clear and precise understanding of their rights and obligations and enable the courts to ensure that those rights and obligations are observed. National legislation implementing the directive which sets out the principle of equal pay without speaking of work of equal value, thus restricting the scope of the principle, does not fulfil those conditions.

3. Unilateral declarations entered by Member States in the minutes of Council meetings cannot be relied upon for the interpretation of Community measures, since the objective scope of rules laid down by the common institutions cannot be modified by reservations or objections which Member States may have made at the time the rules were being formulated.

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT delivered on 24 October 1984 *

Mr President,
Members of the Court,

1. Subject-matter of the application

In its application in Case 143/83, brought on 15 July 1983, the Commission asks the Court to 'declare that the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty by failing to adopt within the prescribed period the measures necessary to implement Council Directive No 75/117/EEC'. In reply to a question which I posed during the oral procedure, however, the Commission confirmed that the subject-matter of the action should be understood in the more restricted sense of its reasoned opinion of 25 October 1982. In that reasoned opinion the Commission alleged only that the Kingdom of Denmark had 'failed to take the measures necessary to extend the principle of equal pay for men and women to activities of equal value'

2. Definition of the legal problem

The legal problem thus presented to the Court seems at first sight to be a simple one. The Council directive in question provides clearly in Article 1 that the 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' (my emphasis). Article 1 of the Danish measure implementing the directive, Law No 32 of 4 February 1976, however, states that the principle of equal pay applies only to 'the same work' ('samme arbejde'), 'at the same place of work'. At first sight it therefore seems clear that the Kingdom of Denmark has indeed 'failed to take the measures necessary to extend the principle of equal pay . . . to activities of equal value', to quote the closing passage of the reasoned opinion.

* Translated from the Dutch.

Although in its reasoned opinion and in its application the Commission raises a number of additional grounds and arguments, that apparently obvious conclusion therefore constituted the main argument put forward by the Commission during the proceedings in support of the conclusions in its application. For the Commission's other arguments reference may be made to the Report for the Hearing.

3. Complications

As appears from the defence of the Danish Government the matter is in reality less banal than it seems at first sight. As the defendant correctly points out in its answer of 1 February 1983 to the reasoned opinion, a careful analysis of the judgments of the Court concerning Article 119 and the directive in question shows that the first sentence of Article 1 of the directive must be regarded only as an interpretation, binding on the Member States, of the first sentence of Article 119 of the EEC Treaty. In that regard I should like to refer to my Opinion of 25 May 1982 in Case 61/82 (*Commission* v *United Kingdom*, [1982] ECR 2601 at p. 2621), where I came to the same conclusion on that point as is now put forward by the Danish Government, and to paragraph 8 of the judgment in that case.

If however the first sentence of Article 1 of the directive is to be regarded only as a binding interpretation of the first sentence of Article 119 of the EEC Treaty (a directly applicable provision which also speaks only of 'equal work'), that may entail certain consequences for the implementation of the directive. The application and interpretation of a provision of the EEC Treaty which has direct effect (in this case Article 119, in which the term 'equal work' appears) is a normal task for the competent national court. In my view Article 189 of the EEC Treaty and Articles 6 and 8 of the directive therefore do not, in principle, prevent a Member State from leaving it to the courts to implement the first sentence of Article 1 of the directive as cases arise. That is in fact done in Article 6 of the Danish law. In such cases the courts must apply Article 1 of the Danish law in accordance with Article 119 of the Treaty and with the interpretation given to that article by Article 1 of the directive and the judgments of the Court. This point is all the more important inasmuch as the second and third paragraphs of Article 119 contain further details of the principle of equal pay, also binding on the Member States, which are not included in the directive.

Although I therefore consider such an interpretation of Article 189 of the EEC Treaty tenable in principle, a question of infringement of the Treaty does indeed arise where a Member State adds to the conditions for equal pay for men and women a condition which does not appear in Article 119 of the Treaty or in the directive in question, and may result in restrictions on the right to equal pay. In Case 61/81, referred to above, the Court found that such an infringement of the Treaty had been committed where the British implementing measures offered no possibility of having work classified as equal in value in cases where there was no job classification system.

Such a possibility does exist in Denmark. On the other hand, in a departure from Article 119 of the EEC Treaty, Article 1 of the Danish law restricts the right to equal pay to equal work (and, on the basis of the directive and of the judgments of the Court, work of equal value) at the same place of

work ('samme arbejdsplads'). During the oral procedure the representative of the Danish Government said that that additional condition was intended to permit geographical differences in pay within Denmark. Since such geographical differences in pay, provided that they apply equally to men and women, cannot be regarded as sexual discrimination, I do not consider that explanation satisfactory. On such a hypothesis the additional condition is superfluous. From a linguistic point of view, moreover, the expression can easily be interpreted as meaning that the comparison of duties is only to be carried out within the same fixed establishment of a single undertaking. In the only arbitration award (dated 8 December 1977) submitted by the Danish Government as evidence of the wide interpretation of the term 'same work' (annex C to the statement of defence) a standard of comparison restricted in that way was sufficient for the settlement of the case. As appears from the second sentence of Article 1 of the directive, however, a comparison of duties within the same fixed establishment of an undertaking or even within a single undertaking will not always be sufficient. In certain circumstances comparison with work of equal value in other undertakings covered by the collective agreement in question will be necessary. As is correctly observed in the annual report for 1980 of the Danish Council for equal treatment of men and woment [Ligestillingsrådet], submitted by the Commission as Annex VIII to its application, in sectors with a traditionally female workforce, comparison with other sectors may even be necessary. In certain circumstances the additional criterion of 'the same place of work' for work of equal value may therefore place a restriction on the principle of equal pay laid down in Article 119 of the EEC Treaty and amplified in the directive in question. The mere fact that such a supplementary condition for equal pay which has no foundation in Article 119 or in the directive has been added must in any event be regarded as an infringement of the Treaty. That supplementary condition limits the scope, governed by the Treaty, of the extension of the principle of equal pay for men and women to activities of equal value, which in principle, according to the background of the Danish law and the arbitration award referred to, is recognized in Denmark. It therefore falls within the ambit of the Commission's application as it is to be interpreted in the light of its reasoned opinion of 25 October 1982.

4. The issues of legal certainty and of the implementation of the directive within the prescribed period

From the point of view of legal certainty it would undoubtedly have been preferable had Denmark simply incorporated in its legislation the interpretation of the principle of equal pay laid down in Article 1 of the directive, in accordance with the view of the Commission. The infringement of Community law of which I have just spoken would also have been avoided. Finally, the correct implementation of that principle within the period laid down by Article 8 of the directive would have been ensured.

As has been pointed out, however, the Court has consistently held that the extension of the term 'equal work' to include 'work to which equal value is attributed' in the directive in question is merely the definition by the legislator of the scope of Article 119 of the EEC Treaty itself, which is of direct application and

must be upheld by the national courts. It would certainly be desirable for the Court to emphasize in its judgment the binding interpretation of Article 119 laid down in the directive and in the previous judgments of the Court. In my view however the failure to incorporate that interpretation in national law cannot, even with reference to the desired degree of legal certainty, be regarded as an infringement of Community law. Since a directly applicable obligation under the Treaty already exists in that respect, its incorporation in national law cannot be regarded as a '*necessary* measure' within the meaning of Article 6 or as a '*necessary* law, regulation or administrative provision' within the meaning of Article 8 of the directive.

5. Conclusion

In conclusion I propose that the Court should declare that the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty inasmuch as it has restricted the application of the principle of equal pay for men and women to comparable duties in the same workplace.

In accordance with the Rules of Procedure the Kingdom of Denmark should also be ordered to bear the costs of the proceedings.