In Case 61/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by John Forman, a member of the Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by Mrs G. Dagtoglou, of the Treasury Solicitor's Department, acting as Agent, assisted by Peter Scott, QC, with an address for service in Luxembourg at the British Embassy, 28 Boulevard Royal,

defendant,

APPLICATION for a declaration that the United Kingdom has failed to fulfil its obligations under Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (Official Journal L 45, 1975, p. 19),

THE COURT,

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

(a) The relevant Community law

The first paragraph of Article 119 of the EEC Treaty provides as follows:

"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."

Article 1 of Directive 75/117 provides as follows:

"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."

(b) The relevant national legislation

In the United Kingdom the Equal Pay Act 1970 as amended by the Sex Discrimination Act 1975 is the legislation which was adopted in the field governed by Directive 75/117.

Section 1 (1) of the Act states the principle that any contract under which a woman is employed at an establishment in Great Britain is to be deemed to include a clause requiring equal pay for men and women. Paragraph (2) of that section distinguishes between the case of a woman employed on like work with a man in the same employment and that of a woman employed on work "rated as equivalent" with that of a man in the same employment. Section 1 (4) defines "like work" as work which is of "the same" or "a broadly similar" nature when the differences, if any, between the work done by the woman and that done by the man are not of practical importance in relation to terms and conditions of employment.

As to work which is rated as equivalent, paragraph (5) provides that:

"A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance, effort, skill, decision), on a study undertaken with a view to evaluating in

those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings . . ."

(c) Procedure

On 3 April 1979 the Commission wrote to the United Kingdom Government a letter initiating the procedure provided for in the first paragraph of Article 169 of the EEC Treaty. Since the Commission was not satisfied with the observations submitted on 19 June 1979 by the government in question it delivered to the United Kingdom on 19 May 1980 a reasoned opinion, dated 8 May 1980, in accordance with the above-mentioned provision. After stating that in its opinion Article 1 of Directive 75/117 had been incorrectly applied in the United Kingdom legislation, the Commission invited the United Kingdom to adopt, within a period of two months, the measures needed to comply with the reasoned opinion.

In reply to the reasoned opinion the United Kingdom stated in a letter dated 3 November 1980 that it considered the United Kingdom legislation to be wholly in conformity with the relevant Community provisions and that in the circumstances no measures whatsoever were necessary in order to comply with Article 119 of the Treaty and with Directive 75/117.

Considering that the United Kingdom had failed to comply with the reasoned opinion, the Commission decided to make this application, which was received at the Court Registry on 18 March 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the Commission to reply in writing before 31 January 1982 to the following questions:

"1. How have the Member States complied with the obligation resulting from Directive 75/117 in respect of work to which equal value is attributed? What are the national provisions adopted? Do those provisions, in the Commission's view, constitute a correct application of the directive?

2. Has the Commission any information on the actual application of the directive, in particular by the courts?

3. Could the Commission give the Court details of the other methods, apart from the introduction of the system of compulsory evaluation to which it refers in point 14 of its reply, making it possible to ascertain or determine whether work is of equal value?"

The Commission's replies to the questions are dealt with at the end of this report.

II — Conclusions of the parties

The *Commission* claims that the Court should:

"1. Declare that, by failing to adopt the laws, regulations or administrative provisions needed to comply with Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to to the application of the principle of equal pay for men and women, as regards work to

which equal value is attributed, the United Kingdom has failed to fulfil its obligations under that directive;

2. Order the Government of the United Kingdom to pay the costs of the proceedings."

The *United Kingdom* contends that the Court should:

"1. Dismiss the Commission's application;

2. Order the Commission to pay the costs."

III — Submissions and arguments of the parties

In its application the *Commission* observes, first, that the fourth recital in the preamble to Directive 75/117 provides that "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" and that the Court held in the *Defrenne* case (judgment of 8 April 1976, Case 43/75 [1976] ECR 455) that "the Community measures on this question" (that is to say, *inter alia*, Directive 75/117) "... 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' " (paragraph 20).

The Commission maintains that as a result of the distinction made in Section 1 (4) and (5) of the United Kingdom Act a woman cannot obtain equal pay in respect of work which, although not the same as, nevertheless has a value equal to that of her male counterpart unless a job evaluation scheme or study is applied in the establishment in which they are employed. Whilst paragraph (4) does not extend the concept of "like work" to include the concept of work of "equal value", paragraph (5) of section 2 makes "equal value" dependent on the implementation in the establishment in question of a job evaluation scheme, which the employer is in no way bound to introduce. Although "like work" is defined in Section 1 (4) as including work "of a broadly similar nature" that does not, in the Commission's view, go far enough because "work to which equal value has been attributed will, more likely than not — and precisely because it has had the label 'equal value' attributed to it — not be of a 'broadly similar nature' ".

In support of its contention the Commission refers to the Case of *Capper Pass* ([1977] Industrial Cases Reports 83) in which the Chairman of the Employment Appeal Tribunal stated that the United Kingdom Act had chosen as the test to be applied in determining whether discrimination exists a compromise between "like work" and "work of equal value". The Commission also points out that the Equal Opportunities Commission which was created by the Sex Discrimination Act 1975 stated on 14 January 1981 that the Community definition of equal pay extended that right to those whose work was judged as being of "equal value" but that the United Kingdom Government ought to amend the United Kingdom Act to that effect in the absence of a formal job evaluation scheme.

In its defence the *United Kingdom* declares that during the procedure preceding the action brought before the Court it consistently maintained that it had applied Directive 75/117 correctly. It adheres to that position and points out once again that in its view the interpretation which the Commission seeks to place upon Directive 75/117 is inconsistent "not only with the statements made when the wording of the directive was agreed by the Council, but also with the wording of the directive itself". The Commission has failed to respond to that argument, merely stating that "it remains unconvinced" by the United Kingdom's argument, and has said that Member States are bound to give full effect to the principle of equal pay at national level without explaining how the wording of the directive is to be reconciled with the effect attributed to it by the Commission.

When the terms of the directive were adopted by the Council the United Kingdom expressly negotiated the inclusion in the minutes of a statement in connection with the phrase "work to which equal value is attributed" which reads as follows:

"The circumstances in which work is considered in the United Kingdom to have equal value attributed to it are where the work is broadly similar or where pay is based on the results of job evaluation."

Since no objection was taken to the statement the United Kingdom considers that provided that the attitude which it adopts is in line with the statement the Commission is no longer in a position to raise any objection.

Moreover, the United Kingdom points out that it forwarded the legislation in question to the Commission in February 1976 and that it was not until 1979 that the Commission claimed for the first time that it was inconsistent with Directive 75/117.

The United Kingdom then examines the wording and purport of Directive 75/117. It contends that the general purpose of the directive must be considered in the light of Article 119 of the Treaty, as the Court emphasized in Case 43/75 (cited above). The Court also stated in its judgment of 31 March 1981 (*Jenkins*, Case 96/80 [1981] ECR 911), at paragraph 21 of the decision, that:

"The provisions of Article 1 of that directive are confined, in the first paragraph, to re-stating the principle of equal pay set out in Article 119 of the Treaty and specify, in the second paragraph, the conditions for applying that principle where a job classification system is used for determining pay."

The meaning and effect of Directive 75/117 should therefore be determined, according to the United Kingdom, by reading it as a whole. The second paragraph of Article 1 of the directive lays down explicit and specific requirements applicable to those cases where a job classification system is used to determine pay. In the absence of a system of job evaluation — and the United Kingdom knows of no other method of comparing the value of different jobs — the closest approach to a comparison is that adopted by the United Kingdom legislation of taking a view on broad similarities of the nature of the work.

The Commission's case implies that Directive 75/117 requires Member States to adopt measures entitling any employee

to insist upon some form of job evaluation being carried out in order to determine whether his or her job is equal in value to another. Such a proposition is inconsistent with the wording of Article 1, however, because it overlooks the words "to which equal value is attributed", which are plainly not the same as "work of equal value". From a review of the terms of Article 1 the United Kingdom concludes that the article does not provide that employees have the right to insist on having pay determined by a job classification scheme, and such a right cannot be implied without doing violence to the language. If the directive is to have the extended meaning advocated by the Commission, Member States should first discuss at least the basic points, relating to the criteria to be used for determining when and to what extent an employee may require his pay to be determined by means of a job classification scheme, before seeking to approximate their national provisions.

In fact, according to the United Kingdom the Commission's argument ignores the difference between "a requirement on the one hand that job classification schemes be used in a non-discriminatory fashion, and a requirement on the other that employees be entitled to insist that their jobs be compared with other different jobs".

As to the historical link between Directive 75/117 and Convention No 100 of the International Labour Organization, the United Kingdom considers that "the Convention does not require, as the Commission seems to imply, that someone should set a value on every job for comparative purposes nor does it provide explicitly or by implication for any form of compulsory job evaluation".

As a result the United Kingdom considers that its legislation faithfully reflects the meaning and intent of Directive 75/117 as defined above. After describing the various provisions which it has adopted in order to implement the principle of equal pay for men and women, the United Kingdom concedes that the Equal Pay Act "does not entitle a worker to insist upon a job evaluation, but it does entitle (Section 1 (5)) a worker to insist on pay without discrimination based on sex". However, such a right would be enforced even if the employer had not implemented the results of a job evaluation study. In support of that argument the United Kingdom cites the Case of *O'Brien* v *Sim-Chem Limited* ([1980] Industrial Cases Reports 573). However, the House of Lords remarked in that case that:

"It is of importance to note that a job evaluation study cannot be carried out without the agreement of the relevant parties — including of course the employer — that there shall be one. Maybe it was recognized that such a study could not sensibly be made compulsory."

Lastly, the United Kingdom emphasizes the practical considerations involved in giving effect to the Commission's argument as compared with the advantages secured by the present system in the United Kingdom. It suggests that such practical problems — and, in particular, the considerable expense involved in compulsory evaluation schemes — have a bearing on whether the meaning contended for by the Commission is likely to be that to which all Members of the Council subscribed.

In its reply the *Commission* addresses itself first to the status and content of the statement which was made by the United Kingdom when Directive 75/117 was adopted.

It maintains that the United Kingdom's insistence on the significance of that statement — which was the result of a unilateral initiative neither approved nor supported by the Council and which was not discussed in any way by the Council — not only fails to strengthen its position but, on the contrary, weakens it. In fact, by making such an explanatory statement the Member State concerned is trying, as far as possible, and at least on a political level, to compensate for a deficiency in the text. As a matter of law a unilateral statement by a Member State cannot influence the interpretation of a part of Community legislation. Moreover, what emerges from the statement is that it does not seek to demonstrate that equal pay in the United Kingdom is dependent on the carrying out of a job evaluation study, and only with the employer's consent, but merely indicates that the jobs must have been evaluated before they may be considered to be of equal value, a proposition which the Commission wholly supports.

Secondly, as far as the interpretation of the directive is concerned, the Commission maintains that the crux of the issue between the parties is as follows: does the adoption of a job evaluation scheme by agreement between the employer, and the employees and their representatives constitute a prerequisite to the operation of the principle of equal pay (the United Kingdom's position) or may any (female) worker require, at all events, equal pay for work which is different, but of equal value, even if there is no job evaluation scheme (the Commission's position)?

Before considering those views the Commission makes two preliminary remarks:

1. Job evaluation schemes of this kind are little used outside the United Kingdom and therefore only a limited percentage of the work-force within the Community as a whole is covered. That being so, where employees, even in the United Kingdom, are not doing the same work, or work which is broadly similar in nature, and are not covered by a job evaluation scheme, they may not rely on the provision in the directive concerning "work to which equal value is attributed".

2. In the United Kingdom's defence there is a considerable shift in emphasis in its argument as compared with the argument which it put forward prior to the initiation of this action. In the latter case the United Kingdom laid its main emphasis on the combined effect of the various provisions of the Equal Pay Act which satisfied, ostensibly, an acceptable interpretation of the directive whereas in its defence the United Kingdom places more emphasis on "a more critical appraisal of the precise words of the directive itself" which makes it all the more easy to justify the national provisions in question.

The Commission maintains that Directive 75/117 must in any case be interpreted in the light of its objectives as defined by the Court of Justice in the *Defrenne* judgment (cited above). Positively, this means that Article 1 of

the directive obliges the Member States to adopt the measures needed to enable a female worker to argue, for the purpose of combating any discrimination based on sex, that two jobs, even though different, may be of equal value. On the negative side, the Commission's position implies that the United Kingdom's argument, which, in the Commission's view, restricts the scope of the first paragraph of Article 1 of Directive 75/117 by placing the emphasis on the words "is attributed" and linking them to the second paragraph, is abusive and not consistent with the principle of equality contained in Article 119 of the Treaty. That is so by reason, on the one hand, of the particular words used in Convention No 100 of the International Labour Organization ("work of equal value") and, on the other hand, of the objective of Directive 75/117 which is to approximate national provisions implementing the principle of equal pay and which would be thwarted if its realization depended on the consent of the employer to the introduction of a job classification scheme, especially in view of the fact that the second paragraph of Article 1 of the directive emphasizes that where, but only where, a job classification scheme is used certain conditions are to be respected, in particular application of the same criteria to men and women and the exclusion of any discrimination based on sex. That view is confirmed, moreover, by the Court in its judgment in *Jenkins* (quoted above), at paragraph 21 of the decision, in which it stated that the provisions in the second paragraph of Article 1 of Directive 75/117 specify the conditions for applying the principle of equal pay where a job classification system is used for determining pay.

According to the Commission there can be no question of legislative difficulties in adopting a provision which simply reproduces the objectives of the directive, particularly in view of the facility with which other Member States have achieved that obligation.

Lastly, as to the reference made by the United Kingdom to considerations of a practical nature, the Commission "has not seized why the disadvantages (of enabling a (female) worker to insist — and this would not necessarily involve introducing compulsory evaluation schemes — on no discrimination based on sex, in respect of work of an equal value) would greatly outweigh the 'advantages' (of limiting equality of remuneration between the sexes to the — restricted — number of cases where a job evaluation exists)".

In its rejoinder the *United Kingdom* returns to the question of the status and content of the statement which it made when Directive 75/117 was adopted. It contends that the statement was not intended to describe the situation existing at the time in question in the United Kingdom, but to record the position which would be adopted by the United Kingdom after the directive entered into force. Moreover, that was why it was able to accept the enactment of the directive, for had any Member State or institution indicated that it would challenge the United Kingdom's position it might have been necessary to reconsider its acceptance of the draft directive. In the absence of any such challenge the United Kingdom "submits

that it is not open to the Commission now to do so".

The United Kingdom goes on to observe that where directives are concerned Member States are entirely free to adapt their legislation by whatever means are most appropriate to their own legal systems. Thus, a statement by one Member State of how it proposes to achieve an objective does not require another Member State to agree to use that method and the United Kingdom has not claimed that they did so agree. On the other hand, if the Commission's attitude were accepted, a valuable means of facilitating agreement in Council discussions would be lost.

As to the content of the statement, the United Kingdom maintains that, contrary to the Commission's contentions, the statement indicates that in the United Kingdom "equal value is to be attributed to work if (and only if) the *work* is broadly similar or *pay is based* on the results of job evaluations. The latter can only be the case if the employer agrees to an evaluation".

On the subject of the terms and effect of Directive 75/117 the United Kingdom replies point by point to the arguments advanced by the Commission. First, it maintains that all job evaluation schemes in the United Kingdom are subject to the provisions prohibiting discriminations.

Next, the United Kingdom denies that there has been a shift in emphasis in its argument: it was the Commission which chose to treat the United Kingdom's point about the statement "as being in the forefront of its argument" which is not the case since the point is made under the heading "background" in the defence.

Finally, as far as the directive itself is concerned the United Kingdom finds it unfortunate that the Commission "has still failed to reconcile the wording of the directive with what it claims to have been the intention of the Council". The United Kingdom reiterates that the Commission has still not answered in its reply the question which it had itself raised: merely repeating, with underlinings, extracts from the Court's decisions, is not helpful in answering that question. The United Kingdom does not dispute that the general purpose of the directive is to extend the narrow criterion of "equal work" and to encourage the proper implementation of Article 119 but, it maintains, "the question is to what extent is this done upon a true construction of the directive in the context of work to which equal value is attributed".

The Commission's position on the point, which consists in reasserting that workers must be able to insist upon the value of a particular job being compared with the value of different jobs, would give rise to considerable difficulty in practice especially as regards the concept of the "equitable basis" the use of which was proposed by the Commission in its report on the application of equal pay for men and women on 12 February 1978, page 140. That test is derived from legislation adopted in the Netherlands on 20 March 1975 and the Commission stated that it should be possible for evaluation to be made on an equitable basis "without any great difficulty" with the aid of a

criterion — "which might appear simplistic but is sometimes effective" — which consists in considering whether "if a man were placed in the post occupied by a woman, he would receive the same wage as hers or would demand an increase to remain there".

The United Kingdom considers that criterion to be inappropriate since the question which arises is one of determining the relative values of two different jobs.

As to the Commission's arguments concerning the second paragraph of Article 1 of Directive 75/117, the United Kingdom takes the view that if the Commission is right in its wide interpretation of the first paragraph it is not easy to see why the second paragraph is necessary at all. It also considers it odd that the Council should specifically deal with the criteria of job classification so as to exclude a form of indirect sexual discrimination whilst saying nothing about the wide-ranging interpretation for which the Commission contends. It maintains that the phrase "where a job classification system is used" for determining pay matches and reflects the phrase "to which equal value is attributed".

In response to the Commission's point that other Member States have reproduced the objective of directive facility, the United Kingdom refers to the extract from the European Industrial Relations Review No 90 of July 1981 which speaks of the "modest impact" of the Netherlands Law on equal pay.

The United Kingdom also wonders how the Commission can reconcile the suggestion that compulsory job evaluation schemes are not required to give effect to its interpretation of the directive with the statement that jobs must be evaluated in order to have equal value attributed to them.

Finally, in view of the Commission's apparent hint that the Court of Justice should fill whatever gap there may be thought to be in the provisions of Directive 75/117 by interpretative rulings, the United Kingdom rejects recourse to such a method as a means of absolving Member States and institutions from their own responsibility with regard to implementing the provisions in question and contends that the Commission's approach "would encourage uncertainty in the law of the Community".

IV — Written replies submitted by the Commission in response to the questions asked by the Court

1. Reply to the first question

As to the principal national provisions which have been adopted by the various Member States on the subject, the Commission refers in the main to the Commission report to the Council of 16 January 1979 on the application of the principle of equal pay for men and women on 12 February 1978. However, it adds the following points:

Belgium: In the Belgian Loi de Réorientation [Reorientation Law] of 4 August 1978 (Moniteur Belge [Belgian Gazette] 17 August 1978, pages 8, 411), Title V of which concerns equal treatment for men and women, Article 128 specifies that working conditions means the provisions and practices relating in particular "to remuneration and its protection".

Denmark: There is no provision concerning work of equal value; the Commission therefore sent a formal letter of complaint to Denmark on 30 March 1979. In its reply of 22 June 1979 that country argued that the expression "samme arbejde" used in its legislation had a much broader significance than the words "same work" and, in fact, extended to "work of equal value".

Nevertheless, the Commission decided that a reasoned opinion should be issued but delayed its transmission pending a report by a legal expert as to whether there was a substantive or purely linguistic problem. Since, notwithstanding the report, a number of points remained unclear, the Commission decided on 10 December 1980 to leave this matter "in cold storage".

Federal Republic of Germany: A law concerning *inter alia* equal treatment for men and women at work was adopted on 13 August 1980 (Bundesgesetzblatt 1980, I, page 1308 *et seq.).* Article 1 of that law incorporated into the German Civil Code the principle of equal pay for men and women in respect of equal work or work of equal value.

Greece: Article 22 of the 1975 Constitution states that "all workers, irrespective of sex or other discriminations, shall be entitled to equal pay for work of equal value". A law implementing the directives on equal treatment is being prepared.

The Commission concludes that eight of the Member States have correctly applied the principle of equal pay for work of equal value. In none of those countries is the operation of the principle as restricted as in the United Kingdom. As regards Denmark, the position remains under constant review by the Commission in order to establish whether the directive is being correctly applied there.

2. Reply to the second question

As to the actual application of the directive by the national courts the Commission refers once again to its report for the main points. It adds that the cases before the courts, which are in any case relatively few in number, are based not on the directive itself but on the national implementing legislation.

3. Reply to the third question

In the first place the Commission observes that "in order to be able to determine whether two (different) jobs have an equal value, they must be compared one with the other or evaluated against a common standard". That being so, Member States have a duty to set up a system whereby employees are able to obtain, if necessary by recourse to the courts, equal pay for work of equal value. This means that it is not necessary to oblige all employers to adopt job evaluation schemes, but that at the same time enabling employers to choose whether or not to introduce such schemes without making any provision for equal pay in respect of jobs of equal value where they do not, is inadequate.

Hence in many cases work of equal value will be compared within the framework of a collective agreement, or under a job evaluation scheme, or even more informally, without any detailed

study having been undertaken. The State may also set up a system of official surveillance or less formal conciliation.

What is essential, in the view of the Commission, is that, in the final count, individuals should have the possibility of succeeding in the argument that the two jobs in question are of equal value.

The Commission then reviews the different systems adopted by the Member States, relying for the most part on its report. In Belgium, France, Italy and Luxembourg, as also in the Federal Republic of Germany, many problems are resolved by works inspectorates, and where a question falls to be resolved by the courts, the latter are not necessarily bound by the results of job evaluation schemes. In the Netherlands the question whether work is of equal value is assessed on the basis of a reliable system of job evaluation. Under the Irish legislation — which the Commission believes to be an example of how the United Kingdom could comply with its obligations under Directive 75/117 — any dispute on the subject of equal pay may be referred to one of the three Equality Officers who, after investigating the matter, will issue a recommendation. Since such recommendations are not legally binding, it is ultimately for the courts to decide the matters referred to them.

The Commission concludes from the foregoing that, on a technical level, there are several possible ways in which the Equal Pay Act might be amended in order to make it comply with Community law. In this respect it emphasizes that in the United Kingdom itself the Equal Opportunities Commission and the Trades Union Congress have drafted proposals along those lines. As to which system, or combination of systems, would be preferable, the Commission refers the Court to its report, in particular page 139.

V — Oral procedure

At the sitting on 23 March 1982 the Commission of the European Communities, represented by its Agent, John Forman, and the United Kingdom of Great Britain and Northern Ireland, represented by its Agent, Peter Scott QC of the Middle Temple, presented oral arguments and their replies to questions which had been put to them by the Court.

The Advocate General delivered his opinion at the sitting on 25 May 1982.

Decision

1 By application lodged at the Court Registry on 18 March 1981 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the United Kingdom had failed to fulfil its obligations under the Treaty by failing to adopt the laws, regulations or administrative provisions needed to comply with Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the

Member States relating to the application of the principle of equal pay for men and women (Official Journal L 45, 1975, p. 19), as regards the elimination of discrimination for work to which equal value is attributed.

2 The first article of the directive, which the Commission considers has not been applied by the United Kingdom, provides that:

"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."

3 The reference to "work to which equal value is attributed" is used in the United Kingdom in the Equal Pay Act 1970, as amended by the Sex Discrimination Act 1975. Section 1 (5) of the Act provides that:

"A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on the worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading."

4 Comparison of those provisions reveals that the job classification system is, under the directive, merely one of several methods for determining pay for work to which equal value is attributed, whereas under the provision in the Equal Pay Act quoted above the introduction of such a system is the sole method of achieving such a result.

5 It is also noteworthy that, as the United Kingdom concedes, British legislation does not permit the introduction of a job classification system without the employer's consent. Workers in the United Kingdom are therefore unable to have their work rated as being of equal value with comparable work if their employer refuses to introduce a classification system.

6 The United Kingdom attempts to justify that state of affairs by pointing out that Article 1 of the directive says nothing about the right of an employee to insist on having pay determined by a job classification system. On that basis it concludes that the worker may not insist on a comparative evaluation of different work by the job classification method, the introduction of which is at the employer's discretion.

7 The United Kingdom's interpretation amounts to a denial of the very existence of a right to equal pay for work of equal value where no classification has been made. Such a position is not consonant with the general scheme and provisions of Directive 75/117. The recitals in the preamble to that directive indicate that its essential purpose is to implement the principle that men and women should receive equal pay contained in Article 119 of the Treaty and that 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 in such a way that all employees in the Community can be protected in these matters.

8 To achieve that end the principle is defined in the first paragraph of Article 1 so as to include under the term "the same work", the case of "work to which equal value is attributed", and the second paragraph emphasizes merely that where a job classification system is used for determining pay it is necessary to ensure that it is based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

9 It follows that where there is disagreement as to the application of that concept a worker must be entitled to claim before an appropriate authority that this work has the same value as other work and, if that is found to be the case, to have his rights under the Treaty and the directive acknowledged by a binding decision. Any method which excludes that option prevents the aims of the directive from being achieved.

10 That is borne out by the terms of Article 6 of the directive which provides that Member States are, in accordance with their national circumstances and legal systems, to take the measures necessary to ensure that the principle of equal pay is applied. They are to see that effective means are available to take care that this principle is observed.

11 In this instance, however, the United Kingdom has not adopted the necessary measures and there is at present no means whereby a worker who considers that this post is of equal value to another may pursue his claims if the employer refuses to introduce a job classification system.

12 The United Kingdom has emphasized (particularly in its letter to the Commission dated 19 June 1979) the practical difficulties which would stand in the way of implementing the concept of work to which equal value has been attributed if the use of a system laid down by consensus were abandoned. The United Kingdom believes that the criterion of work of equal value is too abstract to be applied by the courts.

13 The Court cannot endorse that view. The implementation of the directive implies that the assessment of the "equal value" to be "attributed" to particular work, may be effected notwithstanding the employer's wishes, if necessary in the context of adversary proceedings. The Member States must endow an authority with the requisite jurisdiction to decide whether work has the same value as other work, after obtaining such information as may be required.

14 Accordingly, by failing to introduce into its national legal system in implementation of the provisions of Council Directive 75/117/EEC of 10 February 1975 such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay for men and women for work to which equal value is attributed and for which no system of job classification exists to obtain recognition of such equivalence, the United Kingdom has failed to fulfil its obligations under the Treaty.

Costs

15 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to introduce into its national legal system in implementation of the provisions of Council Directive 75/117/EEC of 10 February 1975 such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the**

principle of equal pay for men and women for work to which equal value is attributed and for which no system of job classification exists to obtain recognition of such equivalence, the United Kingdom has failed to fulfil its obligations under the Treaty;

2. Orders the United Kingdom to pay the costs.

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 6 July 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 25 MAY 1982 [1]

Mr President,
Members of the Court,

1. The subject-matter of the dispute

The Commission asks the Court to declare that, by failing to adopt the laws, regulations or administrative provisions needed to comply with Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, the United Kingdom has failed to fulfil its obligations under that directive as regards the abolition of discrimination in respect of "work to which equal value is attributed".

This is the second case which the Commission has brought before the Court in proceedings under Article 169 for a failure by a Member State to apply Directive 75/117 correctly. The first case concerned Luxembourg and was

1 — Translated from the Dutch.