



Federal Ministry for
Family Affairs, Senior Citizens,
Women and Youth

documentation

equal pay

International
Conference

Models and
Initiatives on
Equal Pay

Berlin,
17 – 19 June 2002

Sponsored by the European Union



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Preface



“Equal pay for work of equal value” – although this principle has long been enshrined in law, women in the European Union are still paid less than their male colleagues, with progress barely apparent despite manifold efforts.

In order to give effective impetus to the implementation of the principle of equal pay, the European Union and the German Federal Government have established equal pay as a major topic of discussion. The International Conference on ‘Equal Pay’ on 17 – 19 June 2002 aimed to increase awareness for the problem of pay discrimination while presenting and discussing concepts and political initiatives for non-discriminatory job evaluation. Financially supported by the European Union, the conference was organised by the German Ministry for Family Affairs, Senior Citizens, Women and Youth in cooperation with partner states such as the Netherlands, Ireland and Austria, in addition to the German Trade Union Confederation and ver.di. Around 300 experts from science, politics and praxis came together to discuss models and initiatives to achieve equal pay for women and men in the European Union.

The report on the occupational and income status of women and men, published in April 2002 by the German Ministry for Family Affairs, Senior Citizens, Women and Youth, has clearly highlighted that current collectively agreed and company-internal procedures, criteria and rules for job evaluation are not gender-neutral. As a result, new models for non-discriminatory job evaluation, which have been developed in various EU member states and in Switzerland, were presented and discussed during the conference. With respect to these concepts, particular attention is paid to ensuring

that uniform standards are applied when evaluating the activities of men and women, and important requirements in female-dominated occupations are considered – requirements such as the ability to communicate, empathy, responsibility for human life or for the success of social processes.

The structuring of pay systems falls within the responsibility of parties to collective pay agreements and management/employee representatives. Consequently, progress is only achieved through a joint effort on both sides. Various EU member states have meanwhile developed exemplary initiatives, including the Netherlands, Sweden and Finland. Political initiatives taken by these states can offer important stimulus to the national discussion and, during the conference they were discussed, with a view to their transferability, against the background of the respective national historical-political framework conditions.

As Federal Minister, my central concern is to encourage joint initiatives by the parties to collective pay agreements and to promote the systematic examination and restructuring of wage agreements. Therefore, with this documentation, we have summarised the most significant contributions to the conference, in addition to the principal statutory elements on which efforts in this area are based. At the same time, with a revised EU code of practice, we shall provide an instrument to support the collective bargaining parties in the analysis of their pay agreements. This code of practice will not only help the parties to collective pay agreements, but will also offer a basis for examining possible pay discrimination to those women who are affected and to those who represent their interests.

A handwritten signature in dark ink that reads "Renate Schmidt". The signature is written in a cursive, flowing style.

Renate Schmidt
Federal Minister for Family Affairs, Senior Citizens,
Women and Youth

Contents

Preface	3
---------	---

Opening 7

Opening address

Dr. Christine Bergmann, former Federal Minister for Family Affairs, Senior Citizens, Women and Youth	8
--	---

„Equal Pay“ – an EU working focal point

Marie Donnelly, Head of Unit for Gender Equality, Directorate General Employment and Social Affairs, EU-Commission	12
--	----

„Simon earns more than Simone“

Dr. Karin Tondorf, Research and Consultation on Equal Pay and Equality Policy, Germany	14
--	----

Models of non or less discriminatory job evaluation and their application in practice 17

Development of less discriminatory job evaluation using the “National Joint Council” as a case study	18
Sue Hastings, Pay and Employment Advice, Great Britain	

Non-discriminatory Job Evaluation – Application of the NJC System within an Action Research Project in Austria

Dr. Edeltraud Ranftl, University of Linz, Austria	21
---	----

Plenary Discussion	24
---------------------------	----

Analytical evaluation of job activities according to Katz and Baitsch (ABAKABA)

Dr. Christian P. Katz, Katz & Baitsch – Partners for Salary Systems, Switzerland	25
--	----

Application of ABAKABA in the project „Non-discriminatory evaluation of (service-related) work (commissioned by ver.di)

Anna Krehnke, Diplom-Kauffrau, Free University of Berlin, Germany	28
---	----

Plenary Discussion	30
---------------------------	----

Strategies towards equal pay 31

Job evaluation – Good practises from the Finnish working life

Lea Rantanen, Master of Political Science, Independent Consultant in Job Evaluation, Jopiarvio, Ltd., Finland and Ulla Aitta, Researcher Akava, Finland	32
---	----

Plenary Discussion	34
---------------------------	----

Checklist Equal Pay

An initiative by employee and employer organisations in the Netherlands	
Drs. Loes van Hoogstraten-van Embden Andres, VNO-NCW (Confederation of Netherlands Industry and Employers VNO-NCW)	35

Plenary Discussion 37

Steps to pay equity in Sweden

Carin Holm and Anita Harriman, Senior Research Officers, Sweden 38

Plenary Discussion 40

Scope and limitations of wage policies and state initiatives 41

The EU equal pay directive and the right to free collective bargaining in Germany –

What can wage parties do to achieve equal pay?

Dr. Detlef Hensche, Lawyer, Berlin 42

Scope of state initiatives

Dr. Regine Winter, European Court of Justice, Luxembourg 46

Legal measures to achieve pay equality: case study “Ontario”

Prof. Dr. Pat Armstrong, York University, Canada 48

Plenary Discussion 50

Panel discussion 53

Strategies for implementing equal pay 54

Closing Words 61

Brigitte Unger-Soyka, Director General, Federal Ministry for Family Affairs, Senior Citizens,

Women and Youth 62

Appendix 63

Legal framework on the issue of equal pay

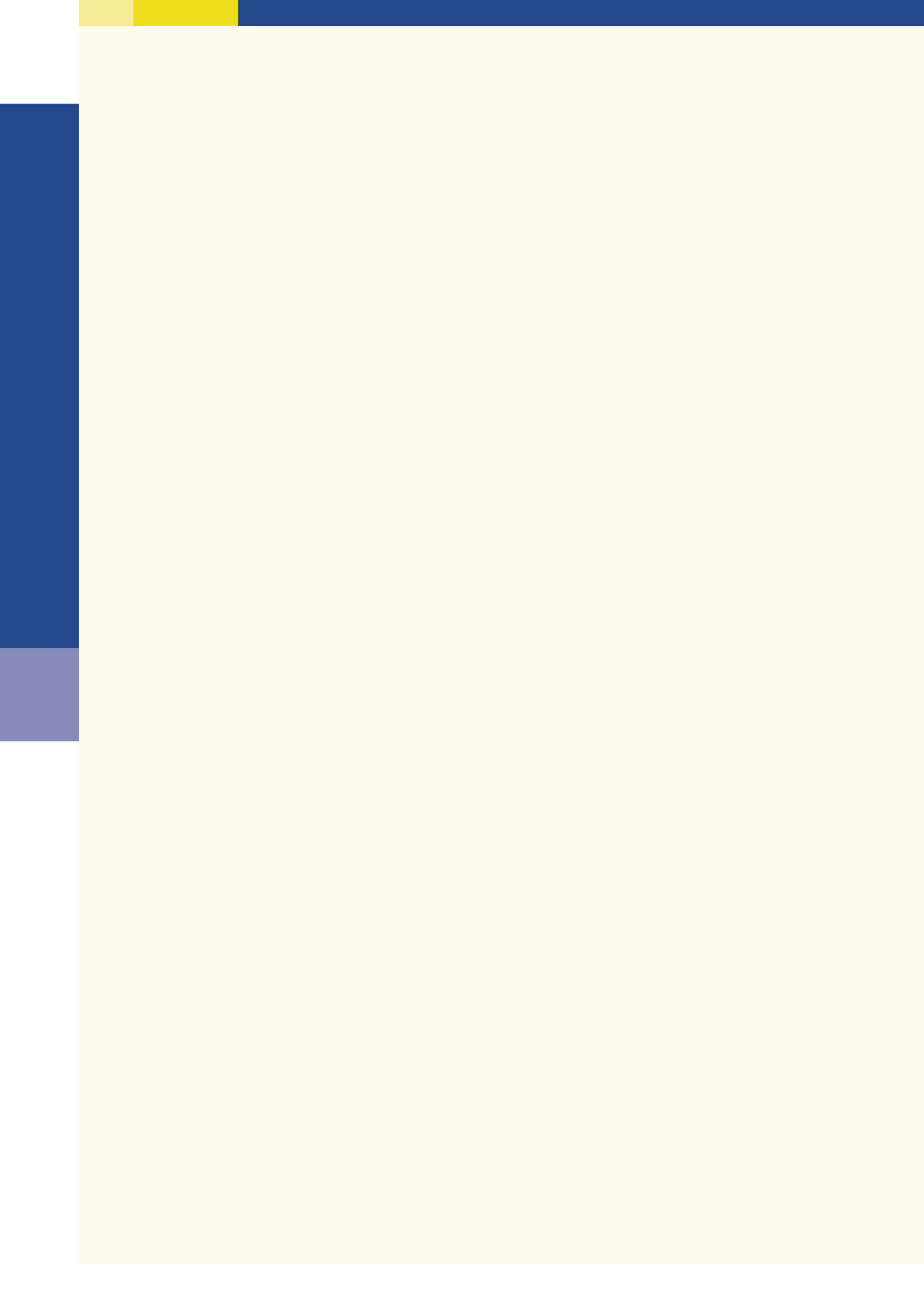
Dr. Edeltraud Ranftl, University of Linz, Austria and Dr. Karin Tondorf, Research and Consultation
on Equal Pay and Equality Policy, Germany 64

Measures and projects on equal pay in various European countries and Canada

Dr. Edeltraud Ranftl, University of Linz, Austria 69

Literature on the subject Equal Pay - Job Evaluation 74

The Contributors 77



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Opening

Opening address

DR. CHRISTINE BERGMANN FORMER FEDERAL MINISTER FOR FAMILY
AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH



Many people have gathered here today to discuss exemplary models and initiatives for the reduction of wage discrimination and to exchange experiences regarding trend-setting political strategies. In particular, I would like to welcome our international guests and the representatives of the European Union who have provided very considerable support for our conference.

Pay differences between women and men are not only a German problem. There are gender pay gaps in all European member states, although they vary from country to country. However, the requirement of pay equity, not only for equal work but also for work of equal value, has long been enshrined in European as well as in German law. In the meantime, numerous decisions and directives have been implemented on the national and international level which help us to enforce this requirement. In order to definitely push through pay equity in all of Europe, the EU has made the fifth action program to promote equality for women and men, "Equal Pay", the central topic for 2002.

Within the framework of these ongoing activities, Germany was put in charge of this conference. We are supported by our partner countries Austria, the Netherlands and Ireland as well as by the Federation of German Trade Unions and ver.di. I would like to thank you all very much for your co-operation. In the meantime, various EU member states, such as the Netherlands, Sweden and Finland, have developed exemplary initiatives. Political initiatives taken by these states can provide an important stimulus to national discussion.

In the Federal Republic of Germany, trade unions have contributed considerably to implementing the regula-

tions by launching campaigns to enhance the status of female-dominated occupations. The elimination of hidden wage discrimination is, of course, a particularly important responsibility of the parties to collective agreements. However, inequity between men and women is not only an issue for an equalisation-oriented wage policy. It is an issue with various, and often hidden structural causes which must be tackled on many levels. Therefore, it is also the duty of politics to identify these causes, to raise awareness, and, as far as possible, to take carefully targeted steps to rectify them.

In order to finally promote equal opportunities for working women, we presented the "Women and Work" program at the beginning of the legislative period, and have consistently implemented it since then. This program establishes the Federal Government's objective to work actively towards ensuring that the principle of "equal pay for men and women" is applied not only to equal work but also to work of equal value. In order to get both a detailed and comprehensive overview of the complex factors that are effective in this context, we commissioned a research team to compile a report on the work and income situation of women.

The research team under the direction of the Institute of Economic and Social Research (WSI) in the Hans Boeckler Foundation compiled this report which has, in the meantime, been published together with political statements by the Federal and Land governments and the collective bargaining parties. In this context, I would like to emphasise some main results of the report. Positive developments were observed in the area of vocational training where women have considerably caught up with men and even overtaken them. In the year 2000, 27 per cent of female students and 21 per cent of male students passed the university entrance exams. Positive trends were also noted in the longterm participation of women in the labour force. Women account for approximately 43 per cent of the gainfully employed population in Germany, thus making them a considerable part of the workforce.

However, we must bear in mind that women's total volume of work has declined over time. That means that an increasing number of women share the same volume of working hours. A growing proportion of the female workforce is occupied in part-time work (the part-time ratio among West German women is 42 per

cent and in East Germany 23 per cent). Women are still harder to find in management positions or on the higher echelons of company hierarchies than similarly qualified men. With increasing age, the proportion of men in management positions also increases. Up to now, women have experienced the opposite: the older they are, the less often they are to be found in executive positions.

Naturally, this also has to do with traditional role perceptions which are only slowly beginning to change. The male/female income ratio differs between the old and new federal Laender, amounting to about 75 per cent in West Germany and about 94 per cent in East Germany.

Fortunately, in the longer-term view, the income of women is growing closer to that of men. However, progress is slow. As a general rule, the following can be stated: the older a woman is, the greater the distance from the average income of men of the same age. The fact that young women between the ages of 20 and 24 in full-time employment earn approximately as much as men of the same age with full-time jobs, gives us hope. However, income differentials are influenced not only by the labour market but also, and most especially, by the position of women and men at home. As in the past, the increased participation of women in the world of work does not lead to a corresponding distribution of household work. The time spent by women doing housework is still 2.3 times higher than that spent by men.

This unequal division of household labour leads to clearly different career paths: independently of the family structure, men are almost always employed full time, while women, as soon as they live together with a man, very frequently have part-time positions or are not gainfully employed at all for periods of time. These patterns are exceedingly more common in West Germany than in East Germany. For these reasons, the total income of women born between the years 1936-1955, calculated over a lifetime, is on average only 42 per cent of the income of the men. The income differences between women and men are carried over into and perpetuated in the pension systems, because pensions are linked to gainful employment. As a consequence of the differing employment biographies, the pensions of women in the East are only approximately 60 per cent of that of the men and, in the West, they amount to even less than 50 per cent.

These are actual facts. However, what is particularly interesting is the causes of the foregoing phenomena and how they can be eliminated. If we look at the report on the occupation and income status of women, we can highlight three points that are particularly important causes of the existing disparities:

1. Gender-specific dividing lines in the labour market which persist inside companies. Here, first and foremost, the choice of career is an important point, but so are career advancement mechanisms in the company.
2. The evaluation of women's work and mechanisms of potential discrimination. Above all, we are talking about the undervaluation of female-dominated jobs in wage arrangements and practices at company level and in collective wage agreements.
3. The gender-based division of labour in the raising of children and the inadequate family support infrastructure. Let me begin with this third point, that is, the general social conditions.

Traditional models of gender roles and the division of labour in families are basic structures which are extremely persistent. To break down these structures, we have changed the framework conditions. We have converted the old child-raising leave into a modern and more flexible parental leave.

Now young parents can take care of their children together. Both parents have the right to work part-time for up to 30 hours per week. Together, both parents can work for a maximum of 60 hours per week to secure the family income. The law gives parents the freedom to decide on their own model. Additionally, we have adopted a law for part-time employees which enables precisely these young mothers and fathers to organise their life with children in a better way. In addition, we have run an advertising campaign to encourage fathers to play a greater role in the education of their children. This is a family and equality policy which is in keeping with the times and takes into account the changes that have taken place in traditional gender role perceptions.

Furthermore, we have made important steps, in reforming the pension system, towards eliminating the disparities which arise from the unequal distribution of work in the family. However, a sensitive point is still the child-care situation, particularly in West Germany. Let me mention some results of a new study on the employment preferences of mothers which I presented two weeks ago, together with staff from the German Institute for Economic Research and the Max Planck Institute for Human Development:

1. More mothers want to be gainfully employed. In the old federal Laender, 70 per cent of mothers with children up to 12 years, who are currently unemployed, wish to pursue gainful employment.
2. Many mothers would like to extend their working hours, but there is an inadequate supply of child care in the West.

This shows how important an expansion of all-day child care is. With regard to child care, Germany is a developing country compared with the rest of Europe. We all know that the responsibility for education and child care in Germany lies with the Laender and the municipalities. However, a lack of responsibility is no reason for inactivity. We are not interested in wrangling about jurisdiction, but rather in providing specific help for families. Therefore, the Federal Government intends to launch an education and childcare program for the future and, in the next four years, make one billion Euro available per year to promote and increase the number of all-day schools.

Moreover, in the next legislative period we will be bringing together all of our partners – the Laender, municipalities, associations, welfare groups, churches, companies – to attend a “childcare summit” in order to arrive at specific agreements on what each partner can contribute to improving the situation.

Let me turn to the other two points. A major proportion of the blame for the discrimination suffered by women in the working world can be laid on the limited occupational choices open to them, a fact that leads to lower pay and fewer options for climbing the career ladder. We have decided, therefore, to make this question one of our central aims and have undertaken massive efforts to arouse the interest of women in occupations with a promising future, especially in the IT sector. Our specific aim is to increase, by 2005, the percentage of female internet users so as to achieve parity and to raise the percentage of female participants in IT courses at universities and IT vocational training courses to 40 per cent.

We know that the structure of the tax and social systems are of central importance to women's lower employment rates and income status. Therefore, it is necessary, and I see it as a task of policy-makers, to review the appropriate regulations under gender-equality aspects and to close the existing loopholes that make inequities possible. For example, I refer to the practice of taxing spouses independently (income splitting system) that we are seeking to reform in the next legislative period.

Permit me now to turn to the major topics of this conference: the central importance of the design of collective agreements and, in particular, the underlying job evaluation procedures. When looking for the causes of inequality, one question arises again and again: what value do we actually give to “women's work” and “men's work”? Today, the main problem is less about equal work, in other words, male bus driver/female bus driver. What poses greater difficulty is evaluating different activities in one workplace, for example, the

job of a clerical assistant with that of a warehouse worker, in a way which avoids gender-based discrimination.

Collective agreements and company arrangements and practices often lead to pay differentials between women and men, without an objective reason for this being evident. For example, the non-valuation of requirements or skills, or the application of different standards in evaluating comparable work done by women and men, has discriminating consequences. In particular, certain requirements that are typical for female-dominated jobs, for example taking on responsibility for other people, are often left out of the job evaluation.

New models of non-discriminatory job evaluation will be presented at the conference. For example, a procedure developed and put into practice by the Swiss labour scientists Katz and Baitsch, or a procedure that the collective bargaining parties in Great Britain have designed jointly. For all of those who are involved in wage policy, and that means especially the collective bargaining parties, these important new approaches provide important ideas for fair and modern wage systems – incidentally, not only from the point of view of gender equity with respect to pay.

At the same time, the government must also contribute to the implementation of pay equity. As examples from the field show, there is a wide spectrum of possible initiatives available – ranging from information and training, to the setting up of state commissions, to laws on procedure. At the conference we will also have the opportunity to discuss the transferability of political solutions against the background of the conditions which have evolved in the various countries.

Germany, too, has launched a range of initiatives aimed at increasing the general public's awareness of the problem of wage discrimination and at sensitising the responsible parties. During the past few years, my ministry has supported several projects, among them projects funded by the EU, which focus on the subject of “equal pay for work of equal value” and, in doing so, establish international connections. The numerous projects promoted by ver.di and by my ministry have provided us with knowledge that indicates that there is a potential for indirect discrimination in the Federal Collective Agreement for Public Employees (BAT).

We have taken the necessary steps: within the framework of a Gender Mainstreaming Project, the Federal Ministry of the Interior as a public employer will examine the classification system of the salary scale for public employees. This will be carried out in dialogue with the social partners as well as with the Laender and municipalities. The results will then flow into the negotiations on the modernisation of collective bargaining

law. With these efforts, the Federal Government is doing its share to eliminate wage discrimination.

In my ministry, one of our principal objectives is to encourage the collective bargaining parties to pursue joint initiatives and to promote the systematic review and redesigning of collective wage agreements. Consequently, this conference is not all that we plan to do. By the end of this year, we will submit a revised EU code of practice for the implementation of the principle of equal pay for work of equal value for men and women. With this we seek to support the wage parties in the analysis of their wage agreements. This code of practice will provide not only the parties to collective wage agreements, but also affected women and their representatives with a basis for the examination of possible wage discrimination. Furthermore, together with the collective bargaining parties, we will examine which measures are suited to improving the enforcement of the individual legal claims of the affected women.

"Many paths lead to pay equity". This was the conclusion of an EU project on discrimination-free(er) job evaluation in Germany, Great Britain and Austria, co-financed by my ministry. This will continue to be the theme for the Federal Government in its future exchanges with EU member states about further steps to secure the implementation of wage equality for women and men.

I am confident that, in the next few years, progress will be made through the implementation of Gender Mainstreaming, the support of the parties to collective agreements, and not least through the creativity of women and committed men. I would like to encourage all of you to continue to face up to these challenges. What the German feminist Louise Otto-Peter said 150 years ago still applies to this day: "... history, especially in present times, has taught us that those who forget to think of their own rights will also be forgotten."

I wish you all a stimulating and successful congress.

„Equal Pay“ – an EU working focal point

MARIE DONNELLY HEAD OF UNIT FOR GENDER EQUALITY, DIRECTORATE GENERAL
EMPLOYMENT AND SOCIAL AFFAIRS, EU-COMMISSION

The principle of equal pay for work of equal value has, in one form or another, been enshrined in European law since the 1950's and was given legal effect in the Equal Pay Directive of 1975 which provides that all discrimination on the ground of sex in respect of all aspects of pay should be eliminated.

However, turning this principle into reality has proved a formidable task. Despite the principles of the treaties, the existence of the Directive for more than 25 years, and the apparently genuine support from governments, employers and trade unions, today women in the European Union continue to earn less than men by as much as 20 per cent.

If social justice did not demand equal opportunities for women and men in employment, then economic necessity would. In the light of the demographic decline in Europe, the longer term sustainability of our social model will be threatened unless the pool of labour is reinforced. Participation of women in the economy is seen as an essential key to this sustainability with the Lisbon summit of March 2000 setting a target for female participation in the labour market at 60 per cent by 2010.

The European Employment Strategy is a key policy in this respect. Establishing equal opportunities for women and men as the fourth pillar of the European Employment Strategy on alongside the pillars of employability, adaptability and entrepreneurship was a breakthrough as it opened up the labour market policies to include the dimension of gender equality as well as introduced gender mainstreaming as intrinsic to the policy.

The European Employment Strategy uses indicators to assess progress in the Member States employment policies. A Joint Employment Report, published annually, gives a comparative assessment of the NAPs and examines each Member State's response to the guideline recommendations for that year. Equal pay has been included as a priority since the beginning.

The EU 2002 employment guidelines, adopted in September 2001, continue to take up the gender pay gap because of the insufficient progress made so far. They urge Member States and the Social Partners to adopt "a multi-faceted strategy" in the public and private sector and "consider the setting of targets to tackle the pay

gap". Suggested actions include a review of job classification and pay systems to end gender bias, improving statistical and monitoring systems and awareness raising about the pay gap.

Improving the situation is however complex due to the multitude of factors involved:

The gender pay gap in the EU is still wide: 16 per cent. Women's average gross hourly earnings for employees at work for 15 hours or more in 1998 were 83.8 per cent of men's. The gap was higher in the private sector – 23.7 percentage points – than in the public sector where it was 10.7 percentage points. The lowest pay gaps in 1998 were in Portugal, Italy and Belgium. The gaps were highest in the United Kingdom, Austria, the Netherlands, Germany and Ireland.

Current research findings show that the pay gap arises to a significant extent from differences in the kind of jobs performed by women and men. This gender segregation of the labour market leads to an unequal distribution of women and men in different sectors, branches of industry and occupations and this has a direct bearing on the pay gap. The pay gap can range from 43 per cent in the male-dominated crafts and related trades to around 18 per cent in female-dominated occupational fields such as clerks, service workers and shop and market sales workers. Occupational segregation is thus high in new technologies, where men take up two thirds of the high skilled jobs. Many factors contribute to gender segregation. Educational choices, stereotypes, attractiveness of given sectors for men or women, including possibilities of reconciliation of professional and family life.

Payment systems are changing, putting greater emphasis on the competencies of the individual worker rather than on the nature of the job. This has been accompanied by greater use of individualised performance awards. This can result in gender bias when assessing skills. Managers may not even be aware that they are more likely to negotiate higher individualised salaries for men. Research has shown that part of the blame comes from "complacency" amongst employers. It said that employers state confidently that they do not discriminate in how they pay women and men, yet have never compared average pay by gender to find out whether or not discrimination is taking place even if inadvertently.



Employers can be criticised for targeting low paid jobs at women who rely on their partner's income even though, the earnings of many women are not sufficient to live on, especially when they have childcare costs. "Employers who pay higher wages (for jobs where men pre-dominate) are effectively subsidising employers who pay low wages to women, because the household income relies on the male earnings."

Over the Union as a whole, women with university education earn on average 32 per cent less than men with a similar educational level, whereas women with no qualifications beyond basic schooling earned 22 per cent less than men. Since women with higher levels of education are far less likely to interrupt their working careers for family reasons, this result is the opposite of what might be expected if experience, an unbroken working career and the understanding of the latest techniques which come with it, are important determinants of pay levels.

The pay gap exists in all age groups but widens significantly the older the worker. So for women aged 40 to 54 working full-time, average hourly earnings were over 20 per cent lower than men's in all Member States, rising to 30 per cent in France, Italy and Luxembourg, 33 per cent in the Netherlands, 40 per cent lower in the UK and almost 45 per cent lower in Greece.

Surprisingly the relative length of service seems to make little difference within age groups. Indeed, "the wage gap tends to be wider for those who have been in a job for a relatively long period of time than for those who have been in a job for nearly a year or two". The top 10 per cent of women wage earners in the European Union earn on average 35 per cent less than the top 10 per cent of men wage earners. This feature is true throughout the Union, and is especially marked in France, Italy and the UK.

On the other hand, the lowest paid 10 per cent of women have hourly wages that are on average some 15 per cent lower than men. The fact that in almost all Member States the income gap is smaller in the government sector than in the private workplace shows that governments have taken measures as employers to avoid the injustice in salaries. In the private sector, more measures are needed.

Equal pay, proper recognition of women's skills and abilities, and policies that enable employees to combine work and family life all help to draw more women onto the labour market and give the economy a productive boost.

However, it is also clear that gender pay gaps do not decrease as an automatic by-product of the growing female participation rate as they are linked to structural gender inequalities in the labour market.

Therefore it is clear that to reach equal pay four actors are required:

- Women themselves must be made aware that an income gap exists so that they can demand equal pay.
- Social partners have an essential role to play – as the active parties to a wage agreement, they have an important role in implementing measures towards equal pay. Pay settlements are the most important means to achieve equal pay.
- Companies at the action point for achieving equal pay, for which gender pay audits and reports on equal treatment can be very useful. Also the method of job evaluation must ensure no gender bias – and this generally means modernising the systems used.
- Governments have a dual role – as employers they must show leadership in this respect (which is underway) and they must also set the policy framework with incentives and targets for achieving equal pay in reality.

“Simon earns more than Simone”

DR. KARIN TONDORF RESEARCH AND CONSULTATION
ON PAY AND EQUALITY POLICY, GERMANY

„Women are not discriminated against in terms of pay“. This is, according to an analysis made in the year 2000, the generally held opinion as well as the opinion of the Federal Association of German Employers' Federations and of the pro-employer Institute of German Industry. A closer look shows that only the problem of direct or imminent discrimination is considered. For about a quarter of a century, however, this is no longer our main problem. In this country, the question of whether women who perform the same work as men receive the same wage is no longer a priority. Today, this is largely guaranteed in Germany, at least in wage agreements. This means that wages are no longer openly based on gender. What has become more important in recent years is to find out to what extent the entitlement to equal pay for work of equal value is actually re-deemed.

In Germany, „Simone“ on average earns 75.8 per cent of the income of „Simon“. The comparison between East and West Germany is interesting. In East Germany the average salary of a woman is 93.9 per cent of the income of a man, various in West Germany annual gross salary of a woman amounts to 74.8 per cent of the income of a man. These differences between East and West demonstrate that in both parts of Germany there are different employment and wage systems as well as various policies towards gender.

What are the reasons for the lower average income of women? The public discussion concentrates on a range of structural features that are meant to justify the differences in pay. Explanations, among others are:

- branches of industry: woman work in lower paid branches;
- occupations: many so-called „female occupations“ like hairdresser, physician assistant, typist, sales clerk or domestic helper, are at the bottom of the income scale;
- the position of women in company hierarchy: women predominantly occupy lower and middle positions;
- the level of qualification: on average – as is assumed erroneously – women have a lower qualification level and accordingly a lower income;
- less work experience and duration of company membership;
- their work/life balance.

At first sight these structural features appear as objective factors with which the differences can be justified. Should one follow this line of thinking, there would be no wage discrimination based on gender. Apart from that, it is widely believed that wage differences are the result of individual decisions made by women themselves and therefore not a responsibility of the collective agreement parties. However, one should take a second look because the actual causes of wage differences remain unanswered. The following facts are unexplained: why do the job segments in which women work often belong to low-wage sectors? Why are the so-called female occupations so poorly paid? Or, why are women in the organisational hierarchy predominantly found in the lower and middle ranks?



Obviously wage differences between the genders also have something to do with values. Our results show that even with the same structural features, considerable wage differences exist between the genders. That means for example, that with the same level of qualification – be it a semiskilled worker, an employee with or without vocational training or an employee holding a university degree – women earn less than men. Holding the same position, e.g. as a clerk, a tradesman, or a craftsman, women are also paid less than men. And, women who are of the same age or have the same seniority in the company as their male colleagues, earn less as well.

This shows that the wage differences between the genders cannot be explained by objective factors alone. It remains unexplained that gender still plays such an important role in wage differentiation. Gender related stereotypes still remain, be it consciously or unconsciously.

sciously, either by predefined structures or by persons who encounter wage policy decisions every day. For a closer look at the deeper reasons for income differences, we have to look at how wages are determined. In EU-member countries, there is quite a wide spectrum of procedures and regulations. Partly, income is regulated individually, and partly by company agreements or collective agreements on an industry level. In such collective agreements there are often very decisive rules, procedures and criteria for establishing and differentiating wages. In some countries, quite often, detailed explanations are missing, for example, why the work of a male or female driver is better paid than the one of a male or female secretary. That means wages are often determined by policy. In Germany, wages and salaries are regulated predominantly by labour agreements. Identifying gender discrimination in these contracts is not an easy task when it comes to indirect discrimination. It is concealed behind rules, regulations and procedures that discrimination appears to be gender neutral. Indirect discrimination becomes apparent if one tests the effects of these regulations on men and women. The decisive factor is the effect, whether desired or not. Such gender comparisons with regard to wage regulations are still unusual in German bargaining practice.

When checking wage systems for discrimination, it is helpful to take a look at the European statutory directives because they show what regulations must be applied to guarantee non-discriminatory wage systems. Here, we would especially like to point at the so-called equal pay directive 75/117/EEC, which prescribes that uniform criteria must be used in the evaluation of activities. A uniform valuation standard must therefore be used. Furthermore, different decisions of the European court exist:

- Wage systems must be transparent and provable.
- Objective differentiation criteria must be used.
- The selected criteria must correspond to the work actually performed.
- The criteria must be interpreted and used in a non-discriminatory way.
- The entire system must be designed so that discrimination based on gender is excluded.

The result of our analysis shows that the majority of the wage agreements in Germany do not meet the European requirements. They contain potential for different forms of discrimination with regard to the job evaluation; for example:

- the non-value of job demands (for example, physical strength needed for care providers),
- the use of different evaluation criteria in female and male dominated activities,
- double and multiple evaluation of criteria for similar circumstances (i.e., when „knowledge“ and additional „thinking“ is valued),

- discriminating interpretation of criteria (i.e., definition of responsibility regarding leadership),
- increasing latitude for evaluation (through summary job evaluation or through vague wording in wage agreements),
- listing of criteria (i.e., evaluation of „responsibility“ only if „comprehensive expert knowledge“ is also required simultaneously),
- disproportionately high weighting of criteria with reference to male dominated jobs (i.e. physical strength),
- the valuing of demanding activities only after a certain time proportion is reached (i.e., 50 per cent of tasks require independent performance),
- use of different job evaluation systems and logic on the part of collective agreement parties or the same employer; for example, for female blue collar workers and office workers or for different occupation groups.

The following example illustrates three important discrimination mechanisms. A comparison was made between the activity of a clerk and a warehouse worker. This example is typical for all wage agreements that evaluate and compensate blue collar and office workers separately. As an evaluation characteristic in the clerk's activity, only the required qualification is considered; namely „a completed vocational education or the equivalent gained by practical experience“. In the case of the warehouse worker, five estimation criteria are considered: qualification (previous educational knowledge or job training), conscientiousness and accuracy, demands and responsibility. The salary of the clerk is about 150 euros below that of the warehouse worker.

Possible sources of discrimination are:

1. Different evaluation criteria. The comparison clearly shows that the evaluation of both activities is inconsistent. The meaning of Directive 75/117/EEC, to use the same criteria, is not fulfilled here.
2. Under-valuation of female jobs. The question remains whether the qualification requirement alone is appropriate for the activity of a typist. According to the European Court, a job description is needed in order to get the right „essence“ of the activities and to find criteria that are applicable to the actual activity. However, this is an exception in most wage agreements and one can say: „what is not specified, is not valued and also usually not compensated“.
3. Non-transparency. For the typist, a vocational education or an equivalent qualification is required. For the job of warehouse worker, only instruction or job training is necessary, therefore a lower qualification level is required. A typist alone cannot verify, based on this regulation, why she receives 150 euros less, because it is not specified what value her education has in comparison to the training of the warehouse worker. The wording also remains vague, such as

„longer work experience“ or „greater demands of different types“.

The non-transparency of wage systems is frequently caused by summary job evaluation commonly used in German wage agreements. For these procedures, the overall typical estimate of the value of an activity creates evaluation latitudes by which both employer and labour union representatives equally see as an advantage. Therefore the political resistance against an analytical job evaluation is relatively high. The existing industrial science findings on this procedure are unambiguous. Analytical job evaluation procedures are more transparent and therefore less susceptible to discrimination. They guarantee that all activities covered by the regulation are valued using the same evaluation criteria. In addition, the weight each criterion has within the framework of the total evaluation must be clearly stated. This is not to say that the analytical job evaluation is also not, per se, free of discrimination. It also depends on the selection of the criteria, its interpretation and its weighting results.

Most German wage agreements, because of inconsistent evaluation, do not recognise whether activities of women and men are of equal value. In order to implement equal pay for work of equal value, we need a non-discriminatory procedure for job evaluations. They are an inevitable prerequisite for more wage equality. This does not mean that the problems of indirect wage discrimination are solved once we do apply a non-discriminatory job evaluation. Further cases of discrimination exist especially in the assigning of wage levels to wage groups. Also, if in reality the activities are of

equal value, they can be paid differently. This becomes clear when comparing the base wages of commercial and technical employees (wage agreements for the paper, cardboard and plastics processing industry). In both commercial and technical occupations, a vocational education or an equivalent background is required. In both cases the activity is characterised as a predominantly low level commercial and/or technical activity. The collective bargaining parties themselves explain that the activities are equivalent. Nevertheless, a difference of more than 150 Euro in agreed wages exists. Published and verified statistics on agreed wages in Germany demonstrate how simple activities carried out by office clerks and blue collar workers are paid. They show that, in general, lower level clerk jobs in West Germany are often paid several hundred euros less than simple blue collar worker jobs.

What consequences can now be drawn from our analyses? The overall results show that it is urgently necessary to subject all wage systems – be it negotiation, operational or legal, or regulated on an official level – to a systematic test and to abolish regulations that discriminate, or could discriminate.

Europeans no longer stand at the beginning with respect to the implementation of the principle of equal pay. Drafts of a non-discriminatory job evaluation already exist and do not need to be re-invented. With respect to the political strategies – be it wage policy or governmental – they can be constructed on the basis of the experiences made in other countries.

equal pay

Models of non or less
discriminatory job evaluation
and their application
in practice

Development of less discriminatory job evaluation using the “National Joint Council” as a case study

SUE HASTINGS PAY AND EMPLOYMENT ADVICE, GREAT BRITAIN

Job evaluation is a technique, or a tool, for comparing the demands of jobs within a population or organisation, in order to develop a rank order of jobs, usually as the basis for a grading and pay structure. Using evaluation techniques, all relevant job requirements are measured in the ranking system. Neither the person whose job is to be evaluated, nor their gender are relevant – job evaluation must be neutral.

What is a job evaluation system?

All job evaluation systems start by examining workplaces with regard to certain factors. If one takes the health system in Great Britain as an example, it appears at first glance that it is very difficult to compare the work of doctors, physiotherapists, nurses, bookkeepers or electricians with each other. It requires,



therefore, a definition of the occupations using underlying criteria such as qualification, experience, and responsibility for staff or finances. Also, workplace conditions like physical, mental and emotional demands are differentiated. As opposed to other appreciation systems, a matrix is constructed for the job evaluation using these factors and for every separate factor a points scale is assigned with a high and a low value as well as those in-between. This points assignment represents the basis for the classification of jobs.

Fundamentally, points based evaluation systems are designed so that several points per classification level can be reached. The job evaluation system distinguishes itself by a different weighting of the different factors: more points are assigned to certain factors if they are classified as more important than others. This weight-

ing can also occur when several factors for a job evaluation become relevant.

Historically, earlier job evaluation systems represented a problem in that they were discriminating and not gender-neutral: in the past the elements of older job evaluation systems were designed in a discriminating way. For example, the examined job factors did not reflect the real demands of the jobs but became over-balanced by the demands of those jobs dominated by men over those jobs dominated by women.

To be able to design a less discriminating job evaluation system, the following must be considered: all factors should be adequate and suitable for the examination of the relevant jobs; all important skills of the job must be considered; which factors best represent all required job demands; and that the weighting system complies with the rankings of the organisation. For the implementation of equal pay, it is essential to consistently apply accurate rules and criteria of the job evaluation to all jobs.

Background to the development the job evaluation system of the National Joint Council

The job evaluation scheme (JES) of the national joint council (NJC) was developed for local government in England and Wales. The local government sector in England and Wales employs nearly 1 million people, of whom approximately 80 per cent are female (of whom about 80 per cent work part-time), most in jobs traditionally segregated by gender. For example, women predominate among school meals staff, nursery nurses, home carers, secretarial and clerical workers, and social workers. Men, on the other hand, form the great majority of road workers, engineers and refuse collectors.

Another reason for the development of a new job evaluation system lay in the many complaints submitted because of wage inequality. The public service employers feared further lawsuits.

Development of the NJC job evaluation system

A working group was established in 1995 and was commissioned by the then two separate negotiating bodies to develop a JES for the local government. The working group consisted of two representatives from three employers' organisations as well as the three biggest labour unions in the sector. In addition, two technical advisers, one from the employers' side and one from the union side, were involved. The working group quickly came to the conclusion that no existing scheme was both applicable to all local government jobs and compliant with the equal value requirements. The first decision was to develop a new scheme.

The working group differentiated the factors and demands of the relevant jobs and arranged them in three categories:

- knowledge and skills (which serve to estimate the scope for action of the employee and to be able to determine to what extent he/she can take initiative and act independently),
- load demands, including emotional demands (although emotional demands do not easily fit into a job evaluation system, for example with social workers and nursing staff, they are an important factor to be considered),
- working conditions (which include not only the physical working conditions but also the working environment).

Moreover, the job evaluation system of the NJC considered some of the responsibility factors already being used in traditional job evaluation systems.

This factor classification was developed on the basis of information available for different jobs. Then various levels were assigned to the factors, so that their relevance can be registered for the respective job.

Ensuring equal pay

Between 1960 and 1970, there were different methods used to weigh workplace factors in Great Britain. The weighting was determined according to a fixed ranking of jobs. In contrast, the new system developed certain principles for use in evaluation and weighting. These fixed principles were used with the testing of the evaluation system. It turned out, for example, that the biggest weighting was attributed to the "knowledge" factor. Moreover, it was determined that all "responsibility" factors should have the same weight, e.g., the responsibility for finance and the management of employees should be equally valued. The load demands should in each case constitute 5 per cent of the total weighting. Also, the equal rights factors are considered.

The job evaluation systems developed in regard to equal pay show many similarities. Because there are many various job evaluation systems, those that develop non-discriminating job evaluation systems should cooperate and become active together against those which still support traditional, discriminating job evaluation systems, for example the large management consultancies. In principle it must be guaranteed that the requirements for occupations of woman are likewise considered as occupations for men. Therefore, the system of the NJC includes factors such as interpersonal communication skills, social and emotional requirements.

The evaluation system has a lower number of fixed factor classifications compared to traditional systems. In traditional systems, additional steps have been introduced only to assign a higher score to certain jobs and to give them a heavier weighting in the system. For the NJC job evaluation system, clear and understandable steps and levels were introduced which can be applied to the appropriate jobs.

The evaluation system and the weighting of the factors is based on established principles and is aimed not to reach a certain result, but to value neutrally.

To ensure equal pay, training programs were given on equal rights principles. Therefore, all persons involved with the organisation and the development of the system – from the working groups to the test subjects and the different involved parties – received training.

Implementation of the NJC

The implementation of the NJC job evaluation system represents a very large logistical challenge in which a control group is general used for the execution and administration. It is important that this control group of workers are fairly represented, with women in appropriate measures. The control group participates and can be supportive by applying the jobs system and by the evaluation after the fixed factors.

For the support of the employees, job analysts are frequently engaged to supply sufficient background information and to make necessary details available for the evaluation of their job. It is usual, in checking the system, to accomplish an orientation attempt at certain benchmarks. For this, job descriptions are particularly important.

During implementation, factors of equal rights were considered to the extent that the persons taking part in the development procedure were trained in the principles and practices of equal treatment. With the system, which is published in the collective agreement, a certain transparency is to be achieved. To avoid any influence from the employee, and to guarantee comprehen-

sive information, a very detailed questionnaire was conceived for the job description. This questionnaire contains questions about pertinent data and the required activities. The employees should be supported by job analysts during the supply of the necessary data required for the system.

For the evaluation of the questionnaire and the job description, all information referring to gender had to be removed. For the evaluation, user guidelines were provided to ensure the observance of principles and procedures of equal treatment. Because in Great Britain more than 60 per cent of the workers in the public service work part-time, special directives had to be provided for the evaluation of part-time employment. This was necessary, because evaluation groups classified part-time jobs lower than full time jobs. Regarding the factor "effort", the committees considered the duration of work proportionally.

Problems during the implementation of the system

Certain difficulties appeared with the implementation of the system. A problem resulted in the fact that the system was not mandatory but only a recommenda-

tion. The local authorities should not be able to decide against the job evaluation in general, but rather be able only to select which job evaluation system is to be used. Moreover, in Great Britain the implementation of the system came with substantial delays. There was clear resistance from the employer's side of the public service to the changes of the classifications brought by the job evaluation system. It was criticised, for example, that all occupations which are carried out as a rule by women (home care service, domestic care, social worker) were classified like jobs in social services, and have thus been classified higher. In addition, many authorities had concerns with regard to the high expenses of job evaluation.

To avoid these problems, the job evaluation system of the British health service will be obligatory and therefore must be applied to all areas of the healthcare sector.

Non-discriminatory Job Evaluation – Application of the NJC System within an Action Research Project in Austria

DR. EDELTRAUD RANFTL UNIVERSITY OF LINZ, AUSTRIA



In 1999, the project “Discrimination free Job Evaluation and Organisation” (D.A.B.O.) was commissioned in Austria. The project belongs to the sphere of responsibility of the Federal Ministry for Economic Affairs and Labour.

The main objective was to conduct an analysis of pay and possible sources of wage discrimination within two enterprises. Building on this platform, a suitable non-discriminatory job evaluation system was to be selected, tested and, where applicable, implemented for each organisation. Selection of the companies lay with the research team themselves. This process proved to be difficult, as the social partners in Austria considered their pay and collective agreements to be gender-neutral.

A bank and the organisation Volkshilfe Oberösterreich declared their willingness to cooperate, with both enterprises putting differing evaluation systems to the test. The job evaluation system from Katz and Baitsch (ABAKABA), in the Evalfri version, was adapted for the bank, while the NJC evaluation system (National Joint Council: Local Government Job Evaluation Scheme), which had been developed for use by local authorities in England and Wales, was applied to the organisation Volkshilfe. The following concentrates on application of the NJC system within the project implemented at Volkshilfe Oberösterreich, entitled FABAs (fair evaluation of work).

The Organisation Volkshilfe

Volkshilfe Oberösterreich (Upper Austria) is a non-profit-making organisation providing health and social services

(in-patient and mobile care for the elderly, refugee support, nursing care, childcare and mobile therapy). The association also carries out numerous, predominantly innovative, socio-economic projects.

The FABAs project started in September 2000 and was concluded as a research project in September 2001. The project-team consisted of the Chair of the Works’ Council, the Chief Executive of Volkshilfe Oberösterreich, the Manager of the Linz office and two members of the research team. The initial task was to agree objectives for the project.

FABAs Project Objectives

- development of a job evaluation system,
- drafting of a framework for collective bargaining negotiations,
- identification of potential elements of discrimination,
- transparency of job evaluations and job descriptions,
- staff information regarding job evaluation,
- enhancement of corporate image.

FABAs aimed to avoid causing uncertainty amongst staff and ensure that there was no direct interference in existing employment conditions.

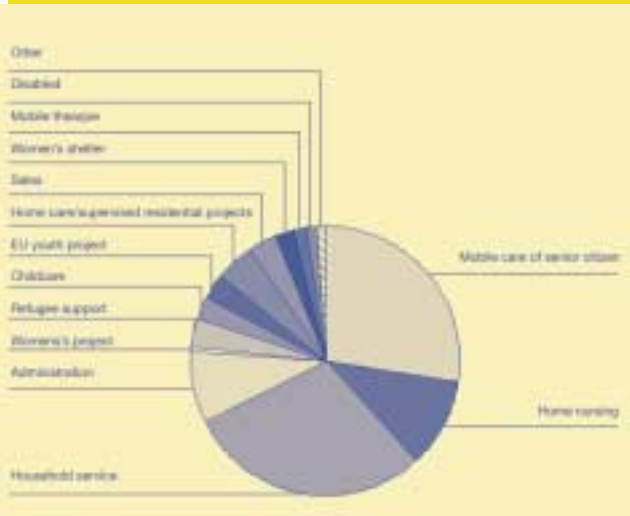
Project Content Schedule and Implementation Steps

- Analysis of staff and payment structures,
- selection of a job evaluation scheme,
- workshops with ‘benchmark jobs’,
- adaptation of evaluation system to jobs within the organisation,
- drawing up and testing of survey tools (questionnaire),
- undertaking job analysis,
- training of evaluation group members,
- implementation of the job evaluation,
- analysis of results.

Analysis of Staff and Payment Structures

Actual analysis of current staff and pay structures was a necessary prerequisite to implementing the project. In 2000 (basis for the analysis), the organisation employed approximately 550 staff, of which women accounted for 91 per cent.

Distribution of employees according to fields of work (N=501)



Source: DABO data file "FABA", 2000

Three-quarters of the entire workforce are employed in just four areas: care of senior citizens (27 per cent), home nursing (11 per cent), household service (29 per cent) and administration (7 per cent).

Structure of Employees According to Application Groups

The salary scheme at Volkshilfe is determined within a separate employment agreement and consists of 8 salary category groups (from A to H, whereby A is the lowest group) each with 25 salary brackets.

Almost one third of female staff and, by contrast, just ten per cent of male personnel are employed in the lower application group A, with a similar ratio apparent in application group B. Conversely, the upper application groups F, G and H account for 20 per cent of men employed within the organisation, yet a mere 5 per cent of women.

Analysis of Pay

The average monthly salary for male staff is more than one-third higher than that of their female counterparts. Even when part-time employment is extrapolated to full-time rates, an average differential between the monthly pay for men and women of around one fifth remains; equivalent to an advantage of approximately Euro 360 for male employees. This initial analysis of pay gives an early indication of potential gender discrimination. Detailed analysis of pay supplements and bonuses did not reveal any gender-specific differences.

Criteria for Classification and Grading

The essential criteria for classification and grading and, therefore, for determining individual rates of pay within

the organisation are: length of prior service, occupational function, in addition to training and/or qualifications. However, these criteria are not applied equally to all groups. For example, the decisive criterion for group classification as regards caring for refugees is the activity involved, whereas, for home nursing, it is set in terms of the relevant qualification for this occupation. In other words, the system of pay does not comply with the requirement for 'application of equal criteria' for all employees.

Selection of the Evaluation System

The researchers sought out evaluation systems that comply with EU norms and standards. Following consideration of the ABAKABA, EVALFRI and NJC systems, the steering committee (two employer representatives, chair of the works council and research-team representatives) opted for adaptation and trial of the NJC system. Essential factors in reaching this decision were, firstly, that the NJC system afforded close consideration of characteristics typical of service-provision operations, and secondly, that the weighting negotiated by the National Joint Council for Local Services appeared to be suitable to actually achieve the creation of new relationships between the various occupational activities, rather than merely aiming to safeguard established traditions. In some applications, an example being the evaluation of the canton of Fribourg, EVALFRI, the question arises of whether the weighting (the intellectual factor accounts for almost 60 per cent) may be applied to simply recreate the historical occupational hierarchy. Furthermore, the FABA evaluation system distinguishes itself from other models in that the number of characteristics is not restricted to a minimum. In the past, a reduction in characteristics has resulted in non-evaluation or under-evaluation of social services provided by women. A further decisive factor in selecting the system was the fact that the 'gender-neutral' evaluation system afforded by ABAKABA is well-known in the German speaking community, thus application of the unknown NJC system represented an additional challenge.

Adaptation of the Evaluation System

Prior to specific adaptation and application of the job evaluation system, analysis of the characteristics and features of occupational activities needed to be carried out in order to enable appropriate consideration of the type and nature of the work. To facilitate compilation of data as regards the activities undertaken within the organisation, workshops were carried with benchmark jobs. Additionally, the workshops also aimed to provide information on the evaluation system and on potential discrimination within job evaluation.

The steering committee revised the NJC system, whereby categories and factors were essentially maintained. A number of individual factor levels were redefined and guidelines were adapted to the jobs undertaken within the organisation. Weighting negotiated by NJC was adopted and a comprehensive questionnaire was developed and tested to facilitate compilation of job descriptions. In all, from a total staff of 550, 45 employees with benchmark jobs were interviewed, with each interview lasting approximately three hours. In respect to the nature of questioning, a familiarisation phase was necessary for the interviewees owing to the fact that, for example, questions were not related to school education, but rather concentrated in detail on the nature of necessary knowledge and skills.

Questionnaires were evaluated anonymously by the evaluation commission (nine members, with equal representation from the management, the works council and researchers), with each individual factor discussed separately. Accordingly, the respective factor levels were determined through discussion and not by means of vote.

Results

Subsequent to evaluation by the commission, the researchers were able to allocate evaluation results to the application groups and salary brackets. Further evaluation analysis demonstrated that different jobs, such as mobile physiotherapy and secretarial management, were on a par, with the total number of points achieved establishing an equal work-value. Moreover, care of refugees proved to be work of equal value to childcare (in this organisation!). Yet, under the old system of pay, these two activities are allocated to different pay groups.

The organisation has now determined to introduce and implement a non-discriminatory, analytical job evaluation system. To facilitate compilation of the new appli-

cation group schedule, additional benchmark jobs, such as those of management executives, are currently being evaluated and incorporated. The quality of performance by Volkshilfe project-group members in terms of information and marketing activity was of such a high level that the project has won extensive acceptance throughout the organisation. Implementation of the project was characterised by 'fair play'.

Final Remarks

Overall, non-discriminatory job evaluation aims to achieve fairer evaluation of work and upgrade those activities primarily undertaken by women.

As a result of these two practical examples and their different development, it has become apparent that a project to implement non-discriminatory job evaluation should be undertaken as a joint programme by the social partners. In respect to this, both parties would pursue different objectives and will need to determine these more precisely. Furthermore, a steering committee with sufficient powers of decision (top management) is required. Information and communication, in addition to training on the subject of 'equal pay', are essential prerequisites for such projects. Through the specific project FABA, it has been possible to demonstrate at an inter-organisational level, both in public and by way of workshops with those involved, how non-discriminatory job evaluation can be implemented within an enterprise. Consequently, this has resulted in a better understanding of the principle of equal pay for work of equal value. The entire DABO project has contributed to revitalising discussion of non-discriminatory job evaluation and 'equal pay' in Austria.

Plenary discussion

Anne Jenter, Head of Women's Policy DGB (German Trade Union Confederation) National Executive,

is interested in how the discussion on 'equal pay for work of equal value' was opened in England.

Sue Hastings, Pay and Employment Advice,

explains that a series of factors have led to the development of the system. The principle cause lay in the different structures for administratively or academically qualified staff and skilled trade personnel. Comparably, tradespersons were paid much less, although they provided numerous services and commanded a large share of the market. For these workers, the old pay structures were no longer just within the new situation. Therefore, steps to implement new regulations have been taken and employers have been 'obliged' to actively contribute to the process.

Dr. Larissa Klinzing, National Executive of the Union for Education and Science, Field of Activity – Women's Policy,

expresses concern that the lack of skilled personnel is not leading to an increase in the percentage of women in qualified professions. Instead the problem is going to be parried through worker migration.

As the representative of a union acting for a great number of educators, she is interested in ways of raising training qualifications. Germany is the only country in Europe where care providers are trained at technical college level. Training in this female profession should be carried out at university level.

Sue Hastings, Pay and Employment Advice,

states that the problem within the employment market concerning the requirement for more skilled labour was addressed at a heads of government meeting in Lisbon in March 2000. Basically, there were two models: either borders could be opened on a large scale allowing immigration of workers, or pools of manpower available within the EU could be utilised. Practically all EU member states were faced with this choice. In Ireland, for example, within the last six years emigration has shifted to immigration of 40,000 to 50,000 arrivals annually. In Lisbon, the heads of government declared their intention of drawing on the EU workforce potential through the inclusion of women.

Veronika Keller-Lauscher, Main Executive Committee of the IGBCE (German Mining, Chemical and Energy Industrial Union),

is interested in the comparison of 'K' (commercial) and 'T' (technical) groups. The 'K' groups are primarily made up of women, with men predominantly forming the 'T' groups. Overall, pay within commercial structures is generally lower.

Dr. Karin Tondorf, Research and Advice on Equal Pay and Equality Policy,

explains that such structures also exist with respect to white-collar and blue-collar employees. From this aspect, comparisons are incomplete, as specific and comprehensive examination must yet be carried out with respect to the representation of men and women in these wage brackets, that is, in the 'K groups' or 'T groups'. Discrimination is only ascertainable where it can be demonstrated that overwhelming numbers of a particular gender are negatively affected by a collective bargaining regulation. As such, operational data detailing the compilation of each group must be documented. If one assumes that ordinary commercial activities are primarily carried out by women and ordinary technical activities are performed by men, then a very strong suspicion of discrimination becomes apparent.

Analytical evaluation of job activities according to Katz and Baitsch (ABAKABA)

DR. CHRISTIAN P. KATZ KATZ & BAITSCHE –
PARTNERS FOR SALARY SYSTEMS, SWITZERLAND

In Switzerland there is an equal opportunities act that regulates “equal pay” or “fair pay” for work of equal value. The fundamental problem for providing equal pay for work of equal value exists in the objective calculation of different work activities. To be considered are the requirements and demands of the function or work place. It is permitted to give different weights to different types of job demands, for example intellectual requirements are valued more highly than physical ones, according to social norms. Likewise, individual factors are to be considered like age and personal achievement.



The development of the ABAKABA System

ABAKABA (Analytische Bewertung von Arbeitstätigkeiten nach Katz und Baitsch or Analytical Evaluation of Occupations by Katz and Baitsch) was developed by Dr. Christian P. Katz and Prof. Dr. Christof Baitsch, both industrial and organisational psychologists. The idea goes back to the work of the authors who have provided expert psychological assessments for the evaluation of wage complaints by labour courts. For example, assessments were generated for child minders, domestic helpers, home-craft teachers, physiotherapists and nurses. As a rule these scientific views led to higher classifications for the plaintiff with regard to the requirements and demands of the functions.

What is analytical function evaluation?

In the analytical function evaluation, functioning activities are compared with regard to their specific requirements and demands. The results lead to an incorporation of the activity into a reward structure – the evaluation system. There are different problems with this. For example overlapping qualitative features such as education, other experience, intellectual capacities, expression capacity and intellectual stress, must be measured. Potential discrimination can further take place if the point values given for each step differ very widely. The danger exists that in difficult classifications too many differentiated scales develop and a type of „pseudo objectivity“ emerges. The classification of the features represents a further problem. To obtain an objective classification and to avoid influence by effects from social psychology, the composition of the evaluation groups is crucial. These commissions should contain at least the same number of women and men. Moreover, there may not be any dependence relationships among members of the group, for example a secretary can not be neutrally appraised if her boss is a member of the group.

Finally, in the weighting of the features, kept separate from the analysis, it should be considered that different job evaluation criteria must contain the same maximal score. If this is not the case, it becomes a distorted and non-transparent evaluation system.

Job evaluation according to ABAKABA

The job evaluation system was developed on behalf of the Swiss Federal Office for the Equality of Women and Men, with the goal to offer an alternative to the procedures previously used in the practice of job evaluation. The ABAKABA method was published in 1996 in the book „Lohnungleichheit für die Praxis“ (Pay Equity in Practice). In the mean time many details of the system have been revised so that the point values, several features, and the wording of the questionnaire represented in the publication are no longer current. In the development of the ABAKABA system, an attempt was made to use the existing scientific and methodical possibilities to establish such job evaluation systems. A clear cut separation of the weighting from the analysis

was considered necessary because with the same analysis results through other weighting, different results can be reached. However, the evaluation of job groups depend decisively on the weighting.

For the job evaluation three feature areas were distinguished from one another, namely the intellectual, the psychosocial and the physical. In addition, leadership responsibility must be taken into account. These criteria must be considered, under the points of view of the request, the unavoidable demands and the time components connected with them. The intellectual requirements of the one being evaluated are once again divided into professional and organisational skills. On the demand side, restricted activities, latitude in decision making as well as impairing work interruptions are differentiated. With regard to the analysis of the intellectual requirements, the differentiated professional skills that must be observed are given the greatest internal weight. In the psychosocial area some characteristic features on the demand side, which were not in the criteria catalogues of previous conventional instruments, and additional possible demands are specified so that a wider spectrum of psychosocial demands can be questioned. Time demands have been integrated into the physical area. These demands encompass varying working hours occurring over a long period of time that can medically and therefore physically have a negative effect.

The stressful environment conditions comprise only a few new criteria, however they consider the demands of frequent computer work such as physical stress or eye strain. The leadership responsibility is differentiated by leadership functions such as group leadership, department leadership, speciality supervision, project direction, etc. The responsibility for the results of other persons is valued with the corresponding score. The responsibility for one's own work is represented by one's level of job training. The demands also include risks if mistakes are made, for example those regarding human life, financial values or environmental protection.

The provision of the analysis values

The related questionnaire contains multiple choice questions and for German speakers is relatively simple to fill out. The answers coming from the questionnaires are transmitted into a computer system and generate certain score values. These scores are pre-programmed in the system so that the valuation commission doesn't need to consider the score but rather just discuss the plausibility of the questionnaire answers.

For the determination of time factors, rough scales are used in order to avoid „pseudo-objectivity“ in the measurement of criteria.

What happens with these analysis values?

In each feature area with different requirement profiles, a maximum of 250 points can be reached. An unweighted further use of analysis results would be plausible from a labour science viewpoint, but would not consider social standards; for example, that intellectual skills are more highly compensated for than physical demands. In order to meet these circumstances, the four feature areas in ABAKABA can be weighted differently. In different wage projects, we have for example the intellectual feature points at 65 per cent instead of 25, and the psychosocial requirements only weighted at 10 per cent. However, such a relatively small weighting of the psychosocial features leads to variations within the wage systems and positively influences typically women dominated job groups because in common wage systems the psychosocial requirements are given little or no weight. Such effects can also benefit male dominated jobs (i.e., prison guards or police). After the definition of the weighting, a conversion results. The sum of the weighted feature point values then yields the job value. These job values should then determine the wage level.

From evaluation to wages

For the analysis of the requirements a certain objectivity and distance is required. In order to guarantee this objectivity, the questionnaire to be filled out must be verified together with the superior. Greater objectivity can be reached by an external consultation or project group, also making cross comparisons possible. The answers to the questionnaire are received into the system and are discussed among an evaluation commission. In order to handle procedures in the same manner, the evaluation commission must agree on how the single features are to be handled. The subject concerned has the possibility to place concerns or to correct mistakes.

In connection to that, weighting variants must be worked out, and a point scale or wage class system and definitive weighting must be compiled. Then protocols from the old to the new wages must be determined. It must be tested whether there is a protection of vested rights, how much money is available, whether the formerly low valued jobs are now more highly paid, and other related issues.

The use of the system

In Switzerland, the ABAKABA system was used successfully in different places (the Evalfri System

mentioned in the report by Ms. Ranftl corresponds in whole to ABAKABA, whereby only the weighting specifically to the Freiburg Kanton was adjusted). The value of an ABAKABA point depends individually on the wage budget of the company and by the distribution of the ABAKABA points.

In the projects it could be proved that the correlations between the four feature areas are very slight and therefore do not overlap. It was further found out that well paid jobs can decline when evaluated by ABAKABA. An example out of the practice with ABAKABA shows that with ABAKABA the executive secretary was classified into a higher wage class and accounting and human resources into a lower wage class.

The following summarises the ABAKABA principle: the job analysis using the four feature areas is followed by the job valuation with the weighted ABAKABA points. Other reward components relevant to wages, such as colleague judgements, etc., are taken into consideration and then the actual wage is determined.

Application of ABAKABA in the project „Non-discriminatory evaluation of (service-related) work (commissioned by ver.di)

ANNA KREHNKE DIPLOM-KAUFFRAU, FREE UNIVERSITY OF BERLIN, GERMANY



In some collective agreement areas of the trade union ÖTV (German trade union for public services, transport and traffic), women have been campaigning since the beginning of the 1990s to have their work upgraded. At the union conference in 1996, the Upgrade Women's Work Campaign was called into life with the objective of achieving equal pay for work of equal value carried out by men and women. As a first measure in the course of the Upgrade Campaign a legal opinion on the Federal Employees collective bargaining agreement (BAT) was furnished by Regine Winter. The legal opinion indicated considerable potential for discrimination as well as breaches against European law. Consequently BAT is in breach of compulsory regulations stipulating that

- the same evaluation measures have to be applied for all those employed,
- it must be clear as to which criteria have been applied when differentiating pay and
- the evaluation criteria used must be suitable for taking into account the type of work.

The comparison project

In order to verify whether the potential for discrimination diagnosed in the legal appraisal actually exists in practice, the ÖTV awarded a contract for a research project to be carried out. It was conducted under the heading "Discrimination-free evaluation of (service) work" under the management of Professor Gertraude Krell at the "Freie Universität" in Berlin. The project was based on a comparison in which selected male-dominated work and female-dominated work was reassessed. It was conducted and evaluated in the

regional capital of Hanover by Andrea-Hilla Carl and Anna Krehnke in the summer of 2000.

A review of the potential for discrimination could only be carried out by conducting a comparative analysis of actual jobs with a discrimination-free work evaluation beyond the scope of the BAT. A (slightly modified) ABAKABA (Analytical Assessment of Work by Katz and Baitsch) procedure was applied. The modifications chiefly concerned the adjustment to take into account the common terms used in Germany as well as an adjustment of the examples with regard to the evaluation of work in the public service. Another area of review was concentrated on the adjustment of definitions and requirement guidelines. It was precisely the features of actual training requirements and those of responsibility for supervision of staff which had to be amended so that they reflected the German system – in words as well as in structure.

The advantages of the system ABAKABA

The factor in favour of selecting ABAKABA was that it satisfies conditions which are absolutely essential for discrimination-free work assessment:

- It is a standard system which can be used throughout an entire organisation,
- it is, in contrast to the summary BAT, an analytical procedure which differentiates evaluation systematically and in accordance with individual evaluation criteria and
- it can – in particular as a result of taking psychosocial features into account – depict the requirements of all types of activities.

But ABAKABA not only satisfies the requirements of European law that a pay differential system has to meet, in addition it also offers other advantages favouring its selection. The procedure has been reviewed methodically and has proved itself in practice. Added to which it provides for a trained evaluation commission with its members drawn from both the employers and employees with both sexes represented in equal numbers on each side.

Another important design feature of the procedure should be highlighted as well, namely that ABAKABA makes a distinction between four sectors: the intellec-

tual, the psychosocial and the physical sector as well as the responsibility sector. The requirements and demands of each sector are recorded by means of a standard questionnaire. Each sector will have the same number of maximum points when taken into account in the evaluation. That means that there is no internal weighting.

The implementation of the project

Four comparable pairs each consisting of a female-dominated and a male-dominated activity were formed with the consent of the ÖTV and the regional capital Hanover. Female- resp. male-dominated means that the proportion of women or men within an activity has to be at least 70 per cent. An important criterion for selection was also that the necessary qualifications for the comparable activities was to be as equal as possible. With this type of requirement – notably formal qualifications – this is a fundamental characteristic used in grouping within the public service. Three of the selected pairs came from among salaried employees and one from among workers:

- graduate librarian in public libraries (university of applied science) and graduate engineers (university of applied science),
- senior technical/medical assistants (MTA) and fully-qualified gardeners,
- geriatric nurse and technician or technical clerk,
- kitchen assistant and road sweeper/sewage worker.

Two persons from each job described their work with proper support in a revised ABAKABA questionnaire. Not only the superiors but also the respective local staff council read the completed questionnaires with a critical eye. The evaluation of the work they do was made on the basis of the 16 job descriptions carried out and on the basis of the ABAKABA point system. Beforehand a four-person commission trained in how work evaluation systems work in general, their potential for job discrimination and being made familiar with ABAKABA was formed for the evaluation process. It consisted of one male and one female representative for both the employer side and the employee side.

The results of the evaluation of the comparable pairs can be summarised as follows: as a result of the re-evaluation the figures have moved in favour of the female-dominated work in three of the four comparable pairs in comparison with the grouping of the jobs in accordance with BAT resp. the wage bracket scale. The unweighted number of points of the jobs as geriatric nurse is way above those for technician/technical clerk. A direct comparison with evaluation in accordance with BAT is indeed difficult for this pair of activities since the applicable collective bargaining agreements are based on another system. Nevertheless the large discrepancy

in the figures produced by ABAKABA is not reflected in BAT.

According to the evaluation with ABAKABA, the librarian and engineer jobs can be regarded as being roughly the same. The rough equality of the librarian and engineer jobs does however tend not to reflect the possible grading of these jobs in BAT.

The unweighted ABAKABA total points for the pairs

kitchen assistant and road sweeper or sewage worker can likewise be described as being roughly equal. The equality of male- and female-dominated work in accordance with ABAKABA tends not to be reflected in the wage grouping list. The equality of the pay for work dominated by men resp. women in accordance with ABAKABA is reflected even less in the wages currently paid, if in addition to basic pay which is laid down in the wage bracket list, the extra pay for difficult working

Plenary discussion

conditions is taken into account, since in the work dominated by women, there are as a rule significantly less opportunities to earn extra pay than in the work dominated by men. The difficult working conditions taken into account in the extra pay list have however already been entered into the ABAKABA evaluation.

In the comparison of the unweighted total amounts for the compared pair – senior medical-technical assistants and fully qualified gardeners –, the ratio to each other has remained constant to the extent that the MTA positions score higher points than those of fully-qualified gardeners. Therefore the unweighted results of the evaluation of the comparable project accords to the relative figures stated in BAT.

The shift of figures in favour of work dominated by women is attributable above all to two sectors recorded by ABAKABA, notably the psychosocial and the physical sector. The requirements and demands are acquired whereas they hitherto have been neglected or not even taken into consideration in the current collective wage bargaining evaluation.

The ranking of the unweighted sector points of the psychosocial sector and that of the physical sector in the comparison of all jobs shows:

Among the jobs examined in the psychosocial sector the care of the old was the job with the most points. This high number of points is largely attributable to the psychosocial strain. Altogether, there are psychosocial demands in all the jobs investigated including those dominated by men, and in most cases psychosocial strains as well.

The physical sector is therefore significant for the jobs investigated in the project effecting a comparison precisely for the group of jobs dominated by women, whereas in the male-dominated groups it only plays a large role in the jobs of road sweeper and sewage worker.

All in all, the results not only point towards the importance of having a standard evaluation procedure for all work, since this firstly makes it possible to compare the gradings among each other and therefore creates a transparency hitherto lacking in BAT. The results also increase the significance of the psychosocial sector hitherto ignored in most evaluation systems, and, to be more precise, the significance not only for the female-dominated jobs, but also for the male-dominated jobs. Above and beyond that, the results show that the physical sector, which is frequently not taken into consideration at all in the evaluation of service work, not only constitutes an important criterion for male-dominated work, but for female-dominated work in particular. However, neither the psychosocial sector nor the physical sector are taken into consideration in the current collective bargaining evaluation in accordance with the BAT.

Silvia Labudda, Directorate for Labour and Collective Bargaining Law, Berufsverband Hauswirtschaft e.V. (Professional Association for Domestic Science),

states that kitchen assistants who work in low pay brackets and are paid according to collective pay agreements in the public sector or according to BAT KF (German Collective Agreement for Civil Servants), have now been grouped into two new wage brackets, BA 1 and BA 2. This means that kitchen assistants' gross earnings have dropped by around DM 300 (Euro 153) to DM 400 (Euro 204) a month. This change came into force on 1 January 2001, with only a minimal number of employees having been informed. Those workers already in an employment relationship have pay protection, but they have also been newly classified. Though they receive compensation, this has been reduced with every pay increase because, proportionately, they earn less. Newly employed workers can expect a considerably lower wage.

equal pay

Strategies towards
equal pay

Job evaluation – Good practises from the Finnish working life

LEA RANTANEN MASTER OF POLITICAL SCIENCE, INDEPENDENT CONSULTANT IN JOB EVALUATION, JOPIARVIO, LTD. AND
ULLA AITTA RESEARCHER AKAVA, FINLAND



di Regional District NRW, Collective Bargaining Department,

is interested in whether Dr. Katz has, to date, applied his system solely to individual companies or whether it has already been applied to an entire branch of industry in Switzerland. He asks whether the system already forms an element of collective pay agreements in Switzerland, or whether the system has, as yet, only been applied to contract work for individual companies.

Dr. Christian P. Katz, Katz & Baitsch, Partners for Salary Systems,

explains that the ABAKABA system has been applied extensively in public administration employment, as well as within large companies operating in various branches. However, no specific projects have been carried out comprehensively across branches of industry, since there are no industrial agreements in Switzerland and each company negotiates its own wage agreement. In Switzerland, wage fixing is not regulated in collective agreements, as is the case in Germany.

Jörg Wiedemuth, Head of Collective Agreement Policy, ver.di,

advocates efforts on the part of those who conclude collective pay agreements to improve their non-discriminatory structure. However, he points to a poor example of non-discriminatory grading of activities: in the church, remuneration was drastically reduced in order to counter privatisation and separation tendencies.

Björn Döhring, European Commission,

asks about the possibility of applying the ABAKABA system in the employment market. In essence, it is assumed that wages are the price which brings supply and demand together in the labour market. How is ABAKABA applied in situations where, for example, there is a plentiful supply of librarians and a shortage of technicians?

Dr. Christian P. Katz, Katz & Baitsch, Partners for Salary Systems,

expresses that court judgements have stated that the labour market could and should play a role. By contrast, ABAKABA does not currently consider the employment market at all. This could only be considered insofar as a so-called labour-market component could be built into a basic payments system. However, this would not have an effect on the ABAKABA ratings. Moreover, occupational groups poorly represented in the employment market would receive a supplement. The notion, on the other hand, of decreasing wages in the case of oversupply is not consistent with the ABAKABA system.

Ulla Aitta

The Finnish labour policy and value-comparison strategy

The Finnish job market has 2.5 million employees. Both men and women participate actively in working life. In the year 2001, the rate of employment was 70 per cent for men and 64 per cent for women. Full-time employment is common among both men and women. The average educational level of women of working age is higher than that of men. Although the position of women on the Finnish labour market is rather good and stable, the labour markets are deeply segregated by gender. Men and women work in different trades and occupations and also on different levels of the hierarchy. The majority of men work in the private sector while 40 per cent of the women work in the public sector, particularly in local government. A wage difference of 20 per cent still exists. That is partly due to the segregation of the labour market, partly due to pay discrimination. According to a current study, about half of this difference is based on horizontal or vertical discrimination. The remainder cannot be explained and must therefore be referred to as pay discrimination. There are situations where women and men with the same

training and work experience are paid differently for equal work. With reference to the Finnish job market system and the law, this kind of discrimination can only be corrected by means of job evaluation.

Finland has one of the highest rates of union membership in Europe. About 80 per cent of the employees are organised in trade unions. The remuneration system based on an analytical job evaluation is result of complex – not always very conscious – interaction between different participants. They are based on laws for the equal treatment of men and women and collective agreement systems. In 1987, the Equality Act prohibiting discrimination by gender in general and in working life particularly came into force. One of the central concepts of this law was the concept of equal pay for work of equal value. The concept was derived from the EC regulations on equality. However, the organisations or authorities (The Finnish Ombudsman of Equality, lawyers, etc.) had no instrument in practice to define the concept of work of equal value. This was one of the main reasons why the employers and trade unions worked together to develop a remuneration system on the basis of job evaluations. Both parties were interested in avoiding long and expensive legal proceedings.

At the same time, trade unions and employers realised that the job evaluation could be a good and fair method to reform remuneration systems. The collective agreements never settled equal remuneration as the primary goal of the reform, not even as an official objective. The objective of equal pay remained hidden as tacit knowledge behind the official reforms and politics.

The role of collective agreements

Since the end of the 1980s the development of job evaluation systems has been included in several central and sectoral collective agreements. In 1989, the social partners (employer, employee, government) appointed the first “tripartite” committee for job evaluation, and it has worked with the follow-up and development of various job evaluation systems in all employer sectors. The committee has initiated several different research projects and produced manuals on the use of analytical job evaluation.

During the 1990s, the development of new pay systems based on analytical job evaluation systems was introduced in many manufacturing industries, in state orga-



the technical sector in the municipalities. The rest of the employees of the municipalities still had no contract of their own until March 2002. This sectoral tariff agreement – the most important for women – is the most problematic one concerning the implementation of equal pay for equal work because it covers only female-dominated groups and does not regard important groups such as physicians, teachers and the technical sector of the municipalities.

Problems and discussion

The pay systems based on job evaluation do not automatically lead to equal pay for men and women. There have been several problems and pitfalls concerning the processes:

1. The centralised negotiation and collective agreement system has been the necessary prerequisite for reforming pay systems based on job evaluation. At the same time the traditional labour market system has been a barrier to carry through the targets connected with equal pay. It has prevented structural changes which would have been necessary to achieve the real goals such as the comparison of female dominated jobs with male dominated jobs.
2. The system of collective agreements only allows the comparison of jobs within the same industry, company or organisation. There are usually particular job evaluation systems for male dominated technical staff and different systems for female dominated occupations such as nurses, kindergarten teachers, social workers etc.
3. There is always a risk that the evaluation system in itself is discriminating. It has been very difficult to develop relevant demand factors which are suitable and valid measures for job demands in the female dominated jobs.
4. The undiscriminating use of a job evaluation system at one's working place does not guarantee equal pay. The results of the evaluation process can be eliminated in many ways. It is very common in Finnish working life to eliminate the results of job evaluation in

different ways – for example by using non-transparent parts of pay systems, i.e., bonuses or other flexible parts of salaries.

5. As the goal of equal pay has been rather hidden or 'tacit knowledge' of nature, there are very limited research or statistics on this subject. There are, however, some available results, which indicate that the pay systems based on analytical job evaluation systems are in any case better for women than no system at all. The results derive from private enterprises. The pay discrimination between higher educated men and women seems to be smaller in those enterprises which use a pay system based on job evaluation– except for the highest hierarchical positions.

Lea Rantanen

At the beginning of the 1990s, there was a very important four-year research project in Espo City, the second largest city in Finland. The study was two-phased with the main focus of the project on the development of an equal job evaluation system for the public sector.

1. The method was created. For this purpose 1,800 workers filled out a questionnaire on job description and through factor analysis demand factors were

Plenary discussion

determined.

2. Subsequently the method was developed and 710 jobs were evaluated. These jobs represented the large title groups of women and men.

Lea Rantanen worked as a researcher in this project, and after that she started to carry out job evaluation projects in her own company in 1995. The first clients came from the government administration and later came municipalities and other organisations.

Regarding equal pay, the municipalities are of greater importance, because 33 per cent of working women are employed by the public sector. These include also many low-income professions, like nursing, childcare, clerical, and other administrative jobs.

Example 1

The project of job evaluation was applied to a Finnish trade association with 118 female and 13 male employees. This led to the following result: the relation between job demands and salary levels was statistically significant. After discussions over job evaluations the salaries were raised and 8.9 per cent of the total salary sum was used. The raise was carried out over three

years: the first year 3.8 percent, in the second 3.7 percent and in the last 1.4 percent.

Example 2

In a community with 462 employees it was decided to evaluate the clerical positions occupied by women. In this example the job demands had a very small effect on salary – typical for many woman-dominated jobs. Despite rising demands the salary remained nearly the

Checklist Equal Pay

An initiative by employee and employer organisations in the Netherlands

DRS. LOES VAN HOOGSTRATEN-VAN EMBDEN ANDRES VNO-NCW (CONFEDERATION OF NETHERLANDS INDUSTRY AND EMPLOYERS VNO-NCW)

same. When salaries are revised, there are usually three different options:

1. The current job structure is accepted and only salaries below the average line get revised.
2. Salary raises are focused in relation to more demanding jobs.
3. All employees get a raise.

With regard to job evaluation, the public service in Finland acknowledges that there are two different systems, one for rather men-dominated and one for rather women-dominated jobs. As a result men are better paid for equal work than women. In addition, increasing job demands affect the pay of men more strongly than for women.

The result of 23 projects in different Finnish working places during the past seven years was: if the municipal organisations are left out, job evaluation will help to raise women's pay levels. In the course of such a project other developing work takes place, and the process is of equal importance. For example, knowledge is gained on the development of jobs and the appreciation for the work of colleagues.

Heide Oestreich, TAZ,

inquires why there are two different evaluation procedures for female and male dominated activities in Finland.

Lea Rantanen and Ulla Aitta, Finland,

describe that male dominated jobs in the municipal sector are subject to other collective agreements than the jobs dominated by women. The role of the trade unions is very problematic and controversial, since this discrimination is not waived. Therefore, the situation remains unchanged. It will take many years to change this and women should try to attain more power in the trade union movement. However, the situation of the two systems exists only in the municipal sector.

Cécilie Küng, Gender Mainstreaming Agency, Zürich,

would like to know what would happen if equal pay with steady wages was established, and employees with higher income, usually men, would have to give

up part of their wages.

Lea Rantanen and Ulla Aitta, Finland,

stress that each case is different. There is no universal system or mathematical solution of how job evaluation results are implemented in practice. Since there are so many problems, it is possible that it could take ten years for the results of such an evaluation to be implemented.

Over the past few decades the Labour Inspectorate of the Netherlands Ministry for Social Affairs and Employment compiled several studies of pay differences between women and men. The results of these studies caused a large impact because at first sight they revealed large differences. The published figures distinguished differences between adjusted and unadjusted wages. The unadjusted differences resulted from the comparison of the average gross pay and/or gross hourly wages of men and women. The adjusted wage differential considered differences between men and women in reference to age, qualification, years of service, etc. In 1993 the unadjusted wage difference amounted to 26 per cent and the adjusted amounted to 9 per cent. The numbers for 1996 were 24 and 7 per cent, and for 1998, 23 and 7 per cent respectively. The unadjusted numbers led to sensational coverage in the media. However, only the adjusted numbers show a realistic picture.

The results of the 1999 survey resulted in a plan of action by the Netherlands government. It emphasised however, that employers and employees are equally responsible for conditions of work and wages. Therefore the "Stichting van de Arbeid" (The Labour Foundation) was asked for consultation and suggestions on the reconciliation of unjustified unequal pay. The "Stichting van de Arbeid" consists of representatives of the trade union organisations and employer organisations in the Netherlands. In addition to being an advisor to the government, their recommendations and statements affect collective bargaining.

Regarding wage differences between men and women, the issue was how the social partners could promote proper compliance with the equal pay law in practice.



Normally the government is responsible for implementing laws. However, when it concerns work and pay conditions, employers and employees themselves are primarily responsible. Employers in the Netherlands share the view that men and women should receive equal pay for equal work. Gender should not play a role in the determination of wages. The employers regard as the most important criteria the characteristics of the job, the performance of the employee, the job market situation and the financial position of the company. The employers were therefore surprised at protests due to continued wage discrimination, particularly since the companies themselves rarely received any complaints. Also, the Netherlands Equal Treatment Commission received very few complaints regarding unequal pay. Because of this, employers in the Netherlands are convinced that, in principle, men and women receive equal pay for equal work. In individual situations -often unintentionally- unfair distinctions may be made.

Nevertheless, in November 2000, the "Stichting van de Arbeid" unanimously submitted to the government an appraisal of their plan of action with the following contents:

1. First of all, the Labour Inspectorate studies were criticised since they did not point out which wage differences were justified and which were not. Instead of general data, research should be focused on the sectoral or company level. Surveys on the national level clearly showed larger wage differences than shown by studies on a sectoral and/or company level. On the national level for example, the adjusted wage difference amounted to 7 per cent. Central government employees showed a difference of 4 per cent and the results of the Ministry for Social Affairs and Employment only 2 per cent. The closer one approaches the company level, the smaller the difference appears. Therefore the government concentrates its research to the sectoral and company level.
2. With support of employer organisations and trade unions an instrument was developed to examine job

evaluation systems for gender neutrality. Both sides committed to implement this instrument. A legal solution was unanimously rejected.

3. Concerning the introduction of flexible pay systems, employer organisations and trade unions called to develop transparent and objective models to prevent gender discrimination.
4. It was agreed that works councils can play a substantial role in the adherence to the rules of equal pay. They are even legally bound to act against discrimination and to promote equal treatment of men and women.
5. The development of an "equal pay checklist" was agreed on. News services should contribute more as a check of unjustified differences in wages as well as unintentional discrimination.

It is intended to assist the social partners at the sectoral level and/or employers and employees at the company level with their wage negotiations. The checklist does not cover all details of the rules of equal pay. It does address the various elements of pay systems that could disguise unjustified indirect discrimination. Ten questions are considered:

1. *Does the pay system discriminate between employees on the basis of working hours or type of contract?*
The Dutch are world champions in part-time jobs. Two thirds of all working women have a part-time job. Differences between part-time and full-time workers could easily lead to gender discrimination. However, European legislation prohibits this distinction on the basis of working hours and part-time contracts unless it is objectively justifiable.
2. *Are the criteria which are used to rank employees in the wage scale non-sexist?*
It is important that the pay systems are comprehensive and unambiguous. If a job grading system is used, it must not contain any discriminatory elements. A very important point for the Dutch employers is the fact that the system owner of the grading system is responsible for it. Government and trade unions recognise that the system owner must evaluate its own system. If the government or women's organisations would interfere, there would be a risk to the balance of the system. Employers and employees could then remove themselves from the job grading system, which would be bad for equal pay.
3. *In practice, does the pay system guarantee equal pay for men and women?*

Plenary discussion

Criteria such as experience and training should be considered only if they are relevant for the job in question. The applied criteria should not disadvantage either men or women. The checklist concentrates also on the value resulting from experience gained in unpaid work, which is particularly important to women. The formulation of this point initiated extensive discussions between employer organisations and trade unions.

4. *Are salary increases for comparable jobs equal?*
In principle women and men with comparable jobs should get the same salary increases. Nevertheless, salary increases depend on factors such as job performance, but in that case, the same standards must be applied for men and women.
5. *Are women and men equally eligible for fringe benefits?*
All employees must be equally eligible for fringe benefits such as the reimbursement of expenses. However, fringe benefits can sometimes be paid only to certain groups of employees. If these workers are predominately male or female, this can lead to indirect gender discrimination. Such things must therefore be considered very carefully.
6. *Are men and women equally eligible for retirement benefits? And do they also apply to part-time employees?*
7. *Are men and women equally eligible for incidental supplements, allowances or bonuses?*
This question demands attention because, at least in the Netherlands, additional pay and bonuses as well as flexible pay are becoming more popular components of the pay system.
8. *Are flexible pay systems transparent and objective?*
It is important to check that the criteria on which flexible pay systems are based are non-sexist and

that their application is objective and transparent.

9. *If a "cafeteria system" of employment conditions is in force can all employees, regardless of gender, benefit from the elements of that system?*

Dutch collective agreements increasingly permit employees to design an individual package of their employment conditions. One may choose for more free time, the other may decide for more pay or a higher pension. In principle the packages should be of equal value.

10. *How can one deal with transitional situations?*

The check list warns of possible pay disparities, such as in the event of a take-over or merger. It is important not to let any disparities continue for longer than necessary, because they may eventually lead to unjustified unequal pay.

Employer organisations and trade unions have distrib-

Steps to pay equity in Sweden

CARIN HOLM UND ANITA HARRIMAN SENIOR RESEARCH OFFICERS, SWEDEN

uted this check list to all their members. It is to be used by companies and parties to wage agreements with the goal of eliminating any wage discrimination still remaining. Since the list is still new, there are no clear results as to what extent the checklist is actually used.

A Participant from the plenum

describes how she experiences the situation in Germany: If one asks an open-minded works council whether there is pay inequality, the answer would be that women are correctly classified. It is not an issue of classification, but possibly that the job demands with respect to remuneration are not correctly shown in the system. As in Holland, the government should encour-



age discussion and the development of checklists which would result in the initiation of binding processes. There are many possibilities and ideas, but so far, there is no political strength to drive forward such a program.

Drs. Loes van Hoogstraten-van Embden Andres, VNO-NCW, the Netherlands,

holds the opinion that the checklist, including comments, represents a good guide for trade unions, works councils, and employers. However, the discussion process must begin. In Holland alone the fact that the "Stichting van de Arbeid" has already provided this checklist, has caused companies and branches of industry to begin negotiations and discussions on equal rights or gender-specific pay inequality.

Jörg Wiedemuth, ver.di, Berlin,

wants to know more about the conditions for part-time employees in the Netherlands: do part-time employees in the Netherlands receive overtime bonuses as soon as they exceed their individual hours of work, or are they treated in the same way as full-time employees who are only paid such bonuses when the average collectively agreed hours of work have been exceeded?

Drs Loes van Hoogstraten-van Embden Andres, VNO-NCW, Niederlande,

answers that this was also discussed in the Netherlands. Eventually two possible solutions to this problem were accepted:

- The employers' viewpoint: extra payments are only granted when full-time status is reached. The extra hours worked, before full-time status is reached, should in this situation result in higher entitlements in the sphere of pension and more vacation pay in order to reach the aim of equal pay.
- The trade union viewpoint: it would immediately require overtime pay, then there would be no problem with additional benefits.

In Sweden a long tradition of free wage agreements exists – without national intervention and without a nationally regulated minimum wage. In the course of the last ten years, however, there were dramatic changes; away from centralised agreements to tariff agreements on an individual company basis. In part, there are salary discussions only between employees and superiors. The decentralisation of wage bargaining and individual wage agreements became key concepts in Sweden, both in the private and the public sector. It is still not known how this affects wage differences between men and women. Up to the early 80's, the wage difference narrowed, but since then it has remained relatively stable at approximately 18 to 20 per cent, the correct adjusted number is 8 per cent. It is feared that

decentralised wage agreements lead to the discrimination of women.

Modified Equal Opportunities Act

Because the wage gap did not close despite constant public discussion in the past 15 to 20 years, the government and parliament of Sweden arranged to modify the Equal Opportunities Act of 1992. Annually, all employers must now analyse the wage differences between women and men. The critical issue is whether wage differences between women and men who perform equal work or work of equal value are directly or indirectly due to gender. The law was also extended to the methods in which these surveys and analyses are to be carried out. In addition, employers with ten and more employees must provide annual timetables for any pay adjustments, including a costs estimate and three-year action plan. The law is to be implemented by both employers and trade unions.

Definitions

Two terms are to be defined:

- Earnings: this does not only include negotiated wages, but also fringe benefits such as mobile telephones, company car, and internal or external training. The following question must be clarified: to what extent do women and men receive these allowances equally?
- Work of equal value: that there can be two completely different jobs, for example that of a nurse and that of an engineer. Here a job evaluation must show whether these jobs can actually be regarded as having the same value. For this, the National Institute of Working Life in Sweden has developed the HAC system (see below).

„Lönelots“ – Wages under a reading-glass

In 1999, the Equal Opportunities Ombudsman, who supervises the implementation of the Equal Opportunities Act, was asked to accelerate his/her work. A two-year Swedish project entitled „Lönelots“, or in English approximately „wages under a reading-glass“ was called to action. This Pay Equity Guide provides information about gender specific wage structures as well

Plenary discussion

as guidelines to prevent any unwarranted pay differentials.

At present, Sweden has mostly individual wage agreements. Important components of the "Lönelots" project are methods with which both a gender-independent evaluation of the job and the evaluation of individual achievement can be accomplished. The "job profile" answers the questions: what are the job requirements? What is the degree of difficulty of the work duties? The "personal profile" describes the individual's qualifications: Which abilities are necessary to fulfil the job requirements and to obtain the desired results? However, both aspects are important and necessary for individual gender-neutral wage agreements.

The HAC system

The Pay Equity Guide has a basic model for job evaluation (the HAC system). This model, after being adapted to local conditions, may be used at all workplaces wishing to conduct a careful and realistic job evaluation. Also included is a questionnaire for gaining information about the job and the job description. The guide describes, among other things, the planning and organisation of the project as well as executing the job evaluations. It also contains guidelines for weighting the factors and how to handle resistance and distrust. An integrated computer disk facilitates individual changes or adjustments to the system according to the respective situation of the company.

In Sweden the HAC system is widely used in both the private and public sector. With Steps to Pay Equity, a simplified, faster procedure was developed which can be used for an analysis of pay and pay differentials by grouping different jobs of the same value. Eight factors are considered, for instance education/experience, problem solving, social skills, responsibility, and physical and mental conditions.

Example: County Administration in Västra Götaland

The Steps to Pay Equity were applied to the County Administration in Västra Götaland. In a department with 140 employees, 30 separate equal jobs were identified. 16 of these jobs were held by both women and men and could therefore be used for comparison. The result was that with 14 jobs, women had a clearly lower average income. Further separate but equal value jobs were combined into groups and a modified form of Steps to Pay Equity were applied. Seven groups could be defined. In these groups, women had a lower average income and a smaller range between the lowest and the highest wages than men. Those jobs predominately held by women were lower paid

than those held predominately by men. In addition, many women had identical wages while the men were more individually paid. These results of the wage survey were presented to the responsible department manager for analyses. Management and union representatives must consider these at the next wage negotiations.

Juliane Eisenführ, Presenter,

asks to what extent companies actually carry out analyses and how this is monitored in practice.

Carin Holm and Anita Harriman, Senior Research Officers, Sweden,

admit that the implementation and control in practice is a weak point. The only one who can control this is the Ombudsman for equal opportunity with only 20 employees. Action plans are requested by thousands of companies and are controlled by means of a random sampling method. Statistics show that approximately 75 per cent of the public and 25 per cent of the private employers provide action plans.

Christel Langhoff, Ministry for Employment for the State of Brandenburg,

asks about the opportunities for sanctions in order to ensure submission of these programmes, now required by law.

Carin Holm and Anita Harriman, Senior Research Officers, Sweden,

answer that, if no action plan is provided, the Ombudsman sets a time period with a penalty clause. If it is an

equal pay

Scope and limitations of
wage policies and state
initiatives

The EU equal pay directive and the right to free collective bargaining in Germany – What can wage parties do to achieve equal pay?

DR. DETLEF HENSCHKE LAWYER, BERLIN



issue of discrimination, the case can be handed over to the Labour Court.

Dr. Regine Winter, European Court of Justice, Luxemburg,

refers to the great importance Germany attaches to the autonomy of collective bargaining. The four criteria in Swedish law referring to the structuring of job evaluation, when transferred to Germany, would possibly cause vigorous discussion on the compatibility of such legal criteria with the autonomy in collective bargaining. Dr. Winter is interested to know whether the Swedish wage bargaining parties have had a problem with the legal criteria.

Carin Holm and Anita Harriman, Senior Research Officers, Sweden,

emphasise that in Sweden, factors of knowledge and skill, responsibility, effort and working conditions are not typical, but are used world-wide. The union members were in favour of incorporating these factors into law, and the employers, in accordance with their traditional role, were against it. Today they accept it. Probably, they should have seen the fact that job evaluation constitutes only one part of wages and that the necessity for a fundamental agreement exists.

Edith Beier, Office for Equal Opportunities – Regional Capital of Magdeburg,

points out the existence of a Law for the Promotion of Women, according to which the requirement for compatibility of gainful employment with family affairs may

not result in disadvantage. She wishes to know whether this criterion is likewise afforded importance in Sweden.

Carin Holm and Anita Harriman, Senior Research Officers, Sweden,

describe this as an important point in the Swedish Equal Opportunities Act. Each employer must organise the work in such a way that both men and women are able to balance work and family.

Prof. Dr. Pat Armstrong, York University, Canada,

would like to know whether individualising the collective bargaining, which is meant to reduce the wage gap between women and men in Sweden, actually increases differences in the wages between women – for example between women living in Stockholm and those living outside.

Carin Holm and Anita Harriman, Senior Research Officers, Sweden,

indicate that they are not yet able to answer this question since a lot has happened to the job market and to wage negotiations. Today, for example, women are often better educated than men yet this has not led to the narrowing of the wage gap. On the other side, one would assume that individual negotiations increased the gap, although this also has not been the case.

The principle of equal pay for equal or work of equal value is reflected in different standards and laws: the constitutional framework is provided by Article 3 GG (the German Basic Law), where sections 2 and 3 stipulate in particular equal rights of men and women and prohibit all gender-based discrimination. Article 141 (formerly Article 119) of the EU treaty provides a concrete formulation of gender equality regarding the aspect of equal pay. Female workers have the same claim to wages as their male colleagues for “equal work or work of equal value”. In the so-called Equal Pay Directive (RI 75/117), the Council of the European Communities made the prohibition of gender discrimination more precise. According to this directive, “where a job classification system is used for determining pay, it must be based on the same criteria for both men and women”, Art. 1, section 2. The European Parliament

and the Council of the European Union recently amended the so-called Access Directive (RI 76/107) and provided a definition of indirect discrimination, which "shall be taken to occur where an apparently neutral provision, criterion or practice puts persons of one sex at a particular disadvantage compared with persons of the other sex...". German legislators furthermore incorporated the European statutory directives in the EU assimilation law of 13 August 1980, including § 612, section 3 BGB (German Civil Law), which repeats the principle of equal pay, § 612, section 3, sentence 3 in combination with § 611 a, section 1, sentence 3 BGB, which puts the onus on the employer to prove that any unequal treatment is due to non-discriminatory material considerations. This is formulated in a statutory prohibition of coercive measures: the employer may not penalise employees wishing to assert their rights in this regard, § 612 a BGB.

The provisions of the German Basic Law, the Civil Code and the EU Treaty have direct and mandatory application. It is true that the general binding nature of wage agreements regarding its application and range receives different interpretations. Moreover, the principle of collective bargaining autonomy also enjoys the status of a constitutional right in Germany and is protected under the Basic Law. Nevertheless the principle of equal rights for men and women applies in each case directly to wage agreements, a fact that has constantly been recognised in legal practice, namely by the European Court of Justice. Collective bargaining autonomy is intended to compensate for different social and economic power structures in working life and give "structurally inferior" workers an opportunity to practise collective autonomy by asserting their mutual rights and interests. The collective bargaining parties are normally able to fulfil this purpose and motivation of collective bargaining autonomy, provided, of course, they are pursuing common goals. However, as soon as social conflicts, discrimination or disregard for the rights of minorities begin to have a bearing on the matter in question, the demands or the commitment of the collective agreement parties, the hopeful assumption that the negotiation process leads to fair and equitable settlements is soon seen to be vain. The mechanisms of social inequality also affect the wage parties and the relevant negotiations and can have a negative effect on the adequate representation of the interests of the disadvantaged.

The subject of the examination is pay regulations agreed between the parties, i.e. the result of the negotiation process. This sometimes also includes the thesis, with reference to a formulation of the European Court of Justice, that unequal treatment can be justified in certain circumstances, for example, when it is the result of non-discriminatory and regular wage negotiations. It is true that laws on gender equality also relate to the process of wage negotiations, for example, re-

garding the participation of women. But correct negotiation proceedings cannot be taken as an excuse for collective agreed standards that are contrary to the principle of equality – as conversely a less correct procedure in negotiations can result in non-discriminatory results.

I. Problems of Application and Proposals for Action

Although the principles themselves are clear, their implementation in concrete cases often presents problems. The report compiled by the German government summarises at the beginning of the chapter on the causes of discrimination (chapter 6, page 161 f) the requirements for non-discriminatory wage systems as are inferred from rulings of the European Court of Justice:

- transparency of the wage systems,
- the same criteria for the work of men and women,
- sufficient material orientation of the criteria to the "type of work in question",
- non-discriminatory interpretation of the differentiation features,
- non-discriminatory structure of the wage system in its entirety.

II. Choice of differentiation method

Almost all wage agreements specify the amount of wages due according to different work requirements. But this is not the only conceivable approach. One other possibility would be to do away with all kinds of differentiation entirely. That sounds utopian and is contrary to the spirit of our times. However, there are cases where it already occurs, for instance in companies where the dominant spirit is one of egalitarian camaraderie. This is also not in conflict with statutory regulations; the constitution, for example, does not insist on workers being treated according to the performance principle. And the parties to the wage agreement can likewise differentiate and categorise according to features other than the requirements of the worker's assignment: e.g. to the worker's qualification.

The equality stipulation will surface only at the next stage, e.g. when the different qualifications have to be specified. Selection and definition of the existing and acquired competence must not be imbalanced in favour of skills that are commonly acquired in male apprenticeships and careers. Any such categorisation must not ignore or undervalue specifically female skills and experience.

This can be explained by a simple example: wage agreements specifying wage amounts generally and

abstractly on the basis of the employee's training qualification – covering all qualifications from a trade apprenticeship to a university degree – will be entirely adequate due to the presence of women in the different training and educational phases. Problems will, on the other hand, arise if the collective agreements were to define any wage group according to qualifications in concrete professions or academic subjects where women, due to social or educational tradition, due to excessively long terms of study, or as a result of other social mechanisms, are underrepresented in the category. This is how male exclusivity arises.

III. Wage differentiation according to job demands

The standard case in wage policy is a pay system oriented to job demands. Pay and classification are measured according to the requirements of the work assignment with no regard for the person and his or her background.

In the course of the development of wage policy and the attendant work done in labour studies, four feature groups have emerged, based on the pattern in the so-called Geneva Scheme, for evaluating the work assignment and determining the due wage amount:

- knowledge,
- responsibility,
- effort,
- environmental influences.

Further progress has also been recorded by the discussion in labour studies; which has resulted in more far reaching differentiation criteria – including from an equality point of view.

There is no doubt that the more differentiated the criteria of job demands are, the closer they will be to operational realities, the more precise and authentically they will describe the essential strains and requirements of the assignment. The danger of discriminating undervaluation of women's jobs will in this way be reduced.

It can be stated that the parties to the wage agreement are generally free in their selection, summary or categorisation of the features of job demands. It is a matter for wage agreements whether the severity of the job demands or the environment influences are not to be taken as criteria influencing the wage for the job or are to be weighted only marginally, and whether instead greater focus is put on responsibility and qualification. Neither the German Basic Law nor the EU Treaty prescribe any binding catalogue of criteria.

Irrespective of the freedom of the parties to the wage agreement to specify their criteria, the following should always be remembered: every reduction of relevant criteria brings with it the danger that certain significant

job demands will not be recognised. Very often demands that are typical for women's jobs are not included. If, for example, secretarial jobs is included in the collective agreement that is more primarily concerned with responsibility and qualification, an under valuation of or even abandonment of the features of job difficulty or environment influences in the total structure of the wage differentiation agreed by the parties to the wage agreement could be discriminatory. The reduced criteria catalogue would then not take full account of the assignments to be carried out.

In my opinion, the need for work adequacy prohibits inclusion of factors such as the labour market situation or company loyalty as categorisation feature, even from the point of view of equal treatment. These are, measured against the exclusively relevant relationship between the worker and the assigned work, immaterial criteria that are potentially discriminatory. The labour market typically reproduces social prejudices and role stereotypes; due to the inevitable interruptions in their working life, the feature of company loyalty would be a disadvantage to women.

Both necessary principles – adequacy for job demand and comprehensiveness – are closely related. The negligence of these principles is a constant source of error, when objection is raised to wage agreements. No wonder, the catalogue of job assessments developed over several decades not only deny their real origins in production; they also embody in their selection, definition and weighting of factors the – generally unreflected – male prejudices regarding difficulty and importance of work, e.g.:

- in the higher priority for technical over commercial assignments,
- in the valuation of management responsibility over caring, helpful or remedial treatment of people,
- in the religious and proletarian ethos of hard muscular work over mental, concentration or speedy work,
- or in the myth of the lonely decision-making hero over the reliability of balanced interaction.

We have known for some time that the responsibility for persons – an essential skill in all care-giving and other personal service occupations – involved with human sorrow, social competence and interactive skills, receive only rare recognition. They are coequal to a hierarchically defined responsibility.

Furthermore, abilities and knowledge are still oriented toward job descriptions at predefined training programs. Although in the last twenty years in almost all wage agreements, the exclusiveness of formal education degrees has managed to overcome and to treat acquired experience equally – undoubtedly an important step to greater penetrability. But comparable experience is often tied to careers of various lengths; depen-

ding on the duration of the career, a specific hurdle arises for women who are confronted with frequent interruptions as a result of their traditional roles. On the other hand, the criterion "comparable" professional experience promotes a concrete challenge to the professional degree if not explained more precisely. This results in a conservative profession orientation, which often doesn't meet the requirements particularly often requested in new fields of work.

The appreciation of longer professional experience is often attributed to the supposed male virtue of having staying power in the job. A lengthy job tenure creates disadvantages for women because of the double function they are still expected to fulfill: holding a gainful occupation and being predominantly, if not exclusively, responsible for care, education and reproduction. Moreover, staying in a job for more than five years no longer appears necessary to suppose a certain degree of competence.

Meanwhile, further developments of the Geneva Scheme exist that help avoid perception deficits and their resulting blind spots, especially by work initiated by the Swiss Federal Office for the Equality of Women and Men. For some time already several labour unions,

for example IG Metall and ver.di, have implemented projects for reviewing and further developing of wage agreement remuneration structures and, at the same time, made use of modern variant evaluation methods.

IV. The dispute regarding evaluation processes

The above mentioned differences also relate to the dispute about the different processes of job evaluation. In brief, notwithstanding all the fuzzy edges and overlaps there may be, we can distinguish between summary and analytic processes for assessing job requirements.

The summary process also generally uses the aforementioned criteria for job evaluation – ability, responsibility, difficulty, environment influences. However, it studies and assesses the job in its entirety, taking a total perspective. The result is an ordered hierarchy of jobs or a grouping of jobs into different categories corresponding to the planned wage groups.

The analytic process evaluates each separate criterion, and from these interim part evaluations calculates the total job evaluation. Although the analytic process has

Scope of state initiatives

DR. REGINE WINTER | EUROPEAN COURT OF JUSTICE, LUXEMBOURG



often been considered to be a rigorously scientific method, this is somewhat an exaggeration. This process also works with evaluations and factor weightings that are ultimately outside the scientific method of proof. It does, however, offer the advantage of greater transparency.

There is no doubt that the analytic process is best suited for this purpose. The individual analysis and evaluation disclose the standards according to which the wage parties evaluated the different types of job demands. This makes it easier to monitor job classification in workplaces taken for determining wages, and to establish the influence of discriminatory valuations, prejudices and unbalanced treatment of different factors.

It will, however, not be possible to exclude the summary process entirely. The wage parties may have reasons for not employing a system if analytic job evaluation; in many cases the relevant personnel in the companies do not have the necessary experience or equipment for carrying out job evaluations according to the analytic method, which puts limits on the design of collective agreements. In addition, it is often considered best to use combined forms in the process, so that, for example, in addition to a detailed listing of the different types of job demands, the relevant weightings are also specified.

V. Process rules

The situation presented above illustrates the need for developing process rules to help implement existing statutes on gender equality.

The German government is of the opinion that with its EU Assimilation Law of 1980 it did everything possible to meet the requirements of Article 119, now 141 of the EU Treaty and the provisions of the equal pay directive (RI 75/117). The Commission originally saw this differently, however. After all, the equal pay directive expects all members states to take "effective measures" to ensure compliance with the principle of equality, Article 6. It is open to doubt whether the individual right to take legal action including the statutory prohibition of coercive measures and the regulation on onus of proof fulfils these expectations.

The findings in the current report of the German government should be the occasion to facilitate implementing equal pay statutes by means of specific process regulations. It is advisable, indeed necessary, that employees of both sexes, works councils and employee representatives, parties to wage agreements and associations that are committed in accordance with their statutes to ensuring gender equality be entitled to examine existing collective agreements or company wage systems to verify that they are free from discrimination, and in the case of any infringements to instigate corrective measures by means of a process to be determined for each specific case. I refer in this regard to a draft proposal developed by Heide Pfarr some months ago. The advantage of such a system is that the process ultimately merges into a collective examination of the matter and, if necessary, new regulation of the agreement. The individual right to take legal action remains notwithstanding.

The Status Quo

Unequal pay for equal work is a problem of discrimination which is deeply imbedded in the payment systems. In the Federal Republic of Germany collective agreements are of particular concern, because a lot of payment systems are of negotiated nature. A structural solution, not selective answers, is necessary. As well as all other member states of the European Union the Federal Republic of Germany is obligated to realise the legal claim of equal pay for equal work.

The following are possible government initiatives:

- improvement of complaint procedures,
- creation of institutions,

- social labels,
- creation of procedure laws or
- the government sets an example.

Complaint Procedures

In Germany and most other European Union member states, individuals may resist structural forms of wage discrimination by means of a legal action. They must overcome their own inhibition threshold and proceed with their individual complaint against the employer. Such suits often are filed, when there is a bigger distance to the employer and when the employees are less afraid of potential disadvantages. For example such complaints take place less often in the private sector than in public service or by cancelled work contracts.

Improvements of the complaint procedures are essential:

- Grant permission for organisations to file suit. The individual woman or man no longer complains against the employer, but the organisation, i.e., a woman's association.
- Grant permission for groups to file suit. That does not mean that only half of the company employees file suit together as was commonly done in the 70s, but for example as in the USA, is done in the context of class action. So each individual does not have to act directly against the employer or the collective agreements.
- Establish mechanisms for supporting institutions.

Conferences such as "Equal Pay" are a good start to analyse problems, to look for solutions and to exchange international viewpoints. In addition, particularly the government is also requested to act. Still pending, for example, is a new European Equal Treatment Directive (2002/73/EC), which also includes the payment. This directive provides the possibility of class action suits.

Creation of institutions

An institution must be highly specialised in order to be able to carry out appropriate to this complex theme of

discrimination-free job evaluations. It should be independent of the government while being publicly funded. It must be active and, in addition, have a sufficient financial budget. The responsibilities of such an institution are specialised and independent research, data collection training, information, public relations, training, maybe control and/or even power to initiate legal action.

- Examples from Ontario show how successfully these themes of public relations can be managed although it is considered to be difficult. For example, a memorable poster campaign on unequal pay called attention. These kinds of actions sensitise those people who do not have previous knowledge of the issue. Furthermore, the institution in Ontario constantly offers training courses for employers who are representatives of personnel departments and for workers' representatives. In these courses specialists mediate over discrimination-free job evaluation. Such an offer would furthermore be useful to the collective agreement commissions in the forefront of negotiations in Germany, without infringing on their autonomy.
- Depending upon the countries laws, some of these institutions have certain authority of control, so that they can go directly into the company, for example.
- Complaint power: an institution could also get the power to sue.
- In Ontario there was a special, publicly financed advocacy allowed to support special case proceedings. A specialised, state-financed "advocacy" which supports in selected cases several female complainants in legal claims is a further interesting example of Ontario.

The creation of an institution is legally intended to

Legal measures to achieve pay equality: case study “Ontario”

PROF. DR. PAT ARMSTRONG YORK UNIVERSITY, CANADA



serve the community. The Equal Pay Directive 75/117/EEC already included, that “competent institutions” should be concerned with this theme. The new European Equal Treatment Directive (2002/73/EC) substantiates that each member state has to appoint and create specialised institutions to assert equal treatment.

Social label

Ecological-audit systems and ISO standards are generally accepted. Likewise, promising measures are being discussed regarding a seal of social quality or an equalisation-audit concerning equal pay. For example, in the context of the “Greenbook Corporate Social Responsibility” debate backed by the EU commission, the German Federal Government endorsed a voluntary procedure for a social label for the creation of a discrimination-free workplace. The factors catalogue of such a label could also include legally obligated regulations as the regulation equal pay for equal work. There with they would not be extenuated but provided with an extra motivation for realisation.

Creation of procedural laws

Does not a systematic, structural problem also require a systematic solution? In the Netherlands, as we learned at this conference, the government advised the collective agreement parties to assume responsibility. They acted hereupon in developing a checklist that is applied in practise. For Germany, however, I am not sure that an admonition is sufficient: the legal requirement have been in force for decades, but no substan-

tial progress has been made.

At a presentation of the campaign “Robert Schuman” in Potsdam with the collective agreement parties from public service and metal industry, the discussion quickly came to the point of “who should pay for it?”. The trade unions saw this as a clear obligation of the employer. The employers’ representatives stressed their openness to equalisation, but also that employers could do nothing beyond a certain, estimated budget. Against this background, a legally supported proceeding would be helpful, as shown by the Ontario or Sweden examples. Applied to Germany, it means that a structural problem is solved in a structural way. The collective agreement parties would be made responsible for this obligation and appropriate time limits could be given with extensions of two to three years. During this time it must be analysed what types of discrimination there are, it must be negotiated, and goals must be obtained.

The government sets an example

The government as an employer is particularly EC obligated to the implementation of equal pay. It should conceive discrimination-free alternatives without delay and, in the case of collective agreements, negotiate and finally apply the wage system for the public service – either in negotiated or legal nature. Besides the fact of legal EC obligation it also would be a good model for the private industry to undertake their own efforts and be an example to follow.

Pay Equity Act of the Province of Ontario

The preamble to the Province of Ontario’s Pay Equity Act contains two substantial statements: First, it is proactive, meaning that people must act in order to achieve pay equality for equal work. Second, systemic discrimination is not necessarily a question of fault, errors or intention. Rather it concerns equal pay for work of equal value in female or maledominated job classes. The legislation requires action from all employers in the public and private sector with more than 100 persons employed. It is less binding for companies with fewer employees and not at all for companies with less than 10 employees. This is regarded as a weakness in the law.

All employees are covered by the Act, regardless if they are full-time, part-time or seasonal workers, and fringe benefits are taken into consideration. Male and female dominated job classes are defined. Female dominated job classes are those that are at least 60 per cent female or are traditionally or stereotypically female jobs. This way, employers cannot work around the legislation simply by the changing the composition of the staff.

Male dominated job classes have at least 70 per cent men. An individual person can also represent a job class, i.e., an individual male in a job class can serve as basis for comparison.

Total job value is defined as a combination of knowledge, skill, effort, responsibility and working conditions. Comparisons must use a gender-neutral comparison system. The choice of the actual system used is not prescribed. The pay equity tribunal developed practical guidelines for use in determining whether a job evaluation method is gender-neutral or not.

The Act also specifies the methods of comparison. In the original version of 1987, there was only one method, job to job comparison, which for example compared the job of a nurse with that of a policeman. There are, however, many female-dominated jobs without a male comparator. In studies required under the original Act, it was determined to what extent these female-dominated workplaces were covered by the law, and what further benchmarks could be used. Based on the results of these studies, the Act was amended in 1993 to include two additional methods of comparison:

- Using the *proportional comparison* wage curves are made for female- and male-dominated job classes and compared as a whole. For male and female job

classes usually at each case a wage curve on the basis of salaries and work value is developed.

- With the *proxy comparison*, a female job class in a different workplace serves as an equivalent job benchmark for the comparison. An example is a kindergarten which has only female employees and thus no direct comparator can compare to a kindergarten where comparators were found. This procedure is used only in the public sector after it was mandated by an official of the Pay Equity Commission.

The trade unions in Ontario were strongly involved in the support of this law. The legislation expressly dictates that the trade unions must also be included in the negotiations for pay equity. This process goes beyond normal collective bargaining. But this process does not run within regular collective bargaining. Pay increases are negotiated in good faith between trade unions and employers and structured into collective agreements after pay equity wages have been determined.

Pay equity process and administrative implementation

All companies with more than 100 employees must develop pay equity plans. The process of developing

Plenary discussion

and implementing these plans is subject to legal regulations and involves a number of steps. It includes certain timeframes or special punishments. Pay equity is recognised as being implemented if a wage adjustment plan is presented and appropriate payments took place unless a complaint is submitted by employers or employees at the pay equity tribunal.

A commission financed by the government, yet still independent, supervises the execution of the law. It advises, trains, evaluates and gives appropriate instructions for implementation. Their representatives are provided with considerable authority. With any disagreements the issue will be handed over to the tribunal whose decisions are binding.

Conclusions from the "Ontario" example

- The monitoring by an independent commission and an independent tribunal made up of competent equal pay experts is an indispensable component of the model. The establishment of these independent tribunals and the strengthening of the legislation are very important for trade unions.
- In the law it is expressly recognised that systematic discrimination exists and that all parties must participate in solving the problem. (In practice it has been shown that woman-dominated trade unions were more successful in the negotiation of wage increases than other trade unions.)
- Direct job comparison is the most complicated way and leads to uneven results and greater controversy. (The method selected for the job to job comparison and its application can lead to unfairness and the results strongly depend on who is selected for the comparison.) Proportional comparison is the better method in most cases.
- It will be even more difficult to ensure that the pay equity regulations are adhered to, particularly through times of enormous restructuring. More and more workers are migrating from an employer-employee relationship into self-employment and no longer benefit from the legislation. Outsourcing and privatisation are used as a means to undermine wage agreements and to avoid the legislation.
- The legislation requires constant examination and advancement. In Ontario, trade unions, woman organisations and local organisations came together to form a strong pay equity lobby. (This group had worked together for ten years prior to the law coming into force, and continues to be active particularly in issues concerning the development of a gender-neutral comparison system – an area where new questions and problems must continually be addressed.)
- Pay equity laws must be constantly defended and

maintained. A newly elected conservative government came into office in Ontario and passed omnibus legislation amending the Equal Pay Act. The proxy comparison were repealed. A large trade



union challenged this legislation under the Canadian Charter of Rights and Freedoms, arguing that proxy should remain and that payments continue. This challenge was successful and proxy is still in place.

Ingrid Weber, Deutscher Juristinnenbund (German Association of Female Jurists),

wishes to know how equal pay was specifically implemented in Ontario: do employers have to pay more to ensure that underpaid women are fairly remunerated or, in the case of equivalent aggregate rates of pay within the company, are male jobs lower paid in order to establish equality? In the Federal Republic of Germany, the question of finance is a central problem within collective pay agreement policy.

Prof. Dr. Pat Armstrong, York University, Canada,

has no enclosing information on how pay equity was established in every single working area. The law prohibits the decrease of wages in male work segments. In some cases they were frozen. The majority of employers are of the opinion that job evaluation systems have helped them and have helped improve the conditions. Other employers – as opposed to many employees – represented the view that pay equity exists and no additional action is necessary. (The employees, in turn, had no power; no support from the trade unions, nor the expertise to file complaints systematically themselves.)

Monika Döschner, Bayer AG and IG BCE (German Mining, Chemical and Energy Industrial Union),

refers to the federal collective pay agreement for the chemicals sector encompassing 13 wage groups. It sets

out verified benchmarks for work activities within individual pay groups. Nevertheless, systematic methods of analytical job evaluation, which were described in every presentation during the conference as being the optimum way of achieving pay equality, are lacking. Mrs Döschner asks whether this is indispensable or whether other alternatives exist? As following this route would require conviction not only from the employers, but also entire collective bargaining commissions and each and every employee.

Dr. Regine Winter, European Court of Justice,

thinks that a pay system must illustrate the nature of the work and that it must be transparent. Only this system will clearly show, and eventually determined by the courts, whether or not there is discrimination. For example, Ontario experienced that such a system can not only be summary but also analytical. However, she is sceptical about this. Transparency by demand is actually only offered through analysis. It is questionable whether a transparent "summary system" is still summary in the long run.

Analysis is not simple, but nevertheless controllable. In Ontario, for example, the metal workers' trade union designed and sold a system in the form of a diskette presentation to employers. Using this, all female employees could easily calculate where they stand or should stand in the pay system.

Anne Jenter, DGB National Executive,

notes that the traditional role of women is reinforced where their average earnings are lower than those of men. Ultimately, it is the lower income earner who stays at home. She considers it important that, overall, it is statutory provisions that provide the impetus for parties to collective bargaining agreements to devote themselves to the goal of equal pay. At the DGB National Congress, an equality policy action programme was agreed upon for the year 2003, which now requires implementation. Equal Pay is an important issue on the agenda. Of interest to Ms Jenter is the question of: what the right approach for the Federal Republic of Germany would be in order to make headway with governmental support?

Prof. Dr. Heide Pfarr, Chief Executive of the Hans-Böckler Foundation and Specialist on Labour Law,

emphasises that, in addition to the state, individuals could also contribute, as is the case, for example, with the Equal Pay Coalition in Ontario. A coalition that pools its forces could progress significantly. The Ontario example further demonstrates that the law must be protected. Particularly those governments who have set themselves an agenda on women's affairs require extensive support, in the form of critical pressure, for

example. All are called upon to actively support such action.

Marlies Diepelt, Equal Opportunities Officer RWTH Aachen and Aachen University Clinic,

points out that women who have taken an occupational break to raise a family receive less money when they return to the workplace. If they return to work on a part-time basis, previously received allowances are discontinued. How may such injustice and discrimination be prevented? In her opinion, existing available legislation are not sufficiently comprehensive.

Dr. Detlef Hensche, ver.di,

points out that, with respect to analytical procedures, equality or comparability of grouping and pay levels may only be analysed when it is clear what factors, with which particular weighting, are decisive. Thus, he considers a workplace analysis and the analytical procedure to be necessary in order to achieve transparency. Nevertheless, transparent procedures could also produce discriminatory results and vice versa, along with the various levels in between. One could begin with the summary process, then specifically name the individual factors of assessment, before ultimately ascribing them weighting: – which would be on the boundaries of an analytical procedure. Dr. Hensche urgently recommends that instruments be set up in companies in order to ensure the transparency of collective pay agreements. He considers that over-extended terms of company service are a discriminatory factor. Further, where collective pay agreements set certain periods of time as a prerequisite to obtaining higher levels, specific models, ascribed to women precisely on the basis of societal distribution of roles, must be endorsed within the scope of company-external work.

Prof. Dr. Heide Pfarr, Chief Executive of the Hans-Böckler Foundation and Specialist on Labour Law,

expresses with respect to the achievability of her draft law, that even those with good intentions require a procedural law for the implementation. To date, the legislative has undertaken little in this respect and has not given any indication that rapid and wondrous improvements can be expected in the next legislative period – either with respect to an equal opportunities law for the private economy or in terms of a law to ensure implementation of equal pay. Therefore, she is currently trying to convince female and male colleagues in the trade unions that such a law would not deprive them of rights, but rather enable their rights to be respected in a non-discriminatory way. Consequently, this law has not yet been introduced. Dr. Pfarr is, first of all, endeavouring to attain committed support for this regulation from the unions and, in particular, the trade union collective bargaining commissions, in addition to gather-

ing feedback and improvement proposals.

**Gisela Beyer, Verband aktiv-unabhängiger Frauen
(Association of Active and Independent Women),**



equal pay

Panel discussion
Strategies for implementing
equal pay

Panel discussion

points out that the equal pay directive, which – among other things – requires non-discriminatory collective bargaining agreements, has existed since 1975. In addition, governments of member states are called upon to introduce measures to bring about the elimination or annulment of discriminatory collective pay agreements. She also wishes to know what sanctions are imposed by the EU and how the government is conducting itself.

MR Janny Dierx, Commissie gelijke behandeling („Equal Treatment Commission“), the Netherlands,

has a follow-up question for Dr. Winter regarding “class action”. In the Netherlands there is a trend to make decisions without first consulting the European Court of Justice. This could be improved through the use of class action. For an organisation like the Equal Treatment Commission “Commissie gelijke behandeling”, it would be helpful to have a direct access to the European Court of Justice. Mrs. Dierx would like to know what the chances are for such a proceeding and whether the Court itself could enhance possibilities concerning access to the Court.

Dr. Karin Tondorf, Research and Consultation on Equal Pay and Equality Policy,

adds that, in Germany, application of the job-to-job comparison is still predominant. In Germany, as in other countries, there are so-called women’s occupa-



tions, such as doctors’ assistants, hairdressers and legal assistants, which are very poorly paid.

Prof. Armstrong spoke of a proportional comparison. What steps could be taken with respect to such areas, independent of the company size, in order to make inequalities apparent? Who should be compared to whom and how? With reference to the PROXI (deputy)

method, she asks how significant women’s sectors that are possibly being discriminated against, could be compared with other women’s sectors that are also potentially suffering discrimination.

Dr. Regine Winter, European Court of Justice,

describes in answer to the question about possibilities for organisations like the „Commissie gelijke behandeling“ (Commission for Equal Treatment) for access to the European Court of Justice, that there are currently only limited possibilities for filing suit and none are applicable for them. She refers, however, to a request submitted to the Court of Justice for a preliminary ruling in the legal matter C-459/99 (MRAX), in which an organisation entitled to sue under Belgian law, is a party of the case, and therefore participated in the fact that certain questions reach the Court of Justice.

Prof. Dr. Pat Armstrong, York University, Canada,

adds some relevant aspects: Job evaluation for the purpose of pay equality does not necessarily have to be a component of collective bargaining. Equalisation, in reference to the job, is a further important component not yet implemented in Canadian law. NGO’s are often part of the proxy comparisons. In addition, many of them are actively involved in the coalition for pay equity.

Dr. Karin Tondorf, Research and Consultation on Equal Pay and Equality Policy

In Germany, and presumably also in other states, the chief problem lies in the fact that the knowledge of the equality issue remains largely underdeveloped. Women, employers and unions concerned still do not have conscious awareness of what the problem of indirect pay discrimination entails exactly. Additionally, a significant acceptance deficit based on character stereotypes such as gender-specific allocation of occupational roles, characteristics or abilities prevails. The unions fear a clash of interests between male and female members because male-dominated occupations might be devaluated. From the employers’ point of view, job evaluation is also an ideological question. Nevertheless, it is economic interests which are the greatest obstacle to the implementation of pay equality, regardless of whether it concerns the private economy or the public sector.

Karl Osterberger, Chief Executive, Volkshilfe O. Ö., Austria

In-house resistance has never really been a factor within Volkshilfe. We wanted to examine whether discrimination was occurring in our own organisation. In an

NGO made up of over 91 per cent of women, this should not really be the case, yet the project FABA proved us wrong. Within the course of this project, which has been running for two years, aspects of discrimination have surfaced. These are currently being analysed, with work also going into a new operation agreement and pay structure.

FABA was the first model in the non-profit sector in Austria. It succeeded in publicising an approach to job evaluation within the trade union, although, to date, it has not exerted any influence on negotiations on collective agreements for the health and social services sector. In Austria, as yet, there is no collective agreement for this sector. Following five years of negotiations, it is anticipated that such an agreement will become effective by January 2003. The agreement integrates the initial elements of job evaluation, but, unfortunately, not to complete satisfaction.

Jörg Wiedemuth, Head of Collective Bargaining Principles, ver.di, Berlin

At present, public service collective wage agreements are being examined to find out whether they ensure pay equality. Additionally, within the major collective agreement project 'Modernising the Public Sector', the question of pay equality will play a significant role. This aside, ver.di is initially at the stage of creating consciousness of the problems of pay equality and their underlying causes. This involves sensitising all central wage bargaining committees to the subject, which presents a major task given the several thousand collective pay agreements within the ver.di sector.

A good starting point is the proposal put forward by Mr. Hensche, of identifying collective agreement areas where there are fewer conflicts of interest between employers and employees. These could be used to establish models, for example, a commission for equality that could provide for common agreements or other concrete steps. A tangible, positive example would surely achieve more progress than numerous lengthy, fundamental analyses.



It is probable that the problems of pay equality will not form part of the next round of public sector pay negotiations. On the contrary, the mood is to allow more time for the process. Specifically, it involves an employment package for several years.

Dr. Hans Bernhard Beus, Director General, German Federal Ministry of the Interior, Berlin

Given that more than half of those employed in the public sector are women, sufficient appreciation of the problem has long been assumed. However, this is increasingly being questioned. Consequently, 'gender mainstreaming' as a whole has been shifted to the forefront, with the result that the subject is now being considered in greater detail. The first investigation by the ÖTV (Trade Union for Public Service, Transport and Traffic) in Hanover started a new discussion process, whereby cost considerations will be a significant factor. Thus, the necessity of fundamental reforms of the Federal Collective Agreement for Public Employees (BAT), including consideration of pay equality, is currently being deliberated. Also, as far as procedure is concerned, it would be advantageous if this point was not dealt with and negotiated in isolation, but rather resolved within the scope of the overall subject.

MR Janny Dierx, Equal Treatment Commission, Netherlands

The Netherlands has also not found a miracle solution. The Equal Treatment Commission represents an alternative to judicature. The entrance threshold is low. Individuals and organisations as well as trade unions or works councils can contact the commission free of charge. The hearings function as a platform for discussion and may enhance further contact between the different parties. Arguments are examined for their validity. If fundamental guidelines are adopted, a discussion of the social partners can take place on how the laws can be implemented. Thus future discriminations may be successfully prevented. Janny Dierx is commissioner and functions as an ambassador as well. The work requires diplomacy and requires an ability to debate. The Equal Treatment Commission plays its own role in organising discussions or promoting meetings and negotiations between parties. In the Netherlands, fortunately there are strong women in the trade unions, always taking up new cases and pushing the discussions forward. For example, after an important decision, the commission was invited by the trade union in order to describe how discrimination could be prevented in the context of the next round of collective bargaining.

Brenda Gannon, The Economic and Social Research Institute Dublin, Ireland

In Ireland there is the National Council of Women very

much involved in enforcing the interests of equal pay in conjunction with the social partners. Research has also been conducted at the Economic and Social Research Institute in Dublin. The problem was brought up for discussion in 1974 when the first equal pay act passed. This was supported by the "Employment Equality Act" of 1998 and by the establishment of the "Equality Authority". The latter supervises the implementation of the laws, informs employers and employees, and advances the research in wage differentials. It was shown that the experiences of each individual in the labour market are important. This particularly concerns women: each year they spend outside the labour market leads to a reduction of their wages. Thus the wage gap between women and men becomes ever larger. In Ireland therefore, a family-friendly policy is on top of the social partners' agenda. Still missing however, is a pattern for job evaluation so that jobs of equal value can be compared with one another. The trade unions are very much interested in these things.

Dr. Walter Wolf, European Commission,

considers that equal opportunities and equal pay occupy an important place within the scope of European employment strategy. A case in point is a specific recommendation jointly concluded by the Commission and the Council, calling for Germany to do more to achieve equal pay and to present transparent indicators. Dr. Wolf deems this 'open method of coordination' to be a worthwhile endeavour which, in the mediumterm, will stimulate discussion and achieve results.

Dr. Karin Tondorf, Research and Consultation on Equal Pay and Equality Policy, Germany,



essentially attributes progress in Germany to the activities of the EU. However, there are no sanctions, should the parties to collective bargaining agreements omit to undertake action against pay inequality. Illegal parking is sanctioned more tightly than breaches of equal pay. Thus, progress is entirely on a voluntary basis. Binding standards on the part of the state would remedy this.

Dr. Marianne Kriszio, Women's Delegate at Humboldt University and Executive Member of the German Conference of Equal Opportunity Officers at Higher Education Institutions (BuKoF), Berlin,

is aware of the fact that many thousands of women at universities, particularly in non-scientific areas, are interested in the subject of non-discriminatory remuneration. As a consequence, BuKoF has, amongst other things, initiated a corresponding pilot project for non-discriminatory job evaluation in four German universities. The question is, however, how far such pilot projects and investigations, and the corresponding increase in consciousness on the part of women, can bring about real changes. Where are the decisive levers, what can be learned from other countries in this respect, and what specific demands can emerge from the 'equal pay' conference? A worthwhile measure, for example, would be the demand for the establishment of a corresponding commission at national level, which would require the participation of both experts and those affected. In addition, the matter of raising consciousness needs further efforts, that is, no abstract, but action-orientated efforts. What could be a practical result of such a conference is a plan of action and a time frame to incorporate up-to-date knowledge into new collective pay agreements.

Ilona Ziesche-Grosse, Equality Delegate, Federal Collective Bargaining Committee for the Public Sector, AG Gender Work Group,

finds it unacceptable that we are still at the sensitisation stage, given that the German federal government already assumed the obligation to 'gender mainstreaming' in 1999, and that the Federal Ministry of the Interior's only 'gender mainstreaming' project was that of BAT.

She expresses criticism of ver.di for its intention to reform BAT in the mid-term which, for many thousands of female colleagues, means that the project is put off. The public sector and with it the federal collective bargaining committee for the public sector, is primarily made up of former ÖTV members. Since the eighties there have been decisions, projects, studies and tangible results. All things considered, this is sensitisation enough.



Dr. Hans Bernhard Beus, Director General, German Federal Ministry of the Interior, Berlin,

is not keen on additional bureaucracy, such as the setting up of a commission, and instead advocates a reduction in the density of regulations. What is needed is for action to be taken by the collective bargaining parties. Both employers and employees, and especially women, must be vigilant and ensure that the right measures are taken.

In his opinion, the fundamental reflections about public sector remuneration systems are an opportunity rather than a delaying tactic. It is an illusion that the complex structural subject of 'equal pay' can be approached in isolation. A system which affects over three million people cannot be changed overnight.

Jörg Wiedemuth, Head of Collective Bargaining Principles at ver.di, Berlin,

emphasises ver.di's strong desire to tackle the problem of pay equality in the public sector quickly. 'Medium-term intentions' also incorporate the perspective of implementation. However, the problem, lies in the development and the implementation of concrete measures to break down inequality within negotiations with employers. Hence, the question of cost cannot simply be resolved through internal redistribution. Rather, those who are unequally evaluated and poorly paid must experience an improvement, while others receive some form of assurance. Otherwise, he does not see any possibility of achieving a majority within the central bargaining committee. The entire issue is not so much a question of stubbornness on the part of male chief negotiators as a problem of democratic decision-making within the central bargaining committees, whose members – of both genders – must be convinced that the direction taken is for the benefit of all, and first and foremost for women. A win-win position needs to be created, not a situation of internal redistribution. However, this is the fundamental difficulty, which requires a concrete schedule to be solved.

MR Janny Dierx, Equal Treatment Commission, Netherlands,

has the impression that in Germany a lot of research and public relations work is carried out and that the German participants know exactly where things go

wrong. She asks why it is so difficult to bring cases to court. This is also the case in the Netherlands. Concerning unequal payment there have only been a handful of cases brought to the Supreme Court. In the lower courts, judgements may be hampered by lack of knowledge and inexperienced judges in this particular field. Although occasionally some cases have become model cases and may contribute to change the situation.

Since 1996, there has been a law in the Netherlands on the equal treatment of different working hours. Before, such a case was regarded as indirect discrimination against women, since women more frequently work part-time than men. The proof of discrimination against women had to be delivered through statistical data. Now there is a new, neutrally formulated law that completely prohibits unequal treatment with regard to working hours. It turned out that for the social partners, it is easier to discuss this topic in the context of working hours in general and not in the context of discrimination of women in particular.

Dr. Karin Tondorf, Research and Consultation on Equal Pay and Equality Policy,

expresses criticism of the fact that, in certain countries, legal action by individual women was needed to stimulate reaction from the collective bargaining agreement parties. She considers it wiser for collective bargaining agreements to be structured so as to prevent discrimination. However, this cannot be self-financing, rather, specific adaptation strategies are needed. Ultimately, this is still more cost-effective than being confronted with a mass of individual lawsuits filed by women.

Anne Jenter, Head of Women's Policy, DGB (German Trade Union Confederation) National Executive,

states that the DGB is willing to accept a medium-term solution. However, the process must begin immediately and not be used as a shunting yard. She recalls the fact that the German government was explicitly criticised by the EU Commission for its lack of action in respect of pay equality. In Germany, an anti-women climate is still prevailing. The following measures could be elements of a medium-term solution:

- The DGB's political programme of action for equal opportunities: ombuds-representatives could be appointed within specific pilot companies in order to ensure that perceptions from the pilot projects about pay discrimination against women are worked out at company level. For large corporations, step-by-step-plans could be drafted, which could be applied in the short-term and then successively be expanded.
- A gender institute named in the SPD manifesto: Hereby, it should be clear from the beginning that equal pay is on the agenda. This, together with spe-



cific guidelines on the procedure, must then be presented to the collective bargaining parties.

- The steering committee is revising the corresponding EU code of practice about equal pay principles for men and women in work of equal value. It is the task and duty of the state to ensure its actual implementation.

Present discussion envisages that women should transfer to male occupations in order to earn more. In principle, this should be supported, however, not in connection with pay equality. Moreover, female dominated occupations should be compared with male dominated occupations, and areas where women perform work of equal value should be subsequently upgraded.

Dr. Dörte Folkers, Ministry for Social Affairs, Hessen,

is concerned that gender mainstreaming could also be used as a shunting yard. The Federal Ministry of the Interior's gender project could run the risk of being conducted as a virtual project. In her opinion, the pilot project is the duty of the collective bargaining parties who should be tackling the problem. She proposes that the project should be carried out using an occupational group proven to have been subjected to discrimination, and that the implementation should be exercised with the aid of an example.

Silvia Labudda, Directorate for Labour and Collective Bargaining Law – Professional Association for Domestic Science,

criticises the introduction of the BA wage-bracket groups which resulted in financial disadvantages for women. She is head of domestic economy at the ecclesiastical social welfare association in Duisburg, where 'outsourcing' has not been a factor for 20 years. Pay protection that had been granted to employees was not guaranteed after the introduction of the BA groups. In addition, the gross earnings of newly employed full-time staff will be between DM 300 (Euro 153) and DM 400 (Euro 204) lower. This affects the number of job

applications, which has fallen significantly.

Monika Christiann, Administrative Clerk at ver.di,

runs the Feminists' Party in her spare time. During the years 1990 to 1995, she fought against discrimination as a member of the works council at Frankfurt airport, and also in the Collective Bargaining Negotiating Committee. She criticises the fact that the subject of indirect discrimination has been deferred at each round of collective bargaining talks and is not given sufficient importance. She proposes that the Law on Collective Bargaining should be amended accordingly. In the normative sector a principle of equality should be introduced and central bargaining committees should have a parity of male and female members. She called upon collective bargaining parties to support this.

Jörg Wiedemuth, Head of Collective Bargaining Principles at ver.di, Berlin,

wishes to make it clear that ver.di has, for some time, heavily criticised the lowering of pay scales and the introduction of low pay areas, and has developed a series of initiatives to counter this.

With reference to the other point, he explains that it is in the interest of the policy department to encourage headway with such plans in the central bargaining committee. In order to give implementation a chance, action must not only be taken at the level of statutory initiatives, but social movements must also be brought into the debate. This is more complex to organise and requires time. The collective bargaining policy department has appointed 'gender streamlining' delegates, who tackle the matter of initiatives and provide knowledge to others, in addition to developing checklists for the evaluation of collective pay agreements.

Karl Osterberger, Chief Executive, Volkshilfe O.Ö., Austria,

has the impression that there are numerous advisory committees and commissions in Germany, but that nothing or very little actually happens. The situation in Austria is similar. Where there is at least the will to introduce the FABA model, for example, there is still a lack of political will to implement further projects. Within the scope of a short-term European project one was able to fall back on an economic committee, yet following conclusion of the project, there is a lack of advisory instruments or support structures in order to continue the development of non-discriminatory job evaluation models.

A second aspect is the permanent focus on collective bargaining policy. It might be more effective to encour-

age the realisation of 'equal pay' at company level. For example, why is there no 'equal pay' certificate? Firms in possession of such a certificate would then be given preference when applying for public contracts.

Brenda Gannon, The Economic and Social Research Institute Dublin, Ireland,

reports that Ireland already has a consulting committee. However, since this was introduced only recently, it is still too early to report on the experiences. In the trade unions, women and men are almost equally represented especially at the middle and lower levels. The National Council of Women in Ireland would like to see this carried out also for higher levels in the organisation.

MR Janny Dierx, Equal Treatment Commission, Netherlands,

has the impression that the social partners in Germany have too much power. In a situation like that, it is all the more important that the national government takes up a strong role. The government is important because this is the institution that must implement EU-laws and regulations. If the social partners are too hesitant, the government should provide more impetus. In the Netherlands, the last government before the 2002 elections took its task very seriously: it initiated research projects and discussions with the social partners and motivated them to develop new instruments to improve the structures.

Currently in the Netherlands, the Ministry for Social Affairs and Employment runs a pilot project to develop a fast examination method. This would allow them to quickly gather data from company's wage and personnel systems to determine appropriate differences. This instrument could then be used by employers, work councils or trade unions. Such possibilities could possibly lead to a break-through in the debate and to attractive solutions.

Dr. Hans Bernhard Beus, Director General, German



Federal Ministry of Interior, Berlin,

states resolutely that in Germany, too, there are court judgements on the matter which, particularly in the part-time sector, ran into nine-figure sums.

This aside, experience from abroad demonstrates that the centralist approach in Germany might not be suited to achieving short-term success. If companies or public authorities had more opportunities to take up the matter locally, then naturally, quicker progress could be achieved by taking small steps, rather than, for example, comparing the remuneration of nurses and police officers across the entire country. At present, however, movement on this is not possible because the collectively agreed standard working conditions are simultaneously those of maximum pay.

Increased flexibility nevertheless makes sense, in addition to the formula recommended abroad of making changes in small stages. The extent to which this is acceptable in Germany needs to be discussed and will certainly require the conclusion of a collective pay agreement with the negotiating partners.

Gerold Haag, National Executive Administration, ver.di,

picks up on the presentation by Dr. Henschke, in which he illustrated both the possibilities and also the lack of collective bargaining autonomy in Germany. Clearly, there are cultural and constitutional differences between, for example, Germany or Austria and the Anglo-Saxon countries, where collective bargaining autonomy does not have this centralised position. Certainly, the collective pay agreement parties need to act with greater speed in respect to pay discrimination. The problem, however, is that employers essentially reject dialogue and generally call the collective pay agreements into question. Perhaps the collective bargaining parties need statutory initiatives to 'get them moving'. Attention does, however, need to be given to ensuring that this does not impair collective bargaining autonomy.

Karin Pötzsch, Paritätische Tarifgemeinschaft (Association for Collective Pay Equality)

The Association for Collective Pay Equality is an employers' association of member organisations of the German Charitable Organisation for Equality. A recent introduction here was a collective pay agreement for seven companies, whereby it was recognised that there were both winners and losers. A win-win situation was not possible. The problem had been resolved in that both winners and losers participated on three counts, hence, pay equality for work of equal value was achieved practically with zero-budget.

However, an additional problem for employers in charitable institutions was the 'superior employment restric-



tion', under which employees could not be paid more than public service workers. This factor could lead to difficulties in realising the new collective pay agreement.

Petra Ganser, National Administration, Collective Agreement Policy, ver.di,

explains that she comes from the public sector and, during her time in the ÖTV, has been responsible for the campaign to upgrade women's occupations. Within this context, ver.di carried out a comparison project in Hanover that highlighted problems in the evaluation of occupational activity resulting from a lack of psychosocial and physical factors. In particular, the ver.di women in the public sector collective bargaining committee call for a non-discriminatory law on collective bargaining. Although the collective pay agreement negotiators are sensitive with respect to this, it will need great effort to convince them.

Vera Morgenstern, National Secretary for Women's Affairs, ver.di,

accentuates that, above all, model examples have been presented throughout the entire conference, such as examples from the public sector, which has a pioneering role to play, as well as from the relevant trade unions. Nevertheless, it should not be overlooked that an increasing number of areas are not covered by collective agreements at all, or will fall outside them. Of utmost necessity is supportive action by the legislative body, which also ensures that collective bargaining autonomy is not encroached upon.

Anne Jenter, DGB National Executive,

criticises the fact that, in the government's income report, employers and members of the federal government questioned the existence of direct pay discrimination. She calls for alignment between unions, the government and NGOs to further develop equal pay in the German Federal Republic.

Dr. Hans Bernhard Beus, Director General, German Federal Ministry of the Interior, Berlin,

emphasises that the problem of pay equality, albeit an important one, is not the only point for discussion. Debate should extend to the systematics of characteristic features of BAT remuneration. Nevertheless, the fact that the ver.di organisation members fight to put the subject high on the agenda is undoubtedly the right line to take. Dr. Beus also emphasises two further facts:

- The public sector, which ultimately also affects the employment market, cannot be an island within the Federal Republic's workforce. Rather, any movement there might be must extend to all wage and salary earners.
- The question of costs should not be neglected. For the public sector, the situation is relatively simple

equal pay

Closing Words

Closing Words

BRIGITTE UNGER-SOYKA DIRECTOR GENERAL, FEDERAL MINISTRY
FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH



given that funding comes from taxpayers and is not generated through profit. Thus, the question is to what extent the general public is willing to pay for any particular issue. Without doubt, such problems require an open discussion and must not be allowed to linger unsolved somewhere in the background.

Jörg Wiedemuth, Head of Collective Bargaining Principles at ver.di, Berlin,

assures that, following the round of collective bargaining talks in the winter of 2002, the requirements put forward will be incorporated into collective pay agreement negotiations. This is the decision-making position within the central bargaining committee. He emphasises once again that ver.di's intention is not to put off the subject. As an example, he can clearly envisage a joint publicity campaign in cooperation with public sector employers to raise awareness.

MR Janny Dierx, Equal Treatment Commission, Netherlands,

clarifies that the establishment of a commission is not seen as the only solution. However, it would be favourable to have some kind of committee with investigative and legal authority, independent of the social partners, in order to inform the public of its observations. There is an EU directive concerning the different treatment due to race or ethnic background. In this EU directive, a paragraph requests the member state governments to create a committee for the promotion of equal treatment. In the Netherlands the creation of a joint commission that scrutinises all kinds of possible discrimination has had a positive effect on the formation of political opinion. This not only relates to gender, but also to race, ethnical grouping, religion or sexual orientation. Thus, more attention is directed to the issue of equal treatment and more knowledge and expertise can be collected.

Brenda Gannon, The Economic and Social Research Institute, Dublin, Ireland,

estimates female union membership in Ireland amounts to approximately 50 per cent. There are national wage agreements that protect the interests of these women. Equal opportunity as well as pay equality must be considered. As a result of the national development plan, a "gender equality unit" was brought into being. Its goal is to guarantee that "gender mainstreaming" is pursued in any policy connected with this development plan. Furthermore, it gives the possibility for individu-

equal pay

Appendix

Legal framework on the issue of equal pay

DR. EDELTRAUD RANFTL UNIVERSITY OF LINZ, AUSTRIA

DR. KARIN TONDORF RESEARCH AND CONSULTATION ON EQUAL PAY
AND EQUALITY POLICY, GERMANY

Germany

German laws on equal pay

Sexual discrimination in pay for men and women is prohibited in particular by the constitutional law of Germany as well as by the (German) Civil Code [BGB]. Article 3 Section 2 and 3 is binding on collective bargaining, internal wage and salary agreements and contracts of employment. § 612 Section 3 BGB deals with the German implementation of the equal pay directive 75/117/EEC. § 611 a BGB regulates inter alia the burden of proof.

Basic Constitutional Law Article 3 Section 2 1994 version

An extract reads:

- 2) Men and women shall have equal rights.
The German state shall promote actual implementation of equal entitlement for women and men and shall work with the aim of eliminating existing disadvantages.

Civil Code (BGB) § 612 "Remuneration" version dated 13.8.1980

Section 3 reads:

"A smaller remuneration must not be agreed for an employee for the same or equivalent work than would be paid for an employee of the other sex. The agreement of a lesser remuneration shall not be justified on the basis that special protection regulations shall apply on account of the sex of the employee. § 611 a Section 1 Sentence 3 is to be applied accordingly".

Civil Code (BGB) § 611 a "Equal treatment of men and women" version dated 13.8.1980

Section 1 reads:

"The employer must not place an employee under a disadvantage on account of his/her sex when making an agreement or measure, in particular when establishing the employment relationship, when the employee is making career advancement, when passing out an instruction or when notice of termination is served on the employment relationship. However, different treatment on account of the sex of the employee may be allowed provided that an agreement or a measure

deals with the type of the work to be carried out by the employee and that it is absolutely essential that such work is carried out by either a man or a woman. If in the event of dispute, the employee gives credence to facts that allow it to be assumed that an employee is placed at a disadvantage on account of his/her sex, the burden of proof will be on the employer to prove that factual reasons not relating to sex justify different treatment, or that it is an absolutely essential precondition that the work is carried out by one sex or the other.

European Union

European laws on equal pay

Under European law, Article 141 of the EC Agreement (Treaty of Amsterdam) and the Equal Pay Directive 75/117/EEC are of particular significance with regard to the claim to equal pay. Article 141 deals with basic community law. Directive 75/117/EEC puts into specific terms the principle of equal pay contained in Article 141 of the EC Agreement. Above and beyond this, the directive 97/80/EC regulates the burden of proof and includes a definition of direct discrimination. These legal rules are binding on national state law.

EC Treaty Article 141: equal pay for men and women (former Article 119), came into force on 1.5.1999

An extract reads:

- 1) Every member state shall ensure the application of the principle of equal pay for men and women for the same or equivalent work.
- 2) By "pay" within the meaning of this Article is to be understood the normal basic or minimum wages as well as all other remuneration which the employer pays to the employee directly or indirectly in cash or in kind as a result of the employment. Equality of employment remuneration without discrimination on the basis of sex means,
 - a) that the remuneration will be stipulated for the same work paid on a piece rate basis on the basis of units of measurement being equal,
 - b) that work paid for on a time basis is the same for the same work.

3) The Council shall decide in accordance with the procedure in Article 251 and after giving an opportunity for explanation to the Economics And Social Committee of measures taken to ensure the application of the principle of equal opportunities and equal treatment of men and women in labour and employment issues, including the principle of equal pay for the same or equivalent work".

Council directive 75/117/EEC

dated 10th February 1975

on the harmonisation of the legal regulations of the member states on the application of the principle of equal pay for men and women

Extracts read:

The implementation of the principle of equal pay for men and women named in Article 119 of the Agreement is an integral element of setting up the Common Market and its operation.

It is primarily the duty of the member states to ensure that this principle is applied by implementing the corresponding laws and administrative measures.

Article 1: The principle of equal pay for men and women named in Article 119 of the Agreement shall be designated below as "Principle of equal pay". It means the elimination of any sexual discrimination with regard to all elements and terms and conditions of pay for the same work or work recognised as being equivalent.

In particular, in those cases in which a system of professional grading is applied to determine pay, this system must be based on criteria applicable to both male and female employees and designed in such a way that sexual discrimination is precluded.

Article 2: The member states shall pass laws implementing regulations within their respective states which are necessary so that every employee who feels aggrieved as a result of the principle of equal pay not having been applied can, once any other offices responsible for such cases have looked at the case, take legal action in the courts.

Article 3: The member states shall eliminate all discrimination between men and women irreconcilable with the principle of equal pay arising from their legal regulations or administrative arrangements.

Article 4: The member states shall take the measures necessary to ensure that provisions in collective bargaining, wage and salary scales or agreements irreconcilable with the principle of equal pay are void or can be declared void.

Article 5: The member states shall take the necessary measures to protect employees from dismissal as a reaction by the employer to a complaint being made

within his business or as a result of legal action being taken to ensure compliance with the principle of equal pay.

Article 6: The member states shall take measures in accordance with their internal arrangements and legal systems as necessary, to ensure that the principle of equal pay is applied. They shall make certain that effective means are available to ensure compliance with this principle.

Article 7: The member states shall ensure that the relevant directives created in the application of this directive as well as the regulations already in force are made known to employees in every suitable form, within companies for example.

Article 8: The member states shall put the necessary legal regulations and administrative arrangements into force in order to fulfil this directive within a year of it being announced. They shall notify the commission of that they have done so without delay.

The member states shall notify the commission of the wording of their legal regulations and administrative arrangements which they are issuing so that this directive can be applied.

Article 9: Within two years from the expiry of the period of one year provided for in Article 8 the member states of the Commission shall pass over to the Commission all expedient information to enable the Commission to prepare a report on the application of this directive for the Council.

Article 10: This directive is addressed to the member states.

Directive 97/80/EC

On the burden of proof for sexual discrimination dated 15th December 1997

An extract reads:

Article 1: Objective

The objective of this directive is to ensure that the measures taken by the member states to apply the principle of equal pay are implemented more effectively so that everyone who feels aggrieved that the principle of equal treatment has not been applied can assert his rights in court once they have been dealt with by other responsible bodies.

Article 2: Definitions

1. Within the meaning of this directive the term "principle of equal treatment" means that there must not be any direct or indirect sexual discrimination.
2. Within the meaning of the principle of equal treatment named in Section 1 indirect discrimination shall exist if it appears according to unbiased regula-

tions that criteria or procedures are detrimental to a significant and sizeable proportion of the employees of a company, unless the regulations, criteria or processes are appropriate and necessary and are justified by reasons unrelated to sex.

Article 3: Sphere of application

1. This directive shall apply to
 - a) The situations recorded by Article 119 of the contract and the directives 75/117/EC, 76/207/EC, and – provided that the issue of sexual discrimination has been raised – by directives 92/85/EC and 96/34/EC;
 - b) Civil and administrative procedures not only in the public but also in the private sector, which provide for legal redress in accordance with the law of a national state member following the application of the regulations in accordance with letter a), with the exception of the voluntary or out of court procedure provided for in the internal legal regulations of a member state.
2. In so far as the member states have not otherwise made provision, this directive shall not apply for criminal proceedings.

Article 4: Burden of proof

1. The member states shall take the necessary measures in accordance with their national system of jurisdiction, according to which in those cases in which individuals who feel aggrieved as a result of a breach in the principle of equal treatment and who lend credence to their case at a court or other responsible body, which allow it to be assumed that there is a case of direct or indirect discrimination, it shall have to be proved by the defendant that the principle of equal treatment has not been breached.
2. This directive does not affect the right of the member states to make provision for a burden of proof regulation more favourable to the party taking legal action.
3. Apart from this, the member states can apply Section 1 to proceedings in which it is incumbent upon the court or the responsible body to find out the facts and circumstances of the case.

Article 5: Information

The member states shall ensure that all those concerned shall be made aware as appropriate of the measures issued in the application of this directive as well as the pertinent regulations already in force.

Gender Mainstreaming

Articles 2 and 3, Section 2 of the EC Agreement dated 1999, apply at the same time as the most important sources of law for the principle of gender mainstreaming. In this the member states have undertaken to work towards eliminating inequalities and promoting the equality of men and women.

EC Treaty Article 2: The task of the community

An extract reads:

By setting up a Common Market and economic and monetary union as well as by introducing the common policies and measures named in Articles 3 and 4 throughout the whole community, the task of the community is to promote harmonious, balanced and sustained economic growth, high levels of employment, and a high level of social protection, equality between men and women, constant non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of environmental protection and an improvement in the quality of the environment, an increase in the standard of living and quality of life, economic and social cohesion and solidarity between the members of the community.

EC Treaty Article 3, Section 2: Work of the community

An extract reads:

In all the activities named in this article the community shall work with the aim of eliminating inequality and promoting the equality of men and women.

Ireland

Legal Framework on the Issue of Equal Pay in Ireland

Legislation on equal pay was first introduced in Ireland in the form of the Anti-Discrimination (Pay) Act, 1974. This Act established the right to equal pay for 'like work', defined in terms of skill, physical or mental requirements, responsibility and working conditions. In 1977, the Employment Equality Act was introduced and prohibited discrimination in recruitment, training, conditions of employment and promotion opportunities on the grounds of sex or marital status.

Those who believed that their rights under these two Acts were violated were required to bring their case to an Equality Officer (appointed under the 1974 Act) or the Labour Court. Both the Equality Officers and Employment Equality Agency (set up under the 1977 Act) had the power to carry out an investigation into discrimination claims. The Agency was also given an information, advisory and monitoring role.

In 1998, these Acts were replaced with the Employment Equality Act, and extended the grounds on which discrimination in employment is outlawed (there are now nine grounds – sex, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community). The new legislation changed the time limit for claims from six months from the date of the first occurrence to six months from the most recent occurrence. The Employment Equality Agency was given a more proactive role: it was reconstituted as the Equality Authority and given the power to conduct equality reviews and prepare equality action plans. Businesses failing to implement the provisions of an equality action plan can be issued with substantive notice to be enforced by the Courts if necessary.

There is evidence of a reducing gender pay gap over the late 1970's and early 1980's some of which has been attributed to the introduction of equality legislation in the mid 1970s (Callan & Wren, 1994). It is probably still too early to assess the impact of the new equality legislation on the gap, however, a number of factors suggest that it has had a limited effect at the aggregate level.

Firstly, neither the original anti-discrimination legislation nor the new Employment Equality Act refer to a job classification or evaluation system, which limits the extent to which different jobs can be compared on the basis of 'equal value'. Secondly, as comparisons are restricted to those working for the same or associated employer, the capacity of the legislation to reduce wage differentials that arise through segregation is restricted and the economy-wide effects of court rulings are small. Thirdly, international comparisons suggest that complaint-driven approaches, like that specified by Irish legislation, appear to be less effective than those where class actions are taken or where government inspectorate pro-actively ensures compliance (Gunder-son, 1989).

The latest annual report of the Equality Authority (July 2001), reports that only 21 gender related equal pay cases were taken in 2000. While individual court cases can have little impact on economy wide gender pay gaps, legislation and the work of the Equality Authority may have an influence by promoting a new culture of compliance. The most recent evidence available suggests that the gender wage gap declined marginally from 15 per cent in 1997 to 14.7 per cent in 2000 (Russell & Gannon, 2002), therefore there is little indication of a significant impact of this new legislation to date.

A further piece of legislation which may impact on the issue of equal pay is The Protection of Employees (Part-Time Work) Act, which came into operation in 2001, the purpose being to ensure that a part-time

employee cannot be treated in a less favourable manner than a comparable full-time employee (employed by the same or associated employer) in relation to conditions of employment. Since the majority of part-timers are female may lead to a narrowing of pay gap.

Netherlands

Equality law and equal pay in the Netherlands

According to Article 1 of the 1983 Dutch Constitution, all persons in the Netherlands should be treated equally in equal circumstances, and the discrimination on the grounds of religion, belief, political opinion, race, sex, or any other ground is prohibited.

This constitutional provision works primarily between the State and individual citizens. In order to apply the equal treatment and non-discrimination norm between citizens and to work out this norm in more specific rules, the Equal Treatment Act (AWGB) came into force in 1994. This Act prohibits discrimination in specific fields (employment, which includes pay; education and the provision of goods and services on the grounds of religion, belief, political opinion, race, sex, homosexuality and civil status.

The AWGB followed another Act, namely the Equal treatment Act of men and women in the Workplace Act (Wgb) of 1980/1989. This Act includes a special chapter on the subject of equal pay for work of equal value. This law gives more detailed directions about the establishment of an equal pay case, such as:

- Rule 1: The basis for comparing are the wages normally enjoyed by a worker of the other sex for work of equal value or, in the absence of such work, for work of approximately equal value, in the undertaking where the worker on whose behalf the comparison is made is employed.
- Rule 2: For the purpose of rule 1 work should be assessed in accordance with a reliable system of job-evaluation.
- Rule 3: For the purpose of rule 1 the wages received by the employee concerned shall be deemed to be equal to the wage that an employee of the other sex normally receives for work of equal value if it is calculated on the basis of equivalent criteria ("equivalent criteria" means that these criteria are free of direct or indirect discrimination).

Also very important for the subject of pay equity is the Act prohibiting discrimination on the basis of working hours (WOA). This Act came into force on 1 November 1996 and regulates the equal treatment of employees and public servants whose working hours differ. This

law stipulates that the employer may not discriminate between employees on the basis of a difference in working hours when setting the conditions under which a contract of employment is entered to, renewed or terminated, unless the distinction made is objectively justified. This Act is of particular importance to women, since it is they who mainly work parttime.

In 1994 an Equal Treatment Commission (De Cgb) was established when the Equal Treatment Act (Awgb) came into force. This Commission was set up to promote and monitor the compliance with this Act, together with other specific non-discrimination and equal treatment legislation in the Netherlands: the Equal treatment of men and women in the Workplace Act (Wgb) and the Act prohibiting discrimination on the basis of working hours Act.

Direct and indirect discrimination

Dutch equality law is very influenced by EC-legislation (article 141 of the EU-treaty and the equal treatment directives) and the jurisprudence of the European Court of Justice.

The concepts of direct and indirect discrimination are taken from the EC-legislation.

Case Law

On 3 January 1997, the Dutch Supreme Court ruled that the salary scheme for home helps indirectly discriminated against women. This scheme distinguished between people with different educational qualifications. Promotion to a higher salary scale was blocked for persons with certain qualifications. This mainly disadvantaged women, since all the qualifications blocked were ones held almost entirely by women. The District Court had ruled earlier that the distinction could not be justified on the grounds of superior specialist knowledge or experience. The Supreme Court upheld the District Court's judgement that female home helps had been indirectly discriminated against.

Austria

The constitutional basis of equal treatment is anchored in the state constitution dated 1867 and in Article 7 of the national constitution (B-VG) dated 1929 as well as in the UN convention for the elimination of every form of discrimination against women ratified by Austria in 1982. In response to the petition by Austrian women, Article 7 of the B-VG was amended in 1998. In the national regulation it was stated that measures taken in practice to promote equality between men and women to create actual equality are legal.

The prohibition of discrimination and the principle of equal pay is embodied in law.

The federal law on the equal treatment of women and men in working life (designated as the Equal Treatment Act) applies to the private sector of the economy: Federal Gazette (BGBl) No 108/1979 as well as the amendments BGBl. No 410/1990, BGBl. No 129/2001 and BGBl. No 833/1992.

The relevant federal law regulating the equal treatment of women and men and the promotion of women in the public sector is the Federal Equal Treatment Act (BGBl. No 100/1993).

The provisions of the EC Agreement (inter alia Article 141) and the national regulations prohibit companies in the public and private sectors of the economy to practise sexual discrimination in the payment of wages. The prohibition covers not only open, but also concealed or indirect discrimination.

Claims for compensation can be asserted by the labour and social courts. The retrospective claim to subsequent payment of remuneration is based on stipulations of the Austrian Gleichbehandlungsgesetz [Equal Treatment Act] (§§2a section 2, Legal Consequences of the Infringement of the Principle of Equal Treatment and 10b section1, Set Terms for the Assertion of Claims). With claims to remuneration the period of limitation is just three years. By the Equal Treatment Act an Equal Treatment Commission as a special organisation was placed at the side of the labour and social courts. Its task is to deal with breaches of the Equal Treatment Act either in general or in specific cases. It also has the option of providing advice or mediating at the early stages to avoid a case going to court.

Moreover, in Austria the Legal Committee for Equal Treatment Issues was set up (with regional committees in some Austrian states). Their tasks include, inter alia, advising persons who feel disadvantaged in their employment compared with the other sex. And the provision of information on the practical applications of the law, success and problems as well as precedent decisions by the Commission for Equal Treatment.

(additional information:

<http://www.bmsg.gv.at/bmsg/relaunch/frauen>)

Measures and projects on equal pay in various European countries and Canada¹

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In Europe, the average difference between the level of remuneration for women and men is currently around 28 per cent (cf. Smet 2001, p. 14). In Austria, for example, women's average earnings amount to only two thirds of those for men, despite the existence of laws in both public and private enterprise sectors proscribing pay inequality. In Germany, according to the 'Federal Government Report on the Occupational and Income Status of Women and Men' (2001), "Simone" earns a mere 76 per cent of what "Simon" earns, in other words 26 per cent less. (More on this from Karin Tondorf at the 'equal pay' conference). Experts on remuneration and equal pay agree that women are distinctly disadvantaged by the traditional system of classification (cf. Becusson/Weiler 1999, p. 89). Consequently, as a European average, around 15 per cent – i.e. more than half the difference in remuneration – cannot be explained through 'objective' factors and, therefore, may be classed as discrimination on grounds of sex (Smet 2001, p. 15).

In 1996, the European Commission published a 'Code of Practice on the Implementation of Equal Pay for Work of Equal Value for Men and Women'. In 1997, the Commission issued a recommendation to member states that they endeavour to eliminate income differences between genders through the development and trial of new methods of non-discriminatory job evaluation, in order to achieve actual implementation of pay equality. Discussions and measures within the individual EU member states vary greatly. The following describes measures taken in selected countries¹ to implement the principle of 'equal pay for work of equal value'.

Belgium

Belgium has extensive statutory regulations in the area of pay equality. In 1975, a cross-occupational agreement on equal pay (Collective Bargaining Agreement No. 25) was concluded, which refers to all elements of the pay structure. In accordance with this regulation, job evaluation systems may not make distinctions in the selection of criteria, weighting or the transfer of these criteria into pay elements. Specifically: "under no circumstances may the system of job evaluation give rise to discrimination" (Van Laere 1998, p. 3). Job evaluation is carried out at sector level, with work inspectors bearing responsibility for ensuring non-discriminatory compliance. Chris Van Laere of the 'Department

of Employment and Labour' states that certain problems still exist in terms of implementation: 'Equal pay is not a priority on the Belgian trade unions' agenda and often they feel uncomfortable in taking legal steps in this area' (Van Laere 1998, p. 5). In 1998, the ministry called upon national parties to collective bargaining agreements to implement a revision of existing classification systems. "As a result, the social partners have committed themselves, within the scope of the Belgian Action Plan for Employment 1998, to revising job classifications in all sectors where such classifications led to inequality. In order to assure that this revision will indeed be carried out, the Minister of Employment and Labour has issued a proposal to add a new paragraph on job evaluation to the Belgian equality legislation" (Van Laere 1998, p. 8).

The 'General Multi-Industrial' Agreement of 2001/2002 states that parties to collective bargaining agreements are to speed up their efforts to implement non-discriminatory job evaluation. The agreement calls upon the government to introduce tax incentives to encourage corresponding job evaluation systems. An assessment of the effects of currently used job evaluation systems on both genders shall occur by way of a project (<http://www.etuc.org/equalpay>).

In 1997, the Ministry of Employment and Labour published a 'Manuel pour l'égalité des chances et l'évaluation des fonctions' (Code of practice on equal opportunities and job evaluation and classification). This handbook was revised and reissued in 2001 (Evaluation et classification de fonctions. Des outils pour l'égalité salariale). In addition, project Eva, an initiative of the Federal Ministry for Employment and Labour (Emploi et du Travail), 'Direction de l'égalité des chances', offers a comprehensive training programme on the 'Evaluation et classification de fonctions' (job evaluation and classification). According to the most recent press reports, Belgium has the lowest level of pay differentiation between men and women in the European Union.

¹The text was added to the conference kit which was handed out to the participants before the international conference.

Luxembourg

In Luxembourg, the Ministry for Women's Affairs (Ministère de la Promotion Féminine) has been running a project on equal pay between men and women since 2001: „L'Égalité de salaire, défi du développement démocratique et économique“. Within this context, various workshops with the social partners on the subject of 'pay differentiation' and non-discriminatory job evaluation have been carried out. Employers' and employees' representatives jointly prepared concrete proposals on how the situation in Luxembourg could be improved. This also included 'keeping a look out' for models of non-discriminatory job evaluation and classification. Experts from, amongst other places, Belgium, Switzerland, Germany and Austria were also invited to participate. The results of the project will be published in 2003.

Denmark

As a result of the obligation for equal opportunities in the public sector, agreements aimed at submitting specific information have been achieved. In one Danish municipality (Ålborg), for example, in cooperation with the city council, a group of employers and employees formed an equal opportunities committee which published corresponding equal opportunities reports, focusing particularly on supplements. An analysis, "which considers the existing pay gap and measures to improve opportunities for women to an equal extent as the pay structure, is of significance, because closer examination of gender-dependent pay structures indicated that other pay elements come into play as soon as the basic wage for male or female dominated occupations has been adapted" (Bercusson/Weiler 1999, p. 92).

In 2001, the Ministry for Employment in Copenhagen published a document on the problems of 'job evaluation and wage parity' which presented and discussed various evaluation systems. Beyond this, the document provides an overview of non-discriminatory job evaluation systems applied in other countries (cf. Arbejds Ministeriet 2001).

Spain

Despite the fact that there is a comprehensive statutory basis with respect to equal pay in Spain, the Instituto de la Mujer (an institute operating under the aegis of the Ministry for Employment and Social Affairs) has established "that in the determination of job evaluation criteria, indirect discrimination is prevalent and that the pay gap results from workplace attributes and not the characteristics of individual persons" (Smet 2001, p. 21). The Instituto de la Mujer has implemented an international project (project partners include: Portugal, Great Britain, France and Belgium) on equal pay, in addition

to publishing a code of practice on recommended practices for job evaluation (cf. Ministerio de Trabajo y Asuntos Sociales 1999). The code of practice recommends assessment of the reason for presentation of checklists and methods of gender-neutral job evaluation within methods of pay determination currently in existence. Furthermore, in 1995 a major international conference was arranged where models for non-discriminatory job evaluation were discussed.

Sweden

The Equal Opportunities Act (of 1980) was rewritten in 1991 and amended in 2001. In accordance with this law, all employers with ten or more employees are called upon to identify differences in pay between men and women, to report on their findings and formulate an equal opportunities programme. This plan must contain a breakdown of the differences in pay between women and men and a programme of action for equal remuneration. The plan should encompass an evaluation of jobs, "so that it is clearly apparent whether women and men are performing equal work or work of equal value." Employers are enjoined to compile a cost schedule and timescale regarding any necessary adaptation. "Employers who fail to draw up positive measures are liable to punishment by fine imposed by the Office for Equal Opportunities" (Smet 2001, p. 22). Additionally, in Sweden, there is recourse to means of bonus payments for women in fields of occupation predominantly performed by female personnel (cf. Bercusson/Weiler 1999, p. 96). To facilitate the formulation of the plans, easily manageable job evaluation systems and lists as well as registers on the drafting of equal pay reviews, have been compiled.

According to information from Carin Holm (January 2002) there are numerous 'examples of good practice' on equal pay in Sweden. The Swedish ombudsman implemented a 'Pay Equity Guide' project, whose objective was the reduction of unexplainable differences between women's and men's income through the development of methods, provision of information and the formation of networks. Two instruments for job evaluation have been developed: a simplistic system of 'Steps to Pay Equity', which focuses attention on the factors of ability/skills, responsibility and environment conditions; and a more advanced system, the HAC job evaluation system (not to be confused with the HAY system which is not considered gender-neutral). The HAC system was developed in 1995 by Anita Harriman and Carin Holm and revised in 2000. At present, it is only available in the Swedish language. Both municipalities and companies have applied the system to determine wages. The HAC job evaluation system and 'Steps to Pay Equity' are frequently implemented in Sweden.

At the 'equal pay' conference in Berlin, Anita Harriman and Carin Holm will provide greater insight into the Swedish approach to collective bargaining negotiations and steps to achieve equal pay, in addition to presenting the above mentioned evaluation systems.

The Netherlands

The principle of equal pay for work of equal value was enacted in law in 1975. The Equal Opportunities Commission (Commissie Gelijke Behandeling, CGB) has undertaken several studies on discrimination through job evaluation system and developed a comprehensive system of checking to ensure non-discrimination (cf. Van Laere 1998). Recommendations on job evaluation are closely in line with the case law of the ECJ. In essence, job evaluation systems may not allow any diverging interpretation; thus, they must be clearly and precisely specified and also documented. The job evaluation system must be transparent and be introduced to the employees. It must also be regularly assessed and maintained by the company (cf. Van Laere 1998, p. 7). The evaluation model developed by the CGB also encompasses a series of characteristics which are typical of 'women's and men's jobs'. Taken as a whole, these job features may not be evaluated and weighted differently (greater detail on this: Van Laere 1998; Ranftl 1998).

In 2001, the FNV (trade union federation) published a brochure on equal pay of women and men. This provides data on income differentials; analysis of the causes of pay differentiation; and action plans to reduce differences in remuneration. It should be emphasised that the Dutch Stichting van de Arbeid, which incorporates employers' and employees' representatives, has drawn up an equal pay checklist. (This will be presented at the conference by Loes van Hoogstraten-van Embden Andres and Karin Kuiper).

Finland

Discussions on non-discriminatory job evaluation have been going on since the end of the 1980's. New job evaluation systems have been introduced in state sectors, however, selection of the system itself still remains the responsibility of the individual sectors. In Finland, regulations on job evaluation were achieved as part of income policy agreements at national level. A working group was formed (Job Evaluation Monitoring Group of the Central Labour Market Organisations), which is tasked with reporting on existing regulations and providing recommendations on development of job evaluation systems. In its work, the group pays particular attention to sectors with a large percentage of women (cf. Bercusson/Weiler p. 93). The appointed monitoring group laid the foundation for job evaluation projects in the agreements of the various sectors. Brian Bercusson

and Anni Weiler (1999, p. 93) report that a sectoral agreement regarding workplace evaluation had been concluded, which applied to around 71 per cent of personnel employed in the health service, social services and general administration. In another branch-specific agreement the emphasis was put on formulating the various pay scales into one single uniform system. A further example of good practice was apparent in an agreement of the chemical industry, whose significance lay in the fact that "it demonstrated a way of achieving equal pay between women and men by combining job evaluation systems and drawing up a uniform pay scale" (Bercusson/Weiler 1999, p. 94).

Additionally in Finland, there are "equality supplements in income policy agreements". These supplements were comprehensively introduced across the sectors in 1989 and had been preceded by the acceptance (in the 70's and 80's) of decisions for concerted pay policy. "Through this, a collectively-assured mechanism was created in order to realise better pay in sectors with women and poorly paid workers. ... The equality supplements are negotiated between employers' associations and trade unions. ... Research showed that, above all, in certain sectors the equality supplements reduced the earnings gap between the genders" (Bercusson/Weiler, p. 94 cont.). In addition, Finland has a number of training programmes on job evaluation and equal pay. A study of the position in terms of pay, commissioned by the social partners, is due to be concluded shortly. This should provide evidence of the percentage of income differentials that are not objectively explainable. The study will also serve as the basis for further measures (cf. Helle 2001, p. 1). (During the conference, Ulla Aitta and Lea Rantanen presented strategies for achieving equal pay, including through job evaluation).

France

As far back as 1927 equal pay for male and female employees was anchored into French law. By way of a statute introduced in 1972 and the amendment law of 1973, criteria for specific assessment of the value of an occupation were laid down. "There are no provisions within French law which provide for factors justifying differentiation in pay" (Smet 2001, p. 22). Instruments for the promotion of equality exist, amongst other things, in job evaluations and programmes for professional equality. Equality programmes are negotiated between the social partners. In companies with more than 50 employees, the employers are obliged to "provide the works council or staff representatives with a written report of comparable data on the general employment and training conditions and the actual pay for women and men" (ibid). The law on equality for women and men in gainful occupation of 1983 was

given wide publication by the 'Ministère des Droits de la Femme' (Ministry for the Rights of Women) and the 'Ministère du Travail, de l'Emploi et de la Formation Professionnelle' (Ministry of Labour, Employment and Professional Training) through a brochure containing numerous checklists and directives on the compilation of pay reviews and on job evaluation. "In 1990 the French government ran a campaign to combat poor pay and ineffective wage negotiation, whereby the parties to collective bargaining were encouraged to enter into negotiations at industry level, in which the negotiation of wages was combined with negotiation of job classification. The success of this initiative lay in the reduction of the number of women and men whose pay was directly linked to the national minimum wage, nevertheless, a higher percentage of women still remain on this wage level" (Smet 2001, p.23).

Great Britain

In 1983, a law amending the Equal Pay Act (1970) was introduced. The gendered pay gap, however, still remains considerable and the Equal Opportunities Commission (EOC) has drawn attention to the link between unequal pay, gender-segregation in the workplace and the inadequacy of job value procedures by means of various studies. The EOC has called upon employers' associations to examine pay systems for discrimination. In 1999, the Equal Opportunities Commission launched a campaign entitled 'Valuing Women'; whose objective is to reduce the pay gap and eliminate all elements that have a discriminatory effect upon women. Numerous studies in relation to this have been commissioned by the EOC.

Analytical job evaluation is widespread in Great Britain, yet only a minority of systems have been explicitly examined for non-discrimination. There are several codes of practice (e.g. from the EOC and a consultancy company) for the achievement of 'equal pay'. A statutory minimum wage was introduced in 1998, which has had a favourable impact on reducing the (structural-dependent) earnings differential. This is due to the fact that many women are employed in poorly paid areas (cf. Smet 2001, p. 21).

In Great Britain, income data is ascertained and published by the 'New Earnings Survey' (NES) and the 'Labour Force Survey' (LFS). However, ascertainment instruments are still insufficient and efforts for improvement are being made (cf. EOC 2001, p. 61). Case studies of 'good practice' in remuneration have been carried out. The Equal Pay Task Force report (EOC 2001, p. 60 cont.) presents exemplary examples from various concerns, including the civil service, HSBC – one of the largest global banking concerns – in addition to BBSRC (a biotechnology research group), which implemented a pay assessment programme and drew up measures to ensure fulfilment of the principle of equal pay. The

report also includes Glaxo Wellcome, one of the largest pharmaceutical conglomerates. This company also applies the EOC code of practice for annual gender-specific pay audits. The company writes: "Apart from the moral argument, Glaxo Wellcome also recognises the pragmatic business case for pay equality. Operating in a buoyant economy and tight labour market, we need to both attract and retain the best people in all areas of our business. Any suggestion of pay inequality would seriously damage our capacity to do so" (quoted in EOC 2001, p. 62).

Well-known examples of 'good practice' for the development of new non-discriminatory job evaluation are the National Health Service and the National Joint Council for Local Services in England and Wales (NJC): NJC is an association of employers and trade unions which has developed a common job evaluation system that corresponds to certain requirements, including non-discrimination, transparency and uniformity (refer to conference contribution from Sue Hastings).

Canada: Province Ontario

In Canada, which is examined briefly here subsequent to EU states, there are a number of specific regulations and practices for implementing the principle of occupational equality. The principle of 'equal pay for work of equal value' has been incorporated into the Canadian Human Rights Act (1977). Analytical job evaluation is planned for the determination of the value of a particular job – evaluation of the demands imposed by the job in terms of skill, ability, responsibility, effort/burden and working conditions. In addition to federal statutory regulation, eight of the ten provinces and the territory of Yukon have each introduced their own Pay Equity Act.

The Ontario Pay Equity Act goes beyond the stated regulations in terms of pay equity and is, therefore, worthy of note within the international comparison. The remarkable feature of the Ontario model for pay equity is that it applies to all women working in the state sector; the semi-state sector; and the private sector. Of further note is that the proxy-method applied to determine the value of particular jobs may also be used even where no male comparison group exists within the own facility. (Pat Armstrong reported on this in greater detail at the conference and possibilities for transfer of the model were discussed.)

Final Conclusions

Bercusson and Weiler write (1999, p. 89): "Thus, the process of adapting classification systems and job evaluation to the requirements of gender neutrality, transparency and equality largely depends on the initiatives of the collective bargaining parties". In some states, collective pay agreements are in force which deal ex-

pressly with the question of pay discrimination. Overall, the measures extend from general wage agreements, analysis of wage structures, analytical job evaluation and changes in occupational classification through to payment of 'equality supplements' – i.e. provision of special payments as compensation for discriminatory tendencies in the process of wage determination (cf. *loc. cit.*, p. 91). Even though an earnings differential between women and men still exists in each country, it is clearly apparent that the existing differences are linked to the structure of collective bargaining negotiations within individual member states. In countries with a central negotiation system they are less apparent (cf. Bercusson/Weiler, p. 25). Several

examples demonstrate that the principle of occupational equality can be best implemented in those areas, where it is part of a campaign to upgrade women's occupational activities. A major problem is that there are separate collective bargaining negotiations for different sectors; here experts are in unison. A further problem is the insufficiency of data and the general lack of detailed studies into pay equality. Additional problems lie within the individual agreements and the fact that pay levels are not openly disclosed. As has already been established by the Swiss Trade Union Confederation: "Wage transparency is the key to pay equity."

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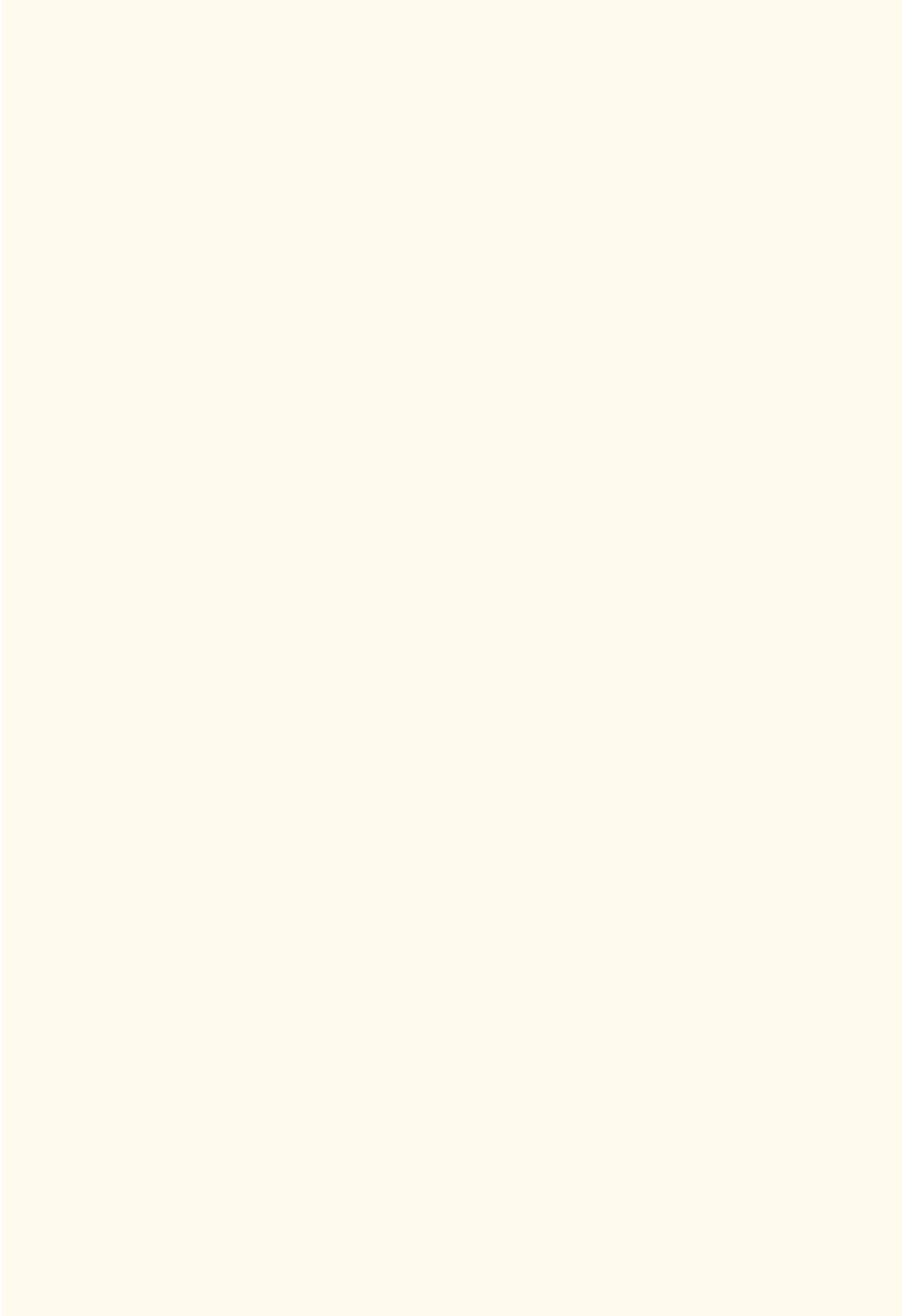
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