Judgment of the Court, Defrenne/Sabena, Case 43/75 (8 April 1975)

Caption: According to the Court of Justice, in its judgment of 8 April 1976, in Case 43/75, Defrenne/Sabena, articles of the treaty which are mandatory apply not only to the action of public authorities but also extend to independent agreements concluded privately or in the sphere of industrial relations, such as individual contracts and collective labour agreements.

Source: Reports of Cases before the Court. 1976. [s.l.].

URL: http://www.cvce.eu/obj/judgment_of_the_court_defrenne_sabena_case_43_75_8_april_1975-en-4b9622eb-b750-4eb2-827f-79f16be9aade.html

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Judgment of the Court 8 April 1976 (1)
Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena (preliminary ruling requested by the Cour du travail Brussels)

'The principle that men and women should receive equal pay for equal work'

Case 43/75

Summary

1. Social policy — Men and women workers — Pay — Equality — Direct discrimination — Individual rights — Protection by national courts
(EEC Treaty, Article 119)

2. Social policy — Men and women workers — Pay — Equality — Direct discrimination — Individual rights — Date of taking effect — Time-limit fixed by the Treaty — Resolution of Member States — Directive of Council — Ineffective to vary time-limit — Amendment of Treaty — Method of effecting
(EEC Treaty, Articles 119 and 236)

3. Social policy — Men and women workers — Pay — Equality — Direct discrimination — Individual rights — Claims — Retroactivity — Legal certainty
(EEC Treaty, Article 119)

4. Social policy — Men and women workers — Pay — Equality — Indirect discrimination — Elimination — Community powers and national powers
(EEC Treaty, Article 119)

1. The principle that men and women should receive equal pay, which is laid down by Article 119, is one of the foundations of the Community. It 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 directly in legislative provisions or collective labour agreements, as well as where men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

2. (a) The application of the principle that men and women should receive equal pay was to have been fully secured by the original Member States as from 1 January 1962, the end of the first stage of the transitional period. Without prejudice to its possible effects as regards encouraging and accelerating the full implementation of Article 119, the Resolution of the Member States of 31 December 1961 was ineffective to make any valid modification of the time-limit fixed by the Treaty. Apart from any specific provisions, the Treaty can only be modified by means of the amendment procedure carried out in accordance with Article 236.

(b) In the absence of transitional provisions, the principle that men and women should receive equal pay has been fully effective in the new Member States since the entry into force of the Accession Treaty, that is, since 1 January 1973. The Council Directive No 75/117 was incapable of diminishing the effect of Article 119 or of modifying its effect in time.

3. Important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to reopen the question of pay as regards the past. 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, except as regards those workers who have already brought legal proceedings or made an equivalent claim.

4. Even in the areas in which Article 119 has no direct effect, that provision cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be achieved by a combination of Community and national provisions.

In Case 43/75

Reference to the Court under Article 177 of the EEC Treaty by the Cour du Travail (Labour Court), Brussels, for a preliminary ruling in the action pending before that court between

GABRIELLE DEFRENNE, former air hostess, residing in Brussels-Jette,

and

SOCIÉTÉ ANONYME BELGE DE NAVIGATION AÉRIENNE SABENA, the registered office of which is at Brussels,

on the interpretation of Article 119 the EEC Treaty,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A.M. Donner, J. Mertens de Wilmars, P. Pescatore and M. Sørensen, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Miss Gabrielle Defrenne was engaged as an air hostess by the Société Anonyme Belge de Navigation Aérienne (hereinafter referred to as Sabena) on 10 December 1951. On 1 October 1963 her employment was confirmed by a new contract of employment which gave her the duties of ‘Cabin Steward and Air Hostess — Principal Cabin Attendant’.

Miss Defrenne gave up her duties on 15 February 1968 in pursuance of the sixth paragraph of Article 5 of the contract of employment entered into by air crew employed by Sabena, which stated that contracts held by women members of the crew shall terminate on the day on which the employee in question reaches the age of 40 years.

When Miss Defrenne left she received an allowance on termination of service.

On 9 February 1970 Miss Defrenne brought an action before the Conseil d’État of Belgium for the annulment of the Royal Decree of 3 November 1969 which laid down special rules governing the acquisation of the right to a pension by air crew in civil aviation.

This action gave rise, following a request for a preliminary ruling, to a judgment of the Court of Justice of 25 May 1971 (Case 80/70 [1971] ECR 445). The Conseil d’État dismissed the application by a judgment of 10 December 1971.

Miss Defrenne had previously brought an action before the Tribunal du travail of Brussels on 13 March 1968 for compensation for the loss she had suffered in terms of salary, allowance on termination of service and pension as a result of the fact that air hostesses and male members of the air crew performing identical duties did not receive equal pay.

In a judgment given on 17 December 1970 the Tribunal du travail of Brussels dismissed all Miss Defrenne's claims as unfounded.

On 11 January 1971 Miss Defrenne appealed from this judgment to the Cour du Travail of Brussels.

In a judgment given on 23 April 1975 the Fourth Chamber B of the Cour du travail of Brussels upheld the

judgment at first instance on the second and third heads of claim.

As regards the first head of claim (arrears of salary) the court decided, in pursuance of Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

1. Does 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 does it, therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance, and if so as from what date?

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

The judgment of the Cour du travail of Brussels was received at the Court Registry on 2 May 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 14 July 1975 by the Commission of the European Communities and Miss Defrenne, the appellant in the main action, on 21 July by the Government of the United Kingdom of Great Britain and Northern Ireland and on 25 July by the Government of Ireland.

II — Written observations submitted to the Court

A — The first question

Miss Defrenne, the appellant in the main action, considers that an individual right to equal pay vests in her directly under Article 119 of the EEC Treaty, independently of Article 14 of Royal Decree No 40 of 24 October 1967 on the employment of women, which provides that ‘any woman worker may institute proceedings before the relevant court for the application of the principle that men and women should receive equal pay for equal work’.

(a) Article 119 provides that all the Member States shall ensure the application of the general principle of non-discrimination between workers on ground of sex. It involves a duty to bring about a specific result which must be complied with during the first stage of the transitional period and subsequently maintained.

It does not require, but does not rule out, the intervention of either the Community or national authorities for the purpose of implementing the principle of equal pay for equal work.

(b) The terms of Article 119 are clear and simple. It stipulates a duty to take action, the significance of which is unambiguous.

(c) The Member States are bound by the obligation to respect the principle of equal, pay, the fact that they are entitled to adopt provisions of a legal, economic or administrative nature in order to implement this obligation in no way means that nationals and, in particular, women workers have to wait for the State to whose jurisdiction they are subject to take an initiative in this direction before they are able to claim that Article 119 be applied in their favour. The criteria laid down by the case-law of the Court of Justice show that Article 119 is capable of having a direct effect on relationships between the State and women workers.

(d) As regards the terms used in Article 119, it must be remembered that the Court of Justice has ruled that the fact that it is the Member States which are designated as subject to duties does not imply that their

citizens cannot benefit therefrom.

The nature of the obligation is unequivocal: the principle of equal pay is quite clear and has only one meaning. The Member States have no discretion in this respect. It also represents the application of a general principle of equality which forms part of a philosophy common to the Member States.

As regards the effectiveness of Article 119 it must be remembered that this Article is only effective to the extent to which the principle of equal pay applies to citizens of the Member States. Women workers have a clear interest in invoking it and it represents one of the numerous applications of the principle of equal treatment on which the EEC Treaty is founded.

Article 119 necessarily has a direct effect. National courts are obliged to apply it in the cases before them in the same way as the executive is bound to respect it, in particular in direct administrative action.

Thus, in the light of the criteria laid down by the case-law of the Court of Justice, Article 119 must be regarded as having effect. It must therefore be complied with by the national courts in the actions before them and it gives the nationals individual rights which they may invoke before the competent courts or tribunals.

(e) The obligation imposed on the Member States to apply the principle of equal pay has been in existence since the beginning of the first stage. It constitutes an obligation to bring about a specific result: the terms of Article 119 are too precise for it to be possible to assign another meaning to it. The principle of equal pay thus entered the positive law of Belgium with the ratification of the Treaty by the Parliament and from this date it must be upheld by the national courts.

The Resolution of the Conference of the Member States of 30 December 1961, which introduces a timetable, ending on 31 December 1964, for equalizing the pay of men and women workers, cannot alter this conclusion. A political and diplomatic decision taken between the States, drawn up at a meeting of the States and not provided for by the Treaty, cannot make any amendment to a provision of the Treaty.

The *Government of the United Kingdom* considers that the first question must be settled in accordance with criteria evolved by the Court for the purpose of determining whether a provision of the Treaty is directly applicable so as to confer on individuals rights enforceable by them in the national courts.

(a) The obligation imposed on the Member States by Article 119 does not satisfy the criteria of clarity and precision evolved by the Court.

Article 119 does not contain a comprehensive definition of the principle of equal pay for equal work. The very use of the word ‘principle’ indicates that it is concerned with a concept of a very general nature. It is for this reason that Article 1 of Council Directive No 75/117 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 (OJ L 45, p. 19) includes a definition of the principle, thereby supplying some clarity and precision which was considered to be lacking in the text of the Article itself.

The concept of pay and, in particular, that of ‘any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer’, is capable of very wide interpretation.

The third paragraph of Article 119 deals with ‘equal pay without discrimination based on sex’, a phrase which is not used in the general statement of the principle in the first paragraph and which deals only with the cases of pay for the same work at piece rates and pay for the same job at time rates. The further clarification provided in Article 1 of Directive No 75/117 is therefore necessary.

This directive left it to each Member State to work out, by means of national legislation, the practical details of implementing the principle. This issue can only be determined by some form of, legislative, as distinct

from judicial, process.

In addition, Article 119 does not make it clear whether the comparison between the pay of men and women workers is to made within the context of a particular employment or across the whole range of a particular trade. Similarly, it does not settle the question whether the special benefits received by women workers from their employers by reason of their employment, in relation to such matters as pregnancy, are to be excluded in operating the principle of equal pay, or whether in some circumstances such a benefit may fall within the ambit of 'any other consideration'.

(b) It is undeniable that Article 119 is an unconditional provision which is not subject to any limitation within the meaning of the second criterion evolved by the Court.

(c) The need for legislative action on the part of the Member States appears from the formulation of the obligation imposed on them by Article 119 in the form of a general statement of principle. Directive No 75/117 acknowledged this need; in Article 8 it requires Member States to put into force the legislation necessary to comply with the directive within one year of its notification and thus to ensure the application of the general principle contained in Article 119. In the absence of such national implementing legislation an obligation of the kind contained in Article 119 is incomplete and cannot properly be completed by interpretative judicial decisions.

(d) The reply to the first question must therefore be in the negative.

(e) In this context it is necessary to bear in mind that the attribution of direct effects to Article 119 may have harmful consequence on the satisfactory operation of the law as a whole. It risks creating uncertainty or confusion in the national legal orders and bringing the national and the Community orders into conflict. No matter how faithfully the Member State has tried to apply a general principle such as that contained in Article 119, there is always room for argument whether the national legislation conforms precisely with the principle. The uncertainty of the law can, moreover, only be dispelled by a ruling of the Court of Justice and, in the meanwhile, individuals will have arranged their affairs in accordance with their national law. Furthermore, a provision of the Treaty which is declared to be directly applicable has had direct effects in all the Member States ever since its entry into force. The national law of each Member State therefore runs the risk of being called in question retroactively. The retroactive alteration of the law conflicts with certain general principles which should also form part of the legal order of the Community.

(f) The consequences which the retroactive attribution of direct effects to Article 119 could have on the position of employers may be so great as to affect the economies of the Member States. Certain agreements, dating back to 1 January 1973 or even, as regards the original Member States, to 1 January 1962, could be thrown into doubt; certain relationships of long standing would have to be readjusted. In the United Kingdom the Equal Pay Act 1970 gives employers until the end of 1975 to phase in equal pay. A decision attributing direct applicability to Article 119 could throw the social and economic situation in the United Kingdom into confusion.

(g) In any event, rights derived from Article 119 can only be asserted in relations between individuals and Member States and not in relations between individuals *inter se*. If Article 119 were capable of being invoked by one individual against another, its direct effect would be to impose obligations on individuals in consequence of the default of a Member States. Such a result would not only contradict the wording of the Treaty obligation, which is addressed to the Member States, but would also be inconsistent with normal principles of equity.

The *Government of Ireland* maintains that Article 119 does not introduce directly into the national law of each Member State the principle that men and women are to receive equal pay for equal work, so that, independently of any provision of national law, employees are entitled to bring legal proceedings for the enforcement of this principle against their employers before the national courts or tribunals.

(a) The text of Article 119 itself does not permit the construction that it produces a direct effect in domestic

law so as to create rights and obligations between employers and employees. If the authors of the Treaty had wished it to be otherwise, Article 119 should not have been addressed to the Member States. It would have been sufficient to provide that as from the end of the first stage, men and women in the Community should receive equal pay for equal work and, in so far as Member States had any obligation under the Article, it was merely an implied obligation to take the necessary steps to support its implementation.

(b) An analysis of the decision of the Court of Justice in the matter of direct applicability shows that, essentially, the Court has held those provisions of the EEC Treaty to be directly applicable whose aim is to ensure the attainment of the 'fundamental freedoms' provided for by the Treaty, in particular the free movement of goods, persons and services, by means of the abolition of restrictions or the prohibition of fresh restrictions. Their object is to benefit the Community as a whole, rather than a particular class of persons. Their realization is closely linked to the basic tasks and activities of the Community, as set out in Articles 2 and 3 as amplified in Article 7 of the Treaty. In no instance do they involve direct intervention in contractual relationships between individual persons.

By contrast, the legal effect of the interpretation of Article 119 as a provision which is directly applicable between persons would be in the field of private law, particularly in the law of contract arising from the employer/employee relationship, rather than in public law. There is thus a fundamental distinction to be drawn between Article 119 and the other provisions which the Court has held to be directly applicable.

Unlike the latter, Article 119 is pursuing a social objective which is limited to a specified class of persons, that is, women workers. However desirable it may be, this objective must be regarded in the light of, and subject to, the basic tasks and activities of the Community as set out in Articles 2 and 3 of the Treaty.

As Article 119 is in an essentially different category from that of the other articles which the Court of Justice has held to be directly applicable the case-law of this Court is of no assistance in answering the first question.

(c) Council Directive No 75/117, especially Articles 6 and 8, confirm that the implementation of Article 119 requires special, and different, measures in different Member States, and also a period of adjustment, particularly in the case of the new Member States. The possibility of the direct applicability of Article 119 as between employer and employee has been rejected by the authors of the EEC Treaty and the Accession Treaty. Article 119 was deliberately worded in such a way as to avoid direct effects.

(d) This view is confirmed by the consequences which would follow from a contrary interpretation. The direct applicability of Article 119 as from 1 January 1973, the date of its accession to the Communities, would certainly involve for Ireland a financial burden which many employers would be unable to bear. For the Irish State as an employer the burden of meeting claims by female state employees for 'equal pay' from the date of accession would exceed the entire allocation to Ireland from the Community's Regional Fund from the period 1975 to 1977.

(e) It must be remembered that the Anti-discrimination (Pay) Act 1974, which establishes in the law of Ireland the application of the principle that men and women shall receive equal pay for equal work came into force on 31 December 1975.

The *Commission of the European Communities* considers that a distinction must be made between, first immediate effect of Article 119 and, secondly, its direct application.

(a) Apart from any discretion as regards the direct application of Article 119, it cannot be regarded as having immediate effect from the ratification of the EEC Treaty by the Member States: the text of the Article itself gives the Member States a period of time, that is, the first stage of the transitional period, to carry out the undertaking they have accepted. The Member States thus had until 1 January 1962 to implement the principle of equal pay. Furthermore, the Resolution of the Conference of the Member States of 30 December 1961 on the equalization of rates of pay for men and women workers extended until 31 December 1964 the time allowed for the removal of all discrimination between the pay for men and women workers.

(b) The EEC Treaty contains two categories of provisions, first, those which create individual rights which the national courts must take into account and, secondly, those which simply impose obligations on the Member States. In order to fall within the first category a provision must be complete in itself, subject to no reservation and unambiguous, and require no further action for its implementation in the form of national legislative provisions. The application of these criteria to Article 119 shows that it falls within the second category and is not directly applicable. It is clear from the very wording of the article that the Member States are required to take action in order to implement the principle of equal pay. Both the recommendation of the Commission of 20 July 1960 and the Resolution of the Conference of the Member States of 30 December 1961 must be interpreted from this point of view.

Article 119 imposes two obligations on Member States: the first — which had to be discharged by the end of the first stage of the transitional period although the time was subsequently extended to 31 December 1964 by the Resolution of 30 December 1961 — is to achieve the application of the principle of equal pay; the second — which comes into existence when the first obligation is discharged — is to maintain the application of this principle, that is, to prevent any return to a situation of inequality.

However, Article 119 is not directly applicable only in relations between individual persons; in relations between Member States and individual persons this Article may be regarded as directly applicable on the expiry of the time allowed to the State for the implementation of Article 119.

The main action concerns relations between individual persons; it is therefore possible to adhere to traditional legal doctrine. The general criteria evolved by the recent case-law of the Court of Justice in questions of direct applicability do not alter this finding and do not allow Article 119 to be regarded as having direct effects in relations between individuals.

Moreover, an important distinction must be drawn between Article 48 and 52, which have been held by the Court of Justice to be directly applicable, and Article 119. Questions of freedom of movement or the right of establishment involve the direct liability of the State, which must treat the nationals of other Member States in the same way as it treats its own nationals. On the other hand, in questions concerning equal rates of pay between men and women arising in relation between individual persons the direct liability of the State is not incurred in the absence of any comparable scheme of reference to legislative provisions actually applied to men. Article 119 does not clearly and unconditionally prohibit the Member States to refrain from taking certain action, but rather imposes on them the obligation to ensure the application of a principle; in other words, it does not concern the abrogation of a provision, but the adoption of one. As regards relations between individual persons, therefore Article 119 cannot be regarded as directly applicable in the internal law of each Member State, or as creating for those subject to the law rights which they may assert before the courts. On the other hand, it becomes directly applicable in relations between Member States and individual persons upon the expiry of the period allowed to the States for its implementation.

B — The second question

Miss Defrenne complains that the second question is unclear.

(a) If it was merely an alternative to the first question its admissibility would be, to say the least, doubtful: it does not raise any real question of interpretation.

(b) If, on the other hand, it was raised in the light of Directive No 75/117, it must be noted that in essence this directive constitutes a disguised warning to the Member States; it introduces no new rule of positive Community law. As regards the principle of equal pay, that law is entirely contained in Article 119. The directive merely sets out certain details concerning a previously existing right which is clearly and precisely defined in the Treaty.

The principles laid down by the Court of Justice in its judgment of 21 June 1974 (Case 2/74 *Jean Reyners v*

Belgian State [1974] ECR 631) are also applicable to the matters governed by Article 119. The directive merely represents one of the possible methods of implementing this provision; it is not indispensable to its application. The direct effect of Article 119 is itself the most important means of its application.

Therefore, to the extent to which a reply to the second question is required it must be negative on two counts.

The *Government of the United Kingdom* considers that the only Community text applicable in this instance is Directive No 75/117. This directive cannot have the effect of making Article 119 directly applicable.

The directive emphasizes that it is primarily the responsibility of the Member States to ensure the application of the principle of equal pay by means of appropriate laws, regulations and administrative provisions, and that the continuing differences in the various Member States necessitate the approximation of the national provisions.

The reply to the second question must therefore be that the national legislature is alone competent in this matter.

The *Government of Ireland* considers that the Council was competent to adopt directive No 75/117. This implies that, within one year of notification of this directive, the 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 and to comply with the other provisions of the directive. Article 119 cannot be relied upon to create rights in favour of employees against their employers until the necessary measures have been taken by Member States to put the directive into effect.

The reply to the second question must therefore be that the national legislatures are alone competent to confer upon employees the legal right to enforce against their employers observance of the principle that men and women must receive equal pay for equal work.

The *Commission* considers that the second question only arises if a negative reply is given to the first one. It is only necessary to give a negative reply to the first question as regards relations between individual persons; thus the second question only arises in this respect.

(a) It must be noted first of all that the text of Article 119 does not subject the implementation of the principle of equal pay to the subsequent adoption of any measure of secondary legislation by the Community institutions. The reply to the first part of the question must therefore be in the negative.

(b) As Article 119 is not directly applicable in relations between individual persons, and as the obligations arising there under are imposed upon the Member States, the competence of the national legislature to introduce this provision into internal law is undeniable. This competence is exclusive but not discretionary: as regards both the result to be achieved and the time-limits for achieving it, the independence of the national legislature is limited both by Article 119 itself and by Directive No 75/117.

III — Replies to question raised by the Court

Following the submission of the written observations and after hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preparatory inquiry.

It did, however, request the Government of the United Kingdom, the Government of Ireland and the Commission to give written replies to several questions before the opening of the oral procedure.

As regards the repercussions of attributing direct effects to Article 119 on the financial stability of undertakings, the *Government of the United Kingdom* maintains that the cumulative effects of the resulting increases in labour costs would seriously aggravate the problems of controlling inflation. The financial

implications vary in terms of the proportion of women doing ‘equal work’ with men, the difference between men's rates and women's rates for equal work, liquidity problems and the proportion of labour costs to total costs. The footwear and food industries, laundries, retail distribution and the clothing industry have a particularly high proportion of women doing equal work. The highest differential between men's rates and women's rates exist in the textile, clothing, footwear, biscuit manufacturing and engineering industries. Many firms, in various sectors, have serious cash-flow problems. The proportion of labour costs to total costs is particularly high in the shipbuilding, instrument engineering, clothing, paper and printing and pottery industries. The clothing industry is thus running a particularly high potential risk. Discrimination in rates of pay between men and women is not limited to any particular type of occupation. The overall increase in labour costs as a result of introducing equal pay is likely to be of the order of 35 % of the national wages and salaries bill, which was intended to be spread over 5 years, ending in 1975.

As regards the Resolution of the Conference of the Member States of 30 December 1961, this does not constitute a decision or agreement within the meaning of Article 3 (1) of the Act of Accession. In so far as the resolution may have been operative on 1 January 1973 it falls within the provisions of Article 3 (3) of that Act. However, there is doubt about whether or how far the original Member States regarded it as continuing to be operative on that date, in view of the fact that they had not implemented it in full. It would of course have been impossible for the United Kingdom in 1973 to give effect literally to the resolution, since it recommended action to be taken not later than the end of 1964, action which the original Member States themselves had not taken. Since 1973 the United Kingdom has participated fully in discussions within the framework of the Community institutions about the implementation of Article 119 and these discussions have resulted in the adoption of Council Directive No 75/117 with which the United Kingdom is complying fully.

The *Government of Ireland* maintains that to attribute direct effects to Article 119 retroactively to 1 January 1973 would be to impose a burden on the Irish economy which it is not in a position to support. The attribution of direct effects in even a limited area, that is, only in relations between individual persons and Member States, would involve extremely heavy financial obligations, As regards the private sector it appears that these obligations cannot be directly estimated. They must, however, affect privately-owned companies and small firms, the activities of the textile, clothing and footwear, food processing, light engineering and paper and printing industries in particular, as well as sections of the retail trade. In many of the sectors referred to the majority of the work force would have a claim for equal pay. The average figure for the order of increase in wage and salary bills involved in the immediate implementation of equal pay for men and women in manufacturing industry would be 5 %. It would be higher in the most sensitive sectors. Article 6 of the EEC Treaty imposes a duty on all the institutions of the Community, including the Court of Justice, to take care not to prejudice the internal financial stability of the Member States.

As regards the question of direct effect, it must be noted that neither concept of ‘equal pay’ nor that of ‘equal work’ is sufficiently precise for Article 119 to be regarded as directly applicable. The fact that this provision may be applied in the public sector in no way affects its interpretation. It cannot be clear and precise in one sector and not in another. Furthermore, such a difference would lead to flagrant discrimination in favour of the public sector. The employees in the public sector would hold their right directly under Article 119, whilst those in the private sector would hold theirs under the national implementing rules. In their capacity as employers the Member States are not subject to any more compelling obligations than the employers in the private sector.

As regards the obligation which may arise for Ireland from the Resolution of 30 December 1961 and the Act of Accession, these do not form the subject of the present proceedings. In any event, the resolution in question became inoperative at the date of accession and any obligation which could have arisen was superseded by Directive No 75/117.

In reply to the various questions raised by the Court, the *Commission* has submitted the following principal observations.

(a) By its nature and content the principle that men and women should receive equal pay for equal work

cannot be pleaded before the courts, at least as regards workers in the private sector. The concepts of pay and equal work can be appreciated easily in the public sector, where wages are based on a particular type of classification given to a job (grades, classes, steps) and are generally fixed by law, independently of the sex of the person taking the post; this does not apply at all in the private sector.

The concept of the 'ordinary basic or minimum wage or salary' in Article 119 is quite clear. Its effects, however, give rise to numerous difficulties which are linked, first to the independence of the two sides in wage-bargaining and their freedom of negotiation as regards wages and, secondly, to the diversity of the traditional methods of wage formation and the widely differing systems of job classification. Article 119 also left open the question whether or not the factors affecting the cost of employing women or the output of women workers may be taken into consideration.

The concept of 'any other consideration ... which the worker receives, directly, or indirectly, in respect of his employment from his employer' is even more difficult to define, as the recent development of the concept of 'wages' has been characterized by the growing complexity of the benefits which a wage-earner receives in respect of his employment and since contemporary law also takes account of the social and economic aspects of pay of employees in the sense of a 'social wage'.

The concept of 'equal work' in the private sector is still more difficult to define and does not enable comparisons to be made easily. In particular, it raises the question whether the application of the principle of equal pay must be limited to 'joint duties' alone, that is, work which is done at the same time, in the same undertaking and under the same conditions by both men and women or whether, interpreting Article 119 more widely, the wage rates fixed must attach to the duties or the post in question and be independent not only of the person (man or woman) performing those duties, but also (for work at time rates) of the outcome of the work done.

In its recommendation of 20 July 1960 the Commission specified that where a compulsory minimum wage exists which is fixed by law or agreement, it must be the same for men and women workers, and that if the wages are fixed according to some system of job classification, the categories must be the same for men and women workers and the criteria of classification must apply in the same way to both men and women. However, even under this wide concept, which was clarified by the Resolution of 30 December 1961, the principle contained in Article 119 does not enable a woman worker who is doing certain work in an undertaking in a particular branch of activity in a certain area of a particular country to claim the same wage as a man doing perhaps the same or equivalent work or work of equal value in another undertaking in another branch of activity in another region or another country. This highest form of wage equality ('an equal wage for equal work') does not even exist as between men.

A realistic and quite satisfactory position is that resulting from Articles 3 and 4 of the Netherlands Law of 20 March 1975 which is, moreover, influenced by Article 1 of Directive No 75/117, according to which:

The principle of equal pay for men and women ... 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, such system 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.

(b) Article 119 became directly applicable in relations between the State and individual persons upon the expiry of the time which the Member States were allowed for implementing it. It comprises all the elements of substantive law required for its application by courts or tribunals, as regards the public service, since the problems of interpreting and comparing the concepts of pay and of same work do not arise in this sector.

As regards public and semi-public undertakings the criterion to be applied in considering the direct applicability of Article 119 in the contest of relations between the State and individual persons is the degree

of intervention by the public authorities in the management of these undertakings and, more particularly, in fixing their wages policy. It is particularly important to examine whether wage agreements concluded in the particular undertaking or branch of the economy in question are freely negotiated and implemented, whether, although freely negotiated, such agreement can only be applied after being authorized, approved or ratified by the supervising public authorities or whether the workers in the undertakings in question are subject to staff regulations similar to those applying to civil servants.

(c) The Resolution of the Conference of the Member States of 30 December 1961 could not validly alter a time-limit laid down by the Treaty without the implementation of the procedure prescribed for in the Treaty.

The circumstances which led the Member States to adopt this Resolution show that it involves a compromise which, by establishing a new timetable for the gradual implementation of the principle of wage equality, allows both progress to the second stage and the application of Article 119 in its wide sense.

(d) As regards the introduction of the right to equal pay by national laws or regulations, the position in the various Member States is as follows:

— In Germany Article 3 of the Basic Law states that ‘men and women shall have equal rights’ and that ‘no person may be favoured or disfavoured on grounds of sex’. The principle of prohibition on discrimination was incorporated in the new Law on the organization of undertakings which entered into force on 19 January 1972, as well as in the Law of 5 August 1955 on staff representation.

— In Italy Article 37 of the Constitution states that ‘a working woman shall enjoy the same rights and receive the same wages, for the same work, as a working man’. This provision is the source of an individual right to equal pay and may be pleaded before the courts. Specific provisions exist concerning the public service, women manual workers employed by the State and certain categories of employment.

— In Belgium Article 14 of Royal Decree No 40 of 24 October 1967, which was replaced by the Law of 16 March 1971, provides that ‘in accordance with Article 119 of the EEC Treaty... any woman worker may institute proceedings before the relevant court for the application of the principle that men and women should receive equal pay for equal work’. A Law of 5 December 1968 gave the Minister for Labour and Employment the power to refuse to enforce a discriminatory collective agreement.

— In France the preamble to the Constitution of 1946, confirmed by that of the Constitution of 1958, states in general terms the principle that ‘the law shall guarantee women equal rights with men in all spheres’. In particular, under the Law of 13 July 1971, those collective agreements whose area of application may be extended must contain clauses laying down detailed rules for the application of the principle ‘equal pay for equal work’. The Law of 22 December 1972 on the principle of equal pay between men and women for equal work or work of equal value provides a precise legal basis for actions which may be brought before the competent courts or tribunals, enables penalties to be fixed for any infringements and declares that any provisions of a contract of employment, collective agreement, wage agreement, wage settlement or scale which are contrary to the principle of equality shall be void. A Decree of the Conseil d’État of 27 March 1973 lays down the procedure to be followed in cases of dispute.

— In Luxembourg Article 4 of the Law of 12 June 1965 provides that any collective labour agreement must lay down detailed rules for the application of the principle of equal pay. The Law of 22 June 1963 fixing the scale of remuneration of Government servants confirms the principles of non-discrimination in the public sector. The Law of 12 March 1973 concerning the adjustment of the minimum social wage incorporated this principle and it was given general application by the Grand-Ducal Regulation of 10 July 1974 on equal pay for men and women.

— In the Netherlands no general provision existed in the form of a law or regulation before the enactment of the Law of 20 March 1975 on equal pay for men and women. Until the entry into force of this Law a right to equal pay could only arise out of a collective agreement or individual contract of employment.

— In Denmark the principle of equal pay for men and women has been recognized in the public sector since the enactment of a Law of 1921. Unequal treatment as regards the head of household allowance was abolished by a Law of 7 June 1958.

In the private sector wage rates for men and women fixed by agreement have been brought much closer together during the last ten years by collective agreements concluded in most sectors and branches of activity. The principle of equal pay was recognized and put into immediate effect in both the private and public sectors following the conclusion of the national agreement in April 1973.

— In Ireland wage scales which differ according to the marital status and sex of the worker exist to the detriment of women workers, particularly in the public service and teaching.

In the private sector wage discrimination appears very widely in the collective agreements concluded in all branches of activity.

On 25 June 1974 the Parliament enacted the Anti-discrimination (Pay) Act 1974, which entered into force on 31 December 1975. Article 2 of this Act states that where a woman is employed by an employer in a certain place of work for duties which are the same as those carried out by a man in the same place of work, she is entitled to the same pay as the man.

— In the United Kingdom most of the collective agreements made in the public sector have removed wage discrimination.

In the private sector the Equal Pay Act 1970 provided for the abolition of all discrimination in collective agreements by the end of 1975. It gives the right to equal pay to women employed on work of the same or a broadly similar nature as men, as well as to women employed on work which, although different from that carried out by men, has been given an ‘equal value’ under a system of classification of duties (‘job evaluation’). The Act also prohibits all discrimination in collective agreements, wage regulation decisions and the arrangements adopted by employers for fixing salaries. From the end of 1975 any woman who considers herself wronged shall be entitled to bring proceedings before the competent courts or tribunals for enforcement of her rights, although she cannot claim arrears of remuneration.

(e) The very words used in Article 119 show that the obligations which derive thereunder are binding upon Member States and that it is the national legislature which is competent to introduce this provision into internal law.

This in no way means that the Commission regards itself as under no duty to implement Article 169 in relation to a Member State which fails to comply with the obligation imposed on it by Article 119.

The fact that the power to implement Article 119 lies with the Member States does not remove the need for the approximation of provisions laid down by law, regulation or administrative action, so as to ensure the coherent application of the principle of equal pay throughout the whole of the enlarged Community. The Council is therefore competent under Article 100 of the Treaty to adopt a directive on the approximation of the laws of the Member States, whose disparity directly affects the establishment and working of the Common Market. This is the justification for Directive No 75/117.

This directive covers not only equal pay for equal work but also the provisions of Convention No 100 of the International Labour Organization. In the Commission's view, the concept of ‘work of equal value’ is wider than the actual wording of Article 119. The directive also deals with the problem of job classification, by specifying that where such a system is used, it must be based on the same criteria for both men and women. Finally, it imposes obligations on the Member States of informing and protecting workers which are not expressly set out in Article 119. It therefore appeared expedient to allow the Member States a period of one year in which to take the measures necessary to comply with the directive.

Miss Defrenne makes the following comments on the replies given to the Court's questions by the

Commission and the Governments of the United Kingdom and Ireland.

(a) The concept of pay is also to be found in Article 48 of the EEC Treaty. It is difficult to understand why this concept, which is stated and whose limits are defined in Article 119, causes such conceptual problems in the case of women workers but not in the case of migrant workers.

The concept of 'equal work' raises no problem in the present case. It is established that the work of an air hostess is identical to that of a cabin steward.

(b) The strictness of the Commission's legal reasoning appears questionable: the distinction which it draws between the private sector and the public sector results in a confusion in law between a fact and proof of that fact.

In addition, this distinction gives rise to fresh discrimination, since women workers in the public sector benefit from the direct effect of Article 119, whereas those in the private sector are deprived of this guarantee until such time as the Member States have introduced the principle of equal pay into their internal legal systems.

(c) It is necessary to draw the legal consequences from the fact that the Resolution of the Conference of the Member States of 30 December 1961 was unable to make a valid amendment to the Treaty. The Resolution did not simply claim to modify the stages provided for by Article 8 of the Treaty; were it regarded as valid, it would have the further consequence of abolishing the review machinery and procedures for imposing penalties provided for by the Treaty.

(d) As regards the implementing measures adopted by the Member States in order to bring Article 119 into force, provisions laid down by the constitution, law or administrative action cannot be regarded as such measures. In Belgium Article 14 of Royal Decree No 40 of 24 October 1967 and the collective agreement negotiated within the National Labour Council may alone be regarded, on a general level, as measures implementing Article 119.

(e) As regards the initiatives taken by the Commission, the question arises why it used its powers under Articles 155 and 169 so timidly and after such delay.

(f) In assessing the burdens which the implementation of the principle of equal pay represents for Ireland and Great Britain it is also necessary to consider the balance to be maintained as regards a country such as Denmark, where the principle has been in force for longer and its application has been taken much further.

The figures for the cost of attributing direct effect to Article 119 retroactively must be treated with caution. They are hiding the real problem. The example of Denmark shows that it is not the employment of women who are better paid which endangers the economy.

(g) The Court of Justice may find in its own case-law the means of establishing the elements of a clear and simple solution which would restore legal certainty for the citizens of the Community.

IV — Oral procedure

Miss Defrenne, the appellant in the main action, represented by Marie-Therese Cuvelliez, Advocate of the Brussels Bar, Sabena S.A., the respondent in the main action, represented by Philippe de Keyser, Advocate of the Brussels Bar, the Government of the United Kingdom, represented by Peter Denys Scott, the Government of Ireland, represented by Liam J. Lysaght, Chief State Solicitor, and the Commission, represented by its Legal Adviser, Marie-Josee Jonczy, presented oral argument at the hearing on 3 December 1975.

At that hearing *Sabena S.A.* maintained that Article 119 clearly constitutes an undertaking on the part of each of the Member States, but does not on its own create direct rights and obligations for the nationals,

employers and workers of these States. This is shown both by the text of Article 119 and from the fact that it, first, allows the Member States a period of time, subsequently extended to 31 December 1964, to ensure the application of the principle of equal pay between men and women and, secondly, obliges them 'subsequently to maintain' such equality. This obligation would have no meaning if, on its own and without reference to any national provision, Article 119 conferred directly on workers the right to enforce the application of the principle of equality, if necessary by means of an action before the competent court or tribunal. In order to comply with the obligation imposed on it by Article 119 the Belgian State had necessarily to introduce into its internal law a legal provision implementing the principle of equal pay; this was one of the aims of Royal Decree No 40 of 24 October 1967.

As regards the legal status of Sabena, it must be noted that it is a limited company constituted under private law and governed by the Belgian Law on commercial companies. It has obtained a licence to operate a public service and the great majority of the shares are held by the Belgian State. Nevertheless, it remains a company constituted under private law and relations between the company and its staff are governed by private law contracts rather than by staff regulations which are adopted unilaterally.

The *Advocate-General* delivered his opinion at the hearing on 10 March 1976.

Law

1 By a judgment of 23 April 1975, received at the Court Registry on 2 May 1975, the Cour du travail, Brussels, referred to the Court under Article 177 of the EEC Treaty two questions concerning the effect and implementation of Article 119 of the Treaty regarding the principle that men and women should receive equal pay for equal work.

2 These questions arose within the context of an action between an air hostess and her employer, Sabena S.A., concerning compensation claimed by the applicant in the main action on the ground that, between 15 February 1963 and 1 February 1966, she suffered as a female worker discrimination in terms of pay as compared with male colleagues who were doing the same work as 'cabin steward'.

3 According to the judgment containing the reference, the parties agree that the work of an air hostess is identical to that of a cabin steward and in these circumstances the existence of discrimination in pay to the detriment of the air hostess during the period in question is not disputed.

The first question (direct effect of Article 119)

4 The first question asks whether Article 119 of the Treaty introduces 'directly into the national law of each Member State of the European Community the principle that men and women should receive equal pay for equal work and does it therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance?'

5 If the answer to this question is in the affirmative, the question further enquires as from what date this effect must be recognized.

6 The reply to the final part of the first question will therefore be given with the reply to the second question.

7 The question of the direct effect of Article 119 must be considered in the light of the nature of the principle of equal pay, the aim of this provision and its place in the scheme of the Treaty.

8 Article 119 pursues a double aim.

9 First, in the light of the different stages of the development of social legislation in the various Member States, the aim of Article 119 is to avoid a situation in which undertakings established in States which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community

competition as compared with undertakings established in States which have not yet eliminated discrimination against women workers as regards pay.

10 Secondly, this provision forms part of the social objectives of the Community, which is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of the living and working conditions of their peoples, as is emphasized by the Preamble to the Treaty.

11 This aim is accentuated by the insertion of Article 119 into the body of a chapter devoted to social policy whose preliminary provision, Article 117, marks 'the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'.

12 This double aim, which is at once economic and social, shows that the principle of equal pay forms part of the foundations of the Community.

13 Furthermore, this explains why the Treaty has provided for the complete implementation of this principle by the end of the first stage of the transitional period.

14 Therefore, in interpreting this provision, it is impossible to base any argument on the dilatoriness and resistance which have delayed the actual implementation of this basic principle in certain Member States.

15 In particular, since Article 119 appears in the context of the harmonization of working conditions while the improvement is being maintained, the objection that the terms of this article may be observed in other ways than by raising the lowest salaries may be set aside.

16 Under the terms of the first paragraph of Article 119, the Member States are bound to ensure and maintain 'the application of the principle that men and women should receive equal pay for equal work'.

17 The second and third paragraphs of the same article add a certain number of details concerning the concepts of pay and work referred to in the first paragraph.

18 For the purposes of the implementation of these provisions a distinction must be drawn within the whole area of application of Article 119 between, first, direct and overt discrimination which may be identified solely with the aid of the criteria based on equal work and equal pay referred to by the article in question and, secondly, indirect and disguised discrimination which can only be identified by reference to more explicit implementing provisions of a Community or national character.

19 It is impossible not to recognize that the complete implementation of the aim pursued by Article 119, by means of the elimination of all discrimination, direct or indirect, between men and women workers, not only as regards individual undertakings but also entire branches of industry and even of the economic system as a whole, may in certain cases involve the elaboration of criteria whose implementation necessitates the taking of appropriate measures at Community and national level.

20 This view is all the more essential in the light of the fact that the Community measures on this question, to which reference will be made in answer to the second question, implement Article 119 from the point of view of extending the narrow criterion of 'equal work', in accordance in particular with the provisions of Convention No 100 on equal pay concluded by the International Labour Organization in 1951, Article 2 of which establishes the principle of equal pay for work 'of equal value'.

21 Among the forms of direct discrimination which may be identified solely by reference to the criteria laid down by Article 119 must be included in particular those which have their origin in legislative provisions or in collective labour agreements and which may be detected on the basis of a purely legal analysis of the situation.

22 This applies even more in cases where men and women receive unequal pay for equal work carried out in the same establishment or service, whether public or private.

23 As is shown by the very findings of the judgment making the reference, in such a situation the court is in a position to establish all the facts which enable it to decide whether a woman worker is receiving lower pay than a male worker performing the same tasks.

24 In such situation, at least, Article 119 is directly applicable and may thus give rise to individual rights which the courts must protect.

25 Furthermore, as regards equal work, as a general rule, the national legislative provisions adopted for the implementation of the principle of equal pay as a rule merely reproduce the substance of the terms of Article 119 as regards the direct forms of discrimination.

26 Belgian legislation provides a particularly apposite illustration of this point, since Article 14 of Royal Decree No 40 of 24 October 1967 on the employment of women merely sets out the right of any female worker to institute proceedings before the relevant court for the application of the principle of equal pay set out in Article 119 and simply refers to that article.

27 The terms of Article 119 cannot be relied on to invalidate this conclusion.

28 First of all, it is impossible to put forward an argument against its direct effect based on the use in this article of the word 'principle', since, in the language of the Treaty, this term is specifically used in order to indicate the fundamental nature of certain provisions, as is shown, for example, by the heading of the first part of the Treaty which is devoted to ‘Principles’ and by Article 113, according to which the commercial policy of the Community is to be based on ‘uniform principles’.

29 If this concept were to be attenuated to the point of reducing it to the level of a vague declaration, the very foundations of the Community and the coherence of its external relations would be indirectly affected.

30 It is also impossible to put forward arguments based on the fact that Article 119 only refers expressly to ‘Member States’.

31 Indeed, as the Court has already found in other contexts, the fact that certain provisions of the Treaty are formally addressed to the Member States does not prevent rights from being conferred at the same time on any individual who has an interest in the performance of the duties thus laid down.

32 The very wording of Article 119 shows that it imposes on States a duty to bring about a specific result to be mandatory achieved within a fixed period.

33 The effectiveness of this provision cannot be affected by the fact that the duty imposed by the Treaty has not been discharged by certain Member States and that the joint institutions have not reacted sufficiently energetically against this failure to act.

34 To accept the contrary view would be to risk raising the violation of the right to the status of a principle of interpretation, a position the adoption of which would not be consistent with the task assigned to the Court by Article 164 of the Treaty.

35 Finally, in its reference to ‘Member States’, Article 119 is alluding to those States in the exercise of all those of their functions which may usefully contribute to the implementation of the principle of equal pay.

36 Thus, contrary to the statements made in the course of the proceedings this provision is far from merely referring the matter to the powers of the national legislative authorities.

37 Therefore, the reference to ‘Member States’ in Article 119 cannot be interpreted as excluding the

intervention of the courts in direct application of the Treaty.

38 Furthermore it is not possible to sustain any objection that the application by national courts of the principle of equal pay would amount to modifying independent agreements concluded privately or in the sphere of industrial relations such as individual contracts and collective labour agreements.

39 In fact, since Article 119 is mandatory in nature, the prohibition on discrimination between men and women applies not only to the action of public authorities, but also extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals.

40 The reply to the first question must therefore be that the principle of equal pay contained in Article 119 may be relied upon before the national courts and that these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular as regards those types of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

The second question (implementation of Article 119 and powers of the Community and of the Member States)

41 The second question asks whether Article 119 has become ‘applicable in the internal law of the Member States by virtue of measures adopted by the authorities of the European Economic Community’, or whether the national legislature must ‘be regarded as alone competent in this matter’.

42 In accordance with what has been set out above, it is appropriate to join to this question the problem of the date from which Article 119 must be regarded as having direct effect.

43 In the light of all these problems it is first necessary to establish the chronological order of the measures taken on a Community level to ensure the implementation of the provision whose interpretation is requested.

44 Article 119 itself provides that the application of the principle of equal pay was to be uniformly ensured by the end of the first stage of the transitional period at the latest.

45 The information supplied by the Commission reveals the existence of important differences and discrepancies between the various States in the implementation of this principle.

46 Although, in certain Member States, the principle had already largely been put into practice before the entry into force of the Treaty, either by means of express constitutional and legislative provisions or by social practices established by collective labour agreements, in other States its full implementation has suffered prolonged delays.

47 In the light of this situation, on 30 December 1961, the eve of the expiry of the time-limit fixed by Article 119, the Member States adopted a Resolution concerning the harmonization of rates of pay of men and women which was intended to provide further details concerning certain aspects of the material content of the principle of equal pay, while delaying its implementation according to a plan spread over a period of time.

48 Under the terms of that Resolution all discrimination, both direct and indirect, was to have been completely eliminated by 31 December 1964.

49 The information provided by the Commission shows that several of the original Member States have failed to observe the terms of that Resolution and that, for this reason, within the context of the tasks entrusted to it by Article 155 of the Treaty, the Commission was led to bring together the representatives of the governments and the two sides of industry in order to study the situation and to agree together upon the measures necessary to ensure progress towards the full attainment of the objective laid down in Article 119.

50 This led to be drawing up of successive reports on the situation in the original Member States, the most recent of which, dated 18. July 1973, recapitulates all the facts.

51 In the conclusion to that report the Commission announced its intention to initiate proceedings under Article 169 of the Treaty, for failure to take the requisite action, against those of the Member States who had not by that date discharged the obligations imposed by Article 119, although this warning was not followed by any further action.

52 After similar exchanges with the competent authorities in the new Member States the Commission stated in its report dated 17 July 1974 that, as regards those States, Article 119 had been fully applicable since 1 January 1973 and that from that date the position of those States was the same as that of the original Member States.

53 For its part, in order to hasten the full implementation of Article 119, the Council on 10 February 1975 adopted Directive No 75/117 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 45, p. 19).

54 This Directive provides further details regarding certain aspects of the material scope of Article 119 and also adopts various provisions whose essential purpose is to improve the legal protection of workers who may be wronged by failure to apply the principle of equal pay laid down by Article 119.

55 Article 8 of this Directive allows the Member States a period of one year to put into force the appropriate laws, regulations and administrative provisions.

56 It follows from the express terms of Article 119 that the application of the principle that men and women should receive equal pay was to be fully secured and irreversible at the end of the first stage of the transitional period, that is, by 1 January 1962.

57 Without prejudice to its possible effects as regards encouraging and accelerating the full implementation of Article 119, the Resolution of the Member States of 30 December 1961 was ineffective to make any valid modification of the time-limit fixed by the Treaty.

58 In fact, apart from any specific provisions, the Treaty can only be modified by means of the amendment procedure carried out in accordance with Article 236.

59 Moreover, it follows from the foregoing that, in the absence of transitional provisions, the principle contained in Article 119 has been fully effective in the new Member States since the entry into force of the Accession Treaty, that is, since 1 January 1973.

60 It was not possible for this legal situation to be modified by Directive No 75/117, which was adopted on the basis of Article 100 dealing with the approximation of laws and was intended to encourage the proper implementation of Article 119 by means of a series of measures to be taken on the national level, in order, in particular, to eliminate indirect forms of discrimination, but was unable to reduce the effectiveness of that article or modify its temporal effect.

61 Although Article 119 is expressly addressed to the Member States in that it imposes on them a duty to ensure, within a given period, and subsequently to maintain the application of the principle of equal pay, that duty assumed by the States does not exclude competence in this matter on the part of the Community.

62 On the contrary, the existence of competence on the part of the Community is shown by the fact that Article 119 sets out one of the ‘social policy’ objectives of the Treaty which form the subject of Title III, which itself appears in Part Three of the Treaty dealing with the ‘Policy of the Community’.

63 In the absence of any express reference in Article 119 to the possible action to be taken by the

Community for the purposes of implementing the social policy, it is appropriate to refer to the general scheme of the Treaty and to the courses of action for which it provided, such as those laid down in Articles 100, 155 and, where appropriate, 235.

64 As has been shown in the reply to the first question, no implementing provision, whether adopted by the institutions of the Community or by the national authorities, could adversely affect the direct effect of Article 119.

65 The reply to the second question should therefore be that 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 into force of the Accession Treaty.

66 The first of these time-limits was not modified by the Resolution of the Member States of 30 December 1961.

67 As indicated in reply to the first question, Council Directive No 75/117 does not prejudice the direct effect of Article 119 and the period fixed by that Directive for compliance therewith does not affect the time-limits laid down by Article 119 of the EEC Treaty and the Accession Treaty.

68 Even in the areas in which Article 119 has no direct effect, that provision cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be relieved by a combination of Community and national measures.

The temporal effect of this judgment

69 The Governments of Ireland and the United Kingdom have drawn the Court's attention to the possible economic consequences of attributing direct effect to the provisions of Article 119, on the ground that such a decision might, in many branches of economic life, result in the introduction of claims dating back to the time at which such effect same into existence.

70 In view of the large number of people concerned such claims, which undertakings could not have foreseen, might seriously affect the financial situation of such undertakings and even drive some of them to bankruptcy.

71 Although the practical consequences of any judicial decision must be carefully taken into account, it would be impossible to go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from such a judicial decision.

72 However, in the light of the conduct of several of the Member States and the views adopted by the Commission and repeatedly brought to the notice of the circles concerned, it is appropriate to take exceptionally into account the fact that, over a prolonged period, the parties concerned have been led to continue with practices which were contrary to Article 119, although not yet prohibited under their national law.

73 The fact that, in spite of the warnings given, the Commission did not initiate proceedings under Article 169 against the Member States concerned on grounds of failure to fulfil an obligation was likely to consolidate the incorrect impression as to the effects of Article 119.

74 In these circumstances, it is appropriate to determine that, as the general level at which pay would have been fixed cannot be known, important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to reopen the question as regards the past.

75 Therefore, 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, except as regards those workers who have already brought legal proceedings or made an equivalent claim.

Costs

76 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

77 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Cour du travail, Brussels, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Cour du travail, Brussels, by judgment dated 23 April 1975 hereby rules:

1. 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 equal work which is carried out in the same establishment or service, whether private or public.

2. 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 into force of the Accession Treaty. The first of these time-limits was not modified by the Resolution of the Member States of 30 December 1961.

3. Council Directive No 75/117 does not prejudice the direct effect of Article 119 and the period fixed by that Directive for compliance therewith does not affect the time-limits laid down by Article 119 of the EEC Treaty and the Accession Treaty.

4. Even in the areas in which Article 119 has no direct effect, that provision cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be achieved by a combination of Community and national provisions.

5. 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.

Lecourt
Kutscher
O'Keeffe
Donner
Mertens de Wilmars

Pescatore
Sørensen

Delivered in open court in Luxembourg on 8 April 1976.

A. Van Houtte
Registrar

R. Lecourt
President

(1) Language of the Case: French