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The Court of Justice in the Archives Project
Analysis of the *Defrenne II* case (43/75)

Sarah Tas

European University Institute

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Abstract

This Working Paper is part of the CJEU in the Archives Project, that aimed to bring the archives to life through an analysis of a selection of cases. The case chosen for this paper is the *Defrenne II* case, handed down by the Court of Justice in 1976. The paper focuses on an archival analysis of this landmark judgement, establishing a women's right to equal treatment in the workplace. The *dossier* offered valuable insight into the case and showed that the case was about more than just the principle of equal pay. In fact, other principles, notably the principle of non-retroactivity were extensively debated in the *dossier.* In addition, it becomes clear that the court's decision did not come out of the blue, but was influenced by several factors, that are analysed in this paper. As a conclusion, this case illustrates that the release of the archives allows for a broader and more thorough understanding of court's famous decisions and is an asset for research in various disciplines.

Keywords

Defrenne II; Court of Justice; Article 119 EEC; Principle of equal pay; Direct effect; Non-retroactivity.

Executive summary

A. Insight into legal issues and arguments

In my opinion, three main points came out of the analysis of this *dossier*. Firstly, there is a strong emphasis on the debate on the horizontal or vertical direct effects of the provision. The Commission argued that Article 119 EEC could be directly applicable in the public area, but not in the private one. Secondly, a central aspect of the case was the retroactivity of the final decision. The *dossier* provides us with more detailed legal reasoning from the governments of the United Kingdom (UK) and Ireland, and evidence attesting to the economic burden that they would suffer. This relates to the third point on the use of evidence. The *dossier* gives information on the instruments used to support the parties' arguments, and potentially the Court's decision.

B. Insights into procedures and institutions

The analysis of the case-management highlights a few points. Whilst it is not unusual for the Court to change Advocate Generals (AG) in the middle of a case, it is still preferably avoided. In this procedure, it has however been the case. Moreover, in principle, except for specific reasons, no time extensions are granted to submit observations. In this case, the Court granted the Government of Ireland's request. This may be linked to the complexity of the case.

C. Insights into actors

The report offers an interesting perspective on the roles of the actors involved and their influence on the case. In fact, it appears that the backgrounds of the members of the Court, as well as the shift in the composition of the Court, may have nudged the judgment in a direction that took 'social policies' more seriously. In light of what is known about Ms Defrenne's lawyers, it is probably unsurprising to uncover that many were already involved in feminist matters prior to the case. Their passion and engagement *vis-à-vis* this issue of inequality between women and men played a role in the success of the case.

D. The dossier *as a document (compared to the judgment): length, contents, redaction*

Spanning 46 pages, the final judgment is a long one. But its length is dwarfed by the dossier, which runs 1188 pages. The final judgment offers an interesting summary of the essential points in the *dossier*, however it failed to articulate some points, and to refer to some interesting pieces of evidence contained therein (such as national surveys and reports).

Most enlightening were the insights into legal issues and arguments that the *dossier de procédure* offered. The *judgment* failed to clarify or even address a lot of important points and arguments that were developed in the *dossier de procédure*.

E. Key paragraph

'(§40): The reply to the first question must therefore be that the principle of equal pay contained in Article 119 may be relied upon before the national courts and that these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular as regards those types of discrimination arising directly from legislative provisions or collective

labour agreements, as well as in cases in which men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public'.

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1. Introduction

The case that will be developed in this report is the *Defrenne II*[1] case of 1976. It is part of the *Defrenne* saga, which is composed of three cases: three preliminary references on gender equality.[2] The most celebrated of the cases is the second one that dealt with the equality of pay.[3]

Defrenne II is an important case not only in the area of equality between male and female workers, but also for the development of the principle of direct effect of EU law. The case is widely recognized on the one hand, for interpreting the principle of equality between sexes as a cornerstone of EU law,[4] and on the other hand, establishing the horizontal direct effect of some provisions of EU law.[5] It is also known as being a pivotal case that gave the Court the possibility to have a stake in the birth of social action at the Community level.[6]

Within my report, I will first offer a broad overview of *Defrenne II* in its broader socio-legal context. In that regard, I will essentially analyse the documents that are publicly available on the website,[7] which offer details about the facts of the case, the parties' submissions, the final judgment and the conclusions of the Advocate General (AG). A small paragraph will be added as well on the importance of the judgment in the evolution of the law, so as to demonstrate why and to what extent the case is a landmark case that helped construct EU law and EU policies. **(2)** The other parts of the analysis will focus on the *dossier de procédure* as such. One part of the report will develop the composition of the *dossier* and describe thereby the scope of it. The *dossiers* of the Court tend to be large and composed of various types of documents. That section of the analysis will offer an overview of the breadth and content of the historical file. **(3)** Another part, more importantly, will analyse the *dossier de procédure* and will compare it with the documents that are publicly available. Numerous points will be analysed: the legal reasoning of the Court and parties and the case management. This section will show the added value historical archives can have on research in a broad sense. **(4)** Finally, the conclusion will gather all the information found in a clear and simple manner. **(5)**

2. An overview of *Defrenne II*

2.1. The social, political and legal context surrounding the Defrenne saga

The *Defrenne* saga emerged in a particular social, political and legal context. As a way of summary, two phenomena are worth mentioning.

First, *Defrenne II* arose against the backdrop of the development of 'second-wave feminism'. In the 1960s, women started to become more outspoken about their working conditions in Belgian factories and the service sector. Regarding the factories, a strike started

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[1] Case 43/75 *Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena* [1976] ECLI:EU:C:1976:56.

[2] R. Guerrina, Mothering the Union: Gender Politics in the EU (Manchester University Press 2005) 45.

[3] N. Busby, 'Social Policy: Case 43/75 Defrenne v Sabena' in R. Smith, L. Murrell and D. Rook (eds), *Conversion Course Companion for Law: Core Legal Principles and Cases* (Pearson Education 2008) pp 151-155.

[4] Ibid.

[5] L. Jimena Quesada, 'Social rights in the case-law of the Court of Justice of the European Union: the opening to the Turin Process' (Conference on Social rights in today's Europe: The role of domestic and European Courts).

[6] N. Busby, 'Social Policy: Case 43/75 Defrenne v Sabena' in R. Smith, L. Murrell and D. Rook (eds), *Conversion Course Companion for Law: Core Legal Principles and Cases* (Pearson Education 2008) pp 151-155.

[7] 'Court of Justice of the European Union' < https://curia.europa.eu/ >, last accessed 8th May 2020.

in the munitions factory at Herstal, the so-called 'Herstal Equal Pay Strike'.[8] At the time, no measures had been taken in the Belgian arms factory in Herstal to implement the principle of equal pay, nor had any dialogue been encouraged. Consequently, women decided to strike from the 15 February to 9 May 1966. In the service sector, air hostesses also protested against their working conditions. Since the main union for airline staff refused to take up women's issues, they started to strike and brought a case before the Belgian court.

Second, in the EU legal framework, developments towards more social policies can be seen. The Paris Summit of 1972, four years before *Defrenne II*, demonstrated the shift towards a social purpose of the EU and a new emphasis on EU social policies.[9] In that regard, new legal instruments saw the light, namely three new EU directives: the Directive on equal pay,[10] the Directive on equal treatment at work[11] and the Directive on equal treatment in social security.[12]

The context that preceded and surrounded the *Defrenne* saga influenced not only the existence of that case-law but also the judgments and arguments developed in it.

2.2. The facts and the law

Defrenne II was a preliminary reference from the Cour du Travail, Brussels. It dealt with the same facts as the other two *Defrenne* cases. Miss Gabrielle Defrenne, a Belgian air hostess was working for the Société Anonyme Belge de Navigation Aérienne (Sabena). From February 1963 until 1966, she had been paid less than men, who were doing exactly the same job. Consequently, she brought an action for compensation for the loss she had suffered in terms of salary, allowance and termination of service and pension due to gender-based pay discrimination. As there was no remedy available under national law, she decided to rely on Article 119 EEC. The claims were dismissed by the court of first instance, but an appeal was initiated. The Cour du Travail of Brussels dismissed part of the claims but decided to stay the proceedings for the others, and referred two questions to the Court of Justice (ECJ). The first was whether Article 119 EEC was directly effective, and if so, from which date. The second was whether Article 119 EEC was directly applicable in Member States or whether its application depended on it being implemented in national law.

2.3. The parties submissions

Four parties submitted observations in this case: the applicant Ms Defrenne, the European Commission and the governments of Ireland and the UK. Their arguments can be summarised as follows.

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[8] C. Hoskyns, *Integrating Gender (Women, Law and Politics in the European Union)* (Verso 1996) 65

[9] Statement from the Paris Summit (19 to 21 October 1972), < https://www.cvce.eu/content/publication/1999/1/1/b1dd3d57-5f31-4796-85c3-cfd2210d6901/publishable_en.pdf >, last accessed the 26 November 2019.

[10] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 45).

[11] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39).

[12] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6).

The governments of Ireland and the UK both agreed that Article 119 was not directly applicable. Whilst the government of Ireland only distinguished the provision with the one having direct effect according to the ECJ, the government of the UK justified it conclusion through the criteria developed by the Court.[13] According to the UK, the provision was neither clear nor precise, and it left it to each Member State to work out the practical details of implementation. Consequently, it could not introduce a rule on equal pay into the national legal orders of the Member States. In any case, if the Court concluded that direct effect applied, both governments argued that a temporal limitation was needed due to the economic burden that such a decision would introduce for every Member State.

In opposition to the UK and Irish governments, Ms Defrenne argued that the provision was, according to the criteria laid down by the case-law of the Court, of the nature to have direct effect. In fact, she considered the nature of the obligations to be unequivocal. The principle of equal pay could thus only have one meaning and Member States had no discretion in that respect. In terms of the date of applicability of that provision, Ms Defrenne thought that it should be applicable in Belgium and the other Member States since the ratification of the Treaty by the Parliament, even if another timetable had been decided by a Resolution of the Conference of the Member States in 1964.

The Commission took a 'middle ground position' in the sense that it did not want to fully support Ms Defrenne's lawyers' positions, but also did not want to be completely associated with the restrictive arguments of the UK and Irish governments. The Commission distinguished between horizontal and vertical direct applicability. Regarding horizontal direct effect, it agreed with the government of the UK and Ireland and rejected that possibility. However, it stated that in relations between Member States and individual persons, Article 119 should be directly applicable on the expiry of the time allowed for its implementation, i.e. the expiry of the extended transitional period.

2.4. The opinion of the Advocate General (AG)

AG Trabucchi gave two recommendations to the ECJ regarding the direct effect of the provision and its temporal scope. He stated that Article 119 introduced the principle of equal pay for men and women into the national law of the Member States and had autonomously and directly conferred rights on the workers concerned, which national courts had a duty to protect.

In other words, the purpose of the rule was clear – the prohibition of any pay discrimination to the detriment of women had direct horizontal effect. Moreover, since direct effect was only recognised with respect to pay *per se* in Article 119, the financial consequences would be insignificant and no temporal limitation for the judgment should be established.

2.5. The judgment of the Court

The Court partly followed the AG's opinion and held that Article 119, namely the principle that men and women should receive equal pay, had horizontal direct effect and was enforceable not only between individuals and the government but also between private parties. Thus, it could be relied on before the national courts, which had a duty to ensure its protection.

[13] The criteria are that the provision must be sufficiently clear and precisely stated ; it must be unconditional and not dependant on any other legal provision and it must confer a specific right upon which a citizen can base a claim (Case 26/62, *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECLI:EU:C:1963:1).

However, it took into account the arguments of the various parties involved, such as the government of the UK and the government of Ireland and added a temporal limitation to the judgment. In fact, practices contrary to Article 119 had been carried out in countries in which that provision was not yet prohibited by national law and reopening the question regarding the past would introduce important issues of legal certainty affecting every actor involved. The Court ended by adding an exception to the already existing one and allowed 'those workers who have already brought legal proceedings or made an equivalent claim'[14] to rely on Article 119 during their legal proceedings.

The table below provides a summary of the positions of the various actors on the two main issues at stake. It includes the opinion of the AG and the position of the Court.

Table 1: Summary table of positions of actors on submitted questions

Position of Actors	**Direct effect of Art. 119 EEC**	**Retroactive application of Art. 119 EEC / Temporal limitation of the judgment**
Ms Defrenne	Horizontal and vertical direct effect	Retroactivity of the judgment
The Government of the United Kingdom	No horizontal and no vertical direct effect	No retroactivity of the judgment, due to economic burden
The Government of Ireland	No horizontal and no vertical direct effect	No retroactivity of the judgment, due to economic burden
The Commission	No horizontal direct effect, but vertical direct effect	Limited retroactivity (since the expiry of the extended transitional period)
The Advocate General	Horizontal and vertical direct effect	Retroactivity of the judgment
The Court	Horizontal and vertical direct effect	No retroactivity of the judgment

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

[14] Case 43/75 *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* [1976] ECLI:EU:C:1976:56 para 75.

2.6. The importance of the judgment in the evolution of the law

The *Defrenne* saga, and particularly *Defrenne II*, has been consequential not only for gender equality but also for the transformation of the EU legal order and the European social model more specifically.[15] In *Defrenne I*, the applicant contested the pension scheme and declared that it infringed the principle of equal pay between men and women.[16] The Court dismissed it on the grounds that the right to equal pay could only apply to payments made by an employer in connection with employment, which was not applicable to the statutory pension scheme at issue in that particular case.[17] Even though the case was dismissed, it allowed the lawyers to find an open door to use Article 119 EEC for similar purposes, including *Defrenne II*.[18]

It is precisely the second case in this saga that caught the attention of scholars. Even if in French case-law collections, *Defrenne II* is not considered a fundamental decision of Community law, it still is the 'heroine of Community law'.[19] As such, the judgment brought various legal changes to the EU landscape.

First, it marked a significant development in EU gender discrimination law. *Defrenne II* was not the first case that dealt with the principle of non-discrimination on the ground of gender. Apart from *Defrenne I*, which dealt with the substance of the principle of equal pay, another judgment is worth mentioning – the *Sabbatini* case.[20] In the latter, the Court invalidated the provision on 'expatriation allowance' of the Staff Regulation on the ground that it resulted in an unjustified difference in the treatment of men and women. Nevertheless, *Defrenne* II is still the first major step toward equality between men and women.[21] In this case, the Court stated that the principle of equal pay, and social policy in general, had a double aim: namely, a social aim and an economic aim.[22] The Court even added that Article 119 would cover direct discrimination as well as indirect discrimination.[23] Some authors say that *Defrenne II* completely transformed the title on social policy in the Treaty and that it is difficult to imagine what EU gender equality law or social and employment law would be nowadays without that case-law.[24]

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[15] I. Heide, 'Sex equality and social security: Selected rulings of the European Court of Justice' in I. Ahmed (ed), International Labour Review (International Labour Office 2004/4).

[16] Case C-80/70 *Gabrielle Defrenne v Belgian State* [1971] ECLI:EU:C:1971:55.

[17] Ibid p. 445.

[18] C. Hoskyns, *Integrating Gender (Women, Law and Politics in the European Union)* (Verso 1996) 71.

[19] E. Sharpston, 'The Shock Troops Arrive in Force: Horizontal Direct Effect of a Treaty Provision and Temporal Limitation of Judgments Join the Armoury of EC Law' in M. Maduro and L. Azoulai (eds), *Past and Future of EU Law: the classics of EU Law revisited on the 50th Anniversary of the Rome Treaty* (Bloomsbury Publishing 2010) 251.

[20] Case 20/71 *Luisa Sabbatini (Bertoni) v European Parliament* [1972] ECLI:EU:C:1972:48.

[21] D. Simon, 'SABENA is dead, Gabrielle Defrenne's case is still alive: the old lady's testament…' in M. Maduro and L. Azoulai (eds), *Past and Future of EU Law: the classics of EU Law revisited on the 50th Anniversary of the Rome Treaty* (Bloomsbury Publishing 2010) 265.

[22] D. Simon, 'SABENA is dead, Gabrielle Defrenne's case is still alive: the old lady's testament…' in M. Maduro and L. Azoulai (eds), *Past and Future of EU Law: the classics of EU Law revisited on the 50th Anniversary of the Rome Treaty* (Bloomsbury Publishing 2010) 265.

[23] Case 43/75 *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* [1976] ECLI:EU:C:1976:56 paras 19 and 48.

[24] S. O'Leary, 'Defrenne II Revisited' in M. Maduro and L. Azoulai (eds), *Past and Future of EU Law: the classics of EU Law revisited on the 50th Anniversary of the Rome Treaty* (Bloomsbury Publishing 2010) 274

On a more general note, the whole *Defrenne* saga helped develop gender equality in EU law. In fact, after *Defrenne II*, the third *Defrenne* case[25] expanded the principle of equal pay even further and transformed it into a general fundamental right of equality, namely a right to eliminate any discrimination based on sex.[26] The Court, by finding a general principle of equal treatment in Art. 119 gave lawyers the opportunity to use it in other related fields,[27] such as discrimination based on pregnancy.[28]

Second, with regard to the direct effect of provisions of EU law, other cases from the ECJ already recognised the direct effect to principles addressed specifically to Member States.[29] It was nevertheless the first case that went further and explicitly recognised its horizontal direct effect,[30] namely the right to rely on the provision in relations between private individuals.

In other words, and as a way of summary, this case-law placed non-discrimination at the heart of the European social model, gave direct horizontal effect to the principle and set the scene for the development of Community labour law in terms of individual rights.[31] However, it did not reach the high expectations one could wish for. The gender pay gap continued to exist and the labour market remained segregated. It did nevertheless enable some legal steps towards gender equality on the labour market, and at the time of the judgment, was a strong stand taken by Europe and its Court.

3. The composition of the *dossier*

The *Defrenne II dossier* is composed of eight categories of documents, namely:

- Decision of the Court of first instance and the referring questions
- Observations of the parties: written submissions of the parties during the written procedure (the Commission, Ms Defrenne, the British Government and the Irish Government), as well as answers of them to the questions asked by the Registrar
- Evidence: documents submitted by the parties upon request of the Court, or on their own initiative
- Procedure-related documents: orders by the President of the Court appoint the chamber, the reporting judge and the AG, as well as setting the dates of the procedure and the delays and correspondence between the Court (Registrar) and the parties (additional questions…)
- Report of the Oral Hearing by the *juge rapporteur* (Judge Pescatore)
- Opinion of the AG (AG Trabucchi)
- Final Judgment of the Court
- Documents of the original file that were not available to the public

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[25] Case C-149/77 *Gabrielle Defrenne v Sabena* [1978] ECLI:EU:C:1978:130.

[26] M. Cuthbert, *European Union Law 2003-2007* (Cavendish Publishing 2003) 173.

[27] R. A. Cichowski, 'Women's Rights, the European Court, and Supranational Constitutionalism' (2004) 38 Law and Society Review 489, 503.

[28] Case 177/88 *Dekker v Stichting Vormingscentrum voor Jong Volwassenen* [1990] ECLI:EU:C:1990:383.

[29] Case 26/62 *Van Gend en Loos v Administratie der Belastingen* [1963] ECLI:EU:C:1963:1.

[30] M. Cuthbert, *European Union Law 2003-2007* (Cavendish Publishing 2003) 173.

[31] H. Muir Watt, 'Gender Equality and Social Policy after Defrenne' in M. Maduro and L. Azoulai (eds*), Past and Future of EU Law: the classics of EU Law revisited on the 50th Anniversary of the Rome Treaty* (Bloomsbury Publishing 2010) 286.

The table below provides a quantitative overview of the composition of the *dossier*.

Table 2: Composition of the *dossier*

Category of Document	**Number of Documents**	**% of number of documents (n=173, annexes included)**	**Number of pages**	**% of the dossier (1104 p)**	**% of the original file (1188 p)**
Decision of the Court of first instance and referring questions	1	0,58%	11	0,99%	0,92%
Submissions by the parties: - **Written submissions** - **Answers to questions**	5 7 Total: 12	6,94%	48 48 Total: 96	8,69%	8,08%
Evidence	14	8,09%	760	68,84%	63,97%
Procedure-related documents	140	80,92%	150	13,59%	12,62%
Report of the Oral Hearing	1	0,58%	16	1,45%	1,35%
Opinion of the Advocate General	1	0,58%	24	2,17%	2,02%
Final Judgment	1	0,58%	46	4,17%	3,87%
Redacted material			84	7,61%	7,07%

3.1 Evidence

The most important part of the *dossier* is made up of documentary evidence that had been submitted by the parties, namely:

- The Equal Pay Act of 1970 (Act of Parliament of the United Kingdom)
- The Council's decisions of late December 1961
- Reports of the Commission of experts from the International Labour Office, for the application of conventions and recommendations:
    - Annex II: Basic provisions of the Convention (No 100) and the recommendation (No 90) on the equality of pay;
    - Annex III: Reports received by 25 March 1975 (Article 19 of the Constitution)

- Various reports of the Commission to the Council on the application of the principle of equal pay for men and women on the 31 December 1968 and on the 31 December 1972, as well as the report of the Commission to the Council on the application of the principle of equal pay for men and women on the 31 December 1972 in Denmark, Ireland and the United Kingdom
- Documents of the International Labour Office (Geneva): the Summary of Reports on Unratified Conventions and Recommendations (Art. 19 of the Constitution) as well as the General Survey of the Committee of Experts on the Application of Conventions and Recommendations
- Summary from the social statistics on the structure and wage distribution in 1966 of the Statistical Office off the European Communities

It is interesting to note that European sources, national sources and international sources have been used as evidence in the written phase, the instruction and the oral phase. The table below demonstrates which sources have been used the most.

Table 3: Sources used in the *Defrenne II* case

Type of sources	**Number of documents**	**Percentage used**
National sources	3	21,4%
European sources	7	50%
International sources	4	28,6%
Total	14	100%

The majority of sources used are European, which seems logical due to the European approach of the case. However, international documents were also used to support arguments, notably by the European Commission. Finally, national sources were used by the government of the UK to defend its position on the temporal limitation of the case, i.e. in order to prove the economic burden it could face. Ireland, whilst defending the same position as the UK, and using numbers to support the argument of economic burden, did not use national evidence from Ireland to justify its claim.

3.2 Procedure-related documents

The procedure-related documents are an important part of the *dossier* in terms of pages and number of documents. However, their substance adds very little to the understanding of the case and its legal reasoning.

One notable procedure-related issue is the change of AG during the litigation. AG Mayras was initially appointed to the case. However, before the hearing of the case, the AG was replaced, and AG Trabucchi took his place. It is not unusual for the AG to be changed in the middle of litigation, so long as it is before the oral hearing. AGs are only appointed to the Court for a specific amount of time, and even though it is preferable for the AG to finish his or her mandate with no open cases, this does occur. In these situations, a new AG will be appointed before the oral phase. It is not surprising therefore, to have delays in the date of the conclusion of the AG's opinion.

The other aspect that is worth mentioning is the Court's willingness to grant an extension of time to the government of Ireland to answer questions. The government of Ireland asked for an extension of a week in order to have time to consult and to conduct the research necessary

to answer questions posed by the ECJ. It is not a common practice of the Court to always grant delays, but it is in its discretionary power to do so if it is duly justified by the requesting party.

3.3 Documents submitted by the parties

The submissions of the parties constitute the third-largest part of the *dossier*. They are composed of eleven documents:

- **Doc 20**: written observations from the European Commission
- **Doc 21**: written observation from the lawyer representing the applicant, Ms Defrenne
- **Doc 23**: written observation from the Government of the UK
- **Doc 24**: written observation from the Government of Ireland
- **Doc 55**: answer of the Foreign and Commonwealth Office of the United Kingdom to the question annexed to the Registrar's letter
- **Doc 58**: answer of the European Commission to the question annexed to the Registrar's letter
- **Doc 59**: further answer of the European Commission to the Question 5 annexed to the Registrar's letter
- **Doc 60**: replies by the Government of Ireland to the questions asked by the Court in the Registrar's letter
- **Doc 76**: amplification of the Answer of the UK to Question (a)
- **Doc 92**: second observation from the lawyer representing the applicant, as an answer to the replies given by the Commission and the British and Irish Government
- **Doc 93**: additional observations from the Irish Government on the replies given by the European Commission

3.4 Other documents (Decision of the Court of first instance and the audience report)

The first document of the *dossier* is the decision of the referring court, the *Cour du Travail* of Brussels, dated 23 April 1975. It is composed not only of the judgment of that Court, but also of the reasons that made the Court decide to stay proceedings and to refer a preliminary reference to the ECJ, and finally of the questions referred to the ECJ.

Another important document added in the *dossier* that was not publicly available on the website is the report of the hearing of reporting judge Pescatore. It gives insight into the oral hearings that occurred in the case.

3.5 Documents contained in the dossier already publicly available

Two of the documents are also published on the official website of the ECJ, namely the AG's opinion and the Court's final judgment. However, together they form only 6,34% of the *dossier*.

3.6 Redacted documents

Almost 8% of the material has been redacted from the original file, which suggests that some parts needed to stay confidential and could not be opened for consultation. It is not possible to clearly determine the nature of the documents that have been subject to secrecy since they have been completely removed from the *dossier*.

4. The dossier's added value

4.1 The legal arguments

The *dossier de procédure* is composed of two large parts to which the parties could submit observations: the written procedure, in which each party submitted written observations, and the oral procedure, in which the parties submitted answers to the questions asked by the ECJ or submitted further observations. The analysis of the *dossier's* added value will thus be divided into these two parts. A third and a fourth part will be added on observations made on the order of the arguments and on statements not found in the *dossier* as such.

4.1.1 Written procedure

When reading the *dossier de procédure* and comparing it with the final, publicly available judgment, a few comments can be made. It is not surprising that the written observations are more developed in the *dossier* than in the final judgement. In fact, it is precisely the task of the reporting judge to summarise these observations to render the judgement clearer, shorter and more accessible. However, the *dossier* allows us to go further than the judgment and is consequently an added value to the comprehension of the case. Whilst a lot of things could be mentioned, I decided to focus on the main points I observed.

Use of the Defrenne I case (Case 80/70)

As mentioned at the beginning of this report, the *Defrenne II* case is part of a bigger Defrenne saga, composed of two other cases: *Defrenne I* (Case 80/70)[32] of 25 May 1971 and *Defrenne III* (Case C-149/77)[33] of 15 June 1978. In *Defrenne I*, the same provision was at stake – Article 119 EEC. The Court stated that a retirement pension under a Belgian scheme was not included in the concept of 'pay' for the purposes of Article 119 EEC.[34]

Whereas the final judgment of *Defrenne II* makes no mention of the *Defrenne I*, or of the conclusion of the AG Dutheillet de Lamothe,[35] the *dossier de procédure* shows that both were used to support the arguments of the parties.

Ms Defrenne's lawyer used the final judgement and the AG opinion to support her arguments. She stated that up to that point, the ECJ had never explicitly decided on the direct applicability of Article 119 EEC, but that AG Dutheillet de Lamothe in the first *Defrenne* case affirmed that the provision should have direct effect, at least from 1 January 1965 onwards.[36] AG Dutheillet de Lamothe's statement supported Ms Defrenne's desired outcome, namely that the provision be considered directly applicable and confer individual rights. Ms Defrenne's lawyer also used the final judgment in *Defrenne I* by stating that the ECJ regretted in its previous decision that some discriminatory situation escaped the scope of Article 119 EEC (such as the use of such a pension scheme). She added that the case at stake was about pay equality and that the ECJ needed to avoid a situation in which other forms of discrimination fell outside of the scope of the provision.

However, the government of the UK used the case *Defrenne I* to defend the other side of the argument. According to William Henry Godwin (lawyer for the UK), the provision should

[32] Case C-80/70 *Gabrielle Defrenne v Belgian State* [1971] ECLI:EU:C:1971:55.

[33] Case C-149/77 *Gabrielle Defrenne v Sabena* [1978] ECLI:EU:C:1978:130.

[34] Case C-80/70 *Gabrielle Defrenne v Belgian State* [1971] ECLI:EU:C:1971:55.

[35] Opinion of the AG in the Case C-80/70 *Gabrielle Defrenne v Belgian State* [1971] ECLI:EU:C:1971:43.

[36] Opinion of the AG in the Case C-80/70 *Gabrielle Defrenne v Belgian State* [1971] ECLI:EU:C:1971:43 p 456.

not be directly applicable, and he used *Defrenne I* to illustrate the lack of clarity and the need for interpretation of Article 119 EEC. The Belgian High administrative Court in the first *Defrenne* case, referred a question to the ECJ as to the interpretation of the sentence 'any other consideration… which the worker receives directly or indirectly in respect of his employment from his employer'.[37] The Court in that case, as mentioned above, excluded retirement pensions from the definition of Article 119(2) EEC, but did not exclude all payments in the nature of social security benefits from it. Further interpretation might thus be needed on that specific part of the provision, which consequently could not be considered as a clear, precise and unconditional provision that needs no further measures implementing it.

More context: scope of the question and details on the Belgian situation

Due to the fact that the written observations are more detailed than the summaries in the final judgment, the *dossier de procédure* offers more context about the questions referred to the Court, but also in the Belgian and Irish situations, notably in terms of equality of payment. These details do not add essential information but are interesting to get a better understanding of the broader picture at stake.

The government of Ireland was the only party that added some introductory remarks on the scope of the questions. It indicated that the ECJ's judgment should not go beyond what was necessary to resolve the issue, namely, to decide whether the plaintiff was entitled to maintain these proceedings against her former employer. That comment is interesting when linked with the observations of the European Commission, which will be analysed in more detail below. The Commission essentially made a distinction between the public and the private sector. However, in doing so, it failed to clearly distinguish between the interpretation of Article 119 EEC and its practical application. The Commission seemed in that regard to decide on the applicability of that provision in exceptional circumstances which fall outside of the scope of the precise question asked.

Various details have also been given on the situation in Belgium. The one I decided to mention is a point made by the lawyer of Ms Defrenne. When mentioning the principle of equality of pay, the lawyer argued that it was clear and precise, and could only have one meaning. It was, according to her, part of the bigger principle of equality, which was an ideological foundation for each Member State. In Belgium, the principle of equality before the law is part of Article 6 of the Constitution. The constitutional value of that principle added to the argument in favour of direct applicability of the Treaty provision and to the unequivocal meaning of the provision.

Regarding the broader picture in Ireland, the *dossier* shows that the government of Ireland within its written observations added figures, which could highlight the economic consequences that retroactivity would cause for the country. The government noted that for its civil servants alone, the burden would be in the neighbourhood of £40 m. That number points out in a clearer way, in my opinion, the issues that would come with retroactivity, and they might have influenced the ECJ's decision on the temporal effects of the judgment.

Precision on the Directive 75/117

The second question, even if unclear as such, made the parties express their views on a new instrument at the time, Directive 75/117. An important point of Ms Defrenne's lawyer's observations were however been left aside by the Court in the final judgment. She mentioned that the directive had not been mentioned by any of the parties in the proceedings for a good reason. The directive has been published in the Official Journal on the 19 February 1975, a date prior to the original procedure before the Cour du Travail. It is an interesting aspect, in the

[37] Art. 119(2) of the Treaty establishing the European Community.

sense that an instrument was discussed even if that instrument had not been adopted at the time of the original proceedings.

4.1.2 Oral procedure

Before analysing the content of the observations submitted in the oral procedure, an introductory point needs to be made on the Court's questions to the parties. The ECJ decided to pose five questions to the European Commission, and two questions to the governments of Ireland and the UK. To the Commission, the ECJ essentially asked for clarification on Article 119, the principle of equal pay, and more specifically, on the meaning of 'pay' and 'same work', and on the Council decision of the 30 December 1961. Through these questions, the ECJ allowed the Commission to clarify its position on these issues, and to give more context to the issues discussed. The ECJ's questions directed the governments of Ireland and UK concerned the direct applicability of Article 119 EEC and the economic burden linked to its direct effect. It provided a way for the governments to develop their views in more detail, including the opportunity to submit concrete statistics in support of their positions.

It is interesting to note, however, that the ECJ did not ask Ms Defrenne's lawyer any questions. It is probably due to the fact that her position was clear and there was no need for further clarification. However, Ms Defrenne's lawyer had the opportunity to provide comments on the answer given by the other parties.

A path not taken – the distinction between the public and the private sectors

The argument of the European Commission, which led it to make a distinction between the public and the private sectors were more developed and discussed in the documents of the *dossier de procédure* then in the final judgment. It was during the oral procedure, and through the answers to questions posed by the ECJ that the distinction between the public and the private sectors became clear. The ECJ posed five written questions to the Commission. The second expressly mentioned the distinction between the public and the private sectors that the Commission was making. It asked the Commission to be more precise on whether, in its view, Article 119 EEC contained all the elements of substantive law necessary to be directly applicable. Additionally, it asked for clarification about the legal status of Sabena and the application of the provision to public companies with a certain autonomy from the State.

Within the written procedure, the term 'public sector' was not clearly used by the Commission. It only stated that Article 119 EEC would be directly applicable, after the determined period, between individuals and the Member States. However, after the Court of Justice posed its questions within the oral procedure, the terms 'public sector' and 'semi-public undertakings' are mentioned at length by the various parties. This debate is only briefly mentioned in the final judgment but is more developed in the *dossier*. The idea of the European Commission was to distinguish between the public and the private sectors. In other words, according to the Commission, Article 119 EEC should not be directly applicable in the private field, meaning relations between individuals. However, the provision could be used in disputes arising between a Member State and individuals in the public sphere. In fact, as the Commission developed in its answers to ECJ's questions (in the *dossier*), all the characteristics were met in order for Article 119 EEC to be directly applicable for public service employees. The problem of interpretation and comparison of pay and work did not appear in the public sphere, since civil servants were paid and categorised through a classification system. It would consequently be easier to determine the differences related to pay and work.

The argument developed by the Commission was a creative and interesting one. However, the other parties strongly disagreed with the proposed distinction, since it would pose many challenges. Firstly, as the government of Ireland and Ms Defrenne's lawyers rightly pointed

out, it would create a new form of discrimination. In fact, this distinction would discriminate between women working in the public sphere, who could already benefit from the principle of equal pay under Article 119 EEC, and women working in the private sphere, who would have to wait for the principle to be incorporated into national legislation. Thus, removing one form of discrimination while creating another did not seem like a good solution. Even once the principle was implemented in national law, as the government of Ireland rightly pointed out, the source of law would be different: Article 119 EEC for public workers and the national legislation for private sector workers. Secondly, the distinction did not take into account the difficulty of distinguishing between public and semi-public undertakings. Additionally, criteria would be needed to be used and developed in order to determine whether the provision was applicable to specific semi-public companies.

In the end, the Court did not even go into the distinction between the public and private spheres or the position of semi-public undertakings. On the contrary, it just rapidly ruled it out without specific justifications. For the Court, 'since Article 119 is mandatory in nature, the prohibition on discrimination between men and women applies not only to the action of public authorities, but also extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals'.[38]

Arguments not used against the retroactivity of the judgment

The governments of Ireland and the UK argued against the retroactivity of the judgment. According to the Irish and UK governments, if retroactivity had been accepted, it would have put an important economic burden on both of these States. Although this point was argued extensively in the *dossier de procédure*, much of it was left aside in the final judgment, even though the submissions probably influenced the decision of the Court not to render the judgment retroactive.

The government of the UK mentioned a survey carried out by the Department of Employment and Productivity in 1969. The aim was to make an enquiry into the costs of introducing equal pay in a number of firms in 13 selected industries. The *dossier* gives us insight into the way the survey had been conducted, as well as details regarding the types of undertaking most likely to be affected, the number of workers concerned, and the margin between rates and pay. The Government stated that the overall increase in labour costs as a result of the introduction equal pay would be around 3.5% of national wages and salaries bill, i.e. well over £1,000 million.

There is another interesting document that has been annexed to the answers of the government of the UK to the ECJ, but not touched upon by the Court in the final judgment. The document is composed of various tables:

- One on the Employees in employment June 1973, which shows how many male workers and female worker are part of the manufacturing industries per category, such as forestry, electricity and water, footwear, mechanical engineering…
- Another table on a comparison of selected rates of pay for men and women at end-March 1970, 1972 and 1974 in agreements and orders (in various areas again: forestry, tobacco, allied industries, public administration and defence…)
- A third table on the details of wage rates chosen for comparison in the sector of agriculture and forestry, food, drink and tobacco, chemical and allied, textiles…

[38] Case 43/75 *Defrenne II* [1976] ECLI:EU:C:1976:56 para. 39.

These tables permit one to better grasp the situation that the UK would face in the event that judgement were made retroactive and may have consequently had an influence on the decision of the Court. In fact, the numbers and figures provide a more concrete overview of the situation. These figures as such are not mentioned in the final judgment, but they likely played a role in the outcome.

The government of Ireland also made two arguments in opposition to retroactivity of the judgment. The first one related to the Commission on the Status of Women Report, and the second came from the case-law of the ECJ. The Commission on the Status of Women report had been carried out by a Government-appointed Commission and published in 1973. The aim was to provide an estimate of the cost that would occur when introducing the principle of equal pay in the private sector. Even if it did not really provide statistically valid estimates in the Commission's view, it still managed to show that it would be difficult to meet the obligation by the end of the year 1975. Thus, retroactivity would without any doubt come with serious negative effects.

Regarding the case-law of the ECJ, the Court stated that no domestic problem could in itself alter the legal nature of a Community provision that was directly applicable.[39] However, it noted that the Court's case-law also provided that where a provision was equally open to two interpretations, the Court should favour the one which was consistent with the nature of the subject matter in question. Thus, the Court should prefer the interpretation allowing for an effective working of the Treaty and the achievement of its objectives. In that regard, it should try to take into account the consequences retroactivity could cause Member States. Closely linked to that idea was also Article 6 EEC, which that stated that EU institutions shall not prejudice the internal financial stability of the Member States, which was clearly at stake here.

Context to the Resolution of Conference of 30/12/1961

The Commission, in its answers to the question of the ECJ, decided to give some context to the Resolution of 30 December 1961. According to the Commission, the Resolution was taken at a time when, before the end of the second period of transposition of the Treaty, there were still substantial differences of opinion with respect to the concept of 'work'. In that regard, some Member States wanted to apply the principle of equal pay only to 'mixed functions', meaning activities which are exercised in the same undertaking and under the same conditions by a woman and a man, whereas others did not want to interpret the principle so strictly. Consequently, the Member States decided to adopt a Resolution that involved an interpretation of Article 119 EEC that was acceptable to all Member States.

The context as such does not support any argument in particular. The Commission considered that the resolution could not modify any time fixed by the Treaty. Such a time could only be modified through the procedure of Article 263 EEC. In any case, it is interesting as a researcher to understand the broader context of legal instruments discussed in the case.

The use of the evidence

There are many annexes in the *dossier de procédure*. The annexes became very interesting during the oral phase of the case. I mentioned already above the annex attached to the answer of the government of the UK that would have given more context to the situation of the UK and that has in my opinion really influenced the ECJ's decision.

The Commission attached the most annexes to its answer. In total, it attached eight. These annexes are never mentioned in the final judgment even though they are composed of official

[39] Case 13/68 *SpA Salgoil. v Italian Ministry of Foreign Trade* [1968] ECLI:EU:C:1968:54.

reports of the European Commission and offer very interesting insights into the situations of the different Member States. The eight annexes of the European Commission are:

- **Annex 1**: chronological table of the implementing measures taken by the various Member States (old and new)
- **Annex 2**: chronological list of the initiatives taken by the European Commission
- **Annex 3**: report from the Commission to the Council on the state of implementation of the principle of equal pay for men and women as of 31 December 1968
- **Annex 4**: report from the Commission to the Council on the state of implementation of the principle of equal pay for men and women as of 31 December 1972
- **Annex 5**: report from the Commission to the Council on the state of implementation of the principle of equal pay for men and women in Denmark, Ireland and the UK as of 31 December 1973 (Cornu Report)
- **Annex 6**: equality of pay – summary of reports on non-implemented Conventions and recommendations (art. 19 of the Constitution) from the International Labour Office
- **Annex 7**: equality of pay – general study of the Committee of Experts on the Application of Conventions and Recommendations from the International Labour Office
- **Annex 8**: Social statistics – structure and distribution of wages 1966 – summary for the EU

All of the annexes add something new. Having a look at them is indispensable in order to better understand the final judgment of the Court. Out of personal choice, I will only focus on Annex 5, the Cornu Report, which in my view is the most interesting one. It is also the only annex to which Ms Defrenne's lawyers directly referred.

The report was written by the Commission to the Council and concerns the state of implementation of the principle of equal pay for men and women in Denmark, Ireland and the UK. It is interesting because it takes into account the situation in the two participating parties (Ireland and the UK). Annex III offers such an analysis as well on the situation in Belgium. Regrettably, this report is from 1968, whereas the Cornu Report is more updated (1973), due to the late accession of the UK and Ireland to the EU. Additionally, whilst the Cornu report includes an analysis on the principle of equal pay in the private and public sector, the report on Belgium is made up essentially of questions to, and answers from, the government of Belgium. The latter is composed of two parts: A) social programmes and draft laws, legislative texts, courts protection and parliamentary activities; B) collective agreements. The Cornu report is comprised of three parts, each with at least three sub-parts. The first part offers details on the principle of equal pay and on Article 119 EEC and its application, as well as on the definition of the concepts of 'equal pay' and 'equal work'. The second part of the report focuses on the situation in the private and public sectors. The private sector analysis includes discussions of collective agreements and an analysis of the decisions on wage regulations. It touches on complementary social security systems, the situation of women at work and job classifications. Finally, in a third part, it discusses national measures taken in order to implement the principle of equal pay.

The report gives insight into the situation in three specific Member States. The lawyers of Ms Defrenne referred expressly to it in the answers to the questions of the ECJ. One can sense that the report has been used within the summary of Ms Defrenne's observations but within the final judgment the report is not mentioned. In her observations, Ms Defrenne emphasised the importance of the report, that showed that countries like Denmark worked hard towards maintaining the principle of equal pay, not without facing issues. Thus, whilst it is challenging for Ireland and the UK to implement the principle, it is not an impossible task to achieve. She

also argued that the report went against some figures that the government of Ireland might have used to scare the Court off.

It is in my opinion a fascinating report that should have been analysed further by the Court in its final judgment. The Court should have made at least a footnote referring to it, so that researcher or other individuals interested in it would have known that it had been used as a basis for reflection.

4.1.3 Order of the arguments

An interesting point to note concerning the structure of the final judgement is that there is always a specific order which the ECJ uses. First the applicant's observations, then the participating parties (here the government of the UK and Ireland) and finally the European Commission. In the *dossier*, however, the Commission observations were always first, both in the written procedure and the oral one.

Regarding the order of the legal arguments, the Court essentially followed the same outline employed by the parties in the written observations and in the written and oral procedures. Within the oral procedure however, the Court did not distinguish between the two different documents submitted by the government of the UK (Answers of the government registered on 23/09/85; Amplification of answer registered on 30/10/75) as well as the two documents submitted by the government of Ireland (Answers of Ireland registered on 20/10/75; Further observations registered on 10/11/75). Within the final judgment, the Court summarised them as a simple position, even if the government of Ireland for example mainly answered directly to the comments of the Commission in one of the documents. None of these directed comments have been transcribed as such in the final judgment.

4.1.4 Parts not found in the *dossier de procédure* (redacted or missing)

A few observations can be made about aspects that cannot be seen in the *dossier de procédure*. It is however unclear whether this information can be found in the redacted part of the *dossier* or whether they are simply missing.

Participation of Sabena S.A. in the oral hearing

It is interesting to note that during the oral procedure, five parties presented oral arguments before the ECJ. The four parties that submitted written observations (Ms Defrenne, the European Commission and the Government of the UK and Ireland) were present at the hearing, but Sabena S.A., the defendant, was also present during the initial proceedings.

It is surprising to see that he could assist in the oral procedure and present oral arguments without having submitted any written observations. In fact, redacted pages were found in the instruction and in the oral proceedings, but not in the written ones. In that regard, Sabena S.A. had not submitted any written observations. It is unclear however if documents of the redacted materiel of the *dossier* mention any participation of Sabena S.A. or whether it includes observations of it or a request to participate in the oral proceedings.

The observations of Sabena S.A., visible in the final judgment in the part on the oral procedure, seemed to be brief and clear. Its lawyer, Philippe de Keyser, essentially argued that Article 119 EEC did not create direct rights and obligations for nationals, employers and workers on its own because national provisions were needed to implement it. Additionally, he stated that Sabena was a public limited company under private law and should be treated such if the Commission's argument distinguishing public and private companies was upheld.

Determination of the legal status of Sabena

Except in the final judgment, the determination of the legal status of Sabena is not part of the *dossier de procédure*. The Commission, when developing its analysis on public and semi-governmental undertakings, did touch upon the characteristics of Sabena.[40] It noted, for example, its date of creation, the shares owned by the Belgian State and details about its Executive Board. However, it did not conclude whether Sabena should be considered a public or semi-governmental undertaking, to which Article 119 would, according to the Commission, directly apply after the expiry of the time allowed for the implementation of that provision.

However, during the oral hearing, as stated in the final judgment, the legal status of Sabena was discussed. It was noted that Sabena was a limited company constituted under private law. Even if it had obtained a licence to operate a public service and even though the majority of shares were held by the Belgian State, it remained a company constituted under private law and could thus not be considered as a public company.

4.2. The Actors and Institutions

Various actors and institutions have been part of *Defrenne II*. I will try to sum them all up in two different tables (one on the Court's composition and one on the parties). Thereafter, I will add details about each person.

4.2.1. The Court's composition

Table 4: Composition of the Court in the *Defrenne II* case

Name of the person	**Function**
R. Lecourt	President of the ECJ
H. Kutscher	President of Chamber
A. O'Keeffee	President of Chamber
P. Pescatore	Reporting Judge
A.M. Donner	Judge
J. Mertens de Wilmars	Judge
M. Sørensen	Judge
AG H. Mayras	First AG
AG A. Trabucchi	AG (replacement)
A. Van Houtte	Registrar

R. Lecourt was a French national, born in 1908. He had a PhD in Law, was a lawyer at the Court of Appeal (Paris), was a member of the Underground Management Committee of the movement 'Résistance' and member of the National Liberation Movement. He played a role in politics as deputy for Paris and the Hautes-Alpes and Minister of Justice on several occasions,

[40] Dossier – PO 6 Answers of the Commission to the questions of the ECJ, p. 10-12.

and Minister responsible for aid and cooperation between France and the Member States of the Community. He was also a Member of the Executive Committee of the European Movement and later a judge (from 1962) and President of the ECJ. He died in 2004.

H. Kutscher was a German national, born in 1911. He studied law and political science. He held a PhD in Law and had many roles in German politics. He was, among other functions, Official in the Ministries for Economic Affairs and Transport. He had been a judge at the Federal Constitutional Court before becoming an Honorary Professor, and then a judge (from 1970) and President of the ECJ. He died in 1993.

A. O'Keeffee was an Irish national, born in 1912. He was a Barrister, a Senior Counsel, an Attorney General, a Judge of the Supreme Court and a President of the High Court. Later he became a judge of the ECJ (from 1975) and died in 1994.

P. Pescatore was a Luxemburgish national, born in 1919. He also held a PhD in Law and played a role in politics. (He was Political Director and Permanent Secretary in the Ministry for Foreign Affairs.) He was also very involved in the academic world. He co-founded the Institute of European Legal Studies (Liège) and held a Chair in European Community Law. He was then a judge at the ECJ (from 1967), He died in 2010.

A.M. Donner was a Dutch national, born in 1918. He held a PhD in Law, was a Professor of Public Law and Administrative, and President of the Netherlands Association for Administrative Law. He was then became a judge at the ECJ (from 1958) and later President. He died in 1992.

J. Mertens de Wilmars was a Belgian national, born in 1912. He held a PhD in Law as well as Political Science. He was also member of the Bar Council and an Avocat. He played a role in politics as a member of the House of Representatives and a member of Parliamentary Committees. He was a professor in Louvain and then a judge (from 1967) and President at the ECJ. He died in 2002.

M. Sørensen was a Danish national, born in 1913. He held a PhD in Law and became a Professor of International and Constitutional Law. He also had roles in politics as an official in the Danish Ministry for Foreign Affairs. He was an ad hoc judge at the International Court of Justice and Member of the Permanent Court of Arbitration. He then became a judge (from 1973) at the ECJ. He died in 1981.

AG H. Mayras was a French national, born in 1920. He studied public law and political economy and participated in French politics as a Technical Adviser in the office of the Minister of Justice, Legal Assistant to the Council of State and then Legal Adviser and judge. He was also a Senior Lecturer and Professor at the Moroccan School. He was AG at the ECJ. He died in 1995.

AG A. Trabucchi was an Italian national, born in 1907. He held a PhD in Law and was a Qualified Professor in Civil law and Comparative Private Law. He became a judge at the ECJ and later AG. He died in 1998.

A. Van Houtte was a Belgian national, born in 1914. He held a PhD in Law and a degree in political and social economy. He was an Assistant Lecturer and Economics and Tax Advisor. Later he became Secretary of the European Office of the Food and Agriculture Organisation. He became Registrar of the ECJ and died in 2002.

Analysis: *Defrenne II* was decided at a time when the Court was essentially composed of men. That is already an interesting aspect, since the case at stake was the principle of equal pay between men and women. It is thus positive to see that the men decided in favour of the direct applicability of that principle, which enabled women to use the provision before national courts. The composition of men might however have influenced their reasoning regarding the

temporal limitation of the judgment. Would a woman have agreed to the non-retroactivity of the judgment? This is a question which will remain open, but one could think that men felt less concern than a woman would about the issue of equal pay and would therefore be less receptive to the arguments put forward by the governments of Ireland and the UK regarding the economic burden it would cause.

The other interesting aspect which can be mentioned is that most of the judges have backgrounds that include politics and/or economics in addition to law, which again might explain why the arguments relating to the economic burden of a country had an impact on them. Most of them were aware of the political and economic consequences of the judgment. Finally, all the participants had an interest in European and international law and were thus quite certainly in favour of its full effectiveness. This could help to explain why they embraced direct applicability of the provision.

Another factor that may have influenced the decision of the ECJ to make the provision directly applicable was the change of personnel that occurred in 1967 and after. In fact, only two out of seven judges were appointed before 1967. Some authors have argued that after 1967, the Court was composed of more integrationist and activist judges,[41] which could consequently explain the decision they took to render the provision directly applicable, even if the majority of the parties were against it.

Lastly, five of the members of the Court that sat on the bench for *Defrenne II* also sat on *Defrenne I*. The first case had been characterised as 'unfinished business' and the judges were not entirely happy with their decision.[42] Moreover, the EU was developing instruments of social policies, namely three Directives (equal pay,[43] equal treatment at work[44] and equal treatment in social security[45]). There is no doubt that the judges were influenced by this socio-legal context in the EU when it decided the second case.

4.2.2. The parties of the case

Table 5: Composition of the other parties in the *Defrenne II* case

Name of the person	**Function**
Marie-José Jonczy	Agent of the European Commission
Marie-Thérèse Cuvelliez	Lawyer of Ms Defrenne from Brussels (Representation of the applicant in the main action)
William Henry Godwin	Agent for UK (Assistant Treasury Solicitor)

[41] B. Davies and M. Rasmussen, 'From International Law to a European Rechtgemeinschaft : Towards a New History of European Law, 1950-197' in J. Laursen (ed), *Institution and Dynamics of the European Community 1973-1983* (2014).

[42] C. Hoskyns, *Integrating Gender (Women, Law and Politics in the European Union)* (Verso 1996) 74.

[43] Council Directive 75/117/EEC of 10 February 1975 on the approximation of laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 45).

[44] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39).

[45] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment in matters of social security (OJ L 6).

Peter Denys Scott	Member of the English Bar (Representation for the Government of the UK)
Liam J. Lysaght	Chief State Solicitor (Government of Ireland)
Philippe de Keyser	Advocate of the Brussels Bar (Represented the respondent in the main action, Sabena S.A.)
Ms Schueler	Advocate of the Brussel Bar (part of the Sabena S.A. legal team)
Eliane Vogel-Polski	Consultant of Marie-Thérèse Cuvelliez (for Ms Defrenne, the applicant)

Eliane Vogel-Polski was not mentioned in the *dossier*, but she it is one of the lawyers associated with the *Defrenne* saga. She was a young advocate who specialised in social and labour law cases.[46] In 1967, she wrote an article in a Belgian legal journal comparing Article 119 with Article 95 EEC (discriminatory taxes on goods).[47] The latter was part of the *Lütticke* case, in which the ECJ stated that Article 95 EEC had direct effect and thus gave individuals enforceable rights in national courts if the Member States had not implemented the provision by the specified deadline.[48] In the article she wrote, she clearly encouraged women who were victims of unequal pay to invoke Article 119 EEC.[49] At the time, a few years before the first *Defrenne* case, she even tried to find a test case. However, neither the trade unions, nor the lawyers in the European Commission supported the tactic.[50] In the end, she found her case with air hostesses working for the Belgian state airline, Sabena. Alongside another Belgian lawyer, **Marie-Thérèse Cuvelliez**, they brought the case before Belgian courts and later before the ECJ. However, she mostly assisted Miss Cuveliez in the role of consultant. Her fight was also inspired by the women's strike in a Belgian factory, the so-called 'strike of the Herstal Factory', and the growing feminist movement in the EU.

Marie-Thérèse Cuvelliez was a Belgian lawyer who worked on *Defrenne I and Defrenne II*. She had been approached by air hostesses about the possibility of forming a separate union, since the main union for airline staff refused to take up women's issues.[51] She pleaded in both cases.

Very limited information was found on **Marie-José Jonczy**. The information that is available relates to her post-trial activities. For a number of years, she was an agent for the European Commission. After that, she became a member of the EWL Board of Directors for University Women of Europe and won the 'Tanesse' prize for her engagement in women's rights.

No information was publicly available about the other parties involved in the case.

[46] C. Hoskyns, *Integrating Gender (Women, Law and Politics in the European Union)* (Verso 1996) 68.

[47] E. Vogel-Polsky, 'L'article 119 du traité de Rome peut-il être considéré comme self-executing?' (1967) Journal des tribunaux 233.

[48] Case 57/65 *Lütticke v Hauptzollamt Saarlouis* [1966] ECLI:EU:C:1966:34, 210.

[49] C. Hoskyns, *Integrating Gender (Women, Law and Politics in the European Union)* (Verso 1996) 69.

[50] Ibid.

[51] Ibid.

4.2.3 Analysis

General remarks

It is interesting to look at the participating parties in the case. Four parties submitted written observations: the European Commission, Ms Defrenne's lawyer and the governments of the UK and Ireland. I was very surprised that the government of Belgium and Sabena S.A did not send written observations. Additionally, none of other 'original' Members brought submissions (France, Germany, Italy, Luxembourg and the Netherlands). Among the new Member States, only the UK and Ireland did so. However, there is no doubt that their submissions influenced the Court's final decision.

The case took place in 1976, three years after the accession of Ireland and the UK to the EU. They were both new members and it is possible that the Court did not want to frustrate and attack them by imposing the retroactivity of the principle of equality of pay. The Court, in following the arguments of the governments of the UK and Ireland, went against the argument of the European Commission, Ms Defrenne and the AG on the issue of retroactivity of the ruling.

The way they litigated

A point can be made on the litigation strategies of the different lawyers. Whilst the governments of Ireland and the UK relied on national instruments from their respective countries (such as national tables regarding employees in employment and basic pay rates for men and women for identical jobs), the European Commission focused on European instruments. Additionally, the European Commission used international reports from the International Labour Office to support its arguments.

Ms Defrenne's lawyer did not use Annexes, but she did use European reports, mainly from the European Commission.

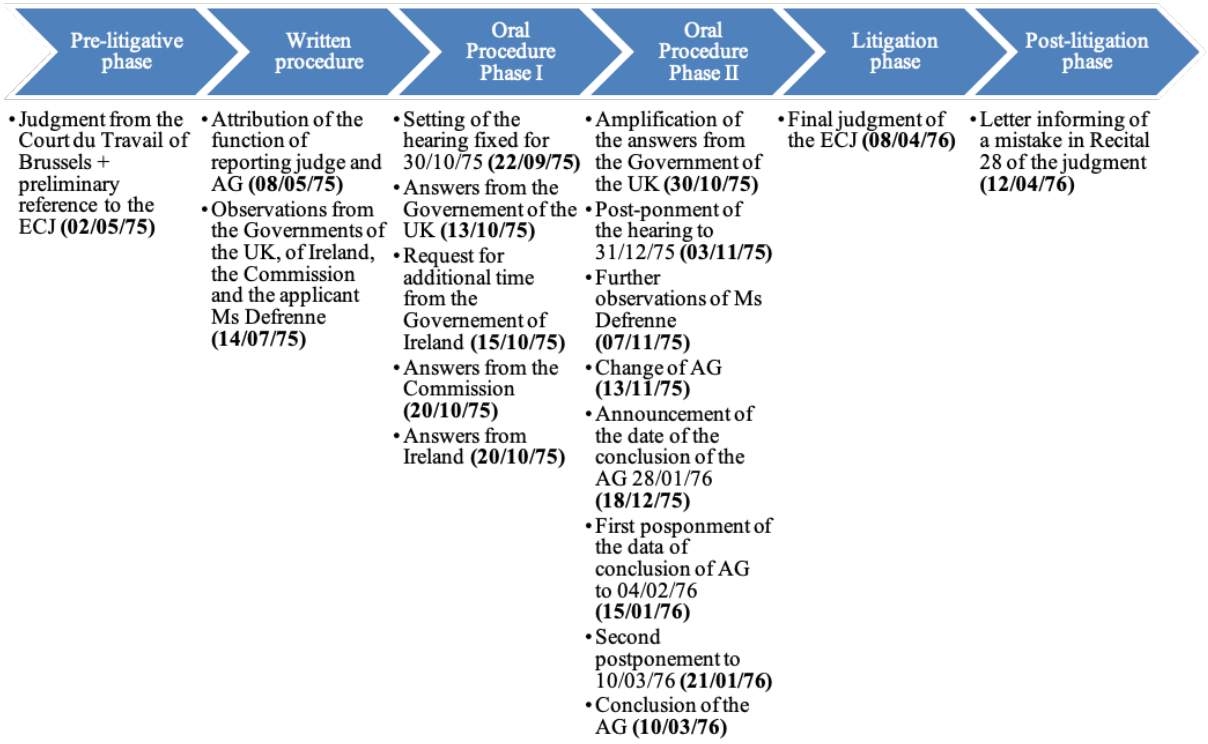
4.3. Procedures and Case Management

The *dossier* is composed of various documents of procedure that ensured the proper functioning of the case. The procedural documents mainly consist of correspondence informing the parties of the initial proceeding and advancements in the management of the case.

The Registrar of the ECJ sent out letters informing the parties of the opening of the case in order for them to send written observation, if they so desired, to the ECJ. Letters were also sent to inform the parties about the dates of the oral hearing, of the conclusions of the AG, as well as on the different stages of the case. At the end of the case, it also sent out the final judgment to various parties. The Registrar also sent out internal letters within the ECJ concerning the designation of the reporting judge and the AG. The correspondence shows that the Registrar was in continuous dialogue with the parties throughout the case (the parties who participated in the case but also the others).

As a way of summary, the timeline below shows the different procedures that form part of the *dossier de procédure*.

Figure 1: Procedural timeline of the *Defrenne II* case



Within that particular *dossier de procédure*, four procedural events caught my eye.

4.3.1 The request for more time from the Government of Ireland

The ECJ asked two questions linked to the economic burden of the direct applicability of Article 119 EEC to the Government of Ireland. In that regard, the Court wanted to know whether the Government could give more concrete statistics and information about various areas, including the types of undertakings concerned, the types of workers concerned and the difference in wages. Additionally, the ECJ asked for its opinion regarding the Council's decision of 30 December 1961 and its application in Ireland.

In the *dossier*, it can be seen that the Government asked for an extension of time to answer the questions. It requested an extension of a week on the ground that research and consultations were necessary in order to provide a complete response. It had to submit its answers on 14 of October 1975 and asked to submit them the 20 October. No document indicates whether the request for an extension was granted, but the Irish government did submit its answers on 20 October 1975, and they were accepted by the Court. As mentioned above, the Court can sometimes grant an extension for the submission of written observations. It does so in a discretionary manner if it is sufficiently justified.

4.3.2 The distribution of documents

In the oral phase, the Registrar transmitted the following *dossiers* to a number of parties and Member States:

- Copy of the report for the hearing from the reporting judge;
- Copy of the answers from the government of the UK;
- Copy of the answers from the European Commission;
- Copy of the answers from the Irish Government;

The fact that the second written observations of Ms Defrenne are not part of the transmission is understandable since Ms Defrenne submitted them on 6 November 1975, and the letters were sent out before that date (23/10/1975). However, I am surprised that the report of the reporting judge was sent to the parties. That report already showed the position of one single judge, and in practice that opinion is at least partly followed in the final judgment.

Personally, I did not know if these reports were sent to the parties before the hearing as well. The hearing took place two months later, when the parties already knew the position of at least one of the judges.

4.3.3 The hearing of the case

Two points need to be mentioned concerning the hearing of the case. The first point concerns the date of the hearing. A first document had been sent to the parties indicating that the hearing would take place on 30 October 1975 (one month and a week's notice). Another document (letter sent from the Registrar) indicated however, that the date of the hearing had been postponed to 3 December 1975. The letter indicating this change had been sent on 3 November 1975. The parties thus had one-month's notice, which is in my opinion very short even if it seems to be the normal time at the ECJ.

What I also found odd in terms of dates, is that after the letter received on the postponement of the hearing, the applicant Ms Defrenne, as well as the government of Ireland submitted additional observations (dated 6 November 1975). I do not know whether that is common in the ECJ's procedure, but it surprised me.

Finally, the presence of Sabena S.A. in the hearing and the oral procedure comes as a surprise, since none of the documents of the *dossier de procédure* attest to his presence in the case. I already developed that above so I will not go into further details.

4.3.4 The conclusions of the AG

At first, the Registrar appointed AG Mayras to the case. However, on 13 November 1975, a few days before the hearing of the case, the Registrar of the Court sent an internal letter to AG Trabucchi asking him to replace, without further justifications, AG Mayras. Therefore, the AG changed in the middle of the procedure and had to catch up with had happened earlier.

Unsurprisingly, the presentation of the conclusions of the AG were delayed on many occasions:

- First letter of the Registrar states that the conclusions of the AG will be presented on 28 January 1976;
- Second letter of the Registrar mentions that they will be postponed and presented on the 4 February 1976;
- Third letter of the Registrar that postpones them once more to 10 March 1976.

As I pointed out already, it is not unusual for the AG to be changed in the middle of the procedure, so long as it is before the oral hearing.

Note: The *dossier de procédure* in itself is composed of some inconsistencies. In fact, the additional observations from the government of Ireland and Ms Defrenne submitted on the 3 November 1975 are far before the additional observations of the government of UK, which were, however, submitted earlier, on 28 October 1975.

5. Concluding reflections

In *Defrenne II*, the Court essentially confronted two pivotal issues: whether Article 119 EEC should be directly applicable in relations between individuals and if so, whether Article 119 EEC should be applied retroactively or not.

Accessing the *dossier* of the case has been enriching on various levels. It enables a clearer understanding of the context of the case and the procedure surrounding it. Furthermore, it illuminates the way the ECJ was working at the time and allows one to get a grasp on the procedural framework surrounding the specific case. Adjacent to that, the *dossier de procédure* introduces additional details and arguments that are absent in the Court's judgment, thereby granting alternative perspectives on how the case could have been decided. I would strongly recommend to researchers, if they are working on a case, to access the archives and the *dossier* of the case.

Based on my personal analysis of the case and its *dossier*, I do not think that a fundamental argument has not been taken into account. However, a lot of evidence and details have been omitted. I understand that final judgments cannot be too long, however some evidence clearly influenced the Court's decision but was not mentioned in the final judgment.[52] The annexes used by the parties have been added for a specific reason and developing them at least partly, or mentioning them in the footnotes of the judgment, would have been useful. Considering that the decision on the temporal limitation of the case was somewhat surprising (as it went against the reasoning of the European Commission, the applicant and the AG) further justification and illustration would have been useful.

Additionally, a 'creative' argument of the European Commission was insufficiently developed and ignored by the ECJ.[53] When reading the *dossier*, one notices that the argument had been the subject of lengthy debate in the written answers of the different participating parties and worthy of debate. In my opinion, the Court should have taken it into account and provided a more complete explanation for its decision.

My case was very large (1173 pages) and only 83 pages were redacted. In terms of percentage, it is quite low. Unfortunately, there is no explanation as to why and which parts of the *dossiers* were redacted. I understand that the deliberation as well as the discussion between judges need to be redacted for privacy and independency reasons. However, nothing indicates that the pages that have been redacted could be categorised as such.

A final comment that could be made is that the case, even though it was comprised of two questions in the preliminary references, it is mainly known for the first question, which concerns the direct applicability of Article 119 EEC. The *dossier de procédure* however demonstrates that the second question received as much attention as the first one.

Whilst the first question related to the direct effect of Article 119 EEC, the second question essentially asked whether Article 119 EEC became applicable in the Member States by virtue of measures adopted by the authorities of the EEC or whether the national legislature was the

[52] Particularly, the Cornu Report.

[53] The European Commission wanted to give direct effect to the provision in the public sector and not in the private sector.

only one competent in that matter. In the final judgment of the Court, the second question included, on the one hand, the issue of the implementation of Article 119 EEC and the respective competences of the Community and the Member State, and on the other hand, the issue of the temporal limitation of the judgment.[54] It is the latter point that formed the subject of debate in the *dossier*.

[54] Case 43/75 *Defrenne II* [1976] ECLI:EU:C:1976:56, para 42 : 'In accordance with what has been set out above, it is appropriate to join to this question the problem of the date from which Article 119 must be regarded as having direct effect.'

Annex: List of documents

	Type of document	Institution	Reference number and date	Number of pages
WRITTEN PROCEDURE				
Doc 1	Judgment and preliminary reference to the ECJ	Cour du Travail Brussels	N° 61246 02/05/75	11
Doc 2	Acknowledgment of receipt of the preliminary reference	Registrar of the Court	N° 61298 05/05/75	1
Doc 3	Transmission of the case and request for observations to the Commission	Registrar of the Court	N° 61299 05/05/75	1
Doc 4	Attribution of the function of reporting judge	Registrar of the Court	N° 61367 08/05/75	1
Doc 5	Attribution of the function of AG	Registrar of the Court	N° 61368 08/05/75	1
Doc 6	Transmission of the case and request for observations to M. Th. Cuvelier (Brussels)	Registrar of the Court	N° 61455	1
Doc 7	Transmission of the case and request for observations to Ms Schueler and Dekeyser (Brussels)	Registrar of the Court	N° 61456	1
Doc 8	Transmission of the case and request for observations to Mr P. De Keyser (Brussels)	Registrar of the Court	N° 61456 b	1
Doc 9	Transmission of the case and request for observations to the French government	Registrar of the Court	N° 61457	1
Doc 10	Transmission of the case and request for observations to the Belgian government	Registrar of the Court	N° 61458	1
Doc 11	Transmission of the case and request for observations to the Luxemburgish government	Registrar of the Court	N° 61459	1
Doc 12	Transmission of the case and request for observations to the government of the Netherlands	Registrar of the Court	N° 61460	1
Doc 13	Transmission of the case and request for observations to the Italian government	Registrar of the Court	N° 61461	2

Doc 14	Transmission of the case and request for observations to the German government	Registrar of the Court	N° 61462	2
Doc 15	Transmission of the case and request for observations to the Government of the UK	Registrar of the Court	N° 61463	1
Doc 16	Transmission of the case and request for observations to the Irish government	Registrar of the Court	N° 61464	1
Doc 17	Transmission of the case and request for observations to the Danish government	Registrar of the Court	N° 61465	1
Doc 18	Letter of refusal of the German government to send observations	Government of Germany (Dr Seidel)	N° 63124 03/07/75	1
Doc 19	Letter nominating the agent of the Commission (M-J Jonczy)	European Commission	N° 62265 14/07/75	1
Doc 20	Written observations by the European Commission	Miss Jonczy (Commission)	N° 63366 14/07/75	17
Doc 21	Written observations by the applicant (Ms Defrenne)	M-T Cuvelliez (Brussels)	N° 63367 14/07/75	12
Annex I	Equal Pay Act 1970 – chapter 41	UK Elizabeth II		11
Doc 23	Written observations by the government of the UK	H. Godwin (Assistant Treasury Solicitor)	N° 64010 21/07/75	9
Doc 24	Written observation by the government of Ireland	L. J. Lysaght (Chief State Solicitor)	N° 64105 25/07/75	9
Doc 25	Transmission of the written observations to the Registrar of the Cour du Travail	Registrar of the Court	N° 64320	1
Doc 26	Transmission of the written observations to M. Th. Cuveliez (Brussels)	Registrar of the Court	N° 64321	1
Doc 27	Transmission of the written observations to Ms Schueler (Brussels)	Registrar of the Court	N° 64322	1
Doc 28	Transmission of the written observations to P. De Keyser (Brussels)	Registrar of the Court	N° 64323	1

Doc 29	Transmission of the written observations to the European Commission	Registrar of the Court	N° 64324	1
Doc 30	Transmission of the written observations to the French government	Registrar of the Court	N° 64325	1
Doc 31	Transmission of the written observations to the Belgian government	Registrar of the Court	N° 64326	1
Doc 32	Transmission of the written observations to the government of Luxembourg	Registrar of the Court	N°64327	1
Doc 33	Transmission of the written observations to the government of the Netherlands	Registrar of the Court	N° 64328	1
Doc 34	Transmission of the written observations to the Italian government	Registrar of the Court	N° 64329	1
Doc 35	Transmission of the written observations to the German government	Registrar of the Court	N° 64330	1
Doc 36	Transmission of the written observations to the government of the UK	Registrar of the Court	N° 64331	1
Doc 37	Transmission of the written observations to the government of Ireland	Registrar of the Court	N° 64332	1
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Doc 40	Question to the government of the UK and Ireland	ECJ		1
Doc 41	Letter announcing the date of the public hearing to M. Th. Cuveliez	Registrar of the Court	N° 64948	1
Doc 42	Letter announcing the date of the public hearing to Ms Schueler	Registrar of the Court	N° 64949	1
Doc 43	Letter announcing the date of the public hearing to P. De Keyser	Registrar of the Court	N° 64950	1
Doc 44	Letter announcing the date of the public hearing to the Commission	Registrar of the Court	N° 64951	1
Doc 45	Letter announcing the date of the public hearing to the French government	Registrar of the Court	N° 64952	1
Doc 46	Letter announcing the date of the public hearing to the Belgian government	Registrar of the Court	N° 64953	1
Doc 47	Letter announcing the date of the public hearing to the government of Luxembourg	Registrar of the Court	N° 64954	1
Doc 48	Letter announcing the date of the public hearing to the government of the Netherlands	Registrar of the Court	N° 64955	1
Doc 49	Letter announcing the date of the public hearing to the Italian government	Registrar of the Court	N° 64956	1
Doc 50	Letter announcing the date of the public hearing to the German government	Registrar of the Court	N° 64957	1
Doc 51	Letter announcing the date of the public hearing to the government of the UK	Registrar of the Court	N° 64958	2
Doc 52	Letter announcing the date of the public hearing to the government of Ireland	Registrar of the Court	N° 64959	2
Doc 53	Letter announcing the date of the public hearing to the Danish government	Registrar of the Court	N° 64960	1
Doc 54	Letter appointing H. Godwin as agent of the UK	Secretary of State for Foreign Affairs (UK)	N°65121 24/9/85	2

Doc 55	Answers from the government of the UK to the questions	H. Godwin (UK)	N° 65581 13/10/75	6
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Doc 56	Letter announcing who will represent the government of the UK (Peter Denys Scott)	H. Godwin (UK)	N° 65574 14/10/75	1
Doc 57	Request for additional time to answer	Government of Ireland	N° 65630 15/10/75	1
Doc 58	Answers from the European Commission to the questions	Miss Jonczy (Commission)	N° 65753 20/10/75	17
Annex I	Chronological table of the implementing measures taken by the various MS (old and new)	European Commission		5
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Doc 59	Continuation of the answers from the European Commission to question 5	Miss Jonczy (Commission)		3
Annex III	Report from the Commission to the Council on the state of implementation of the principle of equal pay for men and women as of 31/12/68	European Commission		163
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Doc 60	Answers from the government of Ireland to the questions	L. J. Lysaght (Ireland)	N° 65762 20/10/75	3
Doc 61	Transmission of the report for the hearing, and the answers to the Cour du Travail	Registrar of the Court	N° 65862	1
Doc 62	Transmission of the report for the hearing, and the answers to M. Th. Cuveliez	Registrar of the Court	N° 65863	1
Doc 63	Transmission of the report for the hearing, and the answers to Ms Schueler	Registrar of the Court	N° 65864	1
Doc 64	Transmission of the report for the hearing, and the answers to P. De Keyser	Registrar of the Court	N° 65865	1
Doc 65	Transmission of the report for the hearing, and the answers to the Commission	Registrar of the Court	N° 65866	2
Doc 66	Transmission of the report for the hearing, and the answers to the French government	Registrar of the Court	N° 65867	1
Doc 67	Transmission of the report for the hearing, and the answers to the Belgian government	Registrar of the Court	N° 65868	1
Doc 68	Transmission of the report for the hearing, and the answers to the government of Luxembourg	Registrar of the Court	N° 65869	1
Doc 69	Transmission of the report for the hearing, and the answers to the government of the Netherlands	Registrar of the Court	N° 65870	1
Doc 70	Transmission of the report for the hearing, and the answers to the Italian government	Registrar of the Court	N° 65871	2
Doc 71	Transmission of the report for the hearing, and the answers to the German government	Registrar of the Court	N° 65873	1

Doc 72	Transmission of the report for the hearing, and the answers to the government of the UK	Registrar of the Court	N° 65873	1
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Doc 75	Report for the hearing	Reporting judge (P. Pescatore)		16
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Doc 80	Letter of postponement of the public hearing to Ms Schueler	Registrar of the Court	N° 66138	1
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Doc 82	Letter of postponement of the public hearing to the Commission	Registrar of the Court	N° 66140	2
Doc 83	Letter of postponement of the public hearing to the French government	Registrar of the Court	N° 66141	1
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Doc 85	Letter of postponement of the public hearing to the government of Luxembourg	Registrar of the Court	N° 66143	1
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Doc 87	Letter of postponement of the public hearing to the Italian government	Registrar of the Court	N° 66145	2
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Doc 89	Letter of postponement of the public hearing to the government of the UK	Registrar of the Court	N° 66147	1

Doc 90	Letter of postponement of the public hearing to the government of Ireland	Registrar of the Court	N° 66148	1
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Doc 92	2nd observations by the applicant Ms Defrenne	M. Th. Cuvelliez	N° 66211 07/11/75	4
Doc 93	Further observations of the Government of Ireland	L. J. Lysaght (Ireland)	N° 66233 10/11/75	12
Doc 94	Transmission of the additional observations and answers to the Cour du travail	Registrar of the Court	N° 66252	1
Doc 95	Transmission of the additional observations and answers to M. Th. Cuveliez	Registrar of the Court	N° 66253	1
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Doc 102	Transmission of the additional observations and answers to the government of the Netherlands	Registrar of the Court	N° 66260	1
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Doc 105	Transmission of the additional observations and answers to the government of the UK	Registrar of the Court	N° 66263	1
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Doc 109	Letter announcing the date of the conclusions of the AG to the Cour du travail	Registrar of the Court	N° 67399	1
Doc 110	Letter announcing the date of the conclusions of the AG to M. Th. Cuveliez	Registrar of the Court	N° 67400	1
Doc 111	Letter announcing the date of the conclusions of the AG to Ms Schueler	Registrar of the Court	N° 67401	1
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Doc 116	Letter announcing the postponement of the AG's conclusions to the Cour du Travail	Registrar of the Court	N° 67727	1
Doc 117	Letter announcing the postponement of the AG's conclusions to M. Th. Cuveliez	Registrar of the Court	N° 67728	1
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Doc 119	Letter announcing the postponement of the AG's conclusions to P. De Keyser	Registrar of the Court	N° 67730	1
Doc 120	Letter announcing the postponement of the AG's conclusions to the Commission	Registrar of the Court	N° 67731	1
Doc 121	Letter announcing the postponement of the AG's conclusions to the government of the UK	Registrar of the Court	N° 67733	1
Doc 122	Letter announcing the postponement of the AG's conclusions to the government of Ireland	Registrar of the Court	N° 67734	1
Doc 123	2nd letter announcing the postponement of the AG's conclusions to the Cour du Travail	Registrar of the Court	N° 67906	1
Doc 124	2nd letter announcing the postponement of the AG's conclusions to M. Th. Cuveliez	Registrar of the Court	N° 67907	1
Doc 125	2nd letter announcing the postponement of the AG's conclusions to Ms Schueler	Registrar of the Court	N° 67908	1
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Doc 127	2nd letter announcing the postponement of the AG's conclusions to the Commission	Registrar of the Court	N° 67910	1
Doc 128	2nd letter announcing the postponement of the AG's conclusions to the government of the UK	Registrar of the Court	N° 67911	1
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Doc 130	Conclusions of the AG Trabucchi	AG Trabucchi		24
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Doc 132	Transmission of the judgment to M. Th. Cuveliez	Registrar of the Court	N° 69692	1
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Doc 141	Transmission of the judgment to the German government	Registrar of the Court	N° 69701	1
Doc 142	Transmission of the judgment to the government of the UK	Registrar of the Court	N° 69702	1
Doc 143	Transmission of the judgment to the government of Ireland	Registrar of the Court	N° 69703	1
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