrenne and court action resulted.

7.4.1. The first Defrenne case [11]

Miss Defrenne brought an action on the 9th of February 1970 before the Belgian Conseil d'État against the Belgian State [12]. As European Community law was cited, the Third Chamber of the Conseil d'État decided on the 4th of December 1970 to refer the matter to the Court of Justice to seek a preliminary ruling in accordance with Article 177 of the European Economic Community Treaty. This referral was lodged with the Registry of the Court of Justice on the 11th of December [13]. Three questions were put to the Court [14]. Firstly, did a general retirement pension constitute a consideration (as laid down in Article 119) which a worker received indirectly with regard to his employment from his employer? Secondly, could the rules for a pension establish a different age-limit for men and women civil air crews? Thirdly, did civil air hostesses and

stewards do the same work? The first question was phrased in rather a misleading way. It would seem that the Belgian Court wanted to establish whether the principle of equal pay as laid down in Article 119 of the European Economic Community Treaty applied to a retirement pension. If pay was judged to include payments to a retirement pension, then the Belgian Royal Decree on air crew pensions infringed European Community law.

Written observations were submitted by Miss Defrenne, the Belgian State and the Commission. The Court then issued its judgment on the 25th of May 1971 [15]. It surmised that the first question arose from the Belgian Court when considering the nature of a Royal Decree on the pensions of civil aviation air crews [16]. That Court wished to know whether that pension scheme came within Article 119. The Court of Justice stated that social security benefits were not in principle alien to the concept of pay. It came to the conclusion that Article 119 did not cover general social security schemes which existed as part of social policy and not stemming from the employment relationship. The contributions from employers to finance such schemes did not act as a direct or indirect payment to the worker. These benefits were paid to the worker not because of the contributions from employers but because the worker fulfilled the legal conditions for the benefit. These conclusions

also applied to special schemes within the general schemes so that any discrimination arising from these schemes did not fall within Article 119. Therefore, the Court judged that

> "A retirement pension established within the framework of a social security scheme laid down by legislation does not constitute consideration which the worker receives indirectly in respect of his employment from his employer within the meaning of the second paragraph of Article 119 of the EEC Treaty" [17].

As the first question was answered in the negative, the Court judged that the other questions did not call for a reply [18].

Following on this judgment, the Belgian Conseil d'État dismissed the case on the 10th of December of that same year [19].

Thus, the judgment from the Court was negative. Retirement pensions established by legislation did not constitute pay within Article 119. This first case, involving the interpretation of the principle of equal pay, had the indirect effect of publicising the existence of Article 119 not least amongst the Commission [20]. The Court did not need to consider special pension schemes but one could perhaps infer that Article 119 might apply to them. The Court gave its opinion that social security benefits might apply to equal pay. It could be tested at a future date.

7.4.2. The second Defrenne case [21]

The second and third Defrenne cases before the Court of Justice arose from a Belgian court case initiated by Miss Defrenne before the Tribunal du Travail at Brussels on the 13th of March 1968 against Sabena [22]. This Tribunal rejected the case on the 17th of December 1970 [23]. Eventually, the Court of Justice was asked for a preliminary ruling. This request was received at the Court on the 2nd of May 1975 [24].

Two questions were put by the Belgian Court for the Court of Justice to consider [25]. Most significantly, the first question asked: Did Article 119 of the Treaty of Rome 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 did it, therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance and, if so, from what date? This question concerned a very important principle, that of direct effect. When an article of the European Community Treaty was judged to confer direct effect, this meant that individuals could cite this article before a national court. The national courts had a duty to safeguard the rights ensuing from direct

effect. If the Court judged that Article 119 did confer direct effect, then women would be able in bringing equal pay claims before a national court to claim Article 119 in their defence. The Belgian Court went on to ask whether Article 119 became applicable in the internal law of the Member States by virtue of measures adopted by the authorities of the European Economic Community and, if so, which, and as from what date or must the national legislation be regarded as alone competent in this matter?

Written observations were submitted by Miss Defrenne, the British and Irish Governments, and the Commission. The Court then declared its judgment on the 8th of April 1976 [26]. It was not under dispute that air hostesses did the same work as cabin stewards [27]. To answer the first question, the Court had to consider the nature of the principle of equal pay, its aim and its place within the Treaty. The Court judged that this principle had a double aim, economic to avoid a competitive disadvantage and social as part of the social objectives of the Community. This duality indicated that the principle formed part of the foundations of the Community. This was recognised in that the Treaty laid down that full implementation of the principle had to be completed by the end of the first stage of the transitional period of the Community. Delays by the Member States to implement this principle could not be put forward as a

basis for arguments.

The Court rejected the argument that a principle could not give direct effect as the term was used in the Treaty to indicate the nature of certain provisions. Therefore, the Court judged

> "The principle that men and women should receive equal pay, which is laid down by Article 119, may be relied on before the national courts. These courts 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 where men and women receive unequal pay for unequal work which is carried out in the same establishment or service, whether private or public" [28].

Generally, direct effect meant that a provision of the Treaty could be judged to have enforceable duties upon the Member States. This conferred vertical direct effect, that of the relationship between the State and individuals. This judgment also conferred horizontal direct effect, relationships between individuals, that is the employer and his employees [29]. Thus, this judgment laid down that the principle of equal pay as in Article 119 conferred direct effect and gave enforceable rights to individuals. Individuals could cite Article 119 before a national court even if that country lacked an equal pay law [30].

Such a judgment received acclaim from legal

commentators as the following illustrate.

> "The second Defrenne ruling rendered on 8 April 1976 was a landmark in the development of Commmunity law on equal pay in that it settled the question of the relationship between Article 119 and national legislation" [31].

> "Thus the declaration by the European Court of Justice that Article 119 is directly applicable in the Member States has had a significant impact on the law regarding equal pay for men and women" [32].

By judging direct effect to apply to contracts between individuals, the Court was encroaching on the collective bargaining process, an area which some Member States jealously reserved for themselves [33]. It was not the first time, however, that direct effect was extended to individuals [34]. Another aspect of the judgment concerned the placing of the social part of the Treaty on a level footing with the economic aims.

> "The emancipation of the Community Social Policy from its long subordination to economic motives is clearly reflected here" [35].

It reflected a contemporary reality.

The Court considered the date from which Article 119 could be said to have direct effect [36]. It looked at the developments in equal pay from the 1961 Resolution [37] up to the 1975 Directive [38]. It

considered that the 1961 Resolution did not and could not amend the Treaty. Neither did the 1975 Directive. Therefore,

> "The application of Article 119 was to have been fully secured by the original Member States as from 1 January 1962, the beginning of the second stage of the transitional period, and by the new Member States as from 1 January 1973, the date of entry in force of the Accession Treaty" [39].

Thus, direct effect was judged from 1962 or from 1973. The 1975 Directive was enacted to encourage the proper implementation of Article 119 so it did not affect the direct effect of Article 119.

However, this important judgment was qualified in a number of ways by the Court of Justice. First, it restricted the extent of direct effect by distinguishing between direct and overt discrimination, and indirect and disguised discrimination [40]. Direct discrimination could be identified solely with the aid of the criteria based on equal work and equal pay as in Article 119. But, indirect discrimination could only be identified by reference to explicit Community and national implementing provisions. The judgment declared that direct discrimination could originate in legislative provisions or collective labour agreements [41]. In making this distinction, the Court did not accept the suggestion from the Advocate-General that

discrimination on grounds of sex could be decided in the same way as discrimination on grounds of nationality [42]. To do so would have entailed full and unconditional direct effect. The Court did not attempt (and was not asked) to define equal work and equal pay. It assumed that the criteria for these concepts were clearly established and determined. But, they were not and were long the centre of controversy.

Secondly, the Court watered down the judgment in a rather surprising way by strictly limiting its temporal effect. The Economist commented:

> "Europe's women got a slap on the back and a kick lower down" [43].

The Court laid it down 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" [44].

In other words, no prior claims, other than those already pending (and they did not seem to be many [45]), could be made. Thus, it would seem that the Court was influenced by the dire economic consequences predicted by the British and Irish Governments. The Court tried to cover itself from possible criticism by

pointing out that this exceptional judgment was made for various reasons [46]. Severe financial problems might arise. The Commission had failed to initiate infringement procedures against erring Member States. This failure might have misled the Member States. Yet, Article 119 had not established a clear legal position which probably explained the lack of legal action by the Commission [47]. The Court also limited its decision to ensure legal security.

The decision revealed a mixture of legal and practical considerations [48]. In making this temporal stipulation, one legal commentator pointed out that the Court actually amended the Treaty [49] and it illustrated how the Court could be manipulated by the political system.

> "It may be noted, however that it is exceptional for the European Court to take such external factors so fully into account" [50].

> "This decision,... appears to be unprecedented in the case-law of the Court" [51].

However, if the Court had allowed direct effect from 1962 or 1973, then, the result would have been to

> "create economic havoc in member countries" [52].

> "It remains only a matter of regret that the Court, while enuntiating these high-sounding statements of

principle, still found its way, in the instant case, to give priority to economic motives" [53].

Finally, the judgment limited Article 119 to discrimination in pay and not other conditions of employment or working conditions.

Having won this victory, Miss Defrenne was awarded damages with interest and costs on the 24th of December 1976 by the Brussels Cour du Travail [54]. She received about £200 for her trouble [55] but she had won an extremely significant judgment for the women of the European Community.

7.4.3. The third Defrenne case [56]

However, Miss Defrenne did not end her litigation at that point. On the 16th of September 1976, she brought an appeal before the Belgian Cour de Cassation against the adverse 1975 judgment from the Cour du Travail [57]. On this occasion, the Third Chamber of the Cour de Cassation stayed the proceedings on the 28th of November 1977 so that it could seek a preliminary ruling from the Court of Justice. The request for a preliminary ruling was registered on the 12th of December 1977 [58].

The Belgian Court sought a ruling on the following questions [59]. Must Article 119 of the

Treaty which laid down the principle that "men and women should receive equal pay for equal work" be interpreted by reason of the dual economic and social aim of the Treaty as prescribing not only equal pay but also equal working conditions for men and women? And in particular, did the insertion into the contract of employment of an air hostess of a clause bringing the said contract to an end when she reached the age of forty years, it being established that no such limit was attached to the contract of male cabin attendants who were assumed to do the same work, constitute discrimination prohibited by the said Article 119 of the Treaty of Rome or by a principle of Community law if that clause might have pecuniary consequences, in particular, as regards allowances on termination of service and pension? Thus, the Court asked whether the principle of equal pay in Article 119 could be extended to include working conditions. This question was asked in the connection of discriminatory retirement ages existing within the employment contract of air crew. Furthermore, the Court was asked to decide whether discrimination was involved under Article 119 or under another Community provision particularly as the clause had pecuniary consequences, namely, a severance allowance and a pension. It must be borne in mind that since this case preceded the implementation date of the 1976 Directive [60], it could not be cited. But, it was perhaps what the Belgian Court was referring to when it cited

"another Community provision" in its questions.

Miss Defrenne, the Italian Republic, the United Kingdom Government and the Commission submitted written observations [61] and judgment was given by the Court on the 15th of June 1978 [62]. The Court considered that the field of application of Article 119 had to be determined within the context of all the social provisions of the Treaty [63]. It considered that whereas Articles 117 and 118 were essentially a programme Article 119 was a special rule limited to the question of pay discrimination between male and female workers. Thus, it could not be extended to elements of the employment relationship other than pay. Even if age limits did have pecuniary consequences it was not sufficient. To widen Article 119 would jeopardise direct applicability and it would intervene in an area reserved by Articles 117 and 118. Therefore,

> "Article 119 of the EEC Treaty cannot be interpreted as prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women" [64].

The Court reiterated that respect for fundamental personal human rights was one of the general principles of Community law which the Court had a duty to ensure [65]. There was no doubt that non-discrimination based on sex formed part of

these fundamental rights. The Court had recognised in some judgments the need to ensure equality in working conditions for Community officials within the framework of the Community Staff Regulations. But, in connection with the relationships between employer and employees under national law at the time of the events before the Belgian courts the Community had not assumed any responsibility for equality in working conditions other than pay. At that time, the relevant Community law only consisted of the programme contained within Articles 117 and 118. Therefore, Belgian law governed the situation. Thus,

> "At the time of the events which form the basis of the main action there was, as regards the relationships 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 Treaty" [66].

Thus, the Court would not extend Article 119 to include equality in working conditions.

But, this judgment would seem to indicate that the 1976 Directive might be used in future [67]. Miss Defrenne did not bring any further litigation probably because Belgian law had a time-limit to bring cases.

Thus, Miss Defrenne was involved in litigation for a considerable time. The judgments of her cases were

important. Defrenne II laid down the direct effect of Article 119 whilst Defrenne I and III established, albeit negatively, that Article 119 could not be extended to embrace working conditions or that pay did not mean payment or benefit to a pension scheme laid down by legislation.

7.5. The British preliminary rulings

Following these three Defrenne judgments, the Court of Justice was called upon to adjudicate once again on Article 119. A number of British equal pay cases were referred to the Court of Justice during the late 1970's and early 1980's. It should be noted that the British Equal Opportunities Commission played an important part in these proceedings through its statutory role in granting assistance to individuals who wished to initiate legal action. Without such help the individuals concerned would possibly have been unable to command the financial and legal resources necessary to commence and maintain expensive and complicated litigation.

7.5.1. Macarthys Ltd. v. Wendy Smith [68]

The first of these British cases had the effect of extending the scope of the principle of equal pay. A case originally brought by a Mrs. Smith before an Industrial Tribunal against Macarthys Ltd led to the

involvement of the Court of Appeal. As European Community law was involved, the Court of Appeal judges decided to delay judgment until a preliminary ruling could be sought from the Court of Justice. The Court of Justice registered the request on the 10th of August 1979 [69].

To enable them to reach a judgment, the Court of Appeal judges put the following four questions to the Court of Justice [70]. Firstly, was the principle of equal pay for equal work contained in Article 119 and Article 1 of the 1975 Directive confined to situations in which men and women were contemporaneously doing equal work for their employer? Secondly, if the answer was no, did the said principle apply where a worker could show that she received less pay for her employment (a) than she would have received if she were a man doing equal work for the employer or (b) than had been received by a male worker who had been employed prior to her period of employment and who had been doing equal work for the employer? Thirdly, if the answer to Question 2 (a) or (b) was yes, was that answer dependent upon the provisions of Article 1 of the 1975 Directive? Finally, if the answer to Question 3 was yes, was Article 1 of the 1975 Directive directly applicable in the Member States?

In other words, did the principle of equal pay only apply to men and women doing equal work at the same

time or could it be temporally extended to different times? A judgment in favour of the latter consideration would amount to an important extension of the principle of equal pay. For the first time, before the Court, the 1975 Directive was cited.

Written observations were submitted by Mrs. Smith, the United Kingdom Government and the Commission. Then the Court of Justice delivered an important judgment on this case on the 27th of March 1980 [71]. The Court, first of all, looked at the wording of the questions [72]. It considered that the Court of Appeal asked for an interpretation of Article 119. But, should it appear that this Article was insufficient to allow a decision to be made, then the 1975 Directive could be taken into account. Therefore, the Court of Justice would examine the questions firstly within the context of Article 119. The 1976 Defrenne judgment declared that direct discrimination according to Article 119 could include situations where men and women received unequal pay for equal work carried out in the same establishment. In such cases, a court was called upon to decide whether any differences arose between a man and woman doing equal work. Equal work was the basis for comparison.

> "The scope of that concept, which is entirely qualitative in character in that it is exclusively concerned with the nature of the services in question, may not be restricted by the introduction of a requirement of contemporaneity" [73].

However, the Court did recognise that unequal pay between two workers occupying the same post at different periods of time might occur for factors not related to sex discrimination. As Thomson and Wooldridge commented, economic factors might come into play [74]. The interval between the two workers occupying the same job might be occasioned by changes in incomes policy, etc. The Court of Justice ruled that a court had to decide on this question of fact.

Thus, the Court answered the first question in the negative.

> "The principle that men and women should receive equal pay for equal work, enshrined in Article 119 of the EEC Treaty, is not confined to situations in which men and women are contemporaneously doing equal work for the same employer" [75].

Turning to the second question, the Court rejected the idea that comparison with a hypothetical male worker could be admissible. It viewed this concept as falling within indirect and disguised discrimination since comparative studies of industry and national criteria would have to be established. But, direct discrimination according to Article 119 could be determined by definite appraisals of the work done by different sexes within the same establishment or service. The Court, therefore, answered the second

part of the second question in the affirmative.

> "The principle of equal pay enshrined in Article 119 applies to the case where it is established that, having regard to the nature of her services, a woman has received less pay than a man who was employed prior to the woman's period of employment and who did equal work for the employer" [76].

The Court concluded that the case could be decided upon the basis of Article 119 alone and so it was unnecessary to answer the final two questions since they related to the 1975 Directive [77].

Thus, the Court of Justice made another important judgment in the field of equal pay. The principle of equal pay in Article 119 could be applied to the same job at different periods of time provided that economic factors did not have an effect. An adverse ruling could have led to disadvantegeous consequences for women. Employers might have been tempted to employ only women at low wages. The women would not have been able to compare their jobs with male counterparts in order to make an equal pay claim. In relation to supervisory posts, employers would only have had to leave the post vacant for one day before filling it since an incumbent might experience difficulties in finding a comparator to claim equal pay.

The Court also confirmed the Defrenne II judgment that Article 119 was only directly applicable to cases

of direct or overt discrimination whereby

> "comparisons are confined to parallels which may be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service" [78].

To cite Article 119 directly, one needed to have an actual comparator and this person must be employed in the same establishment or service.

This judgment also had the effect of illuminating the deficiencies of the British Equal Pay Act in relation to the European Community legislation [79]. Indeed, the Court of Justice gave a wider view of equal pay than the British courts had given in accordance with the United Kingdom Equal Pay Act [80]. In light of this judgment, the Court of Appeal in April 1980 applied this ruling to the case [81]. Davis summed up the case in the following manner.

> "This case made legal history and means that the UK Equal Pay Act will in future have to be applied in the light of the judgment" [82].

However, the Court of Justice did not avail itself of the opportunity to pronounce on the applicability and effect of the 1975 Directive.

> "The ECJ [European Court of Justice] side-stepped the issue" [83].

An apparent reluctance to consider the 1975 Directive was revealed in successive cases.

So,

> "The Macarthys decision, less memorable than the historic triology of cases [Defrenne]..., is nevertheless worthy of remark" [84].

7.5.2. Susan Jane Worringham and Margaret Humphreys v. Lloyds Bank Limited [85]

The second British equal pay case to be referred to the Court of Justice concerned the issue of pensions which had already been considered in the Defrenne I case. On this occasion, the Court was asked to judge whether the contributions to, and the benefits received from, an occupational pension scheme fell within the purview of the principle of equal pay.

Originally, Susan Worringham and Margaret Humphreys initiated separate cases for equal pay before an Industrial Tribunal in May and September 1977 respectively. By the mutual consent of the two applicants, the two cases were consolidated into one. This was considered to be a test case since some 13,800 women worked for Lloyds under the age of twenty-five [86] so the possible financial implications for Lloyds were substantial. The case eventually reached the Court of Appeal. That Court was

divided in its opinion so a preliminary ruling was sought from the Court of Justice. The Court of Justice registered the request on the 3rd of March 1980 [87].

Four questions were put to the Court [88]. Firstly, were contributions paid by an employer to a retirement benefits scheme or the rights and benefits of a worker under such a scheme "pay" within the meaning of Article 119? Secondly, were contributions paid by an employer to a retirement benefits scheme or the rights and benefits of a worker under such a scheme "remuneration" within the meaning of Article 1 of the 1975 Directive? Thirdly, if the answer to Question 1 or 2 was in the affirmative, did Article 119 or Article 1 of the 1975 Directive have direct effect in Member States so as to confer enforceable Community rights upon individuals in the circumstances of the present case? Fourthly, if the answers to Question 1 and 2 were in the negative, were contributions paid by an employer to a retirement benefits scheme or rights and benefits of a worker under such a scheme within the scope of the principle of equal treatment for men and women as regards "working conditions" contained in Article 1 paragraph 1 and Article 5 paragraph 1 of the 1976 Directive"? If so, did the said principle have direct effect in Member States so as to confer enforceable Community rights upon individuals in the circumstances of the present case?

Thus, the Court of Appeal concentrated on the wider issue whether European Community law applied to an occupational pension scheme. The Advocate-General in the Defrenne I case had intimated that this was the case. Furthermore, the Court was asked to declare whether Article 119 and the relevant Article of the 1975 and 1976 Directives conferred direct effect. The 1976 Directive was put forward for the first time before the Court of Justice. Incidentally, the exemption clause on retirement or death in the British Equal Pay Act was also being tested to judge whether it was legal under European Community law [89]. Should the Court judge that these retirement benefits constituted pay according to Community law, then this exemption clause would be contrary to European Community law.

The two sides to the case, the United Kingdom Government and the Commission all gave written observations to the Court [90]. Judgment was given by the Court of Justice on the 11th of March 1981 [91]. The Court narrowed down the first question to mean whether the sums paid by the employer in an employee's name to a retirement benefits scheme by means of an addition to the gross salary constituted pay within the meaning of Article 119 [92]. It concluded that these sums were included in the calculation of the employees' gross salary and they directly determined the calculation of other advantages linked to the

salary such as redundancy payments. They formed part of pay according to Article 119 even if these sums were at once deducted and paid into a pension fund. Similar arguments applied to those sums which were returned on ceasing employment. Therefore, the Court judged that

> "A contribution to a retirement benefit scheme which is paid by an employer in the name of employees by means of an addition to the gross salary and which therefore helps to determine the amount of that salary constitutes "pay " within the meaning of the second paragraph of Article 119 of the EEC Treaty" [93].

The Court declared that since the second part of the first question was subsidiary to the first part there was no need to examine it. Similarly, the second question was subsidiary to the first so it was purposeless for the Court to consider it.

The Court reaffirmed its judgment of the Defrenne II and Macarthys cases with particular reference to the special circumstances of this case.

> "Article 119 of the Treaty may be relied upon before the national courts and these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular in a case where, because of the requirement imposed only on men or only on women to contribute to a retirement benefits scheme, the contributions in question are paid by the employer in the name of the employee and deducted from the gross salary whose amount they determine" [94].

It rejected the plea from Lloyds for temporal effect. Question 4 was deemed purposeless since it only arose should Questions 1 and 2 have been answered in the negative.

In giving its judgment, the Court did not avail itself of the contention of the Advocate-General that the Court was asked to judge on the question of whether or not Article 119 applied to occupational pension schemes. This question, which was posed by the Advocate-General in the Defrenne I case, was not resolved in this judgment. Thus, the Court limited its appraisal to the addition to gross pay although it did judge that this addition constituted pay. Another extension to the scope of pay according to Article 119 was therefore made but its effects were limited. This ruling

> "narrows the likely impact of the judgment since there are probably few situations where an addition to the gross salary is made" [95].

But, the effect of the judgment should be to stop the practice of paying unequal gross pay by means of giving indirect benefits and rights to male workers [96].

It was suggested that the Judges could not reach agreement on the issue of occupational pensions so they compromised and this limited judgment resulted

[97]. This judgment did not put contracted out occupational pension schemes in an advantageous position as compared to state schemes [98]. Such a judgment would have conferred a competitive advantage which was against the economic role of Article 119 as explained in the Defrenne II judgment. Moreover, the judgment did not encroach on the national viewpoint that social security matters fell within the purview of national governments [99].

Although the Court did reaffirm and extend the direct effect of Article 119, it did not consider the important question of Directives having direct effect.

Unlike Defrenne II, the Court was not influenced by economic considerations and it ignored the forebodings of Lloyds and the United Kingdom Government as to the serious economic effects of a judgment in favour of the applicants [100]. However, the situation might have been different had a judgment on the wider issue of occupational pension schemes constituting pay according to Article 119 been given [101].

This judgment gave a wider interpretation to pay than the United Kingdom Equal Pay Act allowed [102]. This situation had also arisen in relation to the Macarthys judgment. Once again, the shortcomings of this Act were revealed.

The limitations of the judgment were commented upon as the following illustrated.

> "The brevity of the judgment is such as to conceal some of the difficulties of the case and of the issues that remain unsolved" [103].

> "Such a judgment demonstrates the limits of case law on treatment, in the absence of Community measures resolving the problems of supplementary schemes" [104].

However, as might be expected,

> "Lloyds Bank were reported to be alarmed by the decision" [105].

With this judgment, the British Court could make the decision on the basis of European Community law which overrode the exemptions laid down by the national law [106]. Accordingly, the Court of Appeal declared that the claimants should receive a sum of money equal to the contributions which would have been paid had they been male workers less the relevant deductions [107]. This sum was subject to a limitation of two years according to the limitation period laid out in the British Equal Pay Act.

7.5.3. J.P.Jenkins v. Kingsgate (Clothing Productions) Ltd [108]

Differences between full-time and part-time rates of pay formed the subject of the third United Kingdom equal pay case to be referred to the Court of Justice. This time, the worker's trades union, the National Union of Tailors and Garment Workers, supported the case as well as the Equal Opportunities Commission.

This case involved Kingsgate, a small ladies clothing manufacturing company, and an employee, Mrs. Jenkins, a part-time machinist. The case went before the Employment Appeal Tribunal which sought a preliminary ruling from the Court of Justice. The request was registered on the 12th of March 1980 [109]. Four questions were referred to the Court of Justice [110]. Firstly, did the principle of equal pay contained in Article 119 and Article 1 of the 1975 Directive require that pay for work at time rates be the same irrespective (a) of the number of hours worked each week or (b) of whether it was of commercial benefit to the employer to encourage the maximum possible hours of work and consequently to pay a higher rate to workers doing forty hours per week than to workers doing fewer than forty hours per week? Secondly, if the answer to Question 1 (a) or (b) was in the negative, what criteria should be used in determining whether or not the principle of equal pay applied where there was a difference in the time rates of pay related to the total number of hours worked each week? Thirdly, would the answer to Question 1 (a)

or (b) or 2 be different (and, if so, in what respects) if it were shown that a considerably smaller proportion of female workers than of male workers was able to perform the minimum number of hours each week required to qualify for the full hourly rate of pay? Finally, were the relevant provisions of Article 119 and Article 1 of the 1975 Directive, as the case may be, directly applicable in Member States in the circumstances of the present case?

It would seem apparent that the Tribunal was covering various approaches to the matter of different wage rates for full-time and part-time work. The point of issue related to the application of equal pay to time rates. For the first time, the Court was asked to decide on indirect discrimination [111],

"the equal rule with the unequal effect" [112].

As the majority of part-time workers tended to be female, then a situation of indirect discrimination arose when part-timers were paid at lower wage rates than full-time workers.

Written observations were submitted by Jenkins, the Governments of the United Kingdom and Belgium, and the Commission [113]. On the 31st of March 1981, the Court of Justice gave its judgment on this case [114]. The Court considered that the first three questions asked

whether differences in the level of pay for part-time work and the same work carried out full-time could result in discrimination as prohibited by Article 119 when the part-time workers consisted wholly or mainly of women [115]. The Court considered that Article 119 was concerned with pay discrimination solely based on differences of sex of the workers. Part-time work which was paid at a lower hourly rate than full-time work did not constitute discrimination per se provided that the rate was applied without discrimination based on sex. The difference in wage rates might arise for other factors which were objectively justified. There might be objectively justified reasons for the employer to encourage full-time work. However, the Court added a qualifying statement that discrimination might arise should the majority of part-timers happen to be women. When disputes as to differences between the rates of pay for part-time and full-time workers arose, it was the task of the national courts to survey the facts of the case, its history and the intention of the employer. Therefore, the Court ruled as follows.

> "A difference in pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 of the Treaty unless it is in reality merely an indirect way of reducing the pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women" [116]

In connection with the fourth question on direct

effect, the Court reaffirmed its previous Article 119 rulings and added the following.

> "Where the national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the payment of lower hourly rates of remuneration for part-time work than for full-time work represents discrimination based on difference of sex the provisions of Article 119 of the Treaty apply directly to such a situation" [117].

However, in relation to Article 1 of the 1975 Directive, the Court ruled that this Article

> "is principally designed to facilitate the practical application of the principle of equal pay outlined in Article 119 of the Treaty" [118]

and it

> "in no way alters the content or scope of that principle as defined in the Treaty" [119].

But, its judgment was not so clear-cut as previous equal pay rulings. In one way, this ruling extended the scope of Article 119 to cover differences between full- and part-time rates of pay. But, this ruling only applied when an employer employed mostly women and discrimination came into effect as an indirect way of reducing part-time pay. Otherwise, differences between full- and part-time rates of pay were not considered to discriminate against Article 119. Thus, the onus of proof was shifted onto the employer. This

case did highlight the narrow scope of Article 119 [120].

The ambiguous nature of the judgment was reflected in the opinions of legal commentators. On the positive side, this judgment was declared to be a

> "positive contribution to the law of equality" [121]

and a

> "a significant decision on the application of European law in the UK" [122].

But, negatively, Thomson and Wooldridge argued that the effect of the questions was to

> "raise issues of considerable difficulty" [123].

They pointed out that the concept of equal work was neither defined in the Treaty nor in the equality Directives [124]. The demands made of full-time workers might differ from those of part-time workers. Differences in pay rates between the two categories of workers might result from different costs incurred by the employer. These differences might not amount to discrimination based on the sex of the worker. In such instances, neither Article 119 nor Article 1 of the 1975 Directive could help the

complainant.

Other problems of definition resulted. The Court did not define what was meant by the "same job" [125]. Furthermore, the Court did not provide a definition of the phrase "the employer's objective grounds" [126]. It would be relatively easy for employers to argue before the courts that they were paying different wage rates for reasons other than discrimination based on sex. Yet, the Court of Justice directed national courts to survey the facts which included the employer's intention. It did not specify what this "intention" meant [127].

Turning to the question of direct effect, for the first time, the Court ruled that Article 119 conferred direct effect in cases of indirect discrimination. Thus, this ruling by this Court introduced the concept of indirect discrimination into Community sex discrimination law.

> "Because indirect discrimination is certainly among the forms of discrimination with the most far-reaching impact on society, at least in this respect, the decision in the Jenkins case is of fundamental significance" [128].

However, the constraints imposed by the ruling must be borne in mind when considering the importance of this issue.

How did the Employment Appeal Tribunal respond to this ruling? In fact,

> "the judgment of the European Court was so obscure that the Employment Appeal Tribunal in the end decided the case on the basis of English law" [129].

The Tribunal felt that the ruling from the Court of Justice raised doubts as to the effect of Article 119. So, it assumed that Article 119 did not apply in this situation and took its decision on the 3rd of July 1981 on the basis of the United Kingdom Equal Pay Act [130]. It allowed the appeal and it decided that the case should be returned to the Industrial Tribunal. This Tribunal could consider whether the differences in wage rates were necessary to achieve greater business efficiency. However, the Employment Appeal Tribunal did invite both sides to look at the judgment and try to reach agreement to void another hearing before the Industrial Tribunal [131].

Szyszczak concluded thus:

> "This case has far reaching social and economic implications regarding women in the labour market since a large proportion of women prefer or are obliged to work part-time given the demands of their family and home" [132].

It was of interest to note that this group of preliminary rulings stemmed from the United Kingdom

courts alone. What were the reasons? One reason for these rulings could perhaps be the different legal systems. English law was derived from very different traditions and concepts as compared to European Community law. The latter was largely based on continental and, hence, Roman law.

Cases before a English court or tribunal received very careful consideration in the interpretation of the law and the judgments were usually thorough [133]. So, it could be argued that the inadequacies of the United Kingdom legislation gave rise to preliminary rulings. Through the rulings of the Court of Justice on equal pay, the European Community legislation gave a wider interpretation than that provided in the United Kingdom Equal Pay Act [134].

> "In part the volume of references from United Kingdom courts on equal pay and related questions also reflects the problems of interpretation posed by, and the shortcomings of the United Kingdom sex discrimination legislation" [135].

Furthermore, it could be contended that the individual bringing a case gained a judgment under European Community law and not under United Kingdom law.

But, a more powerful reason could be found in the existence of the Equal Opportunities Commission. Owing to its statutory powers to render assistance to

individuals wishing to claim equality, these cases were fought through the various stages of litigation. Without assistance, it was doubtful whether any of these cases would have appeared before the Court of Justice. It was also of interest to note that the Equal Opportunities Commission was imbued with more powers than its counterparts in the other Member States. Perhaps this factor could explain the absence of equality cases from the other Member States before the Court of Justice.

Reference by British courts to the Court of Justice was only a gradual process [136]. During the early years of British membership of the European Community, British judges showed a marked reluctance to refer questions under Article 177 of the Treaty to the Court of Justice. More frequent references have become the trend although the Court of Appeal did not adopt this practice until fairly recently. It was perhaps felt that

> "references to the European Court may involve delay and be costly" [137].

Indeed, some British courts decided on questions involving European Community law without reference to the Court of Justice. These courts decided themselves that Article 1 of the 1975 Directive did not have direct effect and that the 1976 Directive did not

have direct horizontal effect when they should have sought a ruling on the matter from the Court of Justice [138]. But, it was of great interest to note that an Industrial Tribunal did decide a case on the basis of European Community law overriding British legislation without reference to the Court of Justice. Perhaps, it was even more noteworthy that this case involved the Equal Treatment Directive which the Court of Justice was reluctant to consider.

Thus, in relation to these equality cases, it could be argued that

> "Community law is now an important basis for actions before industrial tribunals in the United Kingdom" [139].

In conclusion, this small number of preliminary rulings had an important effect on the interpretation of the principle of equal pay. Article 119 was ruled in the Defrenne II case to have direct effect so that individual rights were conferred. It could be argued that the other decisions which widened the scope of equal pay were of almost equal importance. One could detect, perhaps, in the late 1970's, an increasing reluctance on the part of the Court of Justice to give the same sort of generous interpretation to the principle of equal pay that had been shown in Defrenne II. Nevertheless, some important rulings were made in this area by the Court.

7.6. Staff actions

Another way in which the Court of Justice interpreted European Community legislative measures for women involved the use of Article 179 of the Treaty [140]. This Article was concerned with the adjudication of disputes between the European Community institutions and its staff in accordance with the Community Staff Regulations and Conditions of Employment. These Staff Regulations and Conditions controlled the functioning of employees of the Community institutions. When the Court of Justice adjudicated on any disputes between these institutions and its staff it was acting

> "in its capacity as an administrative tribunal" [141].

These domestic cases took up much of the time of the Court of Justice. Procedure was similar to that of a preliminary ruling [142]. It was the task of the Court to hear both sides to the dispute and to judge whether or not a particular action by an institution was legal. Thus, the institution was judged as an employer. The Court could decide that an action was contrary to the Staff Regulations and that action was annulled. But, the Court could not alter the offending Regulation. Damages or compensation could also be

awarded.

7.7. Staff actions in relation to the position of women

A number of cases arose in which the principles of equal pay and equal treatment were cited. These cases related to the granting of an expatriation allowance [143]. This allowance was paid as a means of compensation to European Community officials who worked outside their native country. A number of conditions had to be satisfied before the allowance was given. Officials were never to have been nationals of the State in which the particular Community institution was situated. Secondly, an official was not to have lived or been employed in that State during the five years which ended six months prior to entering Community employment. However, a different situation could arise in the event of an official marrying. When an official married a person who did not qualify for the allowance at the time of marriage then the allowance would not continue to be granted unless that official became a head of household.

Two separate cases on this subject were brought before the Court of Justice about the same time. The first case [144] concerned an Italian, Miss Bertoni, whilst Monique Bauduin [145] pursued another case. As these two cases were concerned with essentially the

same matter, they were joined by Order of the 3rd of December 1971 [146].

Judgment was given by the Court of Justice on the 7th of June 1972 [147]. The Court considered the granting of expatriation allowances to married officials [148]. By itself, differences of treatment as between male and female officials were not created. But, head of household according to Article 1 (3) of Annex VII of the Staff Regulations normally meant a male official and a female could be considered to be head of household only in exceptional circumstances where her husband was an invalid or was seriously ill. This head of household clause did constitute a difference in treatment. Therefore, the Court judged that the

> "Staff Regulations cannot however treat officials differently according to whether they are male or female, since termination of the status of expatriate must be dependent for both male and female officials on uniform criteria, irrespective of sex" [149].

These Regulations, by relating the allowance subject to a head of household status, created an arbitrary difference of treatment between male and female officials.

Accordingly, the Court found in favour of both officials. This judgment

"came as a surprise to everyone" [150].

Landau maintained that the spirit of the judgment implied that the internal law of the Community should be a model for the Member States to follow [151].

Consequently, the expatriation allowance was restored to the two applicants and the arrears due to them were paid [152].

It was of interest to note that this judgment resulted in the Council modifying the Staff Regulations [153]. The phrase household allowance was substituted for all references to head of household allowance. In fact, a condition of head of household had applied to other allowances than just the expatriation allowance. Thus, the opportunity was taken to rectify all these differences of treatment.

However, two further cases on expatriation allowances were brought to result in a judgment on equal treatment. Both cases were heard before the Court of Justice about the same time and both were complicated by questions of nationality. The first case [154] concerned a Belgian national, Jeanne Airola, whilst the second case [155] involved Chantal Van den Broeck, a French national.

The Court of Justice gave its judgment on the 20th of February 1975 [156]. The Court considered that discrimination occurred in the application of the condition of nationality when a female official married a national of another state and acquired his nationality since a male official did not acquire the nationality of his wife [157]. The national provisions were not uniform in relation to nationality. The granting of an expatriation allowance was based mainly on the official's habitual residence and nationality was only a subsidiary factor. The object of the expatriation allowance was to compensate officials for having to change their residence upon taking up employment with the European Community. The Staff Regulations could not treat officials differently because they were male or female. Payment of the allowance must be determined by considerations which were uniform and disregarded the difference in sex.

Thus, the Court declared:

> "The concept of nationals' contained in Article 4 (a) must therefore be interpreted in such a way as to avoid any unwarranted differences of treatment as between male and female officials who are, in fact, placed in comparable situations. Such unwarranted difference of treatment between female officials and officials of the male sex would result from an interpretation of the concept of nationals' referred to above as also embracing the nationality which was imposed by law on an official of the female sex by virtue of her marriage, and which she was unable to renounce" [158].

Under Article 4 of the Staff Regulations, nationality had to be defined without reference to a nationality imposed by law on a female official upon her marriage to a national of another state when she could not renounce this imposed nationality. Thus, the Court took into account the principle of equal rights to which the Advocate-General had alluded. The declaration of the Court, however, was limited to those married female officials who could not renounce their nationality acquired through marriage. Presumably, in cases where a married female official, given the choice, chose not to renounce an acquired nationality, then this declaration would not apply. Thus, the ruling of the Court was more limited than might appear at first glance.

Eventually, the Staff Regulations were amended to take into account this judgment of the Court of Justice. In 1978, the Regulations were changed so that an official who had by marriage automatically acquired the nationality of the country of employment and who could not renounce the nationality should be treated in the same way as officials who were not or who never had been nationals of the country of employment. One might note that this was the second occasion whereby a Court judgment based on the principle of equal treatment resulted in the amendment of the Community Staff Regulations.

To conclude, these staff actions utilised Article 119 and principles of equality. The Court, in effect, ruled that the same rules must apply internally within the European Community institutions as to the Member States. Article 119 was used, in the first place, to eradicate the discriminatory nature of head of household allowances from the Staff Regulations. Without these actions by Sabbatini and Chollet, the Staff Regulations might not have been amended and discrimination might have continued. In two cases brought by Airola and Van den Broeck, the principle of equality of treatment was applied so that female officials with acquired nationality by marriage which they could not renounce were not treated differently from male nationals in the granting of expatriation allowances. Eventually, the Staff Regulations were amended further to include this condition.

7.8. Summary

The Court of Justice, thus, played an important role in interpreting the European Community legislative measures for women, particularly, in relation to preliminary rulings. The nature of the preliminary ruling procedure was described before examining the pertinent preliminary rulings.

In general, the Defrenne II judgment ruled that

Article 119 of the European Economic Community Treaty had a dual economic and social aim. This judgment also ruled that the principle of equal pay formed part of the foundations of the European Community. The Defrenne III judgment went further by recognising that the elimination of sex discrimination was a fundamental personal human right the observance of which, as a general principle of Community law, the Court had a duty to ensure. Moreover, the Defrenne II judgment ruled that arguments based on the slowness and resistance of the Community institutions were not admissible since it was for the Court alone to definitively interpret the Treaty.

These preliminary rulings also extended the scope of the principle of equal pay. The extremely important Defrenne II judgment ruled that cases involving direct discrimination in equal pay could be brought before the national courts since Article 119 of the European Economic Community Treaty conferred direct effect. This important ruling on direct effect was confirmed in the later Macarthys, Worringham and Jenkins cases. The Macarthys decision extended the principle of equal pay temporally. The Worringham judgment further expanded the principle of equal pay to include a retirement benefit contribution which was added by an employer to gross pay. Although the Jenkins decision was rather ambiguous, it did extend the principle of equal pay to the area of indirect

discrimination.

Without these rulings, the European Community law might not have been interpreted. One result of these cases was the development of a

"coherent body of case-law" [159]

and the judgments applied uniformly to each Member State. This uniformity contrasted with the diversity of the national legislation which implemented the European Community law.

> "Meanwhile, it is to the advantage of women and the European Community that EEC law on sex discrimination be applied directly and uniformly throughout the Member States" [160].

However, these preliminary rulings revealed certain negative aspects in limiting the extent of the principle of equal pay.

After pronouncing such a bold judgment in relation to direct effect as evinced in the Defrenne II case, the Court of Justice showed a remarkable caution in later cases. This caution was revealed, in particular, in the reluctance by the Court to rule on the Equal Pay and the Equal Treatment Directives. All of the decisions from these preliminary rulings were taken on the basis of Article 119 alone.

In spite of the importance of the European Court rulings, they tended to display a certain narrowness and some ambiguity. In nearly all of the cases examined, the Court chose to give a more restricted interpretation than that suggested by the Commission and, in some cases, than that put forward by the Advocate-General.

One should also note the significant number of these preliminary rulings arising out of the United Kingdom courts. This number reflected the statutory importance of the Equal Opportunities Commission in its financial and legal assistance to individuals and, also, the shortcomings of the United Kingdom legislation. These rulings were important for the British claimants since they gained favourable judgments which might not have resulted from the British Equal Pay and Sex Discrimination Acts.

Thus, one could conclude that the Court was reluctant to give a liberal interpretation to the concept of equal pay. Burrows postulated that this reluctance might be for two reasons [161]. First, direct effect might have been affected should a wide interpretation have been given. The principle of equal pay might have become imprecise. Secondly, the other areas which formed part of the elimination of discrimination based on sex were encompassed in the

Social Action Programme and were derived from Articles 117 and 118 of the European Economic Community Treaty.

> "It seems unfortunate that in an area of the law which is of direct or indirect concern to the vast majority of Community citizens both the legislation and jurisprudence being evolved are posing questions of delimitation and raising issues of legal principle of such doubt and complexity as to hinder, rather than help, the attainment of the fundamental social principle at issue" [162].

Nevertheless, these preliminary rulings assumed an importance in the interpretation of the principle of equal pay and in their effects upon the right of women to claim equal pay.

Finally, this Chapter considered the adjudication of staff disputes procedure and its application to cases involving equality. Although the effects were confined to the internal staff of the Community, these decisions showed that the European Community was concerned to set an example for the Member States to emulate.

Thus, in relation to equal pay, the Court declared that a head of household allowance constituted discrimination. The discriminatory nature of this allowance was noted in some Member States. And the European Community was determined to eradicate this type of discrimination. Consequently, a Council

Regulation was enacted to deal with the discriminatory Staff Regulation. Then, with regard to equal treatment, the Court ruled that the Staff Regulations could not discriminate between men and women because of the question of nationality which was acquired by marriage and which could not be renounced. Another Staff Regulation gave effect to this ruling.

Therefore, this European Community institution, the Court of Justice, played an important part in improving the position of women by its role in the enforcement and interpretation of European Community law.

Footnotes

1. "The Court of Justice of the European Communities", European Documentation, Number 5 (1986), p. 22.
2. European Communities, Treaties, p. 348.
3. "The Court of Justice", p. 23.
4. Davis, Women's rights, p. 1.
5. "The Court of Justice", pp. 30-31.
6. Ibid, p. 24.
7. Landau, "Recent legislation and case law in the EEC", pp. 53-54.
8. Ibid, p. 57.
9. Burrows, "The Promotion of Women's Rights", p. 192.
10. Rights of Women Europe, Women's Rights & the EEC, p. 27.
11. "Gabrielle Defrenne v Belgian State Case 80/70", pp. 445-462.
12. Ibid, p. 446.
13. JOC, Volume 14, Number 8 (29 janvier 1971), p. 3.
14. "Gabrielle Defrenne v Belgian State Case 80/70", pp. 446-450.
15. JOC, Volume 14, Number 80 (7 août 1971), pp. 7-8.
16. "Gabrielle Defrenne v Belgian State Case

80/70", pp. 450-452.
17. Ibid, p. 453.
18. Ibid, p. 452.
19. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", p. 457.
20. Rights of Women Europe, Women's Rights & the EEC, p. 28.
21. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", pp. 455-493.
22. Ibid, pp. 483-484.
23. Ibid, p. 457.
24. OJC, Volume 18, Number 121 (31 May 1975), pp. 12-13.
25. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", pp. 457-464.
26. OJC, Volume 19, Number 162 (15 July 1976), pp. 3-4.
27. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", pp. 471-476.
28. Ibid, pp. 481-482.
29. Wyatt, "Article 119 EEC: definition of "pay"", p. 419.
30. "European Court Ruling On Extent Of Equal Pay Obligation", Industrial Relations Review and Report, Number 126 (April 1976), p. 7.
31. Landau, "Recent legislation and case law in the EEC", p. 58.
32. Greaves, "Article 119 and its interpretation", p. 199.
33. Crisham, "Case No. 43/75", p. 109.
34. The first time occurred in 1974 with the Walrave judgment.
35. Crisham, "Case No. 43/75", p. 118.
36. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", pp. 476-480.
37. Bulletin EEC, Volume 5, Number 1 (January 1962), pp. 8-10.
38. Council, "Equal Pay Directive".
39. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", p. 482.
40. Ibid, p. 473.
41. Ibid, pp. 481-482.
42. Crisham, "Case No. 43/75", pp. 110-112.
43. "Less equal than others", The Economist, 17 April 1976, p. 54.
44. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", p. 482.
45. "Less equal than others", p. 54.
46. "Gabrielle Defrenne v Société Anonyme Belge de navigation Aérienne Sabena Case 43/75", pp. 480-481.
47. Crisham, "Case No. 43/75", p. 115.
48. "Less equal than others", p. 54.

49. Burrows, "The Promotion of Women's Rights", p. 195.
50. "European Court Ruling On Extent Of Equal Pay Obligation", p. 8.
51. Crisham, "Case No. 43/75", p. 114.
52. "Less equal than others", p. 54.
53. Crisham, "Case No. 43/75", p. 118.
54. "Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", p. 1367.
55. Warner, "EC Social Policy in Practice", p. 149.
56. "Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", pp. 1365-1389.
57. Ibid, p. 1367.
58. OJC, Volume 21, Number 20 (25 January 1978), pp. 8-9.
59. "Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", p. 1367.
60. Council, "Equal Treatment Directive".
61. "Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", pp. 1368-1373.
62. OJC, Volume 21, Number 166 (12 July 1978), p. 4.
63. "Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", pp. 1376-1377.
64. Ibid, p. 1379.
65. Ibid, pp. 1378-1379.
66. Ibid, pp. 1379-1380.
67. Forman, "The equal pay principle under Community law", p. 26.
68. "Macarthys Ltd. v Wendy Smith Case 129/79", ECR, 1980, pp. 1275-1297.
69. OJC, Volume 22, Number 224 (6 September 1979), pp. 7-8.
70. "Macarthys Ltd. v Wendy Smith Case 129/79", pp. 1278-1285.
71. OJC, Volume 23, Number 102 (25 April 1980), p. 2.
72. "Macarthys Ltd. v Wendy Smith Case 129/79", pp. 1288-1291.
73. Ibid, p. 1288.
74. Thomson and Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", p. 10.
75. "Macarthys Ltd. v Wendy Smith Case 129/79", p. 1290.
76. Ibid, p. 1291.
77. Ibid, p. 1290.
78. Ibid, p. 1289.
79. Thomson and Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", p. 1.
80. Steiner, "Sex discrimination under UK and EEC

Law", p. 407.
81. Davis, Women's rights, p. 3.
82. Ibid.
83. Szyszczak, "Problems of Equal Pay Within the EEC Perspective", p. 42.
84. Wyatt, "Article 119 EEC: equal pay for female successor to male worker", p. 374.
85. "Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited Case 69/80", ECR, 1981, pp. 767-808.
86. Ellis and Morrell, "Sex Discrimination in Pension Schemes", p. 18.
87. OJC, Volume 23, Number 84 (3 April 1980), pp. 4-5.
88. "Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited Case 69/80", p. 771.
89. Ellis and Morrell, "Sex Discrimination in Pension Schemes", p. 20.
90. "Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited Case 69/80", pp. 772-785.
91. OJC, Volume 24, Number 66 (26 March 1981), p. 3.
92. "Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited Case 69/80", pp. 790-794.
93. Ibid, p. 795.
94. Ibid.
95. Corcoran, "UK Sex Discrimination and the European Court", p. 20.
96. Greaves, "Article 119 and its interpretation", p. 211.
97. Ellis and Morrell, "Sex Discrimination in Pension Schemes", p. 22.
98. Greaves, "Article 119 and its interpretation", p. 211.
99. Steiner, "Sex discrimination under UK and EEC law", p. 406.
100. Forman, "The equal pay principle under Community law", p. 24.
101. Crisham, "The equal pay principle", p. 609.
102. Ibid, p. 608.
103. Plender, "Equal Pay for Men and Women", p. 632.
104. Remuet-Alexandrou, "Community law and women", p. 97.
105. Corcoran, "UK Sex Discrimination and the European Court", p. 20.
106. Landau, The rights of working women in the European Community, p. 30.
107. Ellis and Morrell, "Sex Discrimination in Pension Schemes", p. 22.
108. "J.P.Jenkins v Kingsgate (Clothing Productions) Ltd Case 96/80", ECR, 1981, pp. 911-939.
109. OJC, Volume 23, Number 106 (29 April 1980), pp. 7-8.
110. "J.P.Jenkins v Kingsgate (Clothing Productions) Ltd Case 96/80", pp. 914-915.
111. Landau, The rights of working women in the

European Community, p. 30.
112. Corcoran, "UK Sex Discrimination and the European Court", p. 19.
113. "J.P.Jenkins v Kingsgate (Clothing Productions) Ltd Case 96/80", pp. 915-921.
114. OJC, Volume 24, Number 94 (24 April 1981), pp. 3-4.
115. "J.P.Jenkins v Kingsgate (Clothing Productions) Ltd Case 96/80", pp. 925-927.
116. Ibid, p. 928.
117. Ibid.
118. Ibid, p. 927.
119. Ibid.
120. Greaves, "Article 119 and its interpretation", p. 204.
121. Landau, "Recent legislation and case law in the EEC", p. 60.
122. Davis, Women's rights, p. 4.
123. Thomson and Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", p. 16.
124. Ibid.
125. Greaves, "Article 119 and its interpretation", p. 205.
126. Landau, "Recent legislation and case law in the EEC", p. 60.
127. Crisham, "The equal pay principle", p. 605.
128. Post, "New Decisions of the European Court on Sex Discrimination", p. 83.
129. Vallance and Davies, Women of Europe, p. 150.
130. Crisham, "The equal pay principle", p. 605.
131. Greaves, "Article 119 and its interpretation", p. 206.
132. Szyszczak, "Problems of Equal Pay Within the EEC Perspective", p. 42.
133. Thomson and Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", pp. 37-38.
134. Steiner, "Sex discrimination under UK and EEC law", p. 405.
135. Crisham, "The equal pay principle", p. 601.
136. Thomson and Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", p. 37.
137. Ibid.
138. Ibid, p. 44.
139. Freestone, "Equal pay in the European Court", p. 86.
140. European Communities, Treaties, p. 348.
141. Landau, "Recent legislation and case law in the EEC", p. 57.
142. "The Court of Justice", p. 22.
143. "Luisa Sabbatini, née Bertoni, v European Parliament Case 20/71", ECR, 1972, p. 346.
144. Ibid, pp. 345-360.
145. "Monique Chollet, née Bauduin, v Commission of the European Communities Case 32/71", ECR,

1972, pp. 363-371.
146. "Luisa Sabbatini, née Bertoni, v European Parliament Case 20/71", pp. 346-347.
147. JOC, Volume 15, Number 75 (12 juillet 1972), p. 9.
148. "Luisa Sabbatini, née Bertoni, v European Parliament Case 20/71", pp. 350-351.
149. Ibid, p. 351.
150. Landau, The rights of working women in the European Community, p. 21.
151. Ibid, p. 22.
152. In answer to Written Question Number 493/72. OJC, Volume 16, Number 67 (17 August 1973), p. 41.
153. Council of the European Communities, "Regulation (ECSC, EEC, Euratom) No. 558/73 of the Council of 26 February 1973 amending Regulation (EEC, Euratom, ECSC) No. 259/68 fixing the Staff Regulations of the Officials and Conditions of Employment applicable to other Servants of the European Communities", OJL, Volume 16, Number 55 (28 February 1973), pp. 1-3.
154. "Jeanne Airola v Commission of the European Communities Case 21/74", ECR, 1975, pp. 221-234.
155. "Chantal Van den Broeck v Commission of the European Communities Case 37/74", ECR, 1975, pp. 235-246.
156. OJC, Volume 18, Number 100 (2 May 1975), pp. 2 and 4.
157. "Jeanne Airola v Commission of the European Communities Case 21/74", pp. 228-229.
158. Ibid.
159. Szyszczak, "Problems of Equal Pay Within the EEC Perspective", p. 42.
160. Steiner, "Sex discrimination under UK and EEC Law", p. 423.
161. Burrows, "The Promotion of Women's Rights", p. 197.
162. Forman, "The equal pay principle under Community law", p. 35.

CHAPTER EIGHT

Conclusions

8.1. Introduction

This thesis has sought to demonstrate that the European Community undertook a number of initiatives to improve the position of women within the Community. From a modest foundation, Article 119 of the Treaty of Rome, a body of legislation was enacted backed up by financial provisions.

But, did the European Community embrace all the domains affecting women as outlined in Chapter 1 [see 1.3.]? It will be recalled that the fields of legal rights, political rights, employment, financial rights, social services, education and training, health and the media were identified.

Of necessity, the European Community was constrained in its policy initiatives by the terms of the Treaty of Rome. Moreover, this Treaty was essentially concerned with economic matters although some attention was given to social concerns. Accordingly, legal and political rights, financial rights, health and the media were largely ignored by the Community. Given the constraints facing the Community, much of the effort expended by the

Community with regard to women related to employment concerns although social services, and education and training were also considered.

Thus, the European Community did not involve itself in all the possible domains affecting the position of women. In attempting to assess the success of European Community policy, this limitation should be borne in mind.

8.2. European Community initiatives in relation to the position of women

How successful were these European Community policy initiatives? Each area will be examined in turn: employment, social services, and education and training. Within the field of employment, the specific topic of equal pay will be first considered.

8.3. Equal pay

8.3.1. Article 119 of the European Economic Community Treaty

European Community policy initiatives were founded upon Article 119 of the Treaty of Rome. This Article related to equal pay but its actual contents revealed certain restrictions in that equal pay was defined to mean pay for equal work. In practice, owing

to the generally sex-segregated state of the employment market, women would be faced with considerable difficulties in establishing a right to equal pay from the need to find men doing equal work, that is, the same job as themselves.

What was the response of the Member States to Article 119? In fact, Article 119 represented an advance over national legislation in that none of the European Community countries possessed equal pay legislation at the time of the signing of the Treaty of Rome. Equal pay was specified in the Italian Constitution whilst the constitutions of France and Germany contained a clause on equal rights. Furthermore, in France, equal pay pertained for those workers who earned minimum rates of pay or who were employed under a national collective agreement. Equal rights or equal pay did not exist in the Benelux countries. Each of these countries maintained a stubbornly defiant attitude towards the fulfilment of the terms of Article 119. Furthermore, the three Benelux countries adopted a strict interpretation of the principle of equal pay as expounded in Article 119. They insisted that equal pay could only apply in situations where the same job was carried out by men and women. This viewpoint clashed with that of the Commission which maintained a more liberal interpretation.

It will be recalled that Article 119 called upon the Member States to ensure and subsequently maintain the application of the principle of equal pay during the first stage of the Common Market, namely, by the first of January 1962. As guardian of the Treaty of Rome, the Commission developed a monitoring service to follow the progress by the Member States towards fulfilling their Treaty obligations. And so, the monitoring of equal pay took place.

The generally unhelpful response by the Member States in relation to equal pay arose from the very nature of the provision and the practical problems which ensued. Equal pay was not a matter for national governments to effect although they could pass legislation on the subject. Practical implementation of equal pay depended upon the collective bargaining process, that is, negotiations between employers and representatives of the employees. Thus, Article 119, in reality, concerned relationships between individuals and not relationships between Member States. In this way, the Article was unlike other articles in the Treaty of Rome. Other practical problems arose since employers devised ingenious methods to avoid paying equal pay to female staff. Such strategems were adopted as regrading jobs so that women were placed in the lowest wage category termed "light work". This category existed below the lowest male grade.

8.3.2. Recommendation on equal pay

Consequently, in view of the difficulties experienced in securing the implementation of Article 119, the Commission drew up a Recommendation which was despatched to the Member States in July 1960. This Recommendation contained the Commission's interpretation of the principle of equal pay and a reminder to Member States to fulfil the requirements of Article 119. Member States were required to notify the Commission of any actions taken. This Recommendation was ignored by the Member States in that the Commission did not, initially, receive any such notifications. Although a further letter from the Commission yielded some information, it was clear that progress was not satisfactory.

8.3.3. Resolution on equal pay

At this stage, the Council became interested in the matter. And so, an ad hoc Working Party was instituted to advise the Commission and the Council on their work with regard to equal pay. Significantly, this temporary Working Party continued in existence, under various changes of title, until the 1970's. The Working Party helped to draw up the text of another measure and, after a period of intense discussions and disagreements, the Council issued a Resolution on

equal pay at the end of 1961. In this Resolution, Member States were exhorted to introduce legal redress for equal pay claims so that individuals would be enabled to bring court actions. Remarkably, a three-stage timetable was established to fully implement equal pay by the end of 1964. Thus, the Council overturned and transgressed the implementation date of Article 119 of the Treaty.

Did this Resolution make any difference? No country consequently enacted equal pay legislation. Discriminatory wages still existed in the early 1970's. Furthermore, indirect discrimination was widespread in Belgium, the Federal Republic, Italy and, to some degree, France.

What was the situation with regard to the legal redress clause of the Resolution? At the time that the Resolution was passed, the right to bring court actions was confined to individuals in the Federal Republic of Germany and Italy by virtue of their respective constitutions. Although France also claimed that, under its Constitution, legal redress was permissible, a test case had not been brought in practice. A Decree of 1973 did, however, grant the right of full legal redress to individuals who wished to pursue equal pay claims before the courts. In Belgium, the right to legal redress was established in 1965. This right was re-affirmed in 1967 when a Royal

Decree, enacted in accordance with Article 119 of the Treaty establishing the European Economic Community, allowed any female worker to institute legal proceedings to claim equal pay. Gradually, a legal redress right was established in Luxembourg by means of a series of laws passed between 1963 and 1965. But, this right was not open to all workers. The Netherlands did not possess nor did it enact any legislation to ensure that individuals could bring court actions.

Thus, this Resolution was not implemented within the stipulated timetable or even by the time of the first enlargement of the European Community, namely, 1973. Member States consistently failed to carry out their commitments in relation to equal pay and, yet, the Commission desisted from using its enforcement procedures to secure compliance. Only in October 1973 was this procedure utilised against Luxembourg and the Netherlands. As a consequence, both countries introduced laws to counteract infringement proceedings.

When Denmark, Ireland and the United Kingdom joined the European Community in 1973, they were bound by the Treaty of Rome to introduce equal pay. What was the situation in these Member States? The United Kingdom possessed an equal pay act dating from 1970 although full implementation of the Act was not due until the

end of 1975. Ireland passed an act on equal pay in 1974. In Denmark, equal pay legislation was not enacted. However, the 1973 National Wage Agreement abolished all discrimination in the relevant agreements. But, this agreement did not cover all workers. Furthermore, the right to legal redress did not exist in Denmark.

8.3.4. Directive on Equal Pay

The unsatisfactory state of affairs with regard to equal pay, caused by the procrastinations on the part of the Member States, was recognised by the Community and, so, a further, stronger, piece of legislation, the Equal Pay Directive, was enacted in 1975. In this Directive, the principle of equal pay was widened to mean pay for the same work or for work to which equal value was attributed. The Directive also required Member States to abolish all laws which were contrary to the principle of equal pay and to declare null and void any discriminatory wage agreements. Workers were to be given the right of legal redress and protection against dismissal for bringing a complaint. Member States also had to supervise and to inform workers of the terms of the Directive. Thus, this Directive incorporated certain aspects of the 1961 Council Resolution and, at the same time, it added new elements.

Was this Directive implemented by the Member States? By the time of the Directive, equal pay legislation existed in France, Ireland, Luxembourg and the United Kingdom. The Dutch passed a law on equal pay in 1975 but its provisions were restricted to the private sector. In the following year, Denmark enacted an equal pay act. Belgium chose not to legislate but, instead, it gave official recognition to a national collective agreement of 1975. However, this agreement only applied to the private sector. Germany and Italy, once again, cited their constitutions as fulfilling the obligations laid down by the Community although Italy did pass an apposite law in 1977. Therefore, not every Member State implemented the Directive through the enactment of suitable legislation.

Chapter Five explored the gaps and failures of the national legislation with regard to the detailed contents of the Directive. Some of these deficiencies arose because some of the national equal pay laws had been passed prior to the Directive. This time, the Commission was determined to secure a full implementation. When Ireland sought a temporary exemption from the Directive in 1976 because of the prevailing harsh economic conditions in that country, the Commission speedily turned down this request since it was felt that Irish women could not be denied the right to equal pay. However, the blow was softened by allowing a certain amount of financial aid to be

granted to Ireland in order to provide assistance for its troubled economy.

As we have seen in Chapter Six, the Commission very quickly instituted infringement procedures once the time allowed for implementation of the Directive elapsed. It will be recalled that the first stage of infringement was initiated against seven Member States. Several of these states complied with new pieces of legislation. France abolished the discriminatory housing allowance in the mining industry whilst the Federal Republic of Germany was at last forced to introduce an equal pay law. However, this law only applied to the private sector and it took the form of amending the Civil Code rather than constituting a new, separate, piece of legislation.

The second stage of infringement resulted in the Dutch enacting a law to apply equal pay to all sectors. Eventually, cases were brought before the Court of Justice against three Member States which were forced by this action to comply with the Commission's requirements.

Thus, the enactment of this Directive which extended and amplified Article 119 was followed by the eventual, if slow, compliance of the Member States.

8.4. Employment

8.4.1. 1958-1975

Equal pay could not, however, be treated in isolation from the wider field of employment. From the establishment of the European Economic Community, the Commission recognised that special problems faced women in an employment situation. Action was eventually undertaken by the European Community to assist the working woman. About the same time as an awakening interest by the Community in social policy, the Commission invited Evelyne Sullerot, a French sociologist, to investigate the employment conditions facing women. Sullerot's comprehensive report was published in 1970. When the three new Member States joined the European Community in 1973, R. B. Cornu examined and produced a similar report on the situation in each of these three States.

Meanwhile, the European Community had undertaken an appraisal of social concerns. The Commission drew up preliminary guidelines for a Community social policy programme and this appraisal was partly instrumental in the initiation of a Social Action Programme. In accepting this Programme, the Council resolved to undertake action to achieve equality between men and women with regard to access to employment and vocational training and advancement and with regard to

working conditions including pay. Thus, the European Community at last came to realise that a coherent employment policy on women was necessary. To examine the problems and to propose suitable measures, an ad hoc group was established to assist the Commission.

This group utilised the findings of the Sullerot and Cornu reports to produce a memorandum which consisted of a Communication together with the text of a proposed Directive dealing with the subject of equal treatment in the work situation. Although not a legally binding instrument, this Communication set out the problems and guidelines for action to be taken by the Member States in the fields of employment, recruitment, promotion, vocational guidance, training and retraining, working conditions, child care and family support services, and social security. This policy document represented an extension to Article 119 on equal pay and formed part of the maintenance of full employment which was regarded as one of the cornerstones of the European Community. However, since the document did not carry any legal standing and since the Commission did not seem to monitor any developments by the Member States, many of the proposals remained a dead letter.

8.4.2. Directive on Equal Treatment

However, the proposal for a Directive on Equal

Treatment was approved by the Council in 1976. This Directive was constructed on similar lines to the Equal Pay Directive although its legal basis was Article 235 of the Rome Treaty. The principle of equal treatment as defined in Article 2 of the Directive should be guaranteed, with respect to access to employment and promotion, vocational training and working conditions, in all laws, provisions, professions, collective agreements and internal rules of enterprises. Although access to education had been included in the original draft, it was excluded in the final proposal. Furthermore, the scope of the Directive was weakened by the inclusion of an exclusion clause which allowed Member States to exclude certain occupations from the provisions of the measure where sex was the determining factor for an occupation. A strict interpretation was intended but the Member States would exploit this loop-hole. In line with the Equal Pay Directive, individuals were given the right to claim legal redress and protection against dismissal for bringing a complaint. Also, employees had to be notified about the contents of this measure. However, the Member States were allowed a longer implementation period than that for the Equal Pay Directive, thirty months as opposed to one year. Four years were allowed to review the protective laws.

Nevertheless, in spite of the apparent narrowness

of the measure, this Directive represented an advance on the situation in most of the Member States since only the United Kingdom already possessed legislation on the subject. The Member States acted slowly to comply with the terms of the Directive. In the same year as the enactment of the Directive, France passed two laws which partially covered its terms. By the deadline, namely, 1978, appropriate legislation had been passed in Ireland and in Italy in 1977, and by Belgium and by Denmark in 1978. Three countries, Germany, Luxembourg and the Netherlands, failed to enact any legislation thus infringing Community obligations. Informal letters of reminder were quickly dispatched to these three states. Indeed, infringement procedures were initiated against the three countries in advance of the formal report on the Directive. As a result, both Germany and the Netherlands enacted laws in 1980 although these laws merely amended the national Civil Codes. But, it should be noted that the titles of both Acts referred to harmonisation with the European Community legislation. At first, Luxembourg stated that it did not intend to introduce equal treatment legislation. The Government complied when it received a reasoned opinion and a law was enacted late in 1981.

One important indirect effect of this national equal treatment legislation concerned the strengthening of rights to equal pay. Rights to legal

protection in particular were enhanced and direct discrimination was almost eliminated.

Owing to the complexity of the Directive, the Member States, by and large, did not comply in some respects with the Directive. And so, the Commission instituted infringement proceedings in July 1980 against the six Member States which had enacted equal treatment legislation. Not all the shortcomings were included in the letters of formal notice. In contrast to the Equal Pay Directive, it should be noted that these proceedings were initiated in advance of the formal report on the implementation of the Directive.

Since these letters did not have any effect, the Commission issued reasoned opinions which resulted in a certain degree of compliance. Consequently, Belgium enacted three Royal Decrees to cover parental leave, discrimination in the public sector, and equal access to vocational guidance and training. Only the first two Decrees complied correctly with the Directive since the third Decree only applied equal access to vocational guidance and training to apprenticeships in undertakings and departments so that educational establishments were not included. Eventually, the Commission brought a case before the Court of Justice to force Belgium to amend this Decree. The enactment of a French law did not satisfy the Commission and new infringement proceedings resulted. Suitable

regulations were passed in Ireland so that proceedings were suspended. Both Italy and the United Kingdom faced a Court action since they failed to amend their legislation. Indeed, fresh infringement proceedings were commenced for other instances of non-compliance and, about this time, new infringement proceedings were commenced against Germany and the Netherlands.

Thus, the Commission continually monitored the situation in the Member States so that compliance with the Directive would result. By the time of the end of the period under review, namely, the end of 1981, full compliance had not been achieved.

8.4.3. Study on maternal protection

Not all the policy initiatives to improve the position of women in employment resulted in the successful implementation of legislation. During the years 1963 to 1964, a tripartite working party began work on the compilation of a comparative study of the existing provisions in the field of maternal protection. This comparative study, published in 1966, covered the extent of the national legislation up to the end of June 1965. Apart from a section on international provisions, the bulk of the work concentrated on the situation in each Member State. The study examined legislation and its field of

application, the extent of physical and economic protection, protection during pregnancy and medical matters. Significant differences between the Member States were revealed particularly in relation to the maternity leave period and the amount of daily time at work allotted to nursing mothers.

8.4.4. Draft Recommendation on maternal protection

As a result of this study, the Commission, in 1966, drafted the text of a proposed Community Recommendation on maternal protection. The proposal was drawn up on the legal basis of Article 118 of the European Economic Community Treaty and not upon Article 119 on equal pay. The measure aimed to encourage the Member States to attain a degree of harmonisation in maternal protection since the same level of harmonisation had not been reached in each Member State.

The proposal was intended to cover all women workers and the detailed clauses covered the regulation of employment, social security and general matters. In relation to the employment situation, various working conditions were laid down. Basically, these conditions were intended to restrict the working day for pregnant women and nursing mothers, to allow nursing mothers time off during the day to look after their babies and to prohibit certain types of work.

Unpaid post-natal leave was to be allowable. The social security clauses covered allowances, maternity expenses, and medical care and treatment. These charges were not to fall upon the employer. Finally, with regard to general matters, workers were to be informed of the measure, and appropriate control and sanctions were to be established.

After this proposal was discussed by the European Parliament and by the Economic and Social Committee, the Commission apparently modified the proposal to take into account some of the criticisms and suggestions which were put forward by these two bodies. However, the Commission decided to consult the national governments before it drew up the definitive text. At this stage, problems arose since some of the Member States expressed grave reservations as to the practical application of the measure. Eventually, the European Parliament forced the Commission to admit that it had abandoned the proposal. The proposal perhaps failed because of the inevitable heavy economic costs which some Member States would have had to bear. This particular initiative failed and harmonisation in this field was thus not achieved.

8.5. Social security

8.5.1. Directive on Equal Treatment in Social Security matters

Social security matters were also treated by the European Community. The Commission resorted to a questionnaire in order to collect information on the existing state of discrimination between men and women in social security matters in the various Member States. Considerable differences were revealed in the treatment of men and women. These differences resulted from the traditional premise that the man constituted the breadwinner whilst the woman stayed at home to rear the family. During this preparatory stage, the Commission also involved the Working Group on the Problems of Womens' Employment. Eventually, as promised in the Equal Treatment Directive, a Directive to secure equal treatment in the field of social security was adopted in December 1978. The terms of the final version of the Directive were considerably watered down in comparison to the original proposal.

The format of the Directive followed that of the two earlier equality Directives. It did not cover the whole field of social security but it was drawn up to provide the first stage towards the full implementation of equal treatment in social security. Thus, it only applied to statutory schemes which provided protection against the risks of sickness, invalidity, old age, accidents at work, occupational diseases and unemployment, and any social assistance schemes which supplemented or replaced these schemes.

Therefore, it excluded important areas of social security such as occupational schemes, and survivors' and family benefits. Next, the Directive laid down that the principle of equal treatment should apply to the scope and conditions of access to the appropriate schemes, the obligation to contribute and the calculation of contributions, and the calculation of benefits to include any increases due to a spouse and dependants, and the conditions which governed the duration and retention of entitlement to benefits.

Member States were obliged to ensure that laws, regulations and administrative provisions contrary to the principle of equal treatment were abolished. A clause granting legal redress was included. But, various exclusions were allowed although the Member States were obliged to conduct a periodic examination of these exclusions to ascertain justification for continuance. An exceptionally long period of implementation, some six years, was laid down so that full implementation of the Directive would be completed by December 1984, a date outside the period of review.

So, an interim assessment of the impact of this Directive could only be attempted. Although the terms of the Directive were restricted in coverage, this Community measure constituted an advance over the existing national legislation. Since equal treatment

was not the rule in national statutory social security schemes, many problems of implementation arose. Many social security benefits were payable only to men. Even in situations where benefits were payable to men and women alike, extra amounts to cover dependants were granted only to male workers.

By the close of 1981, the end of the period under discussion, only Denmark, France and Italy possessed legislation which, on the whole, complied with the terms of the Directive. Indeed, the Italian Act on equal treatment included social security and it went further than the Social Security Directive. Belgium, the Netherlands and the United Kingdom enacted laws during this period but, in the case of Belgium and the Netherlands, some of the laws actually worsened the position of women. Only partial implementation of the Directive was achieved in these three countries. The remaining three countries, Germany, Ireland and Luxembourg, undertook an examinination of the state of their legislation to ascertain whether any changes were necessary. Some improvements took place in Ireland.

In spite of the long implementation period, it would seem that the Member States acted slowly to implement the Directive. Under these circumstances, infringement proceedings would seem to be almost inevitable to bring about a complete and satisfactory

implementation of the Directive.

8.5.2. Proposal for a Directive on Equal Treatment in Occupational Social Security schemes

The second legislative inititative to secure equal treatment in the social security field concerned occupational schemes. Although the Commission promised to draw up a draft proposal on this matter in 1978 and eventually initiated discussions with government experts to sort out the details, the complexities of the subject matter delayed the publication of the proposal until 1983.

8.6. The European Social Fund

Financial instruments such as provided by the European Social Fund assisted legislative initiatives for women. The European Social Fund, established by the Treaty of Rome, was intended to improve the opportunities for employment by means of the allocation of financial aid for vocational training projects.

8.6.1. Decision on European Social Fund assistance for women

The first reform of the Fund took place in 1971 when a Council Decision was enacted. This Decision

opened up the possibility of using the Fund for women's training projects. But, under the rigid conditions which this reform imposed, women could only be eligible for assistance under Article 5 of the Decision. Article 5 applied to those regions, branches of the economy or groups of undertakings which were suffering from structural or regional imbalances. Under these circumstances, women over the age of thirty-five who wished to enter a profession or trade for the first time or whose qualifications were out of date and women under twenty-five in the youth category could be eligible for an European Social Fund grant. This reform also included a section whereby preparatory studies and pilot schemes could be undertaken to explore possible future areas for European Social Fund assistance. The reform came into force on the 1st of May 1972 and was subject to review after five years.

In practice, given these restrictive conditions, it would seem that no specifically appropriate applications to fund women's training projects were made. However, some schemes to help women received grants under the section which dealt with preparatory studies and pilot schemes. Later, some of these schemes and studies prompted applications to the Fund itself.

During the 1970's, the Commission came under

pressure from the European Parliament to open up the less restrictive Article 4 of the 1971 Decision to assist women. After the Commission made several attempts between 1975 and 1977 to widen the European Social Fund in favour of women, the Council finally enacted a Decision in December 1977 to open up Article 4 to women over the age of twenty-five re-entering employment after a long break or working for the first time to give them the opportunity of vocational training to prepare them for working life. Women under the age of twenty-five were eligible for Article 4 assistance under the category for young people. The Decision came into force on the 1st of January 1978 and ran until the end of 1980 when it was renewed to expire on the 1st of January 1983.

This time, positive benefits for women resulted. The budget from the Fund for women's projects was modest at first but, owing to the endeavours of the Commission, the budget was increased so that it almost trebled in the four years from 1978 until 1981 in comparison to the almost doubling of the total Fund allocation. In the first year, only seventeen applications were made although these amounted to nearly eight million EUA. All the Member States except Luxembourg submitted at least one application but the spread was uneven since France accounted for 62% of the total followed by Italy with 27%. For the rest of the period under discussion, applications greatly

outnumbered the amount available. Indeed, the difference between the applications and available funds was greater than the equivalent difference for the total Fund. Although applications continued to increase, the spread amongst the Member States remained uneven. The Federal Republic of Germany, France and Italy dominated the allocations. Indeed, the Federal Republic received 65.5%, 66.1% and 58.6% of the total during the years from 1979 to 1981. During this time, Luxembourg did not submit one application. The pattern differed slightly from the total Fund whereby Italy, the United Kingdom, France and the Federal Republic received a large share of the appropriations.

There was no correlation between the countries receiving Fund assistance for women and the numbers of unemployed women since Belgium possessed the highest number of unemployed women but scarcely featured in the women's category of the Fund. During the period from 1978 to 1981, perhaps about sixty thousand women benefitted from this special category of Fund assistance.

The Commission demonstrated its determination to utilise the European Social Fund to help women whether in putting forward proposals, drawing up budget allocations, encouraging Member States to apply or in establishing priority preferences. Although the

woman's area represented a mere fraction of the total budget, the Commission estimated that around 30% of the total beneficiaries between 1978 and 1981 were women so that perhaps over 1 million women received training from this Fund during this period. Without Fund assistance, many women might not have received the training which was necessary for them to re-enter or enter the job market. In this way, European Social Fund money represented a practical and concrete contribution towards improving employment opportunities for women.

8.7. Education and training

European Community initiatives for women in the field of education and training fell short of equality legislation. Community policy in education for women was based upon one of the principles set out in a 1976 Resolution. This principle concerned the achievement of equal opportunity for free access to all forms of education. Using one of its well-tried investigatory methods, the Commission asked an expert, Eileen Byrne, to produce a report on the problems which were experienced by girls at secondary school. This report was produced in 1978.

On the basis of the findings of this report, the Commission, in October 1978, drew up an Education Action Programme at the Community level to give equal

opportunities in education and training for girls at the secondary level of education. The Programme took the form of a non-legally binding Commmunication rather than a legislative proposal. Areas for action were pinpointed, namely, co-education, positive discriminatory programmes, core curricula, new staff development policies, new training modules, and the improvement of data and research and exchange of information. This first initiative represented a modest, cautious, step in that the whole spectrum of education was not covered and only a few areas were picked out for action. Furthermore, the proposal did not attempt to harmonise national educational systems nor to establish minimum standards. This Programme should have been discussed at the next meeting of the Education Ministers in Council which was scheduled for November 1978. But, the meeting was cancelled and, so, the programme was temporarily shelved.

However, in the following year, the Education Committee reached agreement on the text of a draft Resolution on the question of equal opportunities for girls in education and training. This draft Resolution was put on the agenda for the next meeting of the Education Ministers scheduled to take place in November. But, once again, the meeting was cancelled.

When the Education Committee drew up a general

report on education in 1980, much of the Education Action Programme was incorporated into it. At its meeting in June 1980, the Council and the Ministers of Education meeting within the Council agreed to the substance of this report and to a new action programme in education. The six priorities for action laid out in the Education Action Programme were thus accepted. However, implementation of this action programme did not seem to have occurred.

Problems of the transitional period from school to working life in relation to girls secured some attention from the European Community. A report on the transitional period from the Education Committee in 1976 included an examination of the particular situation which faced girls during this period. After discussing this report at its meeting in December 1976, the Council and the Ministers of Education meeting within the Council passed a Resolution on the subject. The Resolution laid down six priority themes one of which related to specific actions to ensure equal opportunities for girls. These priorities were to be implemented by means of a series of pilot projects. Although pilot projects and studies were carried out, none seemed to have been specifically instigated for girls. But, the Resolution also included a section on the organisation of workshops for teachers and trainers of teachers. One of these workshops, held in 1979, was devoted to the

preparation of young women for working life. Although this workshop brought together various national practitioners and it drew up recommendations for study programmes, further action did not result.

In relation to vocational guidance and training, the Commission decided to organise an European Seminar on the subject. This Seminar was held in November 1975 and its conclusions were intended to be incorporated into an action programme. But, the Commission decided that a stronger measure was needed in order to strengthen the Equal Treatment Directive. Consultations with the social partners and government representatives resulted in the preparation of a Draft Recommendation on vocational training for women. But, the final version was never published and the Draft seemed to have been dropped. Another seminar was held in 1977 and was followed up with the establishment of an action programme.

To assist the work in vocational training, the European Community established a "quango", CEDEFOP, which adopted vocational training for women as one of its chief concerns. An international seminar on Equal Opportunities and Vocational Training was held in 1977 and this was followed up by the drawing up of an action programme of three phases. The first phase identified recent innovations in vocational training and guidance in the Member States whilst the second

phase investigated experimental training programmes in enterprises. Finally, CEDEFOP disseminated information on these initiatives.

Thus, a number of policy initiatives by the Commission and by the Education Committee to improve the position of girls in education and training were not actually implemented in practice. At the most, the problems were investigated and discussed but definite action did not occur during the period under discussion.

8.8. Later initiatives

A significant change in European Community policy on women took place in the 1980's at the end of the period under review when the Community started to consider a co-ordinated programme for women instead of specific, individual, projects. A conference at Manchester in 1980 set the scene for this new thinking alongside the comprehensive attention devoted to problems facing women by an Ad Hoc Committee on Women's Rights of the European Parliament. This Ad Hoc Committee sat for over a year to produce a detailed report which was exhaustively debated in an unprecedented day's session of the Parliament. Since the Parliament only met for one week each month, this time given to discussing women's issues was remarkable. The ensuing weighty Resolution was duly

taken into account by the Commission.

The findings and suggestions from the Manchester Conference and the European Parliament were considered by the Commission and many were incorporated into the New Community Action Programme on the Promotion of Equal Opportunities for Women published by the Commission in December 1981 to form the second stage of Community policy for women.

Thus, European Community initiatives to improve the position of women encompassed the domains of employment, social services, and education and training. Not all of these initiatives were implemented for various reasons but a body of Community equality legislation was enacted. These three Directives constituted a legislative framework so that women were granted certain rights which they could uphold in the national courts. In theory, therefore, the position of women was improved. Furthermore, the European Social Fund provided funds to aid in training projects for women to enable them to enter or re-enter the job market. The evidence would seem to indicate that over one million women benefitted as a result. This would seem to indicate a no mean achievement.

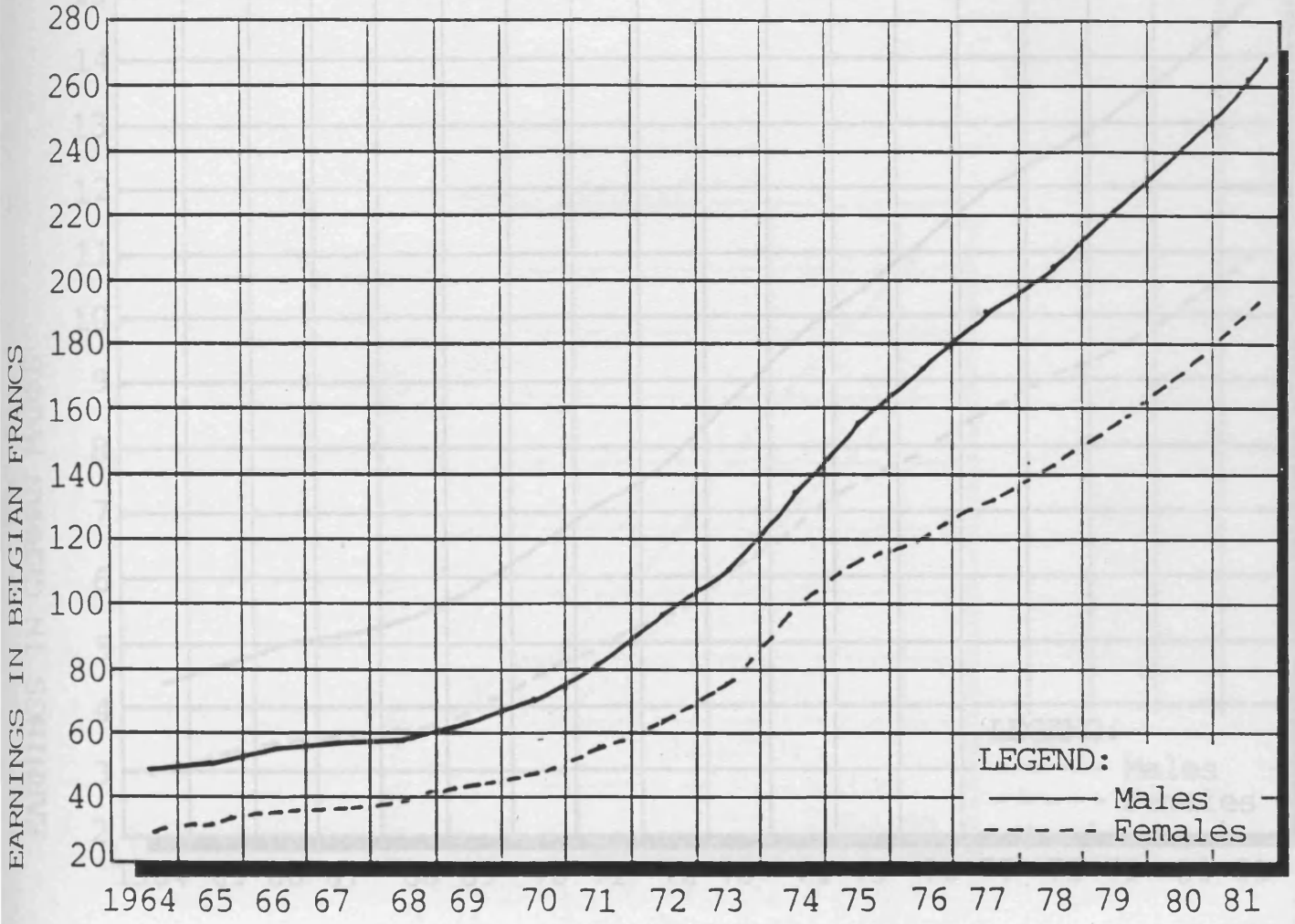
8.9. Practical effects of European Community initiatives to improve the position of women

Did these European Community initiatives make any practical difference to the position of women? The effects of the Equal Pay and the Equal Treatment Directives will be assessed on a practical level. What was the actual state of female wages in relation to male wages during the period under review? Did female wages improve or worsen in comparison to those received by men? Did women actually institute claims before the national courts to uphold their rights in accordance with the terms of the Equal Pay and the Equal Treatment Directives? Answers to these questions might reveal the practical efficacy of the Community legislation.

8.10. Wages in the European Community

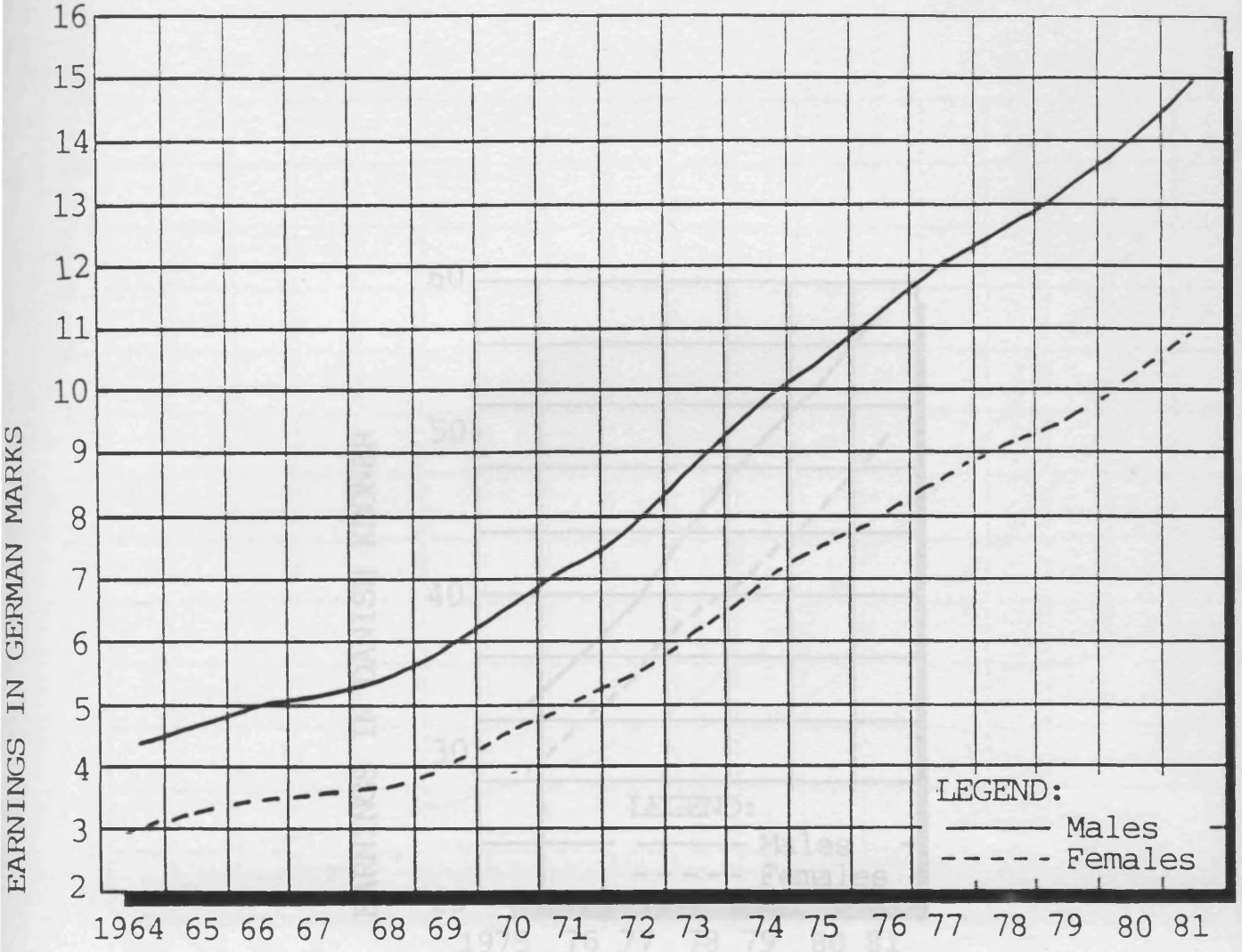
What were the effects of the Equal Pay and the Equal Treatment Directives on a practical level? Firstly, what happened to female wages during the period under review? Since the prime objective behind the European Community equal pay legislation was to secure equal pay for women, was equal pay achieved in practice?

In spite of the problems which arose when attempting to compare wages, the European Community endeavoured to monitor the level of male and female wages within each Member State. Since 1964, it



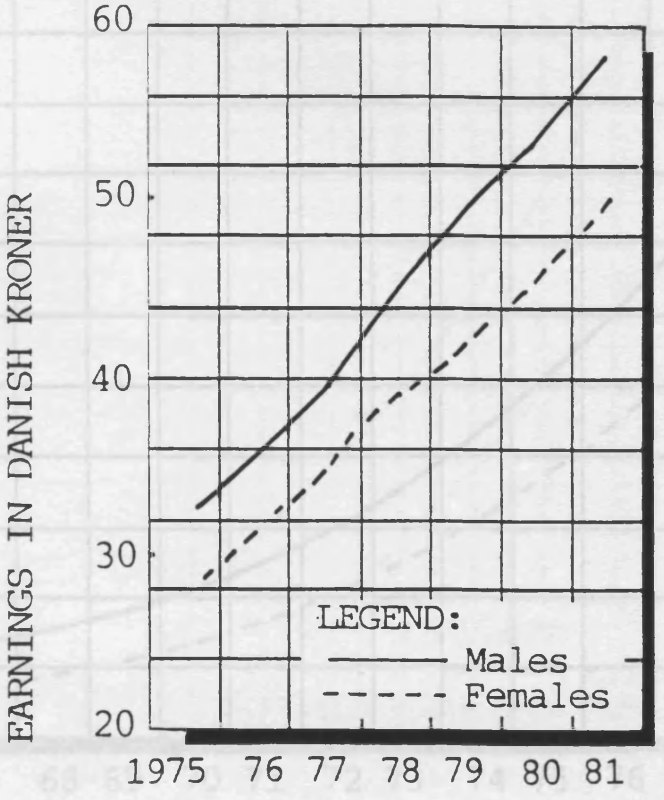
Source: Hourly Earnings. Hours of Work

Figure 8.1.
AVERAGE GROSS HOURLY EARNINGS IN BELGIUM.



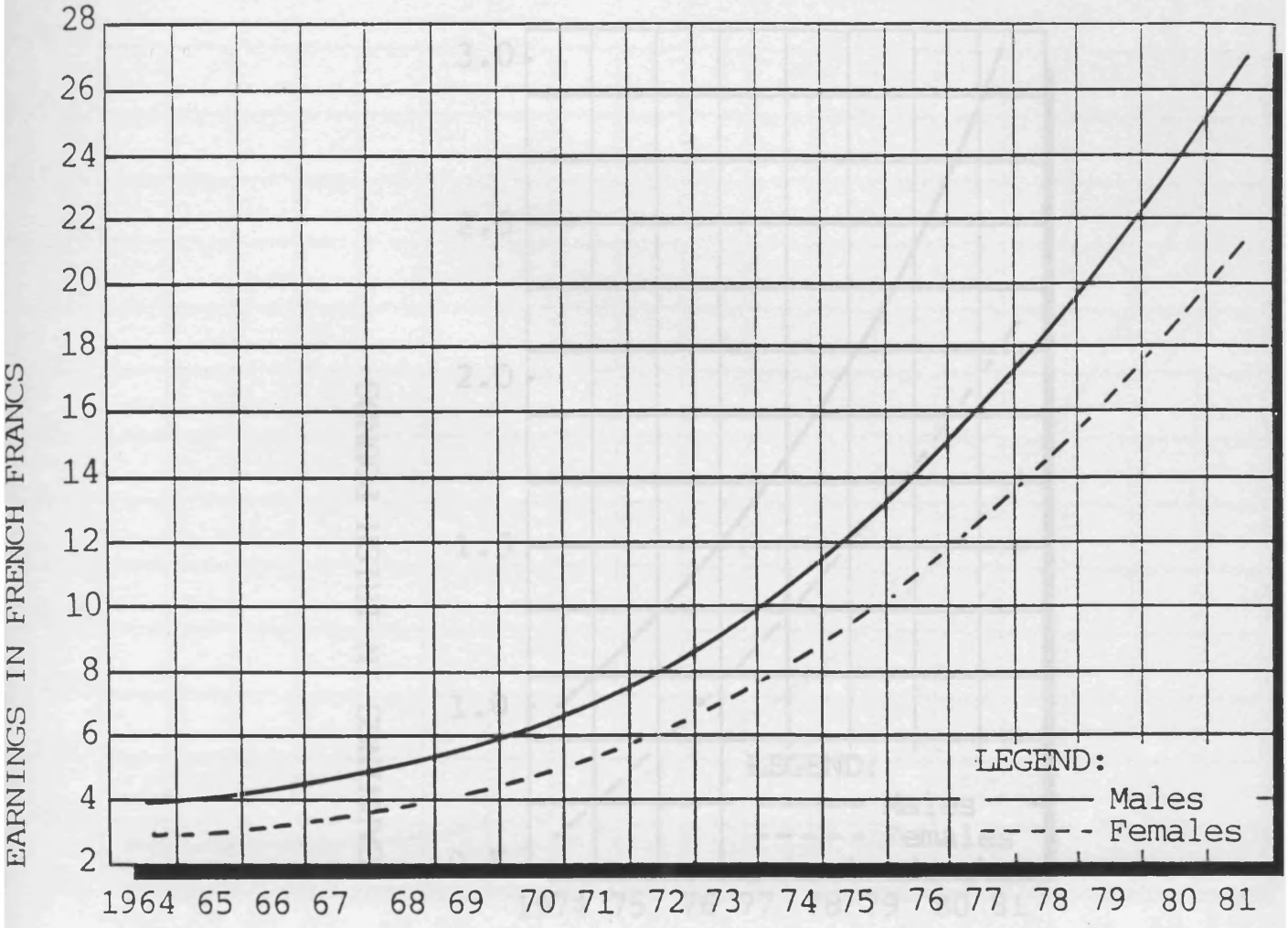
Source: Hourly Earnings. Hours of Work

Figure 9.2.
AVERAGE GROSS HOURLY EARNINGS IN THE FEDERAL REPUBLIC OF GERMANY.



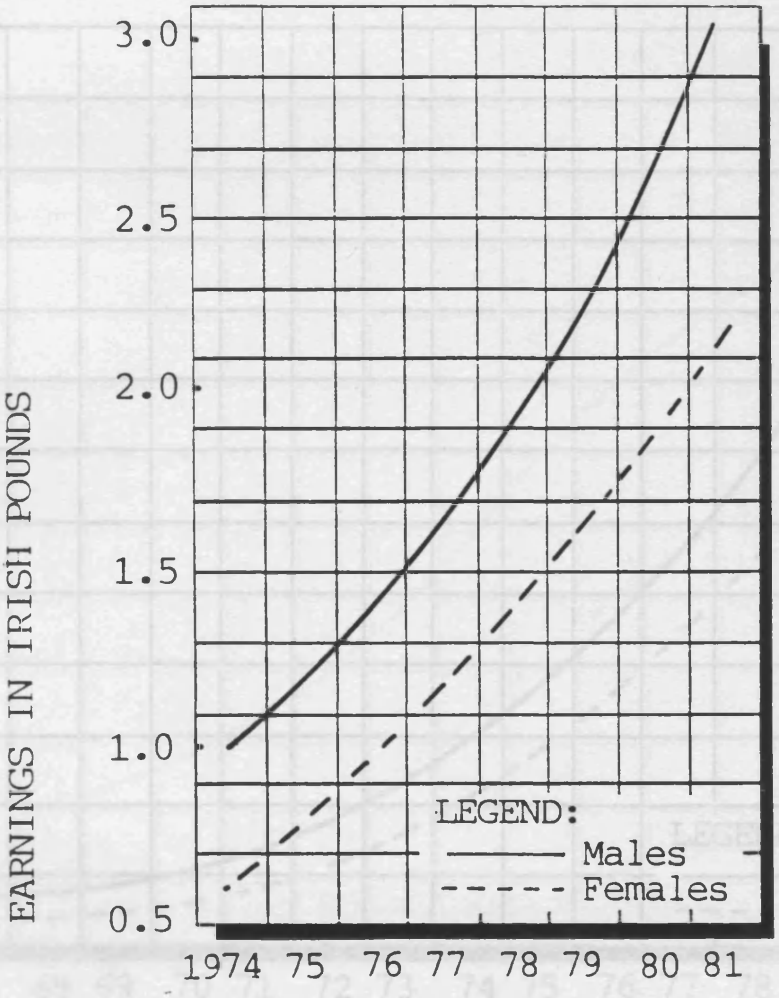
Source: Hourly Earnings. Hours of Work

Figure 8.3.
AVERAGE GROSS HOURLY EARNINGS IN DENMARK.



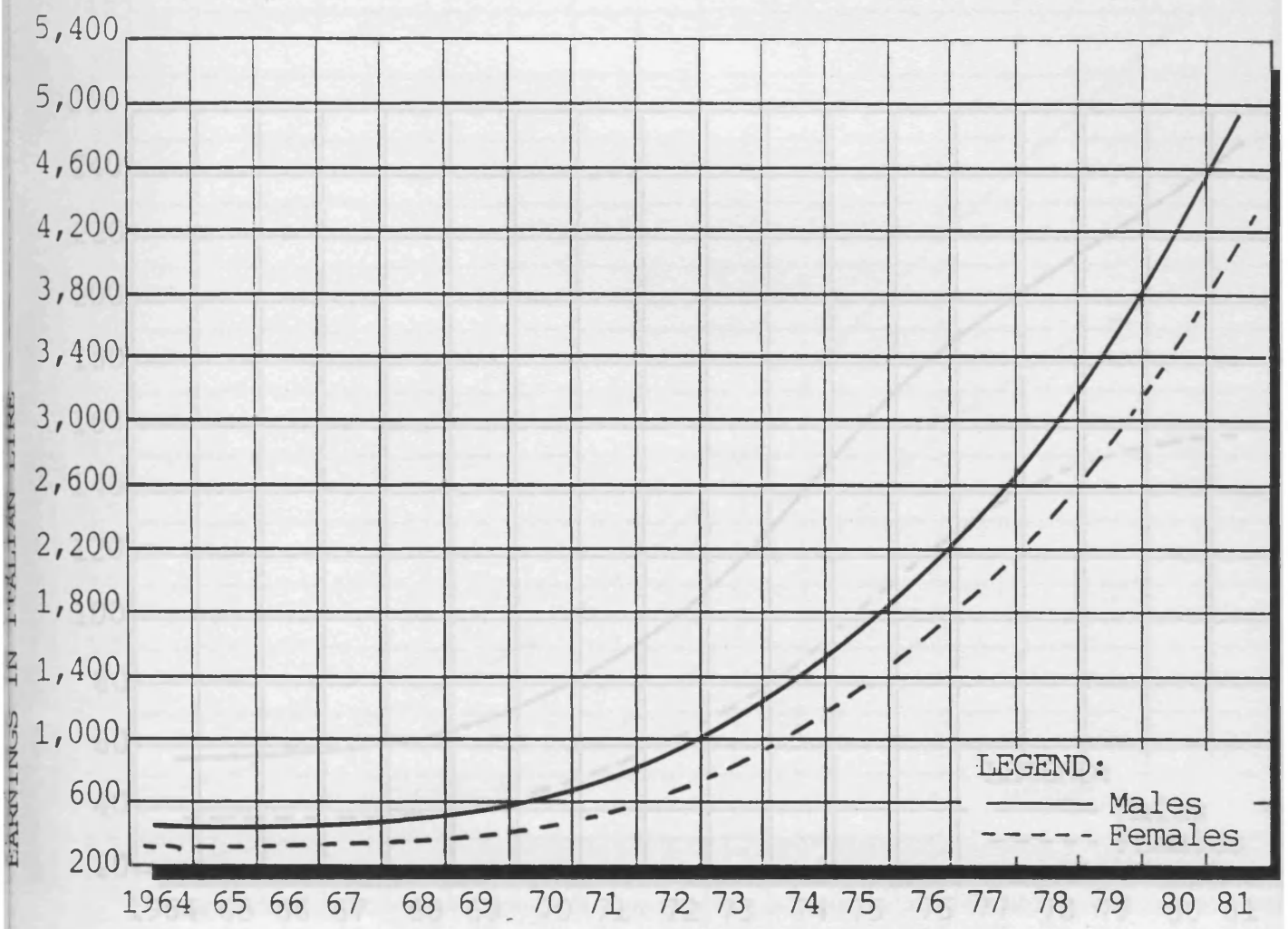
Source: Hourly Earnings. Hours of Work

Figure 9.4.
AVERAGE GROSS HOURLY EARNINGS IN FRANCE.



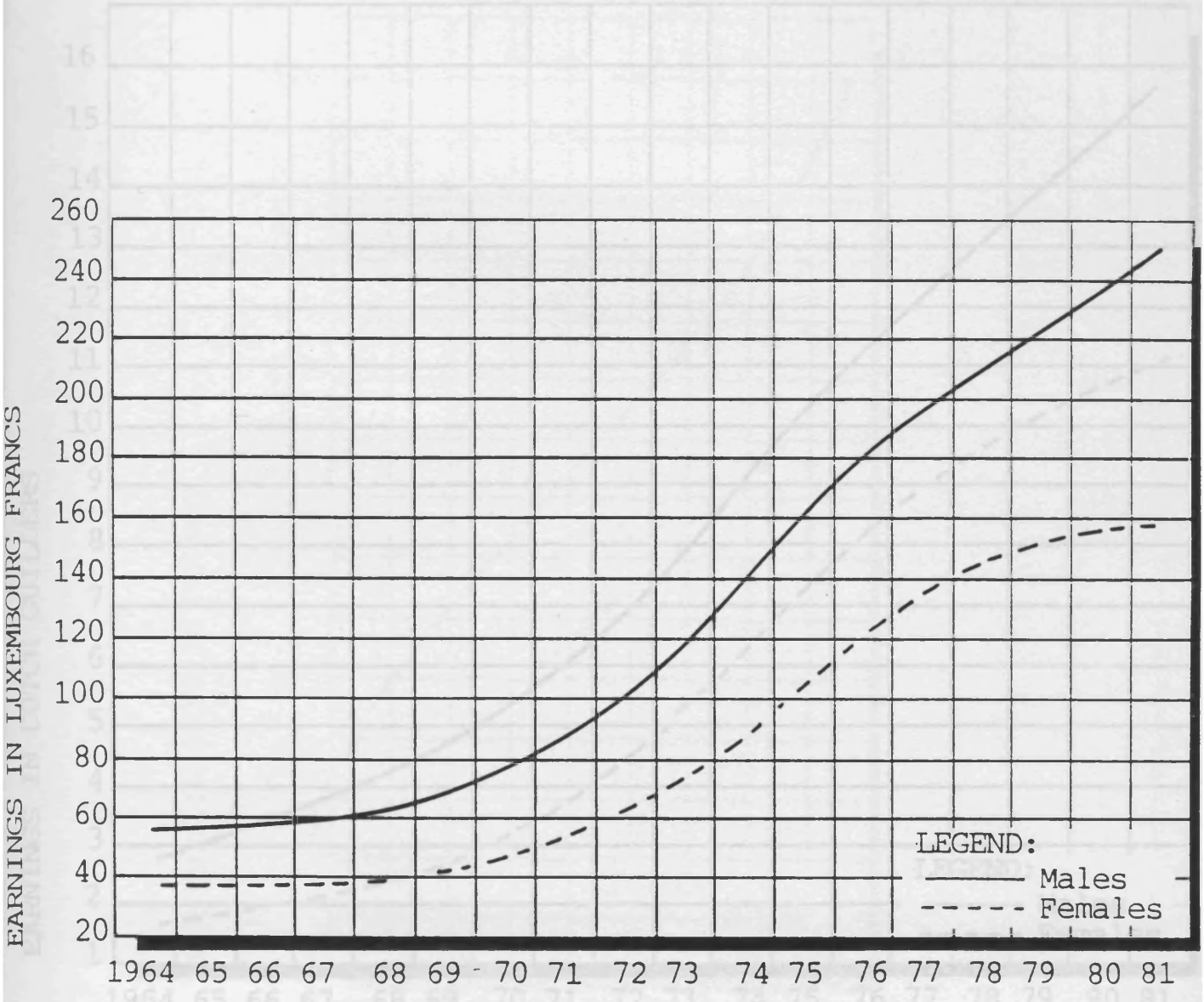
Source: Hourly Earnings. Hours of Work

Figure 9.5.
AVERAGE GROSS HOURLY EARNINGS IN IRELAND.



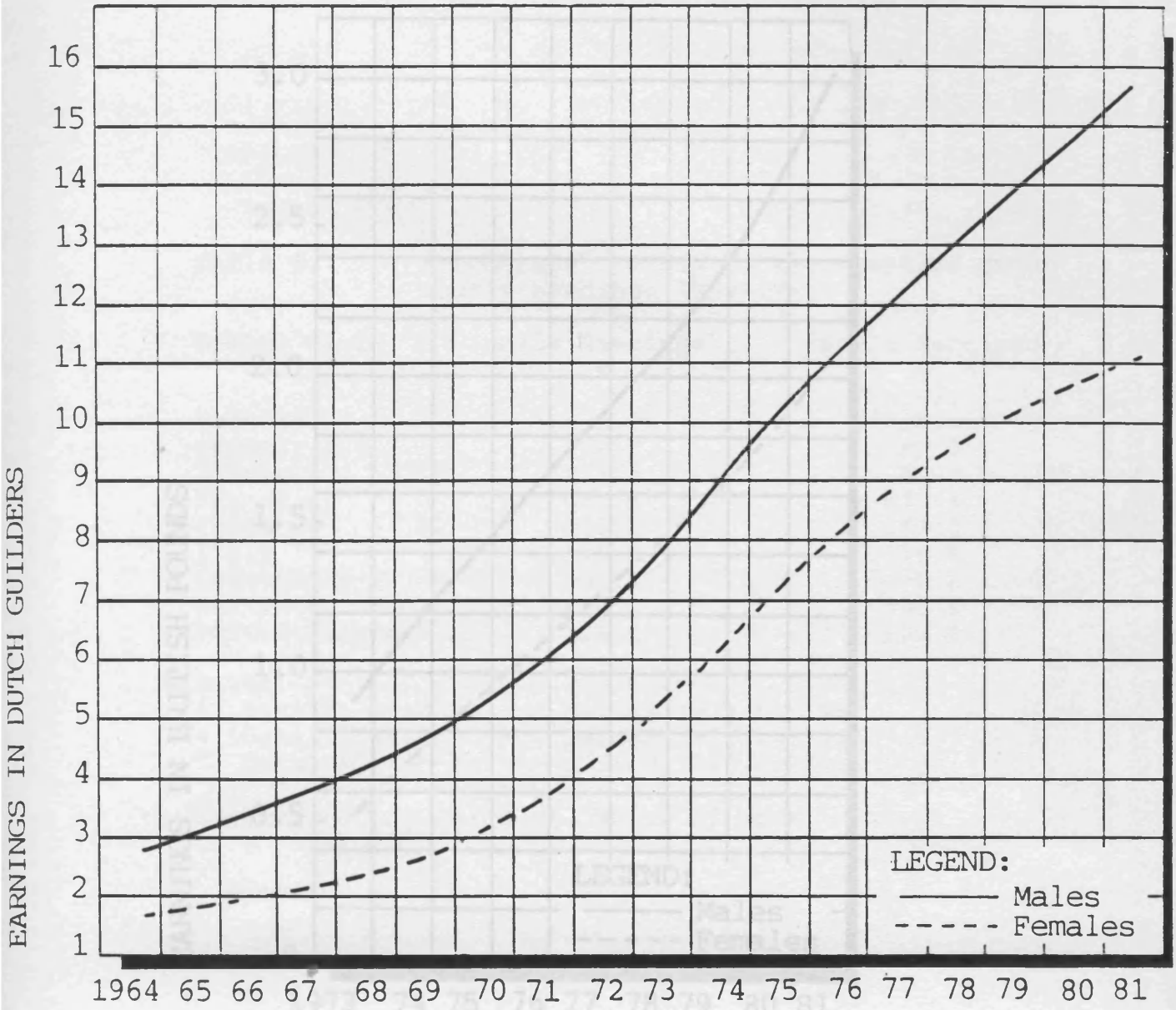
Source: Hourly Earnings. Hours of Work

Figure 9.6.
AVERAGE GROSS HOURLY EARNINGS IN ITALY.



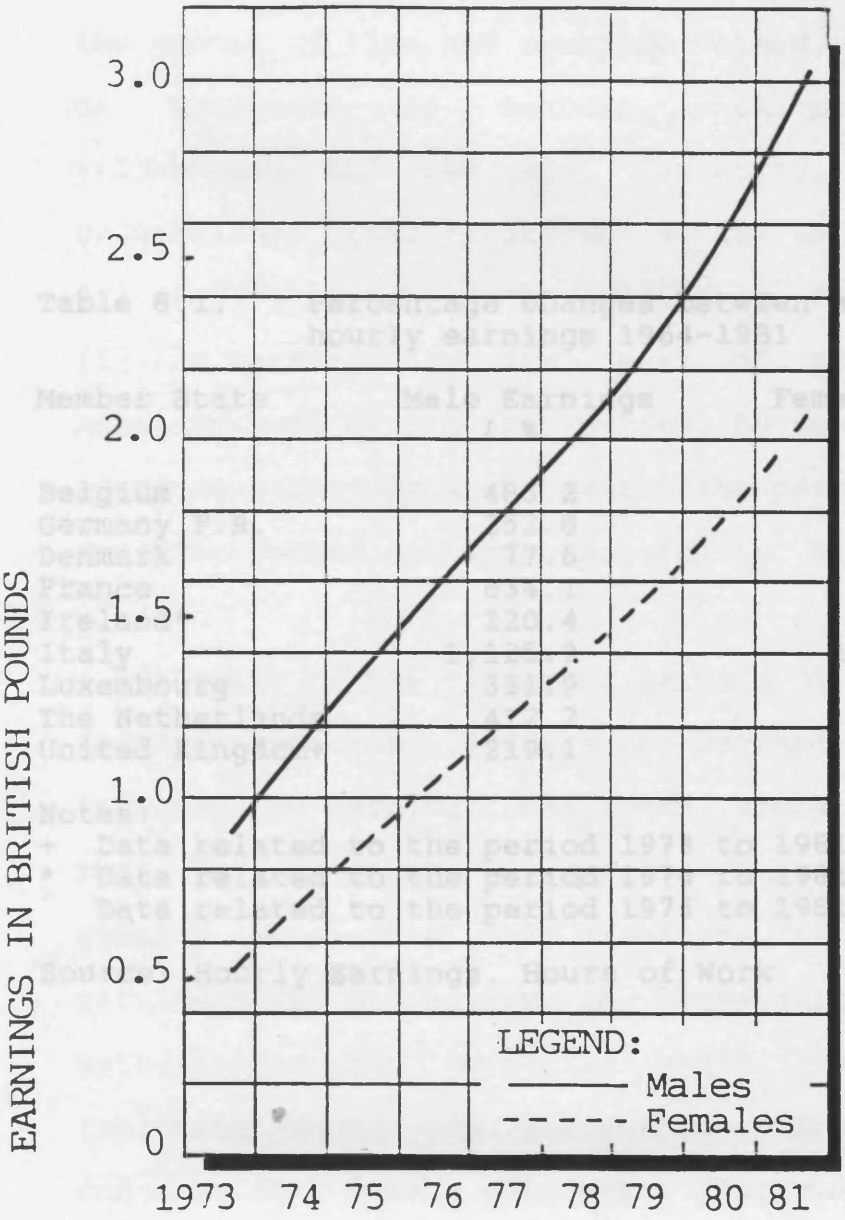
Source: Hourly Earnings. Hours of Work

Figure 8.7.
AVERAGE GROSS HOURLY EARNINGS IN LUXEMBOURG.



Source: Hourly Earnings. Hours of Work

Figure 8.8.
AVERAGE GROSS HOURLY EARNINGS IN THE NETHERLANDS.



Source: Hourly Earnings. Hours of Work

Figure 8.9.
AVERAGE GROSS HOURLY EARNINGS IN THE UNITED KINGDOM.

Table 8.1. Percentage changes between average gross hourly earnings 1964-1981

Member State	Male Earnings %	Female Earnings %
Belgium	485.2	548.1
Germany F.R.	252.8	280.3
Denmark^	77.6	80.6
France	634.1	670.4
Ireland*	220.4	257.6
Italy	1,125.9	1,356.6
Luxembourg	331.9	479.2
The Netherlands	412.2	585.5
United Kingdom+	219.1	259.3

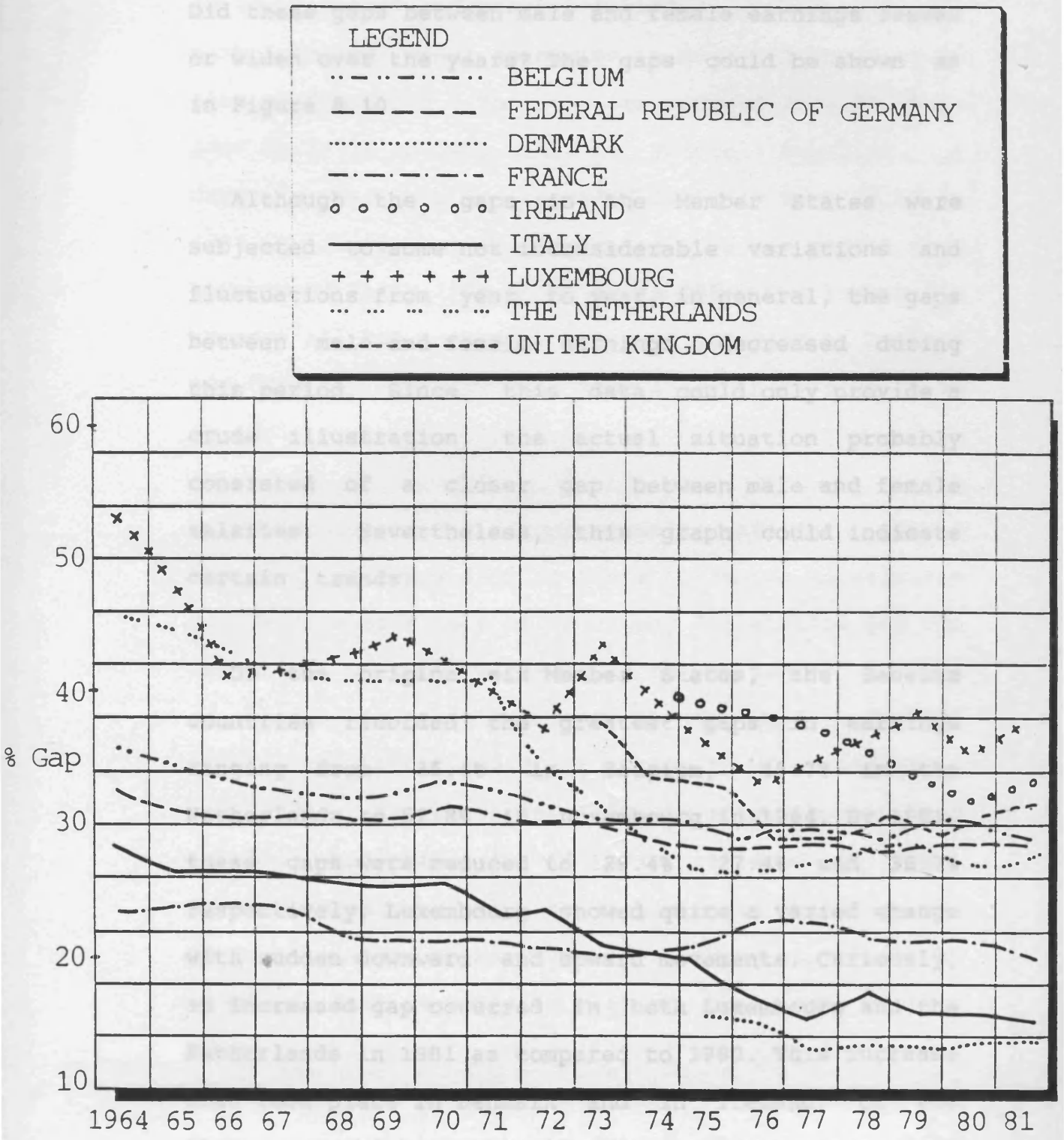
Notes:
+ Data related to the period 1973 to 1981
* Data related to the period 1974 to 1981
^ Data related to the period 1975 to 1981

Source: Hourly Earnings. Hours of Work

collected, at six monthly intervals, harmonised statistics on average gross hourly earnings. These statistics at least used the same bases even though they did not take into account such crucial factors as the amount of time and overtime worked, the inclusion or exclusion of bonuses, sick pay and family allowances, and the age, seniority, education and occupational qualifications of the workers. Figures 8.1.-8.9. illustrated the situation for each country [1]. In each country, the level of male and female earnings rose during that period. By how much did this increase occur? From the data, the percentage changes could be worked out and tabulated in Table 8.1.

In spite of the different periods of time and apart from the remarkable differences between the percentage increase in earnings, one trend stood out, namely, that in each country female earnings increased by a greater amount than male earnings. The difference was particularly noteworthy in Luxembourg and in the Netherlands, two countries which were slow to implement equal pay legislation. Thus, one could conclude that female earnings improved during this period in comparison to those of males.

However, as Figures 8.1. to 8.9. illustrated, average male earnings remained higher than corresponding female earnings. Female earnings did not reach the level of male earnings in any year or in any country.



Source: Hourly Earnings. Hours of Work

Figure 8.10.
THE GAP BETWEEN MALE AND FEMALE AVERAGE GROSS HOURLY EARNINGS IN THE EUROPEAN COMMUNITY.

Did these gaps between male and female earnings lessen or widen over the years? The gaps could be shown as in Figure 8.10.

Although the gaps in the Member States were subjected to some not inconsiderable variations and fluctuations from year to year, in general, the gaps between male and female earnings decreased during this period. Since this data could only provide a crude illustration, the actual situation probably consisted of a closer gap between male and female salaries. Nevertheless, this graph could indicate certain trends.

Of the original six Member States, the Benelux countries recorded the greatest gaps in earnings ranging from 35.4% in Belgium, 45.7% in the Netherlands to 52.8% in Luxembourg in 1964. By 1981, these gaps were reduced to 28.4%, 27.4% and 36.7% respectively. Luxembourg showed quite a varied change with sudden downward and upward movements. Curiously, an increased gap occurred in both Luxembourg and the Netherlands in 1981 as compared to 1980. This increase also took place in Denmark and in Ireland. Of the three new Member States, the greatest gaps were experienced in Ireland and in the United Kingdom. In Ireland, the gap decreased from 39.8% in 1974 to 31.3% in 1980 whilst the gap went up and down in the United Kingdom but decreased rapidly from 37.9% in 1973 to

28.4% in 1977 and then it levelled around the 30% mark. In the other countries, a downward trend could also be discerned. The gap was reduced from 32.5% in 1964 to 27.2% in 1981 in the Federal Republic. A dramatic decrease was recorded in Italy from 28.6% in 1964 to 15.1% in 1981. In France, the gap varied from between 24.7% in 1965 to 20.5% in 1981. The lowest gap amongst all the Member States was recorded in Denmark and this gap was reduced from 15.7% in 1975 to 14.3% in 1981.

Therefore, by and large, women's earnings slowly improved in comparison to those of men. A correlation between the enactment of equal pay legislation and the impact on women's wages could not be traced. As most of this legislation belonged to the mid and late 1970's, the effect would not really be witnessed until the 1980's. As we noted, the gap actually increased in four countries in 1981 as compared to 1980. However, equal pay was not achieved in practice and, in fact, women's earnings were unlikely to reach the level of male earnings in view of the many factors which constituted a wage. It was probable that equal pay legislation played some part towards improving women's wages although the actual effect could not be measured.

8.11. Legal claims

One of the outcomes of the European Community Equal Pay and Equal Treatment Directives was that each Member State possessed an equal pay and equal treatment measure of some description to enable women to institute individual claims. Did women workers respond to this right in actually bringing claims before the relevant national tribunals?

8.11.1. Equal pay claims

With the exceptions of Ireland and the United Kingdom, legal actions were rare [2]. No cases were reported in Denmark and Luxembourg. The Government of Denmark argued that the principle was implemented effectively and any disputes were settled amicably by the two sides. In Luxembourg, pay was for the most part settled by collective agreements within an undertaking and the tendency was for the trades unions to deal directly with the employers to end any instances of discrimination.

A few instances were recorded in Belgium, France, Germany, Italy and the Netherlands and most of them cited national rather than Community law. Instances of the latter usage could be found in Belgium, Ireland and the Netherlands. Belgium argued that the enactment was too recent to have had any effect since trades unions tended to rely upon their customary procedures of negotiation whilst female workers were

either too frightened to take action or were unaware that any discrimination existed. Wage questions in France tended to form part of general disputes which were resolved by agreements between the two sides so individual cases were rare. Disputes over wages in Italy tended to be settled by trades unions rather than an individual seeking aid from the courts.

Only in Ireland and the United Kingdom were numerous cases to be found [3]. Over a hundred cases were recorded in Ireland between 1976 and 1978 as compared to some 2,493 claims between 1975 and 1977 in the United Kingdom courts. In these two countries, equal pay measures had existed for some considerable time and strong equality commissions provided valuable assistance to women seeking to rectify grievances.

The poor response could perhaps be explained by a number of factors. Women were perhaps in ignorance of their rights in spite of the existence of legislation. It was shown how the Member States, generally, did not fulfil satisfactorily the notification clause of the Directive. Such ignorance could be combated by a vigorous information campaign waged by governments, equality commissions and trades unions. Another, stronger, reason could have been the fear of losing a job for bringing a claim. At the very least, a claim could attract the attention of management. The individual concerned could be treated as a

trouble-maker to be given the worst jobs, to be passed over when promotion was considered and subjected to other indirect discriminatory actions. Although protection against dismissal for instituting a claim was built into the legislation, such fears as described above could result in only the most strongest-willed women taking legal action.

Furthermore, many women might not commence a legal action for fear of the possible costs involved even when a strong case existed and equality commission money and assistance would be available. Trades unions could play an important role of support but their reluctance to involve themselves in equal pay matters was noted. In recent years, however, there were indications that trades unions have begun to realise the importance of female labour and, so, assistance has begun to be forthcoming. The increase of aid from trades unions and equality commissions should have positive results in the future. Moreover, the widespread publicising of successful claims might influence other women to seek legal redress. Such an effect might be slow but cumulative as to results.

A number of these equal pay claims resulted in the relevant national courts seeking amplification of European Community law from the Court of Justice. These preliminary rulings were fully examined in Chapter Seven and they had an important part to play

in interpreting the nature of equal pay. The Defrenne II judgment, certainly the most important for women, ruled that Article 119 conferred direct effect so that individuals could bring cases and cite Article 119 directly before national courts. Whilst the principle of equal pay was extended temporally by the Macarthys decision, the Worringham judgment expanded the principle to include a retirement benefit contribution which was added by an employer to gross pay. The Jenkins decision extended the principle of equal pay into the area of indirect discrimination. All these judgments applied uniformly throughout the European Community. Publicity from these cases could have the indirect effect of encouraging other women to seek legal redress.

Court actions, whether at a local or Community level, gave women the opportunity to improve their position at work. Yet, few women availed themselves of this right to legal redress. This valuable right resulted from the endeavours of the European Community and it constituted one of the most important features of the European Community legislation on equal pay.

8.11.2. Equal treatment claims

In practice, even fewer women brought cases for equal treatment than for equal pay. A significant number of claims could be recorded only in Denmark,

Ireland and the United Kingdom [4]. It was noticeable that these countries allowed their equal treatment committees to intervene in court actions. The highest number of cases originated in the United Kingdom, perhaps, because the British equal treatment law had been the first to be enacted. From 1976 to 1979, over eight hundred equal treatment actions were brought before the industrial tribunals. The reasons for the generally low number of claims could be the same as put forward for equal pay. But, in the case of equal treatment, the additional factor must be borne in mind that much of the national legislation was not passed until the late 1970's and, so, the effects would not be felt until outside the period under review. A different picture might emerge in ten years' time. Although a number of preliminary rulings cited the Equal Treatment Directive, the Court of Justice gave its judgments on the basis of Article 119 alone and the equality Directives were not considered. Such a judgment might act as an inspiration to women to seek legal redress.

Thus, practice was rather different from the theoretical framework. During the period under review, female earnings improved in comparison to male earnings throughout the Community although equal pay was not, and was not likely ever to be, achieved. How far legislation affected this improvement could not be ascertained but it would seem likely that legislation

could constitute one of the influences.

But, although the Equal Pay Directive enabled individual claims to be brought, very few were instituted in practice except in Ireland and the United Kingdom. A similar effect arose from the Equal Treatment Directive.

8.12. Summary

European Community policy initiatives for women were limited in extent to the fields of employment, social services, and education and training in line with the constraints imposed by the Treaty of Rome. Within these limits, a body of European Community legislation, based upon Articles 119 and 235 of the Treaty establishing the European Economic Community, was enacted to embrace equal pay, equal treatment with regard to access to employment, vocational training and promotion, and working conditions, and equal treatment in matters of State social security schemes. This legislation comprised three Directives.

These three Directives constituted a core of equality legislation generally well in advance of any national laws. This situation contrasted with the usual position whereby European Community law was passed in order to harmonise the variant national laws. Furthermore, as Landau pointed out, unusually,

this body of equality law was enacted in advance of the realities of the labour market [5]. The advanced nature of the European Community equality legislation represented a remarkable achievement and established a sound foundation to assist women. Thus, legislatively, the European Community played an important role in improving the position of women within the Member States of the European Community.

However, these pieces of European Community legislation needed to be implemented by each Member State. Although the Commission maintained an effective monitoring operation to ensure an adequate rendering of Community legislation by national laws, considerable difficulties resulted in relation to the implementation of the Community equality laws. On occasion, the Commission sought a judgment from the Court of Justice to force a Member State to enact suitable equality legislation. Clearly, in certain cases, national legislation would not have been passed without such monitoring and enforcement. The Federal Republic of Germany, for instance, would not have passed any equality legislation at all since the Government maintained that the German constitution was sufficient to confer equality upon women. By these Community actions, women were thus granted rights in their own countries.

The Community equality legislation enabled women

to seek legal redress through their own national courts. But, in practice, not many women brought cases with the exception of a sizeable number of equal pay claims recorded in Ireland and in the United Kingdom. Many women were ignorant about their rights or else were frightened of possible reprisals by their employers. The national laws which implemented the Community equality Directives also tended to put the burden of proof upon the complainant and not the employer.

Some legislative failures could be noted with regard to maternal protection and vocational training for women. Moreover, within the period under review, the European Community did not succeed in implementing an action programme in education for girls.

Legislation could only provide a framework for action. To back up the legislation, financial aid was made available through the European Social Fund. About one million women were given the opportunity to participate in training courses as the first step towards finding employment.

Legislation and financial aid were not the sole achievements of the European Community in relation to women. Other activities were carried out such as the compilation of special studies, reports, statistical

surveys and opinion polls, and the publication of relevant books, periodicals and suitable audio-visual material. These diverse actions were initiated and co-ordinated by the Commission and, in particular, by the two special women's sections on employment and information. Pressure for action in this field was exerted by the European Parliament especially after the direct elections in 1979 when the first special committee on women's rights was established.

All these European Community initiatives for women represented part of an increasing awareness of the importance of the subject, the position of women in society. Public opinion on this subject changed remarkedly in the last decade from scepticism and some derision to a more general acceptance. This acceptance was accompanied by such developments as new forms of work organisation, job-sharing etc, and an increase in child-minding and nursery care to enable women with families to participate in employment. Yet, opinion polls revealed a low level of knowledge of European Community achievements in relation to women amongst the general public.

By the end of 1981, European Community initiatives for women resulted in a core of Commmunity equality legislation. The next decade would be marked by the establishment of comprehensive action programmes and by the full impact of the equality

legislation. However, the assessment of these developments fell outside the period under discussion but could form the subject of further research in the future.

Footnotes

1. The data covered all industries and it related to October earnings except in France and Ireland where it related to September earnings. The Irish data only included adult earnings. In Italy, the data from 1978 to 1981 only related to firms employing 50 or more and therefore were not fully comparable with previous data.
2. Commission, Equal Pay Report 1978, pp. 36-51.
3. Ibid, pp. 44-46 and 49-51.
4. Commission, Equal Treatment Directive Report, pp. 199-200.
5. Landau, "Recent legislation and case law in the EEC", p. 67.

BIBLIOGRAPHY

A. European Community source material

A.1. European Community

A.1.1. Monographs

Treaties establishing the European Communities. Treaties amending these Treaties. Documents concerning the Accession, Luxembourg, Office for Official Publications of the European Communities, 1978

A.1.2. Periodicals generally consulted

Journal Officiel des Communautés Européennes [hereafter JO]

Journal Officiel des Communautés Européennes. Annexe. Débats du Parlement Européen

Journal Officiel des Communautés Européennes C [hereafter JOC]

Journal Officiel des Communautés Européennes L

Official Journal of the European Communities. Annex. Debates of the European Parliament

Official Journal of the European Communities. Annual Index

Official Journal of the European Communities C [hereafter OJC]

Official Journal of the European Communities L [hereafter OJL]

Official Journal of the European Communities. Special Edition [hereafter OJ Sp Ed]

A.2. Commission of the European Economic Community

A.2.1. COM Documents

Projet d'une recommandation de la Commission concernant la protection de la maternité [COM (66) 3], Bruxelles, 1966

Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1964 de l'Article 119 CEE et de la Résolution adoptée par la Conférence des États membres le 30 décembre 1961 [V/COM (65) 270 final], Bruxelles, 1965

Rapport de la Commission au Conseil sur l'état d'application de l'Article 119 à la date du 30 juin 1962 [V/COM (62) 321 final], Bruxelles, 1962

Rapport de la Commission au Conseil sur l'état d'application de l'article 119 au 30 juin 1963 [V/COM (64) 11 final], Bruxelles, 1964

Rapport de la Commission au Conseil sur l'état d'avancement des travaux relatifs à l'Art. 119 C.E.E. [COM (61) 142 final], Bruxelles, 1961

Rapport de la Commission au Conseil sur l'état des travaux concernant la préparation de l'enquête statistique sur les salaires masculins et féminins

[V/COM (64) 225 final], Bruxelles, 1964

Recommendations de la Commission en vue de l'accélération du rythme du Traité [COM (60) 16 final], Bruxelles, 1960

A.2.2. Monographs and Reports

La protection de la maternité dans les six pays de la CEE, Bruxelles, 1966

A.2.3. Periodicals generally consulted

Bulletin of the European Economic Community

General Report on the Activities of the Community [EEC]

A.3. Commission of the European Communities

A.3.1. COM and SEC Documents

Amended Proposal For A Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty [COM(74) 1010 final], Brussels, 1974

Education Action Programme at Community level. Equal opportunities in Education and Training for girls (second level education) [COM (78) 499 final], Brussels, 1978

Eighth Report on the Activities of the European Social Fund [COM (80) 365 final/2], Brussels, 1980

Equality of treatment between men and women workers (Access to employment, to vocational training, to promotion, and as regards working conditions) [COM (75) 36 final], Brussels, 1975

Fifth report on the activities of the European Social Fund [COM (77) 398 final], Brussels, 1977

Fourth report on the activities of the European Social Fund [COM (76) 338 final], Brussels, 1976

Interim report on the application of Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [COM (83) 793 final], Brussels, 1984

A New Community Action Programme on the Promotion of Equal Opportunities for Women 1982-1985 [COM (81) 758 final], Brussels, 1981

Ninth Report on the activities of the European Social Fund [COM (81) 343 final], Brussels, 1981

Proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women [COM (80) 411 final], Brussels, 1980

Proposal for a Council Decision on intervention by the Social Fund to encourage structural adjustment measures (Article 4 of the Council Decision of 1

February 1971) [COM (75) 126 final], Brussels, 1975

Proposal for a Council Decision regarding European Social Fund assistance towards women... [COM (77) 442 final], Brussels, 1977

Proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty [COM (73) 1927 final], Brussels, 1973

Proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security [COM (76) 650 final], Brussels, 1977

Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1966 du principe d'égalité entre rémunérations masculines et féminines (art. 119 du Traité instituant la CEE et résolution de la conférence des États membres du 30 décembre 1961) [SEC (67) 3204 final], Bruxelles, 1967

Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1968 du principe d'égalité entre rémunérations masculines et féminines (Article 119 du Traité instituant la CEE et résolution de la Conférence des États membres du 30 décembre 1961) [SEC (70) 2388 final], Bruxelles, 1970

Report from the Commission to the Council on the situation at 12 August 1980 with regard to the

implementation of the principle of equal treatment for men and women as regards -access to employment and promotion -access to vocational guidance and training -working conditions (Council Directive 76/207/EEC of 9 February 1976) [COM (80) 832 final], Brussels, 1981

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 [COM(78) 711 final], Brussels, 1979

Report of the Commission to the Council on the application of the principle of equal pay for men and women in Denmark, Ireland and the United Kingdom situation on the [sic] 31 December 1973 (Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States of 30 December 1961 [SEC (74) 2721 final], Brussels, 1974

Report of the Commission to the Council on the application of the principle of equal pay for men and women situation on the [sic] 31 December 1972 (Article 119 of the Treaty establishing the EEC and Resolution of the Conference of Member States of 30 December 1961) [SEC (73) 3000 final], Brussels, 1973

Seventh Report on the activities of the European Social Fund [COM (79) 346 final], Brussels, 1979

Sixth Report on the Activities on [sic] the European Social Fund. 1977 Financial Year [COM (78) 476 final], Brussels, 1978

Supplement to Ninth European Social Fund Report:

National reports on the activities of the European Social Fund in the Community countries [COM (82) 211 final], Brussels, 1982

Tenth Report on the activities of the European Social Fund [COM (82) 420 final], Brussels, 1982

Third Report on the activities of the new European Social Fund [COM (75) 355 final], Brussels, 1975

A.3.2. Proposals for European Community legislation

"Proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", OJC, Volume 23, Number 214, 21 August 1980, pp. 6-7

"Proposal for a Council Decision regarding European Social Fund assistance towards women", OJC, Volume 20, Number 250, 19 October 1977, pp. 5-6

"Proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", OJC, Volume 16, Number 114, 27 December 1973, pp. 46-47

"Proposal for a Council Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes", OJC, Volume 26, Number 134, 21 May 1983,

pp. 7-9

"Proposal for a Council Directive on the implementation of the principle of equality of treatment of men and women as regards access to employment, vocational training, promotion and working conditions", OJC, Volume 18, Number 124, 4 June 1975, pp. 2-4

"Proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", OJC, Volume 20, Number 34, 11 February 1977, pp. 3-4

A.3.3. Monographs and Reports

Ad Hoc Working Group on Equal Pay, Indirect Discrimination by use of Job Classification Systems [V/660/80], Brussels, 1981

Angela Byre, First report of the network of experts set up to monitor the application of Community equal treatment legislation, No place, 1984

Eileen M. Byrne, Equality of education and training for girls (10-18 years), Luxembourg, Office for Official Publications of the European Communities, 1979

Comparative tables of the social security schemes in the Member States of the European Communities. General scheme, 12th ed., Brussels, 1982

R.B.Cornu, Women and employment in the United Kingdom,

Ireland and Denmark, No place, 1974

Davis, Melanie, Women's rights: European and UK Law, London, 1981

European men and women in 1978. A comparative study of socio-political attitudes in the European Community [X/72/79], Brussels, 1979

Claude du Granrut, Vocational Guidance and Training for Women Workers, Luxembourg, Office for Official Publications of the European Communities, 1976

Eve C. Landau, The rights of working women in the European Community, Luxembourg, Office for Official Publications of the European Communities, 1985

Men and women of Europe. Comparative attitudes to a number of problems of our society [X/608/75], Brussels, 1975

Pre-school education in the European Community, Luxembourg, Office for Official Publications of the European Communities, 1980

Second annual report on the activities of the new European Social Fund, No place, no date

Evelyne Sullerot, L'emploi des femmes et ses problèmes dans les États membres de la Communauté européenne, Bruxelles, 1972

Women and the European Community. Community action. Comparative national situations, Luxembourg, Office for Official Publications of the European Communities, 1980

A.3.4. Periodicals generally consulted

Bulletin of the European Communities [hereafter Bulletin EC]

General Report on the Activities of the Communities [EC]

General Report on the Activities of the European Communities [EC] [hereafter General Report EC]

Report on Social Developments

Report on the Development of the Social Situation in the European Community

A.3.5. Periodical articles

Jean Boudard, "Equal pay", Social Europe. Supplement, Number 2, 1986, pp. 103-116

"The Commission moves on discrimination against women", Background reports [London], Number 16, 1979

Albert Coppé, "The social horizon for 1980", Bulletin EC, Volume 4, Number 1, 1971, pp. 5-12

"The Court of Justice of the European Communities", European Documentation, Number 5, 1986

Melanie Davis, "Women and the European Social Fund", Supplement to Women of Europe, Number 6, 1981

Fausta Deshormes, "Why information for women?", Social Europe. Supplement, Number 2, 1986, pp. 71-75

"Encouraging equality for women. The Community Record", Background reports [London], Number 53, 1978

"Equal opportunities for women", European File, Number

10, 1987

"Equal opportunity for women", European File, Number 4, 1984

"From education to working life", Bulletin EC. Supplement, Number 12, 1976

"Guidelines for a social action programme", Bulletin EC. Supplement, Number 4, 1973

"Guidelines for the management of the European Social Fund during the period 1979 to 1981, and transitional guidelines for 1978", OJC, Volume 21, Number 116, 19 May 1978, pp. 2-10

Marlene Lenz, "European Parliament activities to assist women", Social Europe. Supplement, Number 2, 1986, pp. 43-53

"Memorandum annexed to the address on the programme for 1976", Ninth General Report EC, 1975, pp. XXIII-LVIII

"Memorandum annexed to the address on the programme for 1977", Programme of the Commission for 1977, 1977, pp. 23-56

Florence Morgan, "The European Community and Work for Women", Women of Europe. Supplement, Number 2

Florence Morgan, "Women and the European Social Fund", Supplement to Women of Europe, Number 1, 1978

"New technology and social change- Ten years of Community policy on equal opportunities for men and women", Social Europe. Supplement, Number 2, 1986

"Preliminary guidelines for a community social policy programme", Bulletin EC. Supplement, Number 2, 1971

Odile Quintin, "Community structures responsible for promoting equal opportunities", Social Europe. Supplement, Number 2, 1986, pp. 37-42

Françoise Remuet-Alexandrou, "Community law and women", Women of Europe. Supplement, Number 12

"Sex inequality in schools", Background reports [London], Number 67, 1978

"Social action programmme", Bulletin EC. Supplement, Number 2, 1974

Martin Vesey, "New impetus for social policies", European Community, January 1973, pp. 10-11

"Women in the European Community", European Documentation, Number 4, 1984

Gerassimos Zorbas, "Some examples of Commission intervention on equality", Social Europe. Supplement, Number 2, 1986, pp. 127-153

A.4. Council of the European Economic Community

A.4.1. Regulations, Decisions

"Décision des représentants des gouvernments des États membres de la Communauté économique européenne réunis au sein du Conseil, concernant l'accélération du rythme de réalisation des objets du traité", JO, Volume 3, Number 58, 12 septembre 1960, pp. 1217-1220

"Règlement No 188/64/CEE du Conseil du 12 décembre 1964 relatif à l'organisation d'une enquête sur la

structure et la répartition des salaires dans l'industrie", JO, Volume 7, Number 214, 24 décembre 1964, pp. 3634-3635

A.5. Council of the European Communities

A.5.1. Regulations, Decisions, Directives, Resolutions, Conclusions

"Conclusions adoptées par les représentants des gouvernements des États membres, réunis au sein du Conseil, le 29 février 1968, en ce qui concerne l'état d'application au 31 décembre 1966 du principe de l'égalité des salaires masculins et féminins", JOC, Volume 11, Number 34, 17 avril 1968, p. 10

"Council Decision of 1 February 1971 on the reform of the European Social Fund (71/66/EEC)", OJ Sp Ed, Number I, 1971, pp. 52-54

"Council Decision of 4 December 1980 amending Decisions 75/459/EEC, 76/206/EEC, 77/803/EEC and 77/804/EEC concerning European Social Fund aid measures for certain categories of persons (80/1117/EEC)", OJL, Volume 23, Number 332, 10 December 1980, pp. 17-18

"Council Decision of 20 December 1977 on action by the European Social Fund for women (77/804/EEC)", OJL, Volume 20, Number 337, 27 December 1977, p. 14

"Council Directive of 9 February 1976 on the implementation of the principle of equal treatment

for men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC", OJL, Volume 19, Number 39, 14 February 1976, pp. 40-42

"Council Directive of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (75/117/EEC)", OJL, Volume 18, Number 45, 19 February 1975, pp. 19-20

"Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (79/7/EEC)", OJL, Volume 22, Number 6, 10 January 1979, pp. 24-25

"Council Regulation (EEC) No 495/78 of 6 March 1978 relating to the organization of a survey of earnings in industry, wholesale and retail distribution, banking and insurance", OJL, Volume 21, Number 68, 10 March 1978, pp. 3-4

"Council Resolution of 21 January 1974 concerning a social action programme", OJC, Volume 17, Number 13, 12 February 1974, pp. 1-4

"Regulation (ECSC, EEC, Euratom) No. 558/73 of the Council of 26 February 1973 amending Regulation (EEC, Euratom, ECSC) No. 259/68 fixing the Staff Regulations of the Officials and Conditions of Employment applicable to other Servants of the European Communities", OJL, Volume 16, Number 55, 28 February 1973, pp. 1-3

"Regulation (EEC) No 2395/71 of the Council of 8 November 1971 on the organisation of a survey on the structure and distribution of wages and salaries in industry", OJ Sp Ed, Number III, 1971, pp. 921-923

"Regulation (EEC) No 2396/71 of the Council of 8 November 1971 implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund", OJ Sp Ed, Number III, 1971, pp. 924-928

"Regulation (EEC) No 178/74 of the Council of 21 January 1974 on the organization of a survey of earnings in wholesale and retail distribution, banking and insurance", OJL, Volume 17, Number 21, 25 January 1974, pp. 2-3

"Regulation (EEC) No 337/75 of the Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training", OJL, Volume 18, Number 39, 13 February 1975, pp. 1-4

"Regulation (EEC) No 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions", OJL, Volume 18, Number 139, 30 May 1975, pp. 1-4

"Resolution of the Council and of the Ministers for Education, meeting within the Council, of 3 June 1985 containing an action programme on equal opportunities for girls and boys in education", OJC, Volume 28, Number 166, 5 July 1985, pp. 1-4

"Resolution of the Council and of the Ministers of Education, meeting within the Council of 9 February

1976 comprising an action programme in the field of education", OJC, Volume 19, Number 38, 19 February 1976, pp. 1-5

"Resolution of the Council and of the Ministers of Education meeting within the Council of 13 December 1976 concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life", OJC, Volume 19, Number 308, 30 December 1976, pp. 1-3

"Resolution of the Council and of the Ministers of Education meeting within the Council of 15 January 1980 concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life", OJC, Volume 23, Number 23, 30 January 1980, pp. 1-2

A.5.2. Monographs

European educational policy statements 1974-1983, Luxembourg, Office for Official Publications of the European Communities, 1983

A.6. Court of Justice

A.6.1. Periodical articles

"Jeanne Airola v Commission of the European

Communities Case 21/74", Reports of Cases before the Court of Justice [hereafter ECR], 1975, pp. 221-234

"Monique Chollet, née Bauduin, v Commission of the European Communities Case 32/71", ECR, 1972, pp. 363-371

"Gabrielle Defrenne v Belgian State Case 80/70", ECR, 1971, pp. 445-462

"Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena Case 43/75", ECR, 1976, pp. 455-493

"Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena Case 149/77", ECR, 1978, pp. 1365-1389

"J.P.Jenkins v Kingsgate (Clothing Productions) Ltd Case 96/80", ECR, 1981, pp. 911-939

"Macarthys Ltd. v Wendy Smith Case 129/79", ECR, 1980, pp. 1275-1297

"Luisa Sabbatini, née Bertoni, v European Parliament Case 20/71", ECR, 1972, pp. 345-360

"Chantal Van den Broeck v Commission of the European Communities Case 37/74", ECR, 1975, pp. 235-246

"Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited Case 69/80", ECR, 1981, pp. 767-808

A.7. Economic and Social Committee

A.7.1. Opinions

"Avis du Comité économique et social sur le "projet d'une recommandation concernant la protection de la maternité"", JO, Volume 10, Number 4, 12 janvier 1967, pp. 62-63

"Consultation of the Economic and Social Committee on a proposal for a Council Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", OJC, Volume 17, Number 88, 26 July 1974, pp. 6-9

"Opinion on the communication of the Commission to the Council concerning equality of treatment of men and women as regards access to employment, vocational training, promotion and working conditions", OJC, Volume 18, Number 286, 15 December 1975, pp. 8-19

"Opinion on the proposal for a Council Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", OJC, Volume 23, Number 331, 17 December 1980, pp. 18-19

"Opinion on the proposal for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", OJC, Volume 20, Number 180, 28 July 1977, p. 36

"Opinion on the proposals for:... - a Council Decision

regarding European Social Fund assistance towards women", OJC, Volume 21, Number 18, 23 January 1978, pp. 24-27

A.8. European Centre for the Development of Vocational Training

A.8.1. Periodicals

European Centre for the Development of Vocational Training Annual Reports

A.8.2. Periodical articles

"Berlin Centre inauguration", Vocational Training, Number 1, 1977, pp. 2-5

"European seminar on vocational guidance and training for women workers", Vocational Training Information Bulletin, Number 2/3, September 1975, pp. 38-39

Maria Pierret, "Equality of opportunity and vocational training", Vocational Training, Number 3/4, 1977, pp. 2-6

A.9. The European Foundation for the Improvement of Living and Working Conditions

A.9.1. Monographs

A Review of European Foundation Studies 1977-1984.

Implications for Women, Luxembourg, Office for Official Publications of the European Communities, 1986

A.10. European Parliament

A.10.1. Working Documents

Berkhouwer, "Rapport fait au nom de la commission des affaires sociales et de la santé publique sur l'application du principe de l'égalité des rémunérations entre les travailleurs masculins et féminins", 1968-1969, Document 26, 8 mai 1968

"Communication from the Commission of the European Communities to the Council on equality of treatment between men and women workers (Access to employment, to vocational training, to promotion, and as regards working conditions)", 1974-1975, Document 520/74, 10 March 1975

Lady Elles, "Report drawn up on behalf of the Committee on Social Affairs and Employment on the proposal from the Commission of the European Communities to the Council (Doc. 520/74) for a directive on equality of treatment between men and women workers (access to employment, to vocational training, to promotion and with regard to working conditions)", 1975-1976, Document 24/75, 7 April 1975

A.Lulling, "Rapport fait au nom de la commission

sociale sur le projet de recommandation de la Commission de la C.E.E. aux États membres concernant la protection de la maternité (doc. 122-II, 1965-66)", 1966-1967, Document 69, 27 juin 1966

H. Maij-Weggen, "Position of women with respect to the review of the European Social Fund", 1983-1984, Document 1-1229/83/C, 5 January 1984

Hanja R.H. Maij-Weggen, "Report drawn up on behalf of the Ad Hoc Committee on Women's Rights on the position of women in the European Community. Part II- Explanatory Statement", 1980-1981, Document 1-829/80-II, 29 January 1981

Bertrand Motte, "Rapport intérimaire fait au nom de la commission sociale sur l'égalisation des salaires masculins et féminins", 1961-1962, Document 68, 11 octobre 1961

"Proposal from the Commission of the European Communities to the Council for a Decision concerning European Social Fund aid measures for persons employed in the textile and clothing industries, for migrant workers, for persons affected by employment difficulties (young people under 25) and for women", 1980-1981, Document 1-357/80, 14 August 1980

"Proposal from the Commission of the European Communities to the Council for a decision on intervention by the Social Fund to encourage structural adjustment measures", 1975-1976, Document 73/75, 7 May 1975

"Proposal from the Commission of the European Communities to the Council for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", 1976-1977, Document 522/76, 21 January 1977

"Proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", 1973-1974, Document 262/73, 6 December 1973

"Proposals from the Commission of the European Communities to the Council for - a Decision regarding European Social Fund assistance towards women...", 1977-1978, Document 313/77, 11 October 1977

Mrs. Squarcialupi and Mr Porcu, "Oral Question (0-83/78) with debate,... by Mrs Squarcialupi and Mr Porcu on behalf of the Communist and Allies Group to the Commission of the European Communities", 1978-1979, Document 527/78, 14 December 1978

I. van den Heuvel, "The implementation to date of the third Directive ('Social Security', target date - 1984),", 1983-1984, Document 1-1229/83/C, 5 January 1984

A.10.2. Resolutions

"Resolution embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive concerning the progressive implementation of the principle of equality of treatment for men and women in matters of social security", OJC, Volume 20, Number 299, 12 December 1977, pp. 13-15

"Resolution embodying the Opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive on equality of treatment between men and women workers (access to employment, to vocational training, to promotion, and as regards working conditions)", OJC, Volume 18, Number 111, 20 May 1975, pp. 14-17

"Resolution embodying the Opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Directive on the approximation of the laws of Member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty", OJC, Volume 17, Number 55, 13 May 1974, pp. 43-47

"Resolution embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for: 1. a Decision regarding European Social Fund assistance towards women...", OJC, Volume 20, Number 266, 7

November 1977, pp. 15-16

"Resolution on Community action in the educational field", OJC, Volume 22, Number 6, 8 January 1979, p. 59

"Resolution on the 6th General Report of the Commission of the European Communities on the activities of the Communities in 1972", OJC, Volume 16, Number 37, 4th June 1973, pp. 32-42

"Resolution on the meeting of the Council of Education Ministers", OJC, Volume 22, Number 309, 10 December 1979, pp. 59-60

"Resolution on the position of women in the European Community", OJC, Volume 24, Number 50, 9 March 1981, pp. 35-50

"Resolution on the setting up of an ad hoc committee on women's rights", OJC, Volume 22, Number 289, 19 November 1979, pp. 56-57

"Résolution portant avis du Parlement européen sur le projet de recommandation de la Commission de la C.E.E. aux États membres concernant la protection de la maternité", JO, Volume 9, Number 130, 19 juillet 1966, pp. 2422-2425

"Résolution sur l'application de l'article 119 du traité de la C.E.E.", JO, Volume 9, Number 130, 19 juillet 1966, pp. 2439-2440

"Résolution sur l'application du principe de l'égalité de rémunérations entre les travailleurs masculins et féminins", JOC, Volume 11, Number 55, 5 juin 1968, pp. 7-8

"Résolution sur l'état d'application, au 31 décembre 1968, du principe de l'égalité des rémunérations entre les travailleurs masculins et féminins", JOC, Volume 14, Number 45, 10 mai 1971, pp. 10-12

"Résolution sur l'état d'application, dans les differents États membres à la date du 30 juin 1962, de l'article 119 du traité de la C.E.E. (égalité des rémunérations entre les travailleurs masculins et les travailleurs féminins pour un même travail), JO, Volume 6, Number 106, 12 juillet 1963, p. 1920

A.10.3. Monographs

The position of women in the European Community, No place, 1981

A.10.4. Periodicals generally consulted

Débats compte rendu in extenso des séances

A.11. Statistical Office of the European Communities

A.11.1. Monographs

Structure et répartition des salaires 1966, 8 vols., Luxembourg, 1971

Structure of earnings 1978/79- Principal results, 10 vols., Luxembourg, 1982-1986

Structure of earnings in industry 1972, 13 vols.,

Luxembourg-Brussels, 1975-1977

Structure of earnings in wholesale and retail distribution, banking and insurance in 1974, 10 vols., Luxembourg, 1977-1979

A.11.2. Periodical articles

"Statistiques des salaires masculins et féminins dans les 6 pays de la Communauté Européenne", Statistiques Sociales, Number 1, 1961

B. Source material of other international organisations

B.1. Council of Europe

B.1.1. Periodicals

European Treaty Series

B.2. International Labour Organisation

B.2.1. Monographs

International Labour Conventions and Recommendations 1919-1981, Geneva, International Labour Office, 1982

Social Aspects of European Economic Co-operation, Geneva, International Labour Office, 1956

B.2.2. Periodical articles

Efren Cordova, "Equal Pay: What needs to be done", Women at Work, Number 2, 1978, pp. 10-12

C.E. Landau, "Recent legislation and case law in the EEC on sex equality in employment", International Labour Review, Volume 123, Number 1, January-February 1984, pp. 53-79

C.A.Larsen, "Equal pay for women in the United Kingdom", International Labour Review, Volume 103, Number 1, January 1971, pp. 1-11

André Laurent, "European Community law and equal treatment for men and women in social security", International Labour Review, Volume 121, Number 4, July-August 1982, pp. 373-385

Evelyne Sullerot, "Equality of Remuneration for Men and Women in the Member States of the EEC", International Labour Review, Volume 112, Number 2/3, August-September 1975, pp. 87-108

B.3. Organisation for Economic Co-operation and Development

B.3.1. Monographs

Employment of Women, Paris, 1970

The Integration of Women into the Economy, Paris, 1985

C. Source material of the Member States

C.1. Belgium

C.1.1. Legislation

"Act respecting the protection of workers' remuneration, 12 April 1965", ILO Legislative Series, 1965-Bel. 2

"Arrêté royal attribuant une allocation de foyer ou une allocation de résidence au personnel des ministères", Moniteur belge, Volume 137, 9 février 1967, pp. 1283-1284

"Arrêté royal modifiant l'arrêté royal du 30 janvier 1967, attribuant une allocation de foyer ou un allocation de résidence au personnel des ministères", Moniteur belge, Volume 151, 30 septembre 1981, pp. 12084-12086

"Arrêté royal relatif aux absences de longue durée justifiées par des raisons familiales", Moniteur belge, Volume 145, 29 mai 1975, pp. 6764-6765

"Arrêté royal rendant obligatoire la convention collective de travail no 25, conclue le 15 octobre 1975 au sein du Conseil national du travail, relative à l'égalité de rémunération entre les travailleurs masculins et les travailleurs féminins", Moniteur belge, Volume 145, 25 décembre 1975, p. 16447

"Convention collective de travail no 25 du 15 Octobre 1975 relative à l'égalité de rémunération entre les

travailleurs masculins et les travailleurs féminins", Ibid, pp. 16448-16449

"Economic Reform Act", ILO Legislative Series, 1978-Bel. 2

"Labour Act, 16 March 1971", ILO Legislative Series, 1971-Bel. 2

"Royal Order No. 40, respecting the employment of women, 24 October 1967", ILO Legislative Series, 1967-Bel. 3

C.2. Federal Republic of Germany

C.2.1. Legislation

"Act respecting equality of treatment for men and women at the workplace and the maintenance of claims in tbe event of the transfer of establishments (Labour Law (European Communities Harmonisation) Act)", ILO Legislative Series, 1980-Ger.F.R. 3

"Works Constitution Act", ILO Legislative Series, 1972-Ger.F.R. 1

"Works Constitution Act 11 October 1952", ILO Legislative Series, 1952-Ger.F.R. 6

C.2.2. Monographs

Basic Law of the Federal Republic of Germany, No place, Press and Information Office of the Government of the Federal Republic of Germany, 1977

C.3. Denmark

C.3.1. Legislation

"Act respecting equal wages for men and women", ILO Legislative Series, 1976-Den. 1

"Act respecting equality of treatment as between men and women with regard to employment, etc.", ILO Legislative Series, 1978-Den. 3

C.4. France

C.4.1. Legislation

"Act No. 50-205, respecting collective agreements and proceedings for the settlement of collective labour disputes 11 February 1950", ILO Legislative Series, 1950-Fr. 6

"Act No. 71-561 to amend certain provisions of Chapter IV bis of Part II of Book I of the Labour Code respecting collective industrial agreements, and certain provisions of Part II of Act No. 50-205 of 11 February 1950, as amended, respecting the procedure for mediation", ILO Legislative Series, 1971-Fr. 3

"Act No. 71-575 to organise continuing vocational training as part of life long education", ILO Legislative Series, 1971-Fr. 1

"Act No. 72-1143, respecting equal remuneration for men and women", ILO Legislative Series, 1972-Fr. 3

"Act No. 75-625, to amend and supplement the special rules in the Labour Code as to the employment of women, Section L.298 the Social Security Code 1", ILO Legislative Series, 1975-Fr. 2

"Arrêté du 29 juillet 1946 portant relèvement des salaires", Journal Officiel de la République française [hereafter JOF], Number 176, 29 et 30 juillet 1946, pp. 6759-6760

"Arrêté du 2 mai 1979 relatif aux prestations de logement des membres du personnel des exploitations minières et assimilées des anciens membres et de leurs ayants droit", JOF, Number 124, 30 mai 1979, pp. 1255-1256

"Décret no 46-1433 du 14 juin 1946 relatif au statut du personnel des exploitations minières et assimilées", JOF, Number 138, 15 juin 1946, pp. 5274-5282

"Décret no 50-1029 du 23 août 1950 portant fixation du salaire national minimum interprofessionnel garanti", JOF, Number 200, 24 août 1950, p. 9062

"Décret no 73-360 du 27 mars 1973 portant application de la loi no 72-1143 du 22 décembre 1972 relative à l'égalité de rémunération contre les hommes et les femmes, et détermination des contraventions différentes aux dispositions de la dite loi", JOF, Number 75, 29 mars 1973, p. 3456

"Loi no 73-680 du 13 juillet 1973 modifiant le code du

travail en ce qui concerne la résiliation du contrat de travail à durée indeterminée", JOF, Number 165, 18 juillet 1973, pp. 7763-7765

"Loi no 75-599 du 10 juillet 1975 portant modification de l'ordonnance no 59-244 du 4 février 1959 relative au statut général des fonctionnaires", JOF, Number 160, 11 juillet 1975, p. 7124

"Loi no 76-617 du 9 juillet 1976, portant diverses mesures de protection sociale de la famille", JOF, Number 160, 10 juillet 1976, pp. 4149-4152

C.5. Ireland

C.5.1. Legislation

"An Act to ensure equal treatment, in relation to certain terms and conditions of employment, between men and women employed on like work", ILO Legislative Series, 1974-Ire. 1

"An Act to make unlawful in relation to employment certain kinds of discrimination on grounds of sex or marital status, to establish a body to be known as the Employment Equality Agency, to amend the Anti-Discrimination (Pay) Act of 1974 and to provide for other matters related to the aforesaid matters", ILO Legislative Series, 1977-Ire. 1

C.5.2. Monographs

J.M.Kelly, The Irish Constitution, 2nd ed., Dublin, Jurist, 1984

C.6. Italy

C.6.1. Legislation

"Act No. 903, respecting equality of treatment as between men and women in questions of employment", ILO Legislative Series, 1977-It. 1

"Act No. 1204, respecting the protection of working mothers", ILO Legislative Series 1971-It. 1

C.6.2. Monographs

Italian Republic. Constitutional administration, Roma, Presidency of the Council of Ministers Information and Copyright Service, 1976

C.7. Luxembourg

C.7.1. Legislation

"Act respecting collective labour agreements, 12 June 1965", ILO Legislative Series, 1965-Lux. 1

"Act respecting equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions", ILO Legislative Series, 1981-Lux. 1

"Arrêté grand-ducal du 22 avril 1963 portant nouvelle fixation et réglementation du salaire social minimum", Mémorial A, Number 22, 27 Avril 1963, pp. 263-264

"Loi du 12 mars 1973 portant réforme du salaire social minimum", Mémorial A, Number 15, 15 Mars 1973, pp. 386-388

"Loi du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'État", Mémorial A, Number 36, 29 Juin 1963, pp. 506-562

"Loi du 24 juin 1970 portant réglementation du contrat de louage de services des ouvriers", Pasinomie Luxembourgeoise, Volume XLII, 1970, pp. 469-473

"Règlement grand-ducal du 10 juillet 1974 relatif à l'égalité de rémunération entre les hommes et les femmes", Mémorial A, Number 55, 12 Juillet 1974, pp. 1275-1276

C.8. The Netherlands

C.8.1. Legislation

"An Act to harmonise Netherlands legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women (Men and Women (Equal Treatment) Act)", ILO Legislative Series, 1980-Neth. 2

"An Act to lay down rules for the entitlement of workers to a wage that is equal to the wage earned

by workers of the other sex for work of equal value", ILO Legislative Series, 1975-Neth. 1

"An Act to make provision for a minimum wage and a minimum leave allowance (Minimum Wage and Minimum Leave Allowance Act), 27 November 1968", ILO Legislative Series, 1968-Neth. 1

"Decree to issue the Extraordinary (Employment Relations) Decree", ILO Legislative Series, 1945-Neth. 1

C.9. United Kingdom

C.9.1. Legislation

"An Act to prevent discrimination as regards terms and conditions of employment between men and women", ILO Legislative Series, 1970-U.K. 1

"An Act to render unlawful certain kinds of sex discrimination and discrimination on the grounds of marriage, and establish a Commission with the function of working towards the elimination of such discrimination and promoting equality of opportunity between men and women generally; and for related purposes", ILO Legislative Series, 1975-U.K. 1

"Trade Union and Labour Relations Act 1974"

D. Secondary sources

D.1. Monographs

Campbell Balfour, Industrial Relations in the Common Market, London, Routledge and Kegan Paul, 1972

Jean Blondel, The Government of France, 2nd ed., London, Methuen, 1974

Sir Alec Cairncross et al, Economic Policy for the European Community. The Way Forward, London, Macmillan for the Institut für Weltwirtschaft an der Universität Kiel, 1974

Peter Coffey ed., Economic Policies of the Common Market, London, Macmillan, 1979

Doreen Collins, The European Communities. The Social Policy of the First Phase, 2 vols., London, Martin Robertson, 1975

Doreen Collins, The Operation of the European Social Fund, London, Croom Helm, 1983

Ali M. El-Agraa ed., The Economics of the European Community, 2nd ed., Oxford, Philip Allan, 1985

Douglas Evans ed., Britain in the EEC, London, Victor Gollancz, 1973

Feminist Anthology Collective ed., No Turning Back. Writings from the Women's Liberation Movement 1975-80, London, Women's Press, 1981

John Fitzmaurice, The European Parliament, Westmead, Farnborough, Saxon House, 1978

Paul J.G. Kapteyn exec. ed., The Social Policy of the European Communities, Leyden, Sijthoff, 1977

Blaise Knapp, L'égalité de rémunération des travailleurs masculins et féminins dans la

Communauté économique européenne et en Suisse, Genève, Centre d'études juridiques européennes et Institut für europäisches und internationales Wirtschafts- und Sozialrecht, St. Gallen, 1968

Gérard Lyon-Caen, Droit social international et européen, 3rd ed., Paris, Dalloz, 1974

Rights of Women Europe, Women's Rights & the EEC. A Guide for Women in the UK, No place, Rights of Women Europe, 1983

Dennis Swann, The Economics of the Common Market, 5th ed., Harmondsworth, Penguin, 1984

Elizabeth Vallance and Elizabeth Davies, Women of Europe. Women MEPs and equality policy, Cambridge, Cambridge University Press, 1986

Helen Wallace, William Wallace and Carole Webb eds., Policy-making in the European Community, 2nd ed., Chichester, John Wiley, 1983

F. Roy Willis, France, Germany and the New Europe 1945-1967, Revised and expanded ed., London, Oxford University Press, 1968

D.2. Periodicals

D.2.1. Periodicals generally consulted

The Economist

The Times

Times Educational Supplement

Times Higher Education Supplement

D.2.2. Periodical articles

Morag Alexander, "The Contribution of the European Economic Community to Equality between Women and Men", Equal Opportunities International, Volume 4, Number 4, 1985, pp. 28-31

David Beck, "Equal Pay and the Implementation of Article 119 of the Treaty of Rome", The Irish Jurist, New Series, Volume XIII, Part 1, Summer 1978, pp. 112-131

R. Colin Beever, "The Consequences for Labour and Social Policy", Political Quarterly, Volume 34, Number 1, January-March 1963, pp. 78-87

John W. Bridge, "National and Transnational Regulation of Equal Pay for Equal Work in England and the European Community", Revue d'Integration Européenne/Journal of European Integration, Volume V, Number 2, Winter 1982, pp. 117-144

J. L. Burban, "Y a-t-il une politique sociale européenne?", Cahiers de Droit Européen, Volume 12, Number 2/3, 1976, pp. 179-203

Noreen Burrows, "The Promotion of Women's Rights by the European Economic Community", Common Market Law Review, Volume 17, Number 2, May 1980, pp. 91-209

Marion Bywater, "Europe's watchdog on equal pay for women bares its teeth", The Times, 20 August 1973, p. 14

Pierre Clair, "L'article 119 du Traité de Rome. Le

principe de l'égalisation des salaires masculins et féminins dans la Communauté économique européenne", Droit Social, Number 3, Mars 1968, pp. 149-156

"Commission Creates "Ad Hoc Group" To Study Problems of Women's Employment", European Industrial Relations Review, Number 5, May 1974, p. 14

Commission of the European Communities, "Discrimination in occupational pension schemes", European Industrial Relations Review, Number 79, August 1980, pp. 32-36

Commission of the European Communities, "Proposed EEC Directive or Regulation on equal treatment for men and women in occupational social security schemes", European Industrial Relations Review, Number 92, September 1981, pp. 27-28

Jennifer Corcoran, "UK Sex Discrimination and the European Court", Equal Opportunities International, Volume 1, Number 1, 1981, pp. 18-21

R. W. Cox, "Social and Labour Policy in the European Economic Community", British Journal of Industrial Relations, Volume 1, Number 1, February 1963, pp. 5-22

Vicki Crankshaw, "The future role of women in the European Community", New Europe, Volume 2, Number 5, Autumn 1974, pp. 49-53

Catherine A. Crisham, "Case No. 43/75, Gabrielle Defrenne v. Société anonyme belge de navigation aérienne with annotation", Common Market Law Review, Volume 14, Number 1, February 1977, pp. 102-118

Catherine A. Crisham, "The Equal Pay Principle:- Some Recent Decisions of the European Court of Justice", Common Market Law Review, Volume 18, Number 4, November 1981, pp. 601-612

"Draft Memorandum Of The European Commission To The Council on the actions to undertake for the purpose of achieving equality between men and women as regards access to employment and vocational training and advancement as well as working conditions", European Industrial Relations Review, Number 11, November 1974, pp. 20-31

Eva Eberhardt, "Women and the EEC- a missed opportunity", Critical Social Policy, Volume 6, Number 1, Summer 1986, pp. 120-128

"EEC on girls' opportunities", Times Educational Supplement, 20 October 1978, p. 2

Evelyn Ellis and Philip Morrell, "Sex Discrimination in Pension Schemes: Has Community Law Changed the Rules?", Industrial Law Journal, Volume 11, Number 1, March 1982, pp. 16-28

"Equal social security benefits by 1985", European Industrial Relations Review, Number 60, January 1979, pp. 11-12

"Equality and occupational social security schemes", European Industrial Relations Review, Number 92, September 1981, pp. 20-21

"European Court Ruling On Extent Of Equal Pay Obligation", Industrial Relations Review and Report, Number 126, April 1976, pp. 7-8

Paul Flather, "EEC adopts common programme", Times Higher Education Supplement, 4 July 1980, p. 6

John Forman, "The equal pay principle under Community law- A Commentary on Article 119 EEC", Legal issues of European integration, Number 1, 1982, pp. 17-36

David Freestone, "Equal Pay in the European Court", Modern Law Review, Volume 45, Number 1, January 1982, pp. 81-87

Rosa Greaves, "Article 119 and its Interpretation by the European Court of Justice", Northern Ireland Legal Quarterly, Volume 33, Number 3, Autumn 1982, pp. 199-214

Madame Gregoire, "Les salaires féminins dans le cadre du Marché Commun", Droit Social, Volume 21, Number 7/8, Juillet-Août 1958, pp. 400-402

Pat Healy, "Government tried to wreck directive, delegates allege", The Times, 27 November 1978, p. 2

Catherine Hoskyns, "Women's Equality and the European Community", Feminist Review, Number 20, Summer 1985, pp. 70-88

Mark Jackson, "French legal challenge freezes £35m action programme", Times Educational Supplement, 1 December 1978, p. 5

David Jobbins, "Education meeting cancelled", The Times, 28 November 1978, p. 7

"June 1976. The Defrenne judgment", European Law Review, Volume 1, Number 4, June 1976, pp. 267-268

Walter S.G. Kohn, "Women in the European Parliament", Parliamentary Affairs, Volume XXXIV, Number 2,

Spring 1981, pp. 210-220

Brigid Laffan, "Policy Implementation in the European Community: The European Social Fund as a Case study", Journal of Common Market Studies, Volume XXI, Number 4, June 1983, pp. 389-408

André Laurent, "La Directive communautaire relative à la mise en œuvre progressive du principe de l'égalité de traitement entre hommes et femmes en matière de sécurité sociale", Droit Social, Number 6, Juin 1979, pp. 243-247

"Less equal than others", The Economist, 17 April 1976, pp. 54 and 63

"New equality targets for the 1980s", European Industrial Relations Review, Number 78, July 1980, pp. 6-7

Richard Plender, "Equal Pay for Men and Women: Two Recent Decisions of the European Court", American Journal of Comparative Law, Volume 30, Number 4, Fall 1982, pp. 627-653

Harry Post, "New Decisions of the European Court on Sex Discrimination", Legal issues of European integration, Number 1, 1981, pp. 77-87

Odile Quentin, "L'égalité entre hommes et femmes: une réalisation spécifique de la politique sociale communautaire", Revue du Marché Commun, Volume 28, Juin 1985, pp. 309-318

"Recommendations Of European Commission's Study Group On Problems Of Women's Employment", European Industrial Relations Review, Number 11, November

1974, pp. 13-15

"Sex discrimination in employment", Journal of Business Law, July 1976, pp. 296-298

Ian Snaith, "Two more equal pay cases from the United Kingdom", European Law Review, Volume 6, Number 3, June 1981, pp. 193-198

J.M. Steiner, "Sex Discrimination under UK and EEC law: Two plus Four equals One", International and Comparative Law Quarterly, Volume 32, Number 2, April 1983, pp. 399-423

Jane P. Sweeney, "Promoting Human Rights Through Regional Organizations: Women's Rights in Western Europe", Human Rights Quarterly, Volume 6, Number 4, November 1984, pp. 491-506

Erika Szyszczak, "Problems of Equal Pay Within the EEC Perspective", New Law Journal, Volume 131, January 8, 1981, pp. 39-42

J.M. Thomson and F. Wooldridge, "Equal Pay, Sex Discrimination and European Community Law", Legal issues of European integration, Number 2, 1980, pp. 1-45

Joseph M. Thomson and Frank Wooldridge, "Sex discrimination, equal pay and article 119 of the Treaty of Rome", Law Quarterly Review, Volume 93, October 1977, pp. 499-506

"Time Holland went Dutch", The Economist, 1 December 1973, pp. 68-70

Roland Van Lint, "L'égalité des rémunérations entre les travailleurs masculins et les travailleurs

féminins pour un même travail", Cahiers de Droit Européen, Volume 5, Number 4, 1969, pp. 375-403

Harriet Warner, "EC Social Policy in Practice: Community Action on behalf of Women and its Impact in the Member States", Journal of Common Market Studies, Volume XXIII, Number 2, December 1984, pp. 141-167

Rory Watson, "Danish objections force second cancellation of Community summit", Times Educational Supplement, 16 November 1979, p. 19

Derrick Wyatt, "Article 119 EEC: definition of "pay"", European Law Review, Volume 1, Number 5, August 1976, pp. 414-420

Derrick Wyatt, "Article 119 EEC: equal pay for female successor to male worker", European Law Review, Volume 5, Number 5, October 1980, pp. 374-380

Derrick Wyatt, "Prospective effect of a holding of direct applicability", European Law Review, Volume 1, Number 5, August 1976, pp. 399-402

APPENDICES

APPENDIX ONE

Article 119 of the Treaty establishing the European Economic Community

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

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

Equal pay without discrimination based on sex means:

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

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

APPENDIX TWO

Directive on Equal Pay

COUNCIL DIRECTIVE

of 10 February 1975

on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

(75/117/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas implementation of the principle that men and

women should receive equal pay contained in Article 119 of the Treaty is an integral part of the establishment and functioning of the common market;

Whereas it is primarily the responsibility of the Member States to ensure the application of this principle by means of appropriate laws, regulations and administrative provisions;

Whereas the Council resolution of 21 January 1974 concerning a social action programme, aimed at making it possible to harmonise living and working conditions while the improvement is being maintained and at achieving a balanced social and economic devlopment of the Community, recognized that priority should be given to action taken on behalf of women as regards access to employment and vocational training and advancement, and as regards working conditions, including pay;

Whereas it is desirable to reinforce the basic laws by standards aimed at facilitating the practical application of the principle of equality in such a way that all employees in the Community can be protected in these matters;

Whereas differences continue to exist in the various Member States despite the efforts made to apply the resolution of the conference of the Member States of

30 December 1961 on equal pay for men and women and whereas, therefore, the national provisions should be approximated as regards application of the principle of equal pay,

HAS ADOPTED THIS DIRECTIVE:

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.

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.

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.

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.

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.

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.

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.

Article 8

1. Member States shall put into force the laws, regulations and administrative provisions necessary in order to comply with this Directive within one year of its notification and shall immediately inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 9

Within two years of the expiry of the one-year period referred to in Article 8, 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.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 10 February 1975.

For the Council

The President

G. FITZGERALD

APPENDIX THREE

Directive on Equal Treatment

COUNCIL DIRECTIVE

of 9 February 1976

on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

(76/207/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the Council, in its resolution of 21 January 1974 concerning a social action programme, included among the priorities action for the purpose of achieving equality between men and women as regards access to employment and vocational training and promotion and as regards working conditions, including pay;

Whereas, with regard to pay, the Council adopted on 10 February 1975 Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;

Whereas Community action to achieve the principle of equal treatment for men and women in respect of access to employment and vocational training and promotion and in respect of other working conditions also appears to be necessary; whereas, equal treatment for male and female workers constitutes one of the objectives of the Community, in so far as the harmonization of living and working conditions while maintaining their improvement are inter alia to be furthered; whereas the Treaty does not confer the necessary specific powers for this purpose;

Whereas the definition and progressive implementation of the principle of equal treatment in matters of social security should be ensured by means of

subsequent instruments,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as 'the principle of equal treatment'.

2. With a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application.

Article 2

1. For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever, on grounds of sex either directly or indirectly by reference in particular to marital or family status.

2. This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor.

3. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

4. This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1).

Article 3

1. Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

2. To this end, Member States shall take the

measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and managment shall be requested to undertake the desired revision.

Article 4

Application of the principle of equal treatment with regard to access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining, means that Member States shall take all necessary measures to ensure

that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) without prejudice to the freedom granted in certain Member States to certain private training establishments, vocational guidance, vocational training, advanced vocational training and retraining shall be accessible on the basis of the same criteria and at the same levels without any discrimination on grounds of sex.

Article 5

1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and managment shall be requested to undertake the desired revision.

Article 6

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment

within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities.

Article 7

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 treatment.

Article 8

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.

Article 9

1. Member States shall put into force the laws, regulations and administrative provisions necessary in order to comply with this Directive within 30 months of its notification and shall immediately inform the Commission thereof.

However, as regards the first part of Article 3(2)(c)

and the first part of Article 5(2)(c), Member States shall carry out a first examination and if necessary a first revision of the laws, regulations and administrative provisions referred to therein within four years of notification of this Directive.

2. Member States shall periodically assess the occupational activities referred to in Article 2(2) in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment.

3. Member States shall also communicate to the Commission the texts of laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 10

Within two years following expiry of the 30-month period laid down in the first subparagraph of Article 9(1), 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.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 9 February 1976.

For the Council

The President

G. THORN

APPENDIX FOUR

Directive on Equal Treatment in Social Security matters

COUNCIL DIRECTIVE

of 19 December 1978

on the progressive implementation of the principle of equal treatment for men and women in matters of social security

(79/7/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Article 1 (2) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application; whereas the Treaty does not confer the specific powers required for this purpose;

Whereas the principle of equal treatment in matters of social security should be implemented in the first place in the statutory schemes which provide protection against the risks of sickness, invalidity, old age, accidents at work, occupational diseases and unemployment, and in social assistance in so far as it is intended to supplement or replace the abovementioned schemes;

Whereas the implementation of the principle of equal treatment in matters of social security does not prejudice the provisions relating to the protection of women on the ground of maternity; whereas, in this respect, Member States may adopt specific provisions for women to remove existing instances of unequal treatment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is the progressive implementation, in the field of social security and other elements of social protection provided for in Article 3, of the principle of equal treatment for men and women in matters of social security, hereinafter referred to as 'the principle of equal treatment'.

Article 2

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

Article 3

1. This Directive shall apply to:

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

- sickness,
- invalidity,

- old age,
- accidents at work and occupational diseases,
- unemployment;

(b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).

2. This Directive shall not apply to the provisions concerning survivors' benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefits due in respect of the risks referred to in paragraph 1 (a).

3. With a view to ensuring implementation of the principle of equal treatment in occupational schemes, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application.

Article 4

1. The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns:

- the scope of the schemes and the conditions of

access thereto,

- the obligation to contribute and the calculation of contributions,

- the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.

2. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity.

Article 5

Member States shall take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

Article 6

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

Article 7

1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:

(a) the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits;

(b) advantages in respect of old-age pension schemes granted to persons who have brought up children; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;

(c) the granting of old-age or invalidity benefit entitlements by virtue of the derived entitlements of a wife;

(d) the granting of increases of long-term invalidity, old-age, accidents at work and occupational disease benefits for a dependent wife;

(e) the consequences of the exercise, before the adoption of this Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme.

2. Member States shall periodically examine matters excluded under paragraph 1 in order to ascertain, in the light of social developments in the matter concerned, whether there is justification for maintaining the exclusions concerned.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within six years of its notification. They shall immediately inform the Commission thereof.

2. Member States shall communicate to the Commission the text of laws, regulations and administrative provisions which they adopt in the field covered by this Directive, including measures adopted pursuant to Article 7 (2).

They shall inform the Commission of their reasons for maintaining any existing provisions on the matters referred to in Article 7 (1) and of the possibilities for reviewing them at a later date.

Article 9

Within seven years of notification of this Directive,

Member States shall forward all information necessary to the Commission to enable it to draw up a report on the application of this Directive for submission to the Council and to propose such further measures as may be required for the implementation of the principle of equal treatment.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1978.

For the Council

The President

H.-D. GENSCHER