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Skickat: den 6 oktober 2021 10:15
Till: Regelrådet
Kopia: Erik Adell Hellström; Ulf Berkelöf; Håkan Hillefors
Bifogade filer: CELEX_52021PC0093_EN_TXT.pdf; CELEX_52021PC0093_SV_TXT.pdf; swd-2021-41_en_0.pdf; swd-2021-42_en_0.pdf

Uppföljningsflagga: Följ upp
Flagga: Har meddelandeflagga

Kategorier: Ingrid

Hej!

Översänder härmed en begäran om yttrande av KOM konsekvensanalys i samband med förslaget på direktiv om lönetransparens. Bifogat finner ni direktivförslaget på engelska och svenska samt konsekvensanalysen samt en sammanfattande konsekvensanalys.

Kontakta gärna mig eller Erik Adell Hellström (kopia) i det fall ni har frågor. Ert yttrande mottages tacksamt av Erik Adell Hellström.

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Bryssel den 4.3.2021
COM(2021) 93 final

2021/0050 (COD)

Förslag till

EUROPAPARLAMENTETS OCH RÅDETS DIREKTIV

om stärkt tillämpning av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete tack vare insyn i lönesättningen och efterlevnadsmekanismer

{SEC(2021) 101 final} - {SWD(2021) 41 final} - {SWD(2021) 42 final}

MOTIVERING

1. BAKGRUND TILL FÖRSLAGET

• Skäl till förslaget

Rätt till lika lön för kvinnor och män som utför lika eller likvärdigt arbete är en av EU:s grundläggande principer som stadfästas i Romfördraget. Kravet på att säkerställa lika lön fastställs i direktiv 2006/54/EG (nedan kallat *det omarbetade direktivet*)¹, som år 2014 kompletterades med kommissionens rekommendation om insyn i lönesättningen (nedan kallad *rekommendationen från 2014*)². Men trots den rättsliga ramen är det i praktiken fortfarande svårt åstadkomma en verkningsfull tillämpning och efterlevnad i EU. Ett av de huvudsakliga hindren är en bristande insyn i lönesättningen.³ Fortfarande uppgår löneskillnaderna mellan könen⁴ i EU till omkring 14 procent. Löneskillnaderna påverkar kvinnors livskvalitet på lång sikt, ökar deras risk för fattigdom och befäster skillnaderna i kvinnors och mäns pensionsersättningar, skillnader som uppgår till 33 % på EU-nivå.⁵ Covid-19-pandemin och dess ekonomiska och sociala följdverkningar gör det än mer angeläget att ta itu med denna fråga, eftersom krisen har slagit särskilt hårt mot kvinnliga arbetstagare.⁶

Europaparlamentet har vid upprepade tillfällen efterlyst fler åtgärder på EU-nivå för att förbättra tillämpningen av bestämmelserna om lika lön. Även rådet har uppmanat såväl medlemsstaterna som kommissionen att vidta åtgärder. I juni 2019 uppmanade rådet kommissionen att föreslå konkreta åtgärder för att förbättra insynen i lönesättningen.⁷

Bland de 20 principerna i den europeiska pelaren för sociala rättigheter ingår jämställdhet mellan könen och rätten till lika lön⁸. I EU:s handlingsplan 2017–2019 ”Åtgärda löneklyftan mellan kvinnor och män”⁹ utvärderade kommissionen behovet av ytterligare lagstiftningsåtgärder för att förbättra efterlevnaden av principen om lika lön och lika

¹ Europaparlamentets och rådets direktiv 2006/54/EG av den 5 juli 2006 om genomförandet av principen om lika möjligheter och likabehandling av kvinnor och män i arbetslivet (EUT L 204, 26.7.2006, s. 23). Genom detta direktiv konsoliderades de befintliga direktiven om jämställdhet mellan könen i arbetslivet, med hänsyn till Europeiska unionens domstols rättspraxis, dvs direktiv 75/117/EEG om principen om lika lön, direktiv 86/378/EEG (ändrat genom direktiv 96/97/EG) om likabehandling i företags- eller yrkesbaserade system för social trygghet, direktiv 76/207/EEG (ändrat genom direktiv 2002/73/EG) om likabehandling av kvinnor och män samt direktiv 97/80/EG (ändrat genom direktiv 98/52/EG) om bevisbörda vid mål om könsdiskriminering.

² Kommissionens rekommendation 2014/124/EU av den 7 mars 2014 om stärkande av principen om lika lön för kvinnor och män genom bättre insyn (EUT L 69, 8.3.2014, s. 112).

³ Se kommissionens utvärdering- och tillämpningsrapporter [SWD\(2020\)50](#) och [COM\(2013\) 861 final](#).

⁴ Löneskillnaden mellan könen beräknas som skillnaden mellan genomsnittlig bruttotimlön för manliga respektive kvinnliga avlönade anställda uttryckt som andel av de manliga avlönade anställdas bruttotimlön, Eurostat, [sdg_05_20](#).

⁵ <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200207-1>

⁶ <https://www.eurofound.europa.eu/publications/policy-brief/2020/women-and-labour-market-equality-has-covid-19-rolled-back-recent-gains>

⁷ Slutsatser från rådet (sysselsättning, socialpolitik, hälso- och sjukvård samt konsumentfrågor) i juni 2019, dok. 10349/19.

⁸ Den europeiska pelaren för sociala rättigheter ska ge medborgarna nya och mer verkningsfulla rättigheter, utifrån 20 huvudprinciper. Jfr: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

⁹ COM(2017) 678 final, se även den därmed sammanhängande [tillämpningsrapporten \(COM\(2020\) 101 final\)](#).

möjligheter genom bättre insyn i lönesättningen. I kommissionsordförande Ursula von der Leyens politiska riktlinjer¹⁰ uttalade hon att kommissionen hade för avsikt att införa bindande åtgärder avseende rätten till insyn i lönesättningen. Detta åtagande bekräftades sedan i jämställdhetsstrategin 2020–2025.¹¹

Det här initiativet läggs fram i enlighet med kommissionens efterhandsutvärdering¹² av relevanta rättsliga bestämmelser (nedan kallad *2020 års utvärdering*) och flera andra rapporter i frågan¹³. Efter utvärderingarna drogs slutsatsen att rätten till lika lön varken tillämpas på ett lämpligt sätt eller efterlevs i praktiken, och att det i många medlemsstater saknas insyn i lönesättningen.

Förslagets målsättning

Syftet med förslaget är att komma till rätta med kvarstående brister i efterlevnaden av den grundläggande rätten till lika lön och säkerställa att denna rätt respekteras inom hela EU. För att uppnå detta krävs normer för insyn i lönesättningen som ger arbetstagare egenmakt att åberopa sin rätt till lika lön.

Enligt föreslagna direktivet uppnås målsättningarna genom att

- det skapas insyn i lönesättningen inom företag,
- det blir lättare att tillämpa sådana centrala begrepp för likalöneprincipen som ”lön” och ”arbete av lika värde”, och
- efterlevnadsmekanismerna stärks.

Insyn i lönesättningen ger arbetstagarna möjlighet att upptäcka och bevisa eventuell könsdiskriminering. Förslaget uppmärksammar även könsrelaterad särbehandling i lönesättnings- och arbetsutvärderingssystem som bedömer kvinnors och mäns insatser olika och inte på ett könsneutralt sätt, eller som undervärderar viss traditionellt kvinnlig yrkeskunskap. Eftersom sådan särbehandling ofta är omedveten kan insyn i lönesättningen bidra till att öka arbetsgivarnas medvetenhet om frågan och hjälpa dem att kartlägga könsdiskriminerande, men ofta oavsiktliga, löneskillnader som inte kan förklaras med hjälp av giltiga särskiljande faktorer. Insyn i lönesättningen är därför ett viktigt verktyg för att skingra tvivel på hur likalöneprincipen tillämpas och lättare undanröja könsrelaterad särbehandling i lönepolitiken. Insyn kan även förändra attityderna till kvinnolöner genom att öka medvetenheten och skapa debatt om varför det förekommer strukturella skillnader mellan kvinnors och mäns löner. Förutom att säkerställa det grundläggande kravet att likalöneprincipen efterlevs, kan direktivet även utlösa en översyn av företagets allmänna jämställdhetspolicy och främja ett närmare samarbete mellan arbetsgivare och arbetstagarföreträdare.

¹⁰ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

¹¹ COM(2020)152 final.

¹² SWD(2020)50.

¹³ Tillämpningsrapport om direktiv 2006/54/EG, SWD(2013) 512 final [ej översatt till svenska]. Konsekvensbedömning som åtföljer rekommendationen om insyn i lönesättningen, SWD(2014) 59 final [ej översatt till svenska]. Rapport om tillämpningen av kommissionens rekommendation om stärkande av principen om lika lön för kvinnor och män genom bättre insyn (COM(2017) 671 final).

- **Förenlighet med befintliga bestämmelser inom området**

Förslaget bygger på det omarbetade direktivet och rekommendationen från år 2014 men innehåller även nya och mer ingående bestämmelser som ska säkerställa efterlevnaden av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete.

Den europeiska pelaren för sociala rättigheter och dess 20 principer är EU:s riktmärke på väg mot ett rättvisare Europa och i insatserna för bättre levnads- och arbetsvillkor för alla. Den 3 mars 2021 lade kommissionen fram en ambitiös handlingsplan för att säkerställa genomförandet inom hela EU.

Det föreslagna direktivet ingår i ett större åtgärds- och förslagspaket med inriktning på de bakomliggande orsakerna till löneskillnader mellan könen och ekonomisk egenmakt för kvinnor. Lönediskriminering och särbehandling i lönestrukturerna är bara en av de bakomliggande orsakerna till lönegapet på 14 % mellan könen, vid sidan av andra faktorer som horisontell och vertikal arbetsmarknadssegregering, hel- respektive deltidsarbete samt fördelningen av oavlönat omsorgsarbete. Även när dessa orsaker och faktorer borträknas kvarstår så kallade ”oförklarliga” löneskillnader, som står för två tredjedelar av lönegapet i EU:s medlemsstaterna. Det är på dessa skillnader som det här direktivet inriktas. Det bör också framhållas att anställningshistoriken och lönegapet mellan könen, tillsammans med pensionssystemets utformning, också leder till ett gap mellan kvinnors och mäns pensionsersättningar.

Det här förslaget ingår i ett mångfasetterat åtgärds paket som bland annat omfattar direktivet om balans mellan arbete och privatliv¹⁴, olika sektorsinitiativ för att bekämpa stereotyper och säkerställa bättre jämställdhet samt ett förslag till direktiv om en jämnare könsfördelning bland icke verkställande styrelseledamöter i börsnoterade företag.¹⁵

Direktivet är fullt förenligt med EU:s åtaganden avseende FN:s agenda 2030 och bidrar till genomförandet av FN:s mål för hållbar utveckling, i synnerhet mål 5 som avser jämställdhet och egenmakt till alla kvinnor och flickor.¹⁶

- **Förenlighet med unionens politik inom andra områden**

Detta förslag ligger i linje med det förslag som ska öka företagens rapportering av relevanta icke ekonomiska uppgifter.¹⁷ Det är förenligt med och stöds av EU:s förslag om minimilön¹⁸ och det kommande förslaget om hållbar företagsstyrning¹⁹.

¹⁴ Europaparlamentets och rådets direktiv (EU) 2019/1158 av den 20 juni 2019 om balans mellan arbete och privatliv för föräldrar och anhörigvårdare och om upphävande av rådets direktiv 2010/18/EU (EUT L 188, 12.7.2019, s. 79).

¹⁵ <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52012PC0614>

¹⁶ https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en

¹⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-reporting-directive>

¹⁸ COM(2020) 682 final.

¹⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>

2. RÄTTSLIG GRUND, SUBSIDIARITETS- OCH PROPORTIONALITETSPRINCIPERNA

• Rättslig grund

Förslaget till direktiv bygger på artikel 157.3 i fördraget om Europeiska unionens funktionssätt (EUF-fördraget), som föreskriver att EU ska vidta ”åtgärder för att säkerställa tillämpningen av principen om lika möjligheter och lika behandling av kvinnor och män i frågor som rör anställning och yrke, inklusive principen om lika lön för lika eller likvärdigt arbete”.

Artikel 157.3 i EUF-fördraget är den rättsliga grunden för det omarbetade direktivet och för rekommendationen från år 2014. Den artikeln ligger därför till grund även för det här förslagens bindande åtgärder avseende insyn i lönesättningen, till stöd för tillämpningen och efterlevnaden av principen om lika lön som omfattas av artikel 157 i EUF-fördraget och det omarbetade direktivet.

• Subsidiaritetsprincipen

EU:s princip om lika lön stadfästes på EU-nivå redan i Romfördraget från år 1957 (artikel 119 i EEG-fördraget, sedermera artikel 141 i EG-fördraget, som numera blivit artikel 157 i EUF-fördraget). Detta visar tydligt principens ställning som ett grundläggande EU-värde. Från början hade principen huvudsakligen en ekonomisk funktion, eftersom målet var att undvika snedvridning av konkurrensen. År 1976 ansåg dock Europeiska unionens domstol att artikel 119 i EEG-fördraget även hade en social målsättning med horisontell direkt effekt.²⁰ Senare meddelade domstolen att ”det ekonomiska syfte som eftersträvas med artikel 119 i fördraget, som består i att undanröja konkurrensnedvridningar mellan företag som är etablerade i olika medlemsstater, är av sekundär karaktär i förhållande till det sociala mål som avses med samma bestämmelse, vilket är ett uttryck för en grundläggande rättighet som varje människa har”²¹.

Men 2020 års utvärdering visade att jämförbara ansträngningar inom EU för att främja lika lön troligen inte kommer att bli verklighet utan att ett förslag läggs på EU-nivå. Det behövs en samordnad hållning för att inte äventyra möjligheterna att på nationell nivå åstadkomma lika lön för kvinnor och män, på det sätt som krävs enligt artikel 157.1 i EUF-fördraget.

Nationella åtgärder för insyn i lönesättningen är fragmentariska och sällsynta, och detta ökar risken för att skillnaderna i social standard ska snedvrída konkurrensen. Det finns en risk för att företagen tvingas konkurrera på ojämförbara villkor, vilket skulle hindra den inre marknaden från att fungera väl. Åtgärder på EU-nivå behövs alltså för att säkerställa en likvärdig skyddsnivå för arbetstagare inom hela EU och lika villkor för aktörerna på den inre marknaden.

Det föreslagna direktivet bygger på miniminormer för harmonisering av medlemsstaternas system och ger dem frihet att ställa strängare krav om de vill. Enligt förslaget ges medlemsstaterna uttryckligen möjlighet att låta arbetsmarknadens parter genomföra direktivet,

²⁰ Mål 43/75, Gabrielle Defrenne mot Société anonyme belge de navigation aérienne Sabena (Defrenne II) och mål 43/75, ECLI:EU:C:1976:56, punkterna . 8-10.

²¹ Mål 50/96, Deutsche Telekom AG mot Lilli Schröder, ECLI:EU:C:2000:72, s. 57.

förutsatt att man alltid kan säkerställa att det får önskad verkan. De dubbla möjligheterna att genomföra de olika materiella rättigheter och skyldigheter som följer av direktivet genom kollektivavtal tar hänsyn till medlemsstaternas olika typer av dialog mellan arbetsmarknadens parter, kollektivavtalssystem och handlingsfriheten för arbetsmarknadens parter.

- **Proportionalitetsprincipen**

I artikel 5.4 i fördraget om Europeiska unionen fastställs att ”enligt proportionalitetsprincipen ska unionens åtgärder till innehåll och form inte gå utöver vad som är nödvändigt för att nå målen i fördragen”.

Rekommendationen från år 2014 var inte tillräcklig för att nå målet med en mer effektiv tillämpning av likalöneprincipen genom insyn i lönesättningen. Detta beror på att rekommendationen inte var bindande och därför bara i begränsad omfattning tillämpades av medlemsstaterna.²² Det omarbetade direktivet bör därför kompletteras och underbyggas med det här direktivet. Att anta bindande rättsliga åtgärder är ett proportionerligt svar på det uppenbara behovet av praktiska åtgärder för att skydda principen om lika lön, och går inte utöver vad som är tillräckligt för att uppnå detta mål.

Proportionalitetsprincipen respekteras fullt ut eftersom åtgärderna för insyn i lönesättningen och efterlevnadssystemen utformats med tanke på målet, att stärka tillämpningen av principen om lika lön för kvinnor och män. Å ena sidan säkerställer förslaget arbetstagarnas rätt att få information som ger dem möjlighet att upptäcka könsdiskriminerande lönesättning och åberopa sin rätt till lika lön. Å andra sidan tar förslaget hänsyn till möjliga kostnader och administrativa bördor för arbetsgivarna, i synnerhet i mikroföretag och i små och medelstora företag.

Såsom anges i den bifogade konsekvensbedömningen beräknas kostnaderna bli måttliga.²³ De är befogade, med tanke på de sammantagna långsiktiga fördelarna. Den huvudsakliga fördelen är ett fullgott skydd av grundläggande EU-värderingar. Därtill bidrar förslaget till EU:s bredare sociala ambitioner, som beskrivs i den europeiska pelaren för sociala rättigheter. Vidare kan ytterligare fördelar följa tack vare ökad arbetstrygghet, minskad personalomsättning och mer produktiva arbetstagare och företag. Förslaget väntas därför ha positiva följder för företagets lönsamhet och den inre marknadens funktion.

Enligt förslaget får medlemsstaterna behålla eller införa mer gynnsamma normer för arbetstagarna genom ett mer proaktivt arbete med löneinformation och rapportering. Förslaget tar även hänsyn till de olika arbetsmarknadsmodeller som förekommer inom EU och ger medlemsstaterna möjlighet att överlåta åt arbetsmarknadens parter att genomföra direktivet.

²² SWD(2020)50.

²³ Konsekvensbedömningen beräknade kostnaderna för enskildas rätt att begära information till 20 euro per förfrågan (varför den sammanlagda kostnaden per företag beror på hur många förfrågningar som görs), medan den övergripande kostnaden för arbetsgivarnas rapportering om lönesättningen skulle uppgå till minst 379–508 euro och högst 721–890 euro per arbetsgivare, beroende på företagets storlek. Beroende på faktiska löneskillnader beräknas kostnaderna för gemensam lönebedömning att uppgå till minst 1 180–1 724 euro och högst 1 911–2 266 euro per arbetsgivare. Se SWD(2021) 41, s. 74.

Eftersom målet, att förbättra insynen i lönesättningen, inte i tillräcklig utsträckning kan uppnås av medlemsstaterna utan, på grund av behovet av att införa gemensamma minimikrav, kan uppnås bättre på unionsnivå, kan unionen vidta åtgärder i enlighet med subsidiaritets- och proportionalitetsprinciperna (artikel 5.3 respektive artikel 5.4 i EUF-fördraget).

- **Val av instrument**

Det lämpligaste instrumentet bedöms vara ett direktiv som fastställer en rättslig ram för att förbättra tillämpningen av likalöneprincipen med hjälp av insyn i lönesättningen och skärpta efterlevnadsmekanismer. Därmed går det att skärpa befintliga bestämmelser och samtidigt ge medlemsstaterna handlingsutrymme att avgöra hur de nya rättigheterna och skyldigheterna ska införlivas med nationell rätt, med hänsyn till den egna situationen. Denna hållning ligger i linje med den som intagits i EU-rätten när det gäller till exempel sysselsättning och diskriminering.²⁴

Det beslutades att det omarbetade direktivet inte skulle ändras eller ersättas, eftersom det har den bredare målsättningen att motverka könsdiskriminering i arbetslivet. Ett eget kapitel om insyn i lönesättningen och därmed sammanhängande efterlevnadsbestämmelser skulle inte passa in i det direktivets befintliga struktur och vara oproportionerligt i förhållande till de bestämmelser i det omarbetade direktivet som reglerar andra aspekter på likabehandling av kvinnor och män i arbetslivet.

3. RESULTAT AV EFTERHANDSUTVÄRDERINGAR, SAMRÅD MED BERÖRDA PARTER OCH KONSEKVENSBEDÖMNINGAR

- **Efterhandsutvärderingar/kontroller av ändamålsenligheten med befintlig lagstiftning**

Utvärderingen år 2020 av den rättsliga ramen om lika lön, särskilt av de berörda delarna av det omarbetade direktivet och rekommendationen från 2014, visade att alla aktörer ansåg att det omarbetade direktivet är relevant och att efterlevnaden i medlemsstaterna och olika branscher är medelhög till hög. Men en verkningsfull tillämpning av likalöneprincipen och efterlevnaden av den fortsätter i praktiken att vara en utmaning. Det skulle kunna vara mer effektivt om de rättsliga begreppen ”lön” och ”arbete av lika värde” förtydligas med utgångspunkt i Europeiska unionens domstols rättspraxis. Dessa begrepp definieras inte på ett enhetligt sätt i all nationell lagstiftning och oklarheter avseende deras tolkning och tillämpning kvarstår. Tillgången på klara kriterier inom hela EU skulle bidra till en verkningsfull tillämpning av likalöneprincipen.

Vad gäller verkan, gav 2020 års utvärdering inga belägg för att tillämpningen av det omarbetade direktivet och rekommendationen från år 2014 orsakat någon väsentlig administrativ börda. De åtgärder för insyn i lönesättningen som föreslogs i rekommendationen från år 2014 medförde bara begränsade kostnader för arbetsgivarna. Immateriella kostnader

²⁴ Till exempel Europeiska parlamentets och rådets direktiv 2014/67/EU av den 15 maj 2014 om tillämpning av direktiv 96/71/EG om utstationering av arbetstagare i samband med tillhandahållande av tjänster och om ändring av förordning (EU) nr 1024/2012 om administrativt samarbete genom informationssystemet för den inre marknaden (IMI-förordningen) (EUT L 159, 28.5.2014, s. 1) och Europaparlamentets och rådets direktiv 2014/54/EU av den 16 april 2014 om åtgärder som underlättar utövandet av arbetstagares rättigheter i samband med fri rörlighet för arbetstagare (EUT L 128, 30.4.2014, s. 8).

kan uppkomma på grund av missnöje (och därmed lägre produktivitet) bland arbetstagare som får kännedom om stora löneskillnader mellan kvinnor och män, men förslaget kan också påverka arbetstillfredsställelsen och arbetstagarnas engagemang i positiv riktning, och därmed öka arbetsgivarnas attraktivitet. Bristen på insyn i lönesättningen hindrade enskilda individer från att upptäcka och påtala könsdiskriminerande lönesättning. Arbetstagare som lämnade in klagomål om lönediskriminering stötte dessutom på flera hinder för tillgången till rättslig prövning och riskerade att utsättas för stigmatisering och repressalier från arbetsgivarens sida.

Utvärderingen 2020 bekräftade att det omarbetade direktivet ger ett tydligt mervärde på EU-nivå och har lett till åtgärder, som annars inte skulle ha vidtagits, för att främja likalöneprincipen i medlemsstaterna. Men mervärdet på EU-nivå kringkars av otillräcklig och inkonsekvent tillämpning av direktivet och förvirring (i synnerhet i domstolarna men även bland arbetsgivare och arbetstagare) i fråga om rättsliga begrepp av central betydelse för tillämpningen av åtgärderna för lika lön.

- **Samråd med berörda parter**

- (a) Rådgivande kommittén för lika möjligheter för kvinnor och män²⁵

I ett yttrande från december 2017²⁶ framhöll rådgivande kommittén att bättre insyn i lönesättningen är ett första steg på vägen för att säkerställa tillämpningen av likalöneprincipen. Kommittén uppmärksammade bristande insyn på tre nivåer.

- För det första offentliggör företagen sällan uppgifter om lönegrader, och kriterierna för lönesättning är fortsatt oklara.
- För det andra saknas tydliga och rättsligt bindande krav på insyn i lönesättningen.
- För det tredje brister det i tillsynen över de nationella bestämmelsernas tillämpning.

Kommittén uppmanade till åtgärder som ska förbättra insynen i lönesättningen genom fastställande av en enskild rätt att begära och få information om den egna lönenivån och om sammanställda lönenivåer, för att inte skapa motsättningar på arbetsplatsen. Denna rättighet kan även vidgas till att omfatta lokala fackföreningsrepresentanter eller andra arbetstagarföreträdare.

- (b) Offentligt samråd och riktade enkäter

Ett offentligt samråd²⁷ hölls mellan den 11 januari och den 5 april 2019 för att samla information, åsikter och erfarenheter av problem med lönegap och brister i nationella

²⁵ Den rådgivande kommittén inrättades i enlighet med kommissionens beslut 2008/590/EG om inrättande av en rådgivande kommitté för lika möjligheter för kvinnor och män. Kommittén hjälper kommissionen att utarbeta och genomföra EU-åtgärder som ska främja lika möjligheter för kvinnor och män. Den verkar även för fortlöpande utbyte av relevanta erfarenheter, policy och praxis mellan medlemsstaterna och de olika berörda parterna.

²⁶ https://ec.europa.eu/info/sites/info/files/adopted_opinion_gpg.pdf

²⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1839-Evaluation-of-the-provisions-in-the-Directive-2006-54-EC-implementing-the-Treaty-principle-on-equal-pay-/public-consultation>

bestämmelser och EU-bestämmelser om insyn i lönesättningen. Man sökte även belägg för i vilken mån rekommendationen från 2014 bidragit till att stärka tillämpningen av principen om lika lön enligt artikel 157 i EUF-fördraget och det omarbetade direktivet. Slutligen ställdes framåtblickande frågor om relevanta aspekter på förslaget om bättre insyn, däribland behovet av ytterligare åtgärder på EU-nivå mot könsdiskriminerande lönesättning.²⁸

Vid de därpå följande offentliga samråden (från den 5 mars till den 28 maj 2020) lämnade nationella myndigheter, fackföreningar, arbetstagarorganisationer, näringslivsorganisationer, icke-statliga organ och enskilda individer synpunkter på könsdiskriminerande lönesättning, insyn i lönesättningen och utmaningar med efterlevnaden av rätten till lika lön för samma eller likvärdigt arbete.²⁹

Slutligen gjorde kommissionen tre enkäter som riktades till medlemsstaterna, arbetsmarknadens parter respektive arbetsgivarna.³⁰

• **Konsekvensbedömning**

I den konsekvensbedömning³¹ som åtföljer detta förslag

- beskrivs de problem som uppkommer vid tillämpningen av det gällande regelverket och dess efterlevnad,
- beskrivs olika politiska alternativ för att komma till rätta med dessa problem, och
- bedöms de politiska alternativens sociala och ekonomiska konsekvenser.

De politiska åtgärdsalternativ som beskrivs avser att ge enskilda arbetstagare insyn, skapa öppenhet på arbetsgivarnivå och underlätta tillämpningen och efterlevnaden av det befintliga rättsliga regelverket. Alternativerna är olika och spänner över allt från maximal intervention (avseende vilken personal och vilka företag som omfattas) till minimala ingrepp (som väger arbetstagarnas grundläggande rätt till lika lön mot de planerade åtgärdernas möjliga administrativa bördor och merkostnader för arbetsgivarna).

Enligt konsekvensbedömningen är den åtgärds kombination som föreslås här den mest proportionerliga och logiska, med tanke på förslagets allmänna och särskilda mål.

De specifika nationella konsekvenserna styrs av olika omständigheter, till exempel i vilken mån lagstiftningen måste anpassas och den övergripande socioekonomiska situationen. Allmänna fördelar kan väntas i form av fördjupad medvetenhet bland arbetsgivarna, egenmakt för arbetstagarna tack vare bättre efterlevnad av deras rätt till lika lön för samma eller likvärdigt arbete, minskad särbehandling i lönehänseende på grund av kön, hantering av systematisk undervärdering av kvinnors arbete samt i förlängningen en minskning av löneskillnader mellan könen som kan bero på lönediskriminering. Effekter på makroekonomisk nivå kan också förväntas, men är svåra att närmare beräkna eftersom det saknas uppgifter om lönediskrimineringens omfattning (och därmed om dess påverkan på löneskillnaderna mellan könen). Mer jämlik lönesättning kan öka de sammanlagda

²⁸ En sammanfattning av svaren finns i bilaga 2 till 2020 års utvärderingsrapport.

²⁹ En sammanfattning av svaren finns i bilaga 2 till den konsekvensbedömning som åtföljer detta förslag.

³⁰ En sammanfattning av svaren finns i bilaga 2 till den konsekvensbedömning som åtföljer detta förslag.

³¹ SWD(2021) 41.

bruttoinkomsterna på EU-nivå och minska ojämlikheter avseende marknadslönen i alla medlemsstater. Vidare väntas fattigdomsriskerna minska, främst för ensamstående föräldrar (som i 85 % av fallen är kvinnor). I allmänhet kan förslaget leda till ökade skatteintäkter från direkt beskattning och sociala avgifter och en ökning av den sammantagna efterfrågan, med tanke på ökningen av bruttoinkomsterna.

Om särbehandling på grund av kön i arbetsgivarnas lönesättning försvinner, får det positiva effekter på arbetstillfredsställelsen och arbetstagarnas engagemang, två mycket viktiga faktorer efter krisen. Detta kan i sin tur gynna arbetsgivarna genom minskad personalomsättning och bättre rykte vilket kan höja vinsterna. Skärpta efterlevnadsåtgärder kommer att förbättra tillgången till rättslig prövning och efterlevnaden av rättigheter som följer av EU-lagstiftningen. Tydligare bestämmelser kommer att underlätta förståelsen, medvetenheten om den rättsliga ramen och en konsekvent tillämpning.

Utkastet till konsekvensbedömning tillstyrktes av nämnden för lagstiftningskontroll den 27 januari 2021. Nämndens yttrande, den slutliga konsekvensbedömningen och sammanfattningen av den offentligt görda tillsammans med detta förslag.

- **Lagstiftningens ändamålsenlighet och förenkling**

Kommissionen har sett över hur den administrativa bördan kan förenklas och minskas, i synnerhet för småföretag. Åtgärderna i detta förslag, som bygger på nationell praxis i EU och på annat håll, har utformats för att stärka rätten till lika lön och samtidigt begränsa eventuella merkostnader och administrativa bördor, även med hänsyn till den svåra ekonomiska situationen i EU på grund av covid-19-pandemin. Förslaget följer därmed proportionalitetsprincipen. I synnerhet med tanke på de potentiella ansträngningar som krävs för att ta fram och rapportera om lönesystemet, tillämpas rapporteringsplikten bara på arbetsgivare med minst 250 anställda. Den gemensamma lönebedömningen kommer att tillämpas bara på arbetsgivare vars årsrapporter ger stark anledning att tro att det kan förekomma problem med likabehandling av könen i lönehänseende. Analysen visar att de åtgärder som föreslås i direktivet medför måttliga kostnader och inga billigare sätt att nå samma mål med likvärdig verkan kunde beskrivas.

- **Grundläggande rättigheter**

Målen för detta förslag är förenliga med Europeiska unionens stadga om de grundläggande rättigheterna, särskilt artikel 23 som fastställer att ”Jämställdhet mellan kvinnor och män ska säkerställas på alla områden, inbegripet i fråga om anställning, arbete och lön” och artikel 31 som fastställer att ”Varje arbetstagare har rätt till hälsosamma, säkra och värdiga arbetsförhållanden”.

I artikel 27 i stadgan fastställs vidare att ”Arbetstagarna eller deras representanter ska på lämpliga nivåer garanteras rätt till information och samråd vid lämplig tidpunkt, i de fall och på de villkor som föreskrivs i unionsrätten samt i nationell lagstiftning och praxis”.

4. BUDGETKONSEKVENSER

Förslaget kräver inga ytterligare anslag från EU:s budget.

5. ÖVRIGA INSLAG

• Övervakning, utvärdering och rapportering

Medlemsstaterna ska införliva direktivet inom två år efter antagandet och underrätta kommissionen om de nationella införlivandeåtgärderna. I enlighet med artikel 30 i direktivet får de överlåta åt arbetsmarknadens parter att införliva direktivet genom kollektivavtal.

För att bedöma hur effektivt detta förslag uppnår sina allmänna och särskilda mål ska medlemsstaterna efter åtta år rapportera om hur det tillämpats. Kommissionen kommer att utarbeta en rapport på denna grund.

• Ingående redogörelse för de specifika bestämmelserna i förslaget

Kapitel I - Allmänna bestämmelser

Artikel 1 – Syfte och innehåll

Genom denna bestämmelse preciseras direktivets syfte och innehåll. Direktivet syftar till att fastställa minimikrav som ska stärka tillämpningen av principen om lika lön för kvinnor och män och förbudet mot könsdiskriminering genom insyn i lönesättningen och skärpta efterlevnadsmekanismer.

Artikel 2 – Tillämpningsområde

Genom denna bestämmelse fastställs direktivets tillämplighet på personer, dvs vem som kan åberopa de rättigheter som direktivet ger.

Artikel 3 – Definitioner

Genom denna bestämmelse fastställs termer och begrepp och förtydligar redan från början hur de bör tolkas inom ramen för detta direktiv.

Termerna och begreppen omfattar berörda befintliga definitioner i det omarbetade direktivet (lön, direkt diskriminering, indirekt diskriminering) och dessutom införs nya begrepp med särskild koppling till rätten till lika lön, såsom lönenivå, löneskillnad, medianlöneskillnad, lönekvartil och arbetstagarkategori.

Begreppet ”lön” omfattar den gängse grund- eller minimilönen samt alla övriga förmåner i form av kontanter eller naturaförmåner som arbetstagarna får, direkt eller indirekt (de sistnämnda nedan kallade *lönetillägg eller varierande ersättningar*), av sin arbetsgivare på grund av anställningen. Detta omfattar även alla ytterligare förmåner såsom bonusar, övertidsersättning, reseersättning (inklusive tjänstebil som tillhandahålls av arbetsgivaren samt resekort), bostadsbidrag, utbildningsbidrag, avgångsvederlag, lagstadgad sjuklön, lagstadgad kompensation och tjänstepension. Det bör omfatta alla typer av ersättning som lämnas enligt lag eller kollektivavtal.

Könsdiskriminering i lönesättningen kan bero på intersektionalitet mellan olika diskrimineringsgrunder, diskriminering på grund av kön å ena sidan, och å andra sidan till exempel på grund av ras eller etniskt ursprung, religion eller övertygelse, funktionshinder, ålder eller sexuell läggning (som omfattas av diskrimineringsförbudet i direktiv 2000/43/EG eller direktiv 2000/78/EG). Den nya definitionen syftar till att förtydliga att man vid bedömningen av könsdiskriminerande lönesättning bör ta hänsyn till sådana kombinationer (intersektionalitet), och därigenom undanröja eventuella tvivel som kan förekomma enligt det

hittills gällande rättsliga ramverket. Därmed kan man säkerställa att domstolar och behöriga myndigheter tar vederbörlig hänsyn till alla typer av missgynnande som kan bero på intersektionalitet mellan olika diskrimineringsgrunder såväl i materiellt som formellt hänseende, exempelvis vid prövning av om diskriminering förekommit, beslut om lämplig jämförbar person, bedömning av proportionalitet och i förekommande fall fastställande av kompensation eller sanktioner. Ett exempel på intersektionalitet är att en migrerande kvinna kan utsättas för en mångfasetterad diskriminering som på samma gång kan bero på exempelvis hennes könstillhörighet, och/eller ras, och/eller etniska ursprung, och/eller religion och/eller övertygelse.

Artikel 4 – Lika eller likvärdigt arbete

Respekten för principen om lika lön som stadfästs i fördraget kräver att arbetsgivarna tillämpar lönestrukturer som säkerställer att kvinnor och män får lika lön för samma eller likvärdigt arbete. För att arbetstagare och arbetsgivare ska kunna bedöma vad som är arbete av lika värde åläggs medlemsstaterna genom denna bestämmelse att fastställa verktyg och metoder som ska göra det möjligt att bedöma och jämföra arbetets värde med hjälp av objektiva kriterier som omfattar krav på utbildning, arbetslivserfarenhet och fortbildning, färdigheter, arbetsinsats och ansvarsområden, arbetsresultat och arbetets karaktär. Detta ligger till grund för bedömningen av huruvida arbetstagare kan anses vara i jämförbara situationer och utföra arbete av lika värde och kommer att hjälpa arbetsgivarna att bättre kategorisera och lönesätta befattningar med hjälp av objektiva och könsneutrala kriterier.

Tydliga kriterier på nationell nivå kommer att hjälpa arbetstagarna att upprätta en hållbar jämförelse och bedöma om de fått mindre förmånlig behandling än en jämförbar person som utför samma eller likvärdigt arbete.

Denna bestämmelse innehåller även två förtydliganden som gjorts i Europeiska unionens domstols rättspraxis. För det första har domstolen förklarat³² att man för att fastställa om arbetstagare är i jämförbara situationer inte nödvändigtvis måste begränsa jämförelsen till situationer där kvinnliga och manliga anställda har samma arbetsgivare. Arbetstagare kan finnas i en jämförbar situation även om de inte har samma arbetsgivare, om lönevillkoren kan tillskrivas en och samma källa som fastställer dessa villkor (t.ex. när lönevillkoren fastställs i lag eller kollektivavtal om löneförhållanden som ska tillämpas på flera företag, eller när anställningsvillkoren fastställts centralt för mer än en organisation eller mer än ett företag inom ett holdingbolag eller konglomerat). För det andra har domstolen meddelat att bedömningen inte ska begränsas enbart till arbetstagare anställda samtidigt som kändan.³³ Dessa förtydliganden kommer att förbättra tillämpningen av likalöneprincipen i praktiken.

Om det inte finns någon faktiskt jämförbar person, bör det vidare vara tillåtet att jämföra med en hypotetisk person eller använda andra bevismedel (statistik eller annan tillgänglig information) som kan underbygga misstanken om diskriminering. Jämförelse med en hypotetisk person kommer att öka arbetstagarnas möjligheter att påvisa att de inte fått samma behandling som en jämförbar person av annat kön.

I bestämmelsen erinras slutligen kravet i artikel 4.2 i det omarbetade direktivet, som föreskriver att när ett arbetsvärderings- eller arbetsindelningssystem används för att fastställa lön måste systemen använda samma könsneutrala kriterier för både kvinnor och män, så att

³² Mål C-320/00, Lawrence, ECLI:EU:C:2002:498.

³³ Mål 129/79 Macarthy, ECLI: ECLI:EU:C:1980:103.

man utesluter alla förutsättningar för könsdiskriminering. Detta innebär att de kriterier som används för att bedöma värdet av en arbetsuppgift eller en befattning måste beskrivas och definieras på ett sätt som kan tillämpas på både kvinnor och män på ett objektiva och opartiska sätt.

Kapitel II – Insyn i lönesättningen

Artikel 5 – Insyn i lönesättningen före anställning

Än så länge finns det inga miniminormer på EU-nivå om insyn i lönesättningen före anställning. Denna bestämmelse kräver att arbetsgivarna ska ange ingångslön eller löneintervall (som bygger på objektiva och könsneutrala kriterier) för presumtiva arbetstagare. Informationen kan lämnas i en platsannons eller på annat sätt före anställningsintervjun, så att den sökande inte behöver be om den (till exempel i kallelsen till intervju eller direkt från arbetsmarknadens parter).

Bestämmelsen förbjuder även arbetsgivarna att fråga presumtiva arbetstagare om lönehistorik från tidigare anställningar.

Syftet med bestämmelsen är att säkerställa att arbetstagarna har tillräcklig information för att kunna föra balanserade och rättvisa förhandlingar om sin lön när de ingår ett anställningsförhållande. Det skulle även säkerställa att befintlig lönediskriminering och särbehandling inte etableras, i synnerhet när arbetstagare byter arbetsgivare. Detta inskränker inte arbetsgivarnas, arbetstagarnas eller arbetsmarknadens parter rätt att förhandla om löner utanför de angivna intervallen. Insynsåtgärden skulle också göra det möjligt att komma åt intersektionell diskriminering i de fall där icke insynsvänlig lönesättning gör det möjligt att diskriminera på flera olika grunder.

Artikel 6 – Insyn i löne- och karriärutvecklingspolicy

För att könsneutral lönesättning och karriärutveckling ska kunna säkerställas krävs det enligt denna bestämmelse att arbetsgivarna ska förse arbetstagarna med en beskrivning av de könsneutrala kriterier som används för lönesättning och karriärutveckling. För att inte lägga orimliga bördor på mikroföretag samt på små och medelstora företag har arbetsgivaren i lämpliga fall visst handlingsutrymme i fråga om hur skyldigheten ska fullgöras, med hänsyn till företagets storlek och antalet anställda.

Artikel 7 – Rätt till information

Syftet med denna bestämmelse är att ge arbetstagarna tillgång till den information som behövs för att avgöra om deras lön är icke diskriminerande, jämfört med andra anställda i samma organisation som utför lika eller likvärdigt arbete - och att vid behov kunna åberopa sin rätt till lika lön.

Denna bestämmelse bygger på kommissionens tidigare rekommendation från 2014 om insyn i lönesättningen. Genom bestämmelsen ges arbetstagare rätt att begära uppgift från arbetsgivaren om sin egen lönenivå och om de genomsnittliga lönenivåerna, som visar könsfördelningen i lönesättningen för kategorier av anställda som utför samma eller likvärdigt arbete.

Arbetsgivaren är skyldig att varje år informera alla arbetstagare om deras rätt att få ut sådan information och tillhandahålla de begärda upplysningarna inom rimlig tid, samt på begäran i en form som arbetsgivare med funktionshinder kan ta del av.

För att bemöta eventuella repressalier eller påtryckningar från arbetsgivarens sida och arbetstagarnas rädsla för sådana, ger denna bestämmelse arbetstagarna möjlighet att begära informationen via sina företrädare eller ett jämställdhetsorgan.

För att bistå eventuella offer för könsdiskriminerande lönesättning förbjuder bestämmelsen sekretessklausuler, om löneuppgifterna begärs ut för att åberopa rätten till lika lön för kvinnor och män för lika eller likvärdigt arbete. Å andra sidan får arbetsgivare begära att de lämnade uppgifterna bara används för att åberopa rätten till lika lön.

Artikel 8 – Rapportering om löneskillnader mellan kvinnor och män

Enligt denna bestämmelse krävs det att arbetsgivare med minst 250 arbetstagare ska göra viss information allmänt tillgänglig och åtkomlig, däribland information om löneskillnader mellan kvinnor och män i organisationen, även med avseende på lönetillägg och varierande ersättningar, såsom bonusar, utöver den fasta grundlönen (se kommentaren till artikel 3 ovan).

De uppgifter som lämnats i enlighet med punkt 1 a–f i denna artikel bygger på information som är enkelt tillgänglig inom organisationen och ger en helhetsbild av könsskillnaderna i organisationens lönesättning. Uppgifter om könsfördelningen i varje lönekvartil ger till exempel en uppfattning om hur stor andel som är kvinnor i de bäst respektive sämst betalda befattningarna. Offentliggörandet av denna information möjliggör vissa jämförelser mellan arbetsgivare, vilket ger dem incitament att förebygga löneskillnader, stimulerar debatt om lika lön och manar till handling.

De uppgifter som avses i punkt 1 g i denna artikel, avseende löneskillnader mellan kvinnor och män fördelat per arbetstagarkategori som utför samma eller likvärdigt arbete, är arbetsgivarspecifik och mer känsliga än övergripande siffror på löneskillnader. Kategoriseringen av arbetstagare som utför likvärdigt arbete bygger på hur den specifika arbetsgivaren har sammanställt och viktat kriterier som är betydelsefulla i den berörda verksamheten. Löneskillnader i samma kategori kan alltså inte jämföras mellan olika arbetsgivare, och därför bör informationen heller inte offentliggöras. Arbetsgivarna bör förse alla arbetstagare och deras företrädare med informationen, och yrkesinspektion och jämställdhetsorgan bör på begäran få ta del av informationen. Information om löneskillnader mellan kvinnor och män i olika arbetstagarkategorier är avgörande för att stärka självregleringen bland arbetsgivarna och ge arbetstagare och deras företrädare möjlighet att kräva att likalöneprincipen efterlevs. Informationen kan också användas till att utlösa en sådan gemensam lönebedömning som avses i artikel 9.

Som ett alternativ till att kräva lönerapportering från arbetsgivarna får medlemsstaterna, i synnerhet för att lätta den eventuella administrativa bördan förknippad med sådan rapportering, anförtro befintliga organ uppgiften att sammanställa den begärda informationen utifrån administrativa uppgifter, exempelvis sådana som arbetsgivarna lämnat till skatte- eller socialförsäkringsmyndigheter, och ställa informationen till förfogande i arbetsgivarnas ställe. Bestämmelsen ålägger vidare det tillsynsorgan som utsetts i enlighet med artikel 26 att samla in den information som arbetsgivarna lämnat och säkerställa bred tillgång till den för att möjliggöra en jämförelse mellan enskilda arbetsgivare, branscher och regioner inom den berörda medlemsstaten.

Med utgångspunkt i den lämnade informationen har arbetstagare och deras företrädare, yrkesinspektion och jämställdhetsorgan rätt att begära att arbetsgivaren ytterligare ska förtydliga och komplettera sådan information, till exempel förklara eventuella skillnader i lön mellan könen. Arbetsgivaren är skyldig att besvara sådana förfrågningar inom rimlig tid

genom att lämna ett motiverat svar. Om löneskillnader mellan könen inte kan motiveras med hänvisning till objektiva och könsneutrala kriterier är arbetsgivaren skyldig att avhjälpa situationen i nära samverkan med arbetstagarföreträdare, yrkesinspektion och/eller jämställdhetsorgan.

Artikel 9 – Gemensam lönebedömning

Om lönerapporteringen enligt artikel 8 påvisar åtminstone fem procents skillnad i genomsnittslönen för kvinnor och män i företaget i någon arbetstagarkategori som utför samma eller likvärdigt arbete, utan att skillnaderna kan motiveras med hänvisning till objektiva och könsneutrala kriterier, ska den berörda arbetsgivaren vara skyldig att göra en lönebedömning. Arbetsgivaren måste kunna motivera eventuella löneskillnader i alla arbetstagar kategorier, även skillnader som är mindre än fem procent, med hjälp av objektiva och könsneutrala kriterier och avhjälpa situationen i enlighet med artikel 8.7.

Den gemensamma lönebedömningen bör göras av arbetsgivarna i samverkan med arbetstagarföreträdare. Om arbetstagarna inte har några formella företrädare i organisationen bör arbetsgivaren utse en eller flera arbetstagare för detta ändamål.

Kravet på en gemensam lönebedömning syftar till att utlösa obligatoriska åtgärder från arbetsgivarnas sida för att se över lönesättningspolicyn och komma till rätta med eventuell särbehandling på grund av kön i lönestrukturerna i strid med likalöneprincipen. Samverkan mellan arbetsgivarna och arbetstagarföreträdarna säkerställer ett välförankrat arbetssätt och gemensamma åtgärder.

Skillnader i genomsnittlig lönenivå mellan kvinnor och män i varje anställningskategori som utför samma eller likvärdigt arbete måste kunna motiveras objektivt, på ett sätt som gemensamt fastställts av arbetstagarföreträdarna och arbetsgivaren. Om skillnaderna inte kan motiveras med hänvisning till objektiva kriterier, är arbetsgivaren skyldig att vidta avhjälpan åtgärder. Om tidigare bedömningar gjorts måste arbetsgivaren även lämna en rapport om hur effektiva eventuella åtgärder med anledning av tidigare bedömningar varit. Åtgärderna ska vidtas i nära samverkan med arbetstagarföreträdare, yrkesinspektion och/eller jämställdhetsorgan och bör omfatta införandet av en könsneutral arbetsutvärdering och arbetsindelning för att säkerställa att man utesluter all direkt eller indirekt lönediskriminering på grund av kön.

Artikel 10 – Skydd av personuppgifter

Genom denna bestämmelse föreskrivs att eventuell behandling och/eller utlämning av personuppgifter med anledning av åtgärderna för insyn i lönesättningen enligt detta direktiv bör göras i enlighet med den allmänna dataskyddsförordningen (EU) 2016/679.³⁴

I bestämmelsen preciseras att personuppgifter som samlas in av arbetsgivarna i enlighet med artiklarna 7, 8 eller 9 inte får användas i andra syften än att genomföra principen om lika lön för lika eller likvärdigt arbete.

Ytterligare säkerhetsbestämmelser föreskrivs om yppande av information i enlighet med artiklarna 7, 8 och 9 direkt eller indirekt skulle ge kännedom om en identifierbar kollegas lön. Medlemsstaterna får besluta att tillgången till information i sådana fall ska begränsas till

³⁴ Europaparlamentets och rådets förordning (EU) 2016/679 av den 27 april 2016 om skydd för fysiska personer med avseende på behandling av personuppgifter och om det fria flödet av sådana uppgifter och om upphävande av direktiv 95/46/EG, EUT L 119, 4.5.2016, s. 1.

arbetstagarföreträdare eller jämställdhetsorgan. Deras uppgift är att ge råd till arbetstagaren avseende eventuell talan, utan att röja faktiska lönenivåer för enskilda arbetstagare som utför samma eller likvärdigt arbete. Eftersom viss information om lönenivåer kanske redan är offentlig, till exempel avseende tjänstemän i den offentliga sektorn, bör medlemsstaterna få tillämpa denna säkerhetsbestämmelse i enlighet med nationell praxis.

Artikel 11 – Dialog mellan arbetsmarknadens parter

Det är viktigt att engagera arbetsmarknadens parter för att främja jämställdhet mellan könen i arbetsförhållanden. De är bäst på att upptäcka åtgärdernas starka och svaga sidor nationellt, regionalt och lokalt så att könsdiskriminerande lönesättning kan förebyggas och motverkas. De har en nyckelroll till exempel när det gäller upprättande av könsneutrala metoder för arbetsutvärdering och arbetsindelning. Denna artikel föreskriver därför att medlemsstaterna, utan att inskränka handlingsfriheten för arbetsmarknadens parter och i enlighet med nationell lagstiftning och praxis, ska säkerställa att de rättigheter och skyldigheter som följer av detta direktiv diskuteras med arbetsmarknadens parter. Detta kan uppnås genom olika policyåtgärder som syftar till att utveckla en aktiv samverkan mellan arbetsmarknadens parter.

Kapitel III – Rättsmedel och efterlevnad

Artikel 12 – Tillvaratagande av rättigheter

Denna bestämmelse bygger på artikel 17 i det omarbetade direktivet och ålägger medlemsstaterna att säkerställa att det finns rättsliga förfaranden för att åberopa de rättigheter och skyldigheter som följer av detta direktiv. Tillgången till rättslig prövning stärks genom att det tydligare framgår att föregående utomrättsliga förfaranden kan bestå i förlikning eller förfaranden i ett jämställdhetsorgan. Tillgången till rättslig prövning får i vilket fall som helst inte inskränkas genom obligatoriska krav på mellanliggande administrativa förfaranden.

Artikel 13 – Förfaranden för eller till stöd för arbetstagare

Enligt denna bestämmelse krävs det att sammanslutningar, organisationer, jämställdhetsorgan och arbetstagarföreträdare eller andra rättsliga organ med befogat intresse av att säkerställa jämställdheten mellan könen får delta i alla rättsliga eller administrativa förfaranden avseende efterlevnaden av de skyldigheter som följer av förslaget. De ska ha rätt att, med arbetstagarens godkännande, agera vid sådana förfaranden för arbetstagarens räkning eller till stöd för denne. I flera medlemsstater har jämställdhetsorgan i dag ingen rätt att väcka talan vid domstol.

Bestämmelsen ger även jämställdhetsorgan och arbetstagarföreträdare rätt att föra mer än en arbetstagares talan, med deras godkännande. Syftet med detta är att frångå de processuella och kostnadsbetingade hinder som personer vilka utsatts för könsdiskriminerande lönesättning möter, när de vill åberopa rätten till lika lön och den rätt till insyn som föreskrivs i förslaget. Möjligheten att väcka grupp-talan begränsas till erkända organ, såsom jämställdhetsorgan och arbetstagarföreträdare.

Artikel 14 – Rätt till kompensation

Skärpta krav på kompensation kommer att ge incitament till den som utsatts för könsdiskriminerande lönesättning att söka rättslig prövning och hävda sin rätt till lika lön. Genom denna bestämmelse åläggs medlemsstaterna att säkerställa att alla arbetstagare som lidit skada på grund av en överträdelse av någon av de rättigheter eller skyldigheter som följer

av likalöneprincipen har rätt att begära och få full kompensation för den åsamkade skadan på ett sätt som är avskräckande och står i proportion till liden skada.

Denna bestämmelse bygger på artikel 18 i det omarbetade direktivet och kräver, i enlighet med domstolens rättspraxis, att den diskriminerade arbetstagaren ska återinsättas i samma situation som denne skulle ha haft om ingen diskriminering förekommit. Detta omfattar full retroaktiv återvinning av utebliven lön och därmed sammanhängande bonusar eller in-naturaförmåner, kompensation för förlorade möjligheter och ideell skada. Bestämmelsen föreskriver slutligen att rätten till kompensation eller gottgörelse inte får inskränkas av en på förhand fastställd övre gräns.

Artikel 15 – Övriga rättsmedel

För att skärpa efterlevnaden av likalöneprincipen säkerställer denna bestämmelse att domstolar eller behöriga myndigheter får utfärda förelägganden som fastställer överträdelse av någon av de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete, vilket ska stoppa fortsatta överträdelser. Vidare är det viktigt att domstolarna eller behöriga myndigheter kan ålägga svaranden att göra strukturella eller organisatoriska förändringar för att fullgöra sina skyldigheter när det gäller likalöneprincipen.

För att säkerställa att skyldigheterna efterlevs så fort som möjligt får domstolarna eller behöriga myndigheter förelägga en återkommande straffavgift.

Artikel 16 – Omvänd bevisbörda

Såsom redan fastställs i artikel 19 i det omarbetade direktivet kräver denna bestämmelse att det, i en situation som vid första anblicken ger sken av könsdiskriminering, ska åligga svaranden att bevisa att det inte förekommit någon överträdelse av likalöneprincipen. Därtill stärker direktivet arbetstagarens ställning vid rättsliga eller administrativa förfaranden som avser direkt eller indirekt diskriminering, i enlighet med gällande rättspraxis³⁵. Om arbetsgivaren åsidosatt någon av sina skyldigheter enligt direktivet om insyn i lönesättningen, bör nämligen omvänd bevisbörda tillämpas så att den istället åvilar svaranden, även om arbetstagaren inte ens kunnat styrka att det föreligger en situation som vid första anblicken ger sken av lönediskriminering.

De ökade möjligheterna till omvänd bevisbörda kommer inte bara att göra det lättare för arbetstagarna att åberopa sin rätt till lika lön, utan kommer även att ge arbetsgivarna ytterligare incitament att fullgöra sina skyldigheter i fråga om insyn enligt direktivet.

Artikel 17 – Tillgång till bevis

I denna artikel föreskrivs det att nationella domstolar eller behöriga myndigheter bör ha befogenhet att förelägga svaranden att yppa relevant bevisning i dennes besittning vid talan om könsdiskriminerande lönesättning. I synnerhet ska nationella domstolar ha behörighet att

³⁵ Mål C-109/88, Handels- og Kontorfunktionærernes Forbund I Danmark mot Dansk Arbejdsgiverforening, som företräder Danfoss, ECLI:EU:C:1989:383.

utfärda förelägganden om inhämtande av bevisning som omfattar konfidentiella uppgifter, om de anser detta vara relevant för talan, förutsatt att de har tillgång till effektiva åtgärder för att skydda informationen. Konfidentiella uppgifter kan vara juridisk rådgivning som företagsledningen fått, protokoll från aktieägarmöten, personuppgifter osv. som behövs för att föra talan eller gå i svaromål i mål om könsdiskriminerande lönesättning.

Artikel 18 – Preskriptionstid

Korta preskriptionstider och krångliga förfaranden identifierades som ett av hindren för att personer som utsatts för lönediskriminering ska kunna åberopa sin rätt till lika lön. Därför fastställs i direktivet gemensamma normer för preskriptionstiden för talan om könsdiskriminerande lönesättning.

Direktivet föreskriver att preskriptionstiden för att väcka talan enligt föreliggande förslag ska uppgå till minst tre år och inte börja löpa innan överträdelsen av likalöneprincipen eller överträdelser av andra rättigheter och skyldigheter som följer av detta direktiv har upphört och kändanden har fått vetskap om överträdelserna. Preskriptionstiden bör vidare uppskjutas eller avbrytas så snart kändanden väcker talan genom stämning eller genom att påtala ärendet hos arbetsgivare, arbetstagarföreträdare, yrkesinspektion eller jämställdhetsorgan.

Artikel 19 – Arvoden och rättegångskostnader

Rättegångskostnader utgör ett centralt hinder ur förfarandesynpunkt och ger den som utsatts för könsdiskriminerande lönesättning ett starkt negativt incitament att åberopa sin rätt till lika lön, vilket i sin tur ger ett otillräckligt skydd och en otillräcklig efterlevnad av rätten till lika lön. För att säkerställa en bättre tillgång till rättslig prövning och ge arbetstagare incitament att åberopa sina rättigheter säkerställer denna bestämmelse att en kändande vars talan om lönediskriminering bifallits har rätt att få ersättning från svaranden för sina utlägg för arvoden till jurister och experter samt rättegångskostnader. Samtidigt preciseras att svarande vilkas talan i mål om lönediskriminering bifallits inte ska ha någon motsvarande rätt, dvs. de ska inte ha rätt att få ersättning från kändanden för utlägg för arvoden till jurister och experter eller rättegångskostnader, förutom i fall där talan väckts i ond tro, varit uppenbart ogrundad eller om utebliven ersättning bedöms vara orimlig med tanke på de särskilda omständigheterna i målet (till exempel om ärendet gäller mikroföretag i ekonomiska svårigheter).

Artikel 20 – Sanktioner

Genom denna bestämmelse stärks befintliga miniminormer eller bestämmelser om sanktioner vid överträdelser av de rättigheter och skyldigheter som följer av principen om lika lön för kvinnor och män för samma eller likvärdigt arbete, genom att skärpa den avskräckande effekten för arbetsgivare som betar sig olagligt. Samtidigt har meningsfulla sanktioner en förebyggande effekt eftersom de stimulerar arbetsgivarna att redan från början efterkomma sina skyldigheter.

Sanktioner som fastställs i medlemsstaterna bör omfatta straffavgifter, vilkas omfattning måste fastställas med hänsyn till olika försvårande omständigheter, såsom överträdelsens allvar och varaktighet samt eventuellt uppsåt eller grov försumlighet från arbetsgivarens sida.

Enligt denna artikel krävs även att medlemsstaterna ska vidta särskilda sanktioner vid upprepade överträdelser av de rättigheter och skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete. Sanktionerna skulle till exempel kunna

omfatta återkallande av offentliga förmåner eller uteslutning under viss tid från ytterligare tilldelning av ekonomiska incitament eller från krediter.

Artikel 21 – Lika lön vid offentlig upphandling och koncession

I enlighet med direktiv 2014/23/EU³⁶, direktiv 2014/24/EU³⁷ och direktiv 2014/25/EU³⁸ bör medlemsstaterna vidta lämpliga åtgärder för att säkerställa att de ekonomiska aktörerna (och deras underleverantörer) vid offentlig upphandling eller koncession efterlever sina skyldigheter i fråga om lika lön för kvinnor och män. Detta innebär att de framför allt bör säkerställa att de ekonomiska aktörerna tillämpar en lönesättningspolicy som inte ger upphov till löneskillnader mellan manliga och kvinnliga arbetstagare som inte kan motiveras med könsneutrala kriterier för alla arbetstagar­kategorier som utför lika eller likvärdigt arbete.

Vid tillämpningen av dessa skyldigheter bör medlemsstaterna vidare överväga att, i tillämpliga fall, låta upphandlande myndigheter använda sanktioner och uppsägningsklausuler för att säkerställa efterlevnaden av likalöneprincipen vid offentlig upphandling eller koncession. Genom denna bestämmelse förtydligas det även att de befintliga frivilliga uteslutningskriterierna enligt direktiv 2014/23/EU, direktiv 2014/24/EU och direktiv 2014/25/EU får användas för att utesluta en ekonomisk aktör som bryter mot likalöneprincipen.

Skyldigheterna enligt denna bestämmelse faller inom ramen för tillämpliga socialrättsliga och arbetsrättsliga skyldigheter i enlighet med artiklarna 18.2 och 71.1 i direktiv 2014/24/EU om offentlig upphandling, artiklarna 36.2 och 88.1 i direktiv 2014/25/EU om upphandling av enheter som är verksamma på områdena vatten, energi, transporter och posttjänster och artiklarna 30.3 och 42.1 i direktiv 2014/23/EU om tilldelning av koncessioner. Avsikten med att förtydliga och uttryckligen hänvisa till ovanstående bestämmelser är att stödja och stärka tillämpningen med avseende på rätten till lika lön.

Artikel 22 – Skydd mot repressalier och mindre förmånlig behandling

Arbetstagare och deras företrädare bör inte behandlas mindre förmånligt efter att ha åberopat sin rätt till lika lön eller några andra rättigheter som föreskrivs i detta direktiv. Medlemsstaterna bör på nationell nivå vidta åtgärder för att skydda arbetstagare och arbetstagar­företrädare mot uppsägning eller annan ogynnsam behandling från arbetsgivarens

³⁶ Europaparlamentets och rådets direktiv 2014/23/EU av den 26 februari 2014 om tilldelning av koncessioner (EUT L 94, 28.3.2014, s. 1).

³⁷ Europaparlamentets och rådets direktiv 2014/24/EU av den 26 februari 2014 om offentlig upphandling och om upphävande av direktiv 2004/18/EG, EUT L 94, 28.3.2014, s. 65.

³⁸ Europaparlamentets och rådets direktiv 2014/25/EU av den 26 februari 2014 om upphandling av enheter som är verksamma på områdena vatten, energi, transporter och posttjänster och om upphävande av direktiv 2004/17/EG, EUT L 94, 28.3.2014, s. 243.

sida efter ett klagomål eller rättsliga förfaranden som syftat till att säkerställa efterlevnaden av någon av de rättigheter och skyldigheter som avser lika lön för samma eller likvärdigt arbete.

Artikel 23 – Förhållande till direktiv 2006/54/EG

Genom denna bestämmelse tydliggörs förhållandet till direktiv 2006/54/EG med avseende på efterlevnadsåtgärder. Sådana åtgärder i detta direktiv ska tillämpas på förfaranden som avser de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete i enlighet med artikel 4 i direktiv 2006/54/EG, istället för artiklarna 17, 18, 19, 24 och 25 i det direktivet.

KAPITEL IV – Övergripande bestämmelser

Artikel 24 – Skyddsnivå

Detta är en standardbestämmelse som tillåter medlemsstaterna att tillämpa en högre skyddsnivå än den som fastställs i direktivet. Däri förbjuds även medlemsstaterna att försämra skyddsnivån när det gäller lika lön för kvinnor och män för samma eller likvärdigt arbete.

Artikel 25 – Jämställdhetsorgan

Nationella jämställdhetsorgan har en viktig uppgift när det gäller efterlevnaden av diskrimineringsförbud och jämställdhetslagstiftning i Europeiska unionen. Redan i det omarbetade direktivet föreskrivs det att medlemsstaterna bör utse ett eller flera organ för främjande, analys och kontroll av samt till stöd för likabehandling av alla personer utan könsdiskriminering, även med avseende på lön. Genom denna bestämmelse fastställs det att nationella jämställdhetsorgan även bör vara behöriga i frågor som ingår i detta direktivs tillämpningsområde. Vidare åläggs medlemsstaterna att aktivt vidta åtgärder för att säkerställa ett nära samarbete och samordning mellan landets jämställdhetsorgan och yrkesinspektioner och för att säkerställa att jämställdhetsorganen har tillräckliga resurser för att kunna fullgöra sitt uppdrag i fråga om rätten till lika lön. För det ändamålet bör medlemsstaterna överväga att omfördela belopp som drivits in i form av straffavgifter till jämställdhetsorganen.

Artikel 26 – Tillsyn och ökad medvetenhet

För att säkerställa lämplig tillsyn av hur rätten till lika lön för kvinnor och män som utför samma eller likvärdigt arbete tillämpas bör medlemsstaterna inrätta ett särskilt jämställdhetsorgan. Detta organ kan ingå i ett redan befintligt organ med liknande syften, men bör ha särskilda uppgifter avseende genomförandet av de planerade åtgärderna för insyn i lönesättningen enligt detta direktiv och ska samla in vissa uppgifter för att bevaka ojämlig lönesättning och verkan av åtgärderna för insyn i lönesättningen. Medlemsstaterna kommer att behöva vidta nödvändiga åtgärder för att sådana organ ska kunna fungera väl.

Tillsynsorganets huvuduppgift bör vara att sammanställa de upplysningar och rapporter som tagits fram i enlighet med direktivets åtgärder för insyn i lönesättningen och i förekommande fall säkerställa att de offentliggörs i en användarvänlig form. Organet bör även ta itu med bakomliggande orsaker till löneskillnader mellan manliga och kvinnliga arbetstagare och

tillhandahålla verktyg för analys och bedömning av ojämlikheter i lön. Det bör också ansvara för att varje år förse kommissionen med uppgifter om hur många och vilken typ av lönediskrimineringsärenden som anhängiggjorts vid domstol och som påtalats till behöriga myndigheter, däribland jämställdhetsorgan. Detta organ bör slutligen ha till uppgift att verka för ökad medvetenhet bland privatägda och offentligägda företag och organisationer, arbetsmarknadens parter och allmänheten i syfte att främja principen om lika lön för lika eller likvärdigt arbete samt insyn i lönesättningen.

Artikel 27 – Förhandlingsrätt och rätt till kollektiva åtgärder

Direktivet tar hänsyn till de olika arbetsmarknadsmodeller som förekommer inom EU och de olika roller som arbetsmarknadens parter spelar i medlemsstaterna när det gäller frågor som berörs av detta direktiv. Denna bestämmelse bekräftar därför att direktivet inte alls ska påverka den rätt arbetsmarknadens parter har att förhandla om, ingå och tillämpa kollektivavtal samt att vidta kollektiva åtgärder.

Artikel 28 – Statistik

Enligt rådets förordning (EG) nr 530/1999³⁹ ska medlemsstaterna vart fjärde år sammanställa statistik över lönestrukturer på mikronivå som ger harmoniserade uppgifter som underlättar en beräkning av löneskillnaderna mellan könen. I fyraårsintervallet mellan varje sammanställning av statistik över lönestrukturer överlämnar medlemsstaterna på frivillig grund varje år uppgifter om löneskillnader mellan könen, fördelat per kön, bransch, arbetstid (heltid/deltid), typ av ekonomisk kontroll (offentligt eller privat ägarskap) och ålder. Även om lönediskriminering bara är en av orsakerna till löneskillnaderna mellan könen bör dessa uppgifter tas fram oftare för att möjliggöra en årlig bevakning. Genom denna bestämmelse blir det obligatoriskt att årligen sammanställa uppgifter om löneskillnaderna för att få en fullständig uppsättning uppgifter varje år.

Artikel 29 – Informationsspridning

Syftet med denna bestämmelse är att säkerställa att man i medlemsstaterna ökar medvetenheten om de rättigheter som fastställs i direktivet, liksom om övriga befintliga rättigheter på området.

Artikel 30 – Genomförande

Enligt denna artikel ska man, för att ta hänsyn till de olika arbetsmarknadsmodeller som förekommer inom EU och den grad i vilken arbetsmarknadens parter i vissa medlemsstater delar i utformningen av bestämmelser om de frågor som omfattas av direktivet, tillåta att medlemsstaterna överlåter åt arbetsmarknadens parter att genomföra relevanta bestämmelser i direktivet, förutsatt att man kontinuerligt kan säkerställa att direktivet får önskad verkan.

Artikel 31 – Införlivande

³⁹ Rådets förordning (EG) nr 530/1999 av den 9 mars 1999 om strukturstatistik över löner och arbetskraftskostnader (EGT L 63, 12.3.1999, s. 6).

Genom denna bestämmelse fastställs tidsfristen för medlemsstaterna att införliva direktivet i nationell lagstiftning och överlämna texterna i fråga till kommissionen. Fristen fastställs till två år efter ikraftträdandet av detta direktiv.

Artikel 32 – Rapportering och översyn

Genom denna bestämmelse åläggs medlemsstaterna att senast åtta år efter ikraftträdandet av direktivet rapportera till kommissionen om hur direktivet tillämpats, så att kommissionen kan se över tillämpningen av direktivet.

Artikel 33 – Ikraftträdande

Detta är en standardbestämmelse enligt vilken direktivet träder i kraft den tjugonde dagen efter det att det har offentliggjorts i *Europeiska unionens officiella tidning*.

Artikel 34 – Adressater

Detta är en standardbestämmelse om adressaterna som klargör att direktivet riktar sig till medlemsstaterna.

Förslag till

EUROPAPARLAMENTETS OCH RÅDETS DIREKTIV

om stärkt tillämpning av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete tack vare insyn i lönesättningen och efterlevnadsmekanismer

EUROPAPARLAMENTET OCH EUROPEISKA UNIONENS RÅD HAR ANTAGIT
DETTA DIREKTIV

med beaktande av fördraget om Europeiska unionens funktionssätt, särskilt artikel 157.3,

med beaktande av Europeiska kommissionens förslag,

efter översändande av utkastet till lagstiftningsakt till de nationella parlamenten,

med beaktande av Europeiska ekonomiska och sociala kommitténs yttrande⁴⁰,

i enlighet med det ordinarie lagstiftningsförfarandet, och

av följande skäl:

- (1) Artiklarna 2 och 3.3 i fördraget om Europeiska unionen stadfäster rätten till jämställdhet mellan könen som en grundläggande värdering och en av unionens uppgifter.
- (2) I artiklarna 8 och 10 i fördraget om Europeiska unionens funktionssätt (EUF-fördraget) fastställs det att unionen ska undanröja bristande jämställdhet, främja jämställdhet mellan könen och bekämpa diskriminering på grund av kön vid utformningen av och genomförande av sin politik och verksamhet.
- (3) Enligt artikel 157.1 i EUF-fördraget ska varje medlemsstat se till att principen om lika lön för kvinnor och män för lika arbete eller likvärdigt arbete tillämpas.
- (4) Enligt artikel 23 i Europeiska unionens stadga om de grundläggande rättigheterna ska jämställdhet mellan kvinnor och män säkerställas på alla områden, inbegripet i fråga om anställning, arbete och lön.
- (5) Den europeiska pelaren för sociala rättigheter⁴¹ som gemensamt tillkännagivits av Europaparlamentet, rådet och kommissionen nämner bland sina principer lika behandling och lika möjligheter för kvinnor och män samt rätt till lika lön för likvärdigt arbete.

⁴⁰ EUT C [...], [...], s. [...].

⁴¹ https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

- (6) Europaparlamentets och rådets direktiv 2006/54/EG⁴² föreskriver att för samma eller likvärdigt arbete ska direkt eller indirekt könsdiskriminering avskaffas med avseende på alla aspekter av och villkor för ersättningen. Särskilt om arbetsindelningssystem används för att fastställa lönerna, bör det bygga på samma kriterier för både män och kvinnor, så att alla förutsättningar för könsdiskriminering utesluts.
- (7) Utvärderingen år 2020⁴³ påvisade att tillämpningen av likalöneprincipen försvåras av att den som utsatts för könsdiskriminering hindras av bristande insyn i lönesättningen, bristande rättssäkerhet i fråga om begreppet ”likvärdigt arbete” och processuella hinder. Arbetstagarna har inte den information som behövs för att framgångsrikt driva talan om rätten till lika lön, i synnerhet information om lönenivåerna för kategorier av anställda som utför samma eller likvärdigt arbete. Rapporten visade att bättre insyn skulle möjliggöra upptäckt av könsrelaterad olika behandling och lönediskriminering i företag och organisationer. Den skulle också ge de anställda, arbetsgivarna och arbetsmarknadens parter möjligheter att vidta lämpliga åtgärder för att stärka rätten till lika lön.
- (8) Efter en noggrann utvärdering av det befintliga regelverket om lika lön för lika eller likvärdigt arbete⁴⁴ och ett omfattande och inkluderande samråd⁴⁵ tillkännagavs i jämställdhetsstrategin för 2020-2025⁴⁶ bindande åtgärder om insyn i lönesättningen.
- (9) Löneskillnader mellan könen orsakas av olika faktorer, varav en del kan tillskrivas direkt eller indirekt löneskimming mellan könen. En bristande insyn generellt i lönesättningen inom företagen befäster en situation där könsdiskriminerande lönesättning och särbehandling inte upptäcks eller är svår att bevisa. Bindande åtgärder behövs därför för att öka insynen i lönesättningen, uppmuntra företagen att se över sina lönestrukturer för att säkerställa lika lön för kvinnor och män med samma eller likvärdigt arbete och ge personer som utsatts för diskriminering möjlighet att åberopa sin rätt till lika lön. Detta bör kompletteras av bestämmelser som förtydligar befintliga rättsbegrepp (såsom ”lön” och ”arbete av lika värde”) samt åtgärder för att förbättra efterlevnadsmekanismerna och tillgången till rättslig prövning.
- (10) Tillämpningen av principen om lika lön för kvinnor och män bör förbättras genom undanröjande av direkt och indirekt lönediskriminering. Detta hindrar inte att arbetsgivarna ger arbetstagare som utför samma eller likvärdigt arbete olika lön, utifrån objektiva, könsneutrala och opartiska kriterier, såsom prestation och kompetens.
- (11) Detta direktiv bör tillämpas på alla arbetstagare – däribland deltidsarbetande, visstidsanställda och personer som är anställda av eller står i ett anställningsliknande förhållande till bemanningsföretag – som har ett anställningsavtal eller

⁴² Europaparlamentets och rådets direktiv 2006/54/EG av den 5 juli 2006 om genomförandet av principen om lika möjligheter och likabehandling av kvinnor och män i arbetslivet (EUT L 204, 26.7.2006, s. 23).

⁴³ [SWD\(2020\)50](#). Se även 2013 års rapport till rådet och Europaparlamentet om tillämpningen av direktiv 2006/54/EG, COM(2013) 861 final.

⁴⁴ Utvärdering av relevanta bestämmelser i direktiv 2006/54/EG som genomför fördragets princip om lika lön för lika eller likvärdigt arbete, SWD(2020)50. Rapport om genomförandet av EU:s handlingsplan 2017–2019 om att åtgärda löneklyftan mellan kvinnor och män, COM(2020) 101.

⁴⁵ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-33490_en

⁴⁶ Meddelande från kommissionen av den 5 mars 2020: ”En jämlikhetsunion: jämställdhetsstrategi för 2020-2025”, COM(2020)152 final.

anställningsförhållande definierat i gällande lag, kollektivavtal och/eller praxis i medlemsstaten, med hänsyn till Europeiska unionens domstols rättspraxis. Domstolen har i sin rättspraxis fastställt kriterier för när en person ska anses ha ställning som arbetstagare.⁴⁷ Under förutsättning att de uppfyller dessa kriterier bör hushållsanställda, efterfrågestyrd arbetskraft, säsongarbetare, arbetstagare i kupongsystem, arbetstagare på digitala plattformar, praktikanter och lärlingar omfattas av detta direktivs tillämpningsområde. Uppgifter om arbetets faktiska utförande, inte parternas beskrivning av förhållandet, bör ligga till grund för fastställande av om ett anställningsförhållande föreligger.

- (12) För att undanröja sådant som hindrar den som drabbats av könsdiskriminerande lönesättning ifrån att återopa sin rätt till lika lön och vägleda arbetsgivarna när de säkerställer denna rätt bör centrala begrepp avseende lika lön, såsom ”lön” och ”arbete av lika värde” förtydligas i enlighet med domstolens rättspraxis. Detta bör underlätta tillämpningen av dessa begrepp, i synnerhet för små och medelstora företag.
- (13) Principen lika lön för kvinnor och män som utför lika eller likvärdigt arbete bör följas med avseende på lön samt alla övriga förmåner i form av kontanter eller naturaförmåner som arbetstagaren, direkt eller indirekt, får av arbetsgivaren på grund av anställningen. I enlighet med domstolens rättspraxis⁴⁸ bör begreppet ”lön” inte bara omfatta grundlön utan även ytterligare förmåner såsom bonusar, övertidsersättning, reseersättning (inklusive tjänstebil som tillhandahålls av arbetsgivaren samt resekort), bostadsbidrag, utbildningsbidrag, avgångsvederlag, lagstadgad sjuklön, lagstadgad kompensation och tjänstepension. Det bör omfatta alla typer av ersättning som lämnas enligt lag eller kollektivavtal.
- (14) I artikel 10 i fördraget om Europeiska unionens funktionssätt stadfästas att Europeiska unionen vid utformningen och genomförandet av sin politik och verksamhet ska söka bekämpa all diskriminering på grund av kön, ras eller etniskt ursprung, religion eller övertygelse, funktionshinder, ålder eller sexuell läggning. Enligt artikel 4 i direktiv 2006/54/EG får det inte förekomma någon direkt eller indirekt könsdiskriminering, till exempel i fråga om lön. Könsdiskriminering i lönesättningen där den utsattas kön är en avgörande faktor kan i praktiken yttra sig på många olika sätt. Den kan medföra intersektionalitet mellan olika grunder för diskriminering eller ojämlig behandling där arbetstagaren ingår i en eller flera grupper som skyddas mot diskriminering på grund av kön å ena sidan, och å andra sidan till exempel på grund av ras eller etniskt ursprung, religion eller övertygelse, funktionshinder, ålder eller sexuell läggning (som

⁴⁷ Mål C-66/85, Deborah Lawrie-Blum mot Land Baden-Württemberg, ECLI:EU:C:1986:284; mål C-428/09, Union Syndicale Solidaires Isère mot Premier ministre m.fl., ECLI:EU:C:2010:612; mål C-229/14, Ender Balkaya mot Kiesel Abbruch- und Recycling Technik GmbH, ECLI:EU:C:2015:455; mål C-413/13, FNV Kunsten Informatie en Media mot Staat der Nederlanden, ECLI:EU:C:2014:2411; mål C-216/15, Betriebsrat der Ruhrlandklinik gGmbH mot Ruhrlandklinik gGmbH, ECLI:EU:C:2016:883; mål C-658/18, UX mot Governo della Repubblica italiana, ECLI:EU:C:2020:572.

⁴⁸ Till exempel mål C-58/81, Europeiska gemenskapernas kommission mot Storhertigdömet Luxemburg, ECLI:EU:C:1982:215; mål C-171/88, Rinner-Kulhn mot FWW Spezial-Gebaudereinigung GmbH, ECLI:EU:C:1989:328; mål C-147/02 Alabaster mot Woolwich plc and Secretary of State for Social Security, ECLI:EU:C:2004:192; mål C-342/93 - Gillespie m.fl. ECLI:EU:C:1996:46; mål C-278/93 Freers and Speckmann mot Deutsche Bundespost, ECLI:EU:C:1996:83; mål C-12/81, Eileen Garland mot British Rail Engineering Limited, ECLI:EU:C:1982:44; mål C-360/90, Arbeiterwohlfahrt der Stadt Berlin e.V. mot Monika Bötzel, ECLI:EU:C:1992:246 och mål C-33/89, Maria Kowalska mot Freie und Hansestadt Hamburg, ECLI:EU:C:1990:265.

omfattas av diskrimineringsförbudet i direktiv 2000/43/EG eller direktiv 2000/78/EG). Migrerande kvinnor befinner sig i en av de grupper som möter denna typ av dubbel diskriminering. Detta direktiv bör därför klargöra att sådan intersektionalitet i samband med könsdiskriminerande lönesättning bör beaktas, och på så sätt undanröja eventuella tvivel som kan förekomma enligt det hittills gällande rättsliga ramverket. Därmed bör man kunna säkerställa att domstolar eller behöriga myndigheter tar vederbörlig hänsyn till alla typer av missgynnande som kan bero på intersektionalitet mellan olika diskrimineringsgrunder i såväl materiellt som formellt hänseende, exempelvis vid prövning av om diskriminering förekommit, beslut om lämplig jämförbar person, bedömning av proportionalitet och i förekommande fall fastställande av kompensation eller sanktioner.

- (15) För att respektera rätten till lika lön för kvinnor och män måste arbetsgivarna ha lönesättning eller lönestrukturer som inte ger upphov till sådana löneskillnader mellan kvinnor och män som utför samma eller likvärdigt arbete som inte kan motiveras med hjälp av objektiva och könsneutrala kriterier. Sådana lönestrukturer bör möjliggöra jämförelser mellan värdet av olika befattningar inom samma organisation. Enligt domstolens praxis bör arbetets värde bedömas och jämföras med hjälp av sådana objektiva kriterier som exempelvis krav på utbildning, arbetslivserfarenhet och fortbildning, färdigheter, arbetsinsats och ansvarsområden, arbetsresultat och arbetets karaktär⁴⁹.
- (16) Att hitta en giltig jämförbar person är en viktig parameter för att fastställa om visst arbete kan anses vara av lika värde. Det ger arbetstagaren möjlighet att visa att han eller hon fått mindre förmånlig behandling än den jämförbara personen av motsatt kön som utför lika eller likvärdigt arbete. Om det inte finns någon faktisk jämförbar person, bör det vara tillåtet att göra jämförelser med en hypotetisk person så att arbetstagaren får möjlighet att påvisa att han eller hon inte fått samma behandling som en hypotetisk jämförbar person av motsatt kön. Detta skulle undanröja ett stort hinder för potentiella offer för könsdiskriminerande lönesättning, i synnerhet i starkt könssegregerade yrken där kravet på att hitta en jämförbar person av motsatt kön gör det hart när omöjligt att väcka talan avseende likalöneprincipen. Därutöver bör arbetstagarna inte heller hindras ifrån att åberopa annat underlag, såsom statistik eller annan tillgänglig information, som ger anledning att anta att diskriminering förekommit. Därigenom skulle det bli möjligt att vidta effektivare åtgärder mot könsgrundade löneskillnader i könssegregerade branscher och yrken.
- (17) För det första har domstolen förklarat⁵⁰ att man för att se om arbetstagare är i jämförbara situationer inte nödvändigtvis måste begränsa jämförelsen till situationer där kvinnliga och manliga anställda har samma arbetsgivare. Arbetstagare kan befinna sig i en jämförbar situation även om de inte har samma arbetsgivare om lönevillkoren kan tillskrivas en och samma källa som fastställer dessa. Detta kan vara fallet när lönevillkoren fastställs i lag eller kollektivavtal om löneförhållanden som ska tillämpas på flera företag, eller när sådana villkor fastställts centralt för mer än en organisation

⁴⁹ Till exempel mål C-400/93, Royal Copenhagen, ECLI:EU:C:1995:155; mål C-309/97, Angestelltenbetriebsrat der Wiener Gebietskrankenkasse, ECLI:EU:C:1999: 241; mål C-381/99, Brunnhofer, ECLI:EU:C:2001:358 och mål C-427/11, Margaret Kenny m.fl. mot Minister for Justice, Equality and Law Reform m.fl. [2013] ECLI:EU:C:2013:122, punkt 28.

⁵⁰ Mål C-320/00, Lawrence, ECLI:EU:C:2002:498.

eller mer än ett företag inom ett holdingbolag eller konglomerat. För det andra har domstolen även meddelat att bedömningen inte ska begränsas enbart till arbetstagare anställda samtidigt som käranden.⁵¹

- (18) Medlemsstaterna bör ta fram särskilda verktyg och metoder för att stödja och vägleda bedömningen av vad som utgör arbete av lika värde. Detta bör underlätta tillämpningen av detta begrepp, i synnerhet för små och medelstora företag.
- (19) System för arbetsindelning och arbetsutvärdering som inte används på ett könsneutralt sätt kan bidra till en könsdiskriminerande lönesättning, i synnerhet när de bygger på antaganden om könsstereotyper. I sådana fall bidrar systemen till och befäster löneskillnader mellan könen genom att mans- respektive kvinnodominerade yrken värderas olika även i situationer där det utförda arbetet har lika värde. Könsneutrala system för arbetsutvärdering och arbetsindelning främjar däremot ett insynsvänligt lönesystem och är centrala för att direkt eller indirekt könsdiskriminering ska kunna förhindras. Systemen gör det möjligt att spåra lönediskriminering som beror på undervärdering av traditionellt kvinnodominerade arbeten. Detta sker genom att man mäter och jämför arbetsuppgifter med olika innehåll men med lika värde och därmed underbygger principen om arbete av lika värde.
- (20) Bristen på information om en tjänsts potentiella löneintervall ger informationsasymmetri som begränsar de sökandes förhandlingsposition. Genom en säkerställd insyn bör presumtiva arbetstagare ha möjlighet att fatta välinformerade beslut om den förväntade lönen utan att det på något sätt begränsar arbetsgivarnas eller arbetstagarnas förhandlingspositioner eller möjligheter att förhandla även om löner utanför de angivna löneintervallen. Detta skulle även säkerställa en uttrycklig icke könsdiskriminerande grund för lönesättningen och försvåra en undervärderande lönesättning i förhållande till kompetens och erfarenhet. Insynsåtgärden skulle också göra det möjligt att komma åt intersektionell diskriminering i de fall där icke insynsvänlig lönesättning gör det möjligt att diskriminera på flera olika grunder. Den information som ska lämnas till den sökande före anställning, om den inte tillhandahålls i platsannonserna, kan lämnas till den sökande före anställningsintervjun av arbetsgivaren eller på annat sätt, till exempel av arbetsmarknadens parter.
- (21) För att försvåra att löneskillnader mellan kvinnor och män som påverkar enskilda arbetstagare vidmakthålls över tiden bör arbetsgivarna inte få fråga den som söker anställning om dennes tidigare lönehistorik.
- (22) Åtgärder för insyn i lönesättningen bör skydda arbetstagarnas rätt till lika lön, samtidigt som man så långt som möjligt begränsar merkostnader och administrativa bördor för arbetsgivarna, med särskild hänsyn till mikro- och småföretag. När det är lämpligt bör åtgärderna skraddarsys efter arbetsgivarens storlek med hänsyn till antalet anställda.
- (23) Arbetsgivarna bör ge arbetstagarna tillgång till en beskrivning av de kriterier som används för att fastställa lönenivåer och karriärutveckling. Med hänsyn till organisationens storlek bör arbetsgivaren ha visst handlingsutrymme i fråga om hur denna skyldighet fullgörs.

⁵¹ Mål 129/79, Macarthys, ECLI:EU:C:1980:103.

- (24) Alla arbetstagare bör ha rätt att på begäran få ut information om sin egen lön och om lönenivån, uppdelad efter kön, för kategorier av anställda som utför samma eller likvärdigt arbete. Varje år måste arbetsgivarna informera arbetstagarna om denna rättighet. Arbetsgivarna får på eget initiativ också välja att tillhandahålla sådan information utan att arbetstagarna måste begära den.
- (25) Arbetsgivare med minst 250 arbetstagare bör lämna regelbundna rapporter om lönesättningen på ett lämpligt och insynsvänligt sätt, till exempel genom att ta med denna information i sin förvaltningsberättelse. Företag som är underställda kraven i Europaparlamentets och rådets direktiv 2013/34/EU⁵² kan även välja att lämna rapport om lönesättningen tillsammans med andra uppgifter som rör arbetstagarna i sin förvaltningsrapport.
- (26) Lönerapportering bör ge arbetsgivarna möjlighet att utvärdera och övervaka sina lönestrukturer och sin lönesättningspolicy så att de efterlever principen om lika lön redan från början. Samtidigt bör könsuppdelade uppgifter kunna användas av behöriga myndigheter, arbetstagarföreträdare och andra aktörer i bevakningen av löneskillnaderna mellan könen i olika branscher (horisontell uppdelning) och befattningar (vertikal uppdelning). Arbetsgivarna kanske vill komplettera de offentliggjorda uppgifterna med en förklaring av eventuella löneskillnader eller lönegap mellan könen. Om skillnader i genomsnittslön för kvinnor och män som utför samma eller likvärdigt arbete inte kan motiveras med hänvisning till objektiva och könsneutrala kriterier bör arbetsgivaren vidta åtgärder för att avhjälpa ojämlikheterna.
- (27) För att minska arbetsgivarnas börda kan medlemsstaterna besluta att samla in och länka de nödvändiga uppgifterna via sin nationella förvaltning för att beräkna löneskillnaderna mellan manliga och kvinnliga arbetstagare hos de olika arbetsgivarna. Sådan datainsamling kan kräva sammanlänkning av uppgifter från flera olika håll i den offentliga förvaltningen (till exempel skattemyndigheter och socialtjänst) och är möjlig om det går att matcha de administrativa upplysningarna om arbetsgivarna (företag och organisationsnivåer) med uppgifter om arbetstagarna (på individnivå), inklusive uppgifter om kontant- och in naturaförmåner. Medlemsstaterna kan besluta att samla in denna information bara för arbetsgivare som omfattas av skyldigheten att lämna rapport om löner enligt detta direktiv, men kan även inkludera små och medelstora företag. Medlemsstaternas offentliggörande av den obligatoriska informationen bör ersätta skyldigheten att lämna rapport om lönesättningen för de arbetsgivare för vilka administrativa uppgifter finns, förutsatt att syftet med rapporteringsskyldigheten uppnås.
- (28) För att göra informationen om löneskillnader mellan män och kvinnor på företagsnivå brett tillgänglig bör medlemsstaterna anförtro åt det tillsynsorgan som utsetts i enlighet med detta direktiv att sammanställa uppgifter som inkommit från arbetsgivarna om löneskillnader utan att ytterligare belasta arbetsgivarna. Tillsynsorganet bör se till att informationen står till allmänt förfogande och möjliggör jämförelser mellan enskilda arbetsgivare, branscher och regioner i den berörda medlemsstaten.

⁵² Direktiv 2013/34/EU, ändrat genom Europaparlamentets och rådets direktiv 2014/95/EU av den 22 oktober 2014, vad gäller vissa stora företags och koncerners tillhandahållande av icke-finansiell information och information om mångfaldspolitik (EUT L 330, 15.11.2014, s. 1).

- (29) Gemensamma lönebedömningar bör utlösa en översyn och förändring av lönestrukturerna i företag med minst 250 anställda om ojämlikheter framkommer. Den gemensamma lönebedömningen bör göras av arbetsgivarna i samverkan med arbetstagarföreträdare. Om det inte finns några arbetstagarföreträdare bör sådana utses för detta ändamål. Gemensamma lönebedömningar bör utmytna i att man eliminerar könsdiskriminering i lönesättningen.
- (30) Behandling och offentliggörande av information enligt detta direktiv bör ske i enlighet med Europaparlamentets och rådets förordning (EU) 2016/679⁵³. Särskilda säkerhetsbestämmelser bör antas för att förhindra direkt eller indirekt yppande av information om en identifierbar kollega. Samtidigt bör arbetstagarna inte hindras ifrån att frivilligt yppa sin lön för att kunna återropa principen om lika lön för kvinnor och män för lika arbete eller arbete som tillmäts lika värde.
- (31) Det är viktigt att arbetsmarknadens parter diskuterar och ägnar särskild uppmärksamhet åt likalöneprincipen vid kollektivavtalsförhandlingar. Hänsyn bör tas till att dialogen mellan arbetsmarknadens parter och kollektivavtalsystemen skiljer sig åt inom EU och även beakta arbetsmarknadens parter handlingsfrihet och avtalsfrihet, samt deras kapacitet att företräda arbetstagare och arbetsgivare. Därför bör medlemsstaterna i enlighet med sina nationella system och sin praxis vidta lämpliga åtgärder, såsom program till stöd för arbetsmarknadens parter, praktisk vägledning samt aktivt deltagande från regeringens sida i den nationella dialogen om arbetsmarknaden. Sådana åtgärder bör stimulera arbetsmarknadens parter att ägna vederbörlig uppmärksamhet åt likalöneprincipen, bland annat genom diskussioner på lämplig nivå i samband med kollektivavtalsförhandlingar och utveckling av könsneutrala system för arbetsutvärdering och arbetsindelning.
- (32) Arbetstagarna bör ha tillgång till nödvändiga förfaranden för att de lättare ska kunna utöva rätten att få tillgång till rättslig prövning. Nationell lagstiftning som omfattar skyldigheter, incitament eller sanktioner för att stimulera till att använda förlikningsförfaranden eller att vända sig till ett jämställdhetsorgan bör inte hindra parterna ifrån att utöva sin rätt att begära domstolsprövning.
- (33) Att engagera jämställdhetsorganen vid sidan av övriga aktörer är avgörande för en verkningsfull tillämpning av likalöneprincipen. De nationella jämställdhetsorganens befogenheter och uppdrag bör därför ge ett lämpligt och heltäckande ansvar för att bevaka könsrelaterad lönediskriminering, rätt till insyn i lönesättningen och alla andra rättigheter och skyldigheter som fastställs i detta direktiv. För att komma till rätta med de förfarandemässiga och kostnadsrelaterade hinder som arbetstagare som anser att de utsatts för könsdiskriminerande lönesättning möter, när de vill återropa sin rätt till lika lön, bör jämställdhetsorgan, sammanslutningar, organisationer, organ och arbetstagarföreträdare eller andra rättsliga instanser som har intresse av att säkerställa jämställdheten mellan könen få rätt att företräda enskilda individer. De bör ha möjlighet att besluta att agera för arbetstagares räkning eller tid stöd för dem, för att hjälpa diskriminerade arbetstagare att effektivt återropa sina rättigheter och kräva att likalöneprincipen efterlevs.

⁵³ Europaparlamentets och rådets förordning (EU) 2016/679 av den 27 april 2016 om skydd för fysiska personer med avseende på behandling av personuppgifter och om det fria flödet av sådana uppgifter och om upphävande av direktiv 95/46/EG (allmän dataskyddsförordning), EUT L 119, 4.5.2016, s. 1.

- (34) Jämställdhetsorgan och arbetstagarföreträdare bör även ha rätt att företräda en eller flera arbetstagare som anser sig ha utsatts för könsdiskriminering i strid med principen om lika lön för samma eller likvärdigt arbete. Att tillåta att talan förs för flera arbetstgares räkning eller till stöd för dem är ett sätt att underlätta förfaranden som annars inte skulle ha inletts på grund av förfarandehinder, kostnadshinder eller rädsla för represalier samt i situationer där arbetstagaren diskrimineras på flera olika grunder som kan vara svåra att särskilja. Grupptalan kan potentiellt röja systematisk diskriminering och öka synligheten när det gäller lika lön och jämställdhet i samhället i sin helhet. Möjligheten att väcka grupptalan skulle motivera en efterlevnad av åtgärderna för insyn i lönesättningen redan från början, skapa grupstryck och öka arbetstagarnas medvetenhet och motivation att agera förebyggande.
- (35) Medlemsstaterna bör säkerställa att jämställdhetsorganen får tillräckliga resurser för att utföra sina uppgifter avseende könsdiskriminerande lönesättning på ett effektivt och tillfredsställande sätt. Om uppgifter tilldelas fler än ett organ bör medlemsstaterna se till att dessa samordnas i tillräckligt hög grad.
- (36) Kompensationen bör till fullo täcka den förlust eller skada som lidits på grund av könsdiskriminerande lönesättning⁵⁴. Detta bör omfatta full retroaktiv återvinning av utebliven lön och därmed sammanhängande bonusar eller in-naturaförmåner, kompensation för förlorade möjligheter och ideell skada. Kompensationen får inte begränsas av en i förväg fastställd övre gräns.
- (37) Utöver kompensationen bör även övriga rättsmedel tillhandahållas. Domstolarna bör till exempel kunna förelägga att arbetsgivaren ska göra strukturella eller organisatoriska förändringar för att fullgöra sina skyldigheter när det gäller likalöneprincipen. Sådana åtgärder kan till exempel avse skyldighet att: se över lönesättningspolicyn med utgångspunkt i en könsneutral arbetsutvärdering och arbetsindelning, upprätta en handlingsplan för att undanröja de upptäckta ojämligheterna och minska alla omotiverade löneskillnader, lämna information och öka arbetstagarnas medvetenhet om rätten till lika lön, och införa obligatorisk fortbildning för personalansvariga om lika lön samt könsneutral arbetsutvärdering och arbetsindelning.
- (38) I enlighet med domstolens rättspraxis⁵⁵ fastställdes i direktiv 2006/54/EG en bestämmelse för att säkerställa att bevisbördan övergår på svaranden i situationer som vid första anblicken ger sken av diskriminering. Medlemsstaterna bör inte heller hindras från att närhelst det passar under förfarandet införa bevisregler som är fördelaktigare för arbetstagare som väcker talan. Vid rättsliga eller administrativa förfaranden som avser direkt eller indirekt diskriminering ska, ifall arbetsgivaren inte efterkommit någon av direktivets skyldigheter avseende insyn i lönesättningen, omvänd bevisbörda automatiskt tillämpas så att den i stället åvilar svaranden, oavsett om arbetstagaren styrkt en situation som vid första anblicken ger sken av lönediskriminering eller ej.

⁵⁴ Dom i mål C-407/14, María Auxiliadora Arjona Camacho mot Securitas Seguridad España SA, ECLI:EU:C:2015:831, punkt 45.

⁵⁵ Mål C-109/88, Handels- og Kontorfunktionærernes Forbund I Danmark mot Dansk Arbejdsgiverforening, som företräder Danfoss, ECLI:EU:C:1989:383.

- (39) Även om det räcker att bara etablera presumtion om diskriminering för att bevisbördan ska övergå på arbetsgivaren, är det inte alltid lätt för den diskriminerade och domstolen att veta hur en sådan presumtion ska kunna fastställas. Åtgärder för insyn i lönesättningen kan potentiellt stödja användningen av omvänd bevisbörda genom att arbetstagarna får insyn i de genomsnittliga lönenivåerna för kvinnor och män som utför samma eller likvärdigt arbete. Genom att arbetstagarna på så vis får möjlighet att styrka en situation som vid första anblicken gör det möjligt att presumera diskriminering skulle detta snabbt utlösa den omvända bevisbördan, vilket gynnar arbetstagaren.
- (40) Enligt rättspraxis från Europeiska unionens domstol bör nationella preskriptionsregler för återopande av rättigheter enligt detta direktiv vara utformade så att det inte i praktiken blir omöjligt eller orimligt svårt att utöva dessa rättigheter. Preskriptionstider skapar specifika hinder för den som utsätts för könsbunden lönediskriminering. Därför bör gemensamma miniminormer fastställas. Dessa normer bör fastställa när preskriptionsfristen börjar löpa, dess löptid och under vilka förhållanden den ska avbrytas eller tillfälligt upphöra att löpa samt föreskriva att preskriptionsfristen för talan ska vara minst tre år.
- (41) Rättegångskostnader ger den som utsatts för könsdiskriminerande lönesättning ett kraftigt negativt incitament när det gäller att återropa sin rätt till lika lön, vilket i sin tur ger ett otillräckligt skydd och en otillräcklig efterlevnad av rätten till lika lön. För att undanröja det kraftiga förfarandemässiga hindret för tillgång till rättvis prövning bör kärande vars talan bifalls ha rätt till ersättning för sina rättegångskostnader från svaranden. Samtidigt bör inte käranden, om det är den svarandes talan som bifalls, behöva bestrida dennes kostnader, förutom i fall där talan väckts i ond tro, varit uppenbart ogrundad eller om utebliven ersättning till svaranden av domstolen eller behöriga myndigheter bedöms vara orimlig med tanke på de särskilda omständigheterna i målet, till exempel med hänsyn till ett mikroföretags ekonomiska ställning.
- (42) Medlemsstaterna bör föreskriva ändamålsenliga, proportionella och avskräckande sanktioner för överträdelse av de nationella bestämmelser som följer av detta direktiv eller de nationella bestämmelser som redan är i kraft den dag detta direktiv träder i kraft och som hänför sig till rätten till lika lön för kvinnor och män som utför samma eller likvärdigt arbete. Sanktionerna bör omfatta straffavgifter, som bör fastställas till en miniminivå med hänsyn till överträdelsens allvar och varaktighet, eventuellt uppsåt att diskriminera eller grov försumlighet, samt eventuella andra förmildrande eller försvårande omständigheter som kan vara förhanden i ärendet, till exempel om lönediskrimineringen förenas med diskriminering även på andra grunder. Medlemsstaterna bör överväga att omfördela belopp som drivits in i form av straffavgifter till jämställdhetsorganen för att de effektivt ska kunna fullgöra sina uppgifter avseende efterlevnaden av rätten till lika lön, även genom att väcka talan i diskrimineringsärenden eller bistå och stödja drabbade personer som väcker talan i sådana ärenden.
- (43) Medlemsstaterna bör fastställa särskilda sanktioner för upprepade överträdelse av de rättigheter och skyldigheter som följer av principen om lika lön för kvinnor och män för samma eller likvärdigt arbete, för att beakta beteendets allvar och avskräcka från ytterligare överträdelse. Sanktionerna får även omfatta olika former av ekonomiska avskräckande åtgärder, exempelvis indragning av offentliga förmåner eller uteslutning under viss tid från ytterligare tilldelning av ekonomiska incitament eller från deltagande i offentlig upphandling.

- (44) De skyldigheter som åligger arbetsgivarna i enlighet med detta direktiv ingår i de gällande skyldigheter avseende miljö-, social- och arbetslagstiftning där medlemsstaterna ska säkerställa efterlevnaden i enlighet med Europaparlamentets och rådets direktiv 2014/23/EU⁵⁶, Europaparlamentets och rådets direktiv 2014/24/EU⁵⁷ och Europaparlamentets och rådets direktiv 2014/25/EU⁵⁸ avseende deltagande i offentlig upphandling. För att fullgöra dessa skyldigheter vad gäller rätten till lika lön bör medlemsstaterna framför allt säkerställa att de ekonomiska aktörerna vid offentlig upphandling eller koncession tillämpar en lönesättningspolicy som inte ger upphov till löneskillnader mellan manliga och kvinnliga arbetstagare som inte kan motiveras med könsneutrala kriterier för alla arbetstagar-kategorier som utför lika eller likvärdigt arbete. Medlemsstaterna bör även överväga att, i tillämpliga fall, låta upphandlande myndigheter använda sanktioner och uppsägningsklausuler för att säkerställa efterlevnaden av likalöneprincipen vid offentlig upphandling eller koncession. De får även ta hänsyn till om anbudslämnaren eller någon av dennes underleverantörer inte efterlever likalöneprincipen när det gäller tillämpningen av uteslutningskriterier eller beslut om att inte tilldela kontrakt till den anbudsgivare som lämnat det ekonomiskt mest fördelaktiga anbudet.
- (45) Ett ändamålsenligt genomförande av rätten till lika lön förutsätter ett lämpligt rättsligt och administrativt skydd mot all ogynnsam behandling på grund av arbetstagares försök att åberopa sina rättigheter när det gäller lika lön, eventuella klagomål till arbetsgivaren eller andra rättsliga eller administrativa förfaranden som syftar till att åstadkomma efterlevnad av rätten till lika lön.
- (46) För att stärka efterlevnaden av likalöneprincipen bör detta direktiv skärpa de befintliga efterlevnadsmekanismerna och förfarandena avseende de rättigheter och skyldigheter som följer av direktivet och av bestämmelserna om lika lön i direktiv 2006/54/EG.
- (47) I detta direktiv fastställs minimikrav, vilket innebär att medlemsstaterna har kvar sin möjlighet att införa och behålla mer förmånliga bestämmelser. Rättigheter som förvärvats enligt den befintliga rättsliga ramen bör fortsätta att gälla, om inte fördelaktigare bestämmelser införs i och med detta direktiv. Genomförandet av detta direktiv kan inte användas för att inskränka befintliga rättigheter enligt gällande unionsrätt eller nationell rätt på detta område och kan inte heller utgöra ett giltigt skäl för att sänka den allmänna skydds-nivån för arbetstagarna när det gäller lika lön för kvinnor och män som utför samma eller likvärdigt arbete.
- (48) För att säkerställa lämplig tillsyn av hur rätten till lika lön för kvinnor och män som utför samma eller likvärdigt arbete tillämpas bör medlemsstaterna inrätta eller utse ett särskilt jämställdhetsorgan. Detta organ kan ingå i ett redan befintligt organ med liknande syften, men bör ha särskilda uppgifter avseende genomförandet av de planerade åtgärderna för insyn i lönesättningen enligt detta direktiv och ska samla in

⁵⁶ Europaparlamentets och rådets direktiv 2014/23/EU av den 26 februari 2014 om tilldelning av koncessioner (EUT L 94, 28.3.2014, s. 1).

⁵⁷ Europaparlamentets och rådets direktiv 2014/24/EU av den 26 februari 2014 om offentlig upphandling och om upphävande av direktiv 2004/18/EG, EUT L 94, 28.3.2014, s. 65.

⁵⁸ Europaparlamentets och rådets direktiv 2014/25/EU av den 26 februari 2014 om upphandling av enheter som är verksamma på områdena vatten, energi, transporter och posttjänster och om upphävande av direktiv 2004/17/EG, EUT L 94, 28.3.2014, s. 243.

vissa uppgifter för att bevaka ojämlik lönesättning och verkan av åtgärderna för insyn i lönesättningen.

- (49) Det är viktigt att sammanställa lönestatistik som visar könsfördelningen och att förse kommissionen (Eurostat) med tillförlitlig och uttömmande statistik för att utvecklingen av löneskillnaderna mellan könen på EU-nivå ska kunna analyseras och följas. Enligt rådets förordning (EG) nr 530/1999⁵⁹ ska medlemsstaterna vart fjärde år sammanställa statistik över lönestrukturer på ett sätt som underlättar beräkningar av löneskillnaderna mellan könen. Årlig statistik av god kvalitet kan öka insynen och förbättra tillsynen och medvetenheten om ojämlika löneskillnader mellan könen. Det är helt avgörande att sådana uppgifter är tillgängliga och jämförbara om det ska kunna avgöras vilka framsteg som görs såväl nationellt som på EU-nivå.
- (50) Syftet med detta direktiv är att åstadkomma en bättre och mer verkningsfull tillämpning av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete genom införande av gemensamma minimikrav som bör tillämpas på alla företag och organisationer inom hela EU. Eftersom detta mål inte i tillräcklig utsträckning kan uppnås av medlemsstaterna utan kan uppnås bättre på unionsnivå, får unionen vidta åtgärder i enlighet med subsidiaritetsprincipen i artikel 5 i fördraget om Europeiska unionen. I enlighet med proportionalitetsprincipen i samma artikel går detta direktiv, som begränsas till att fastställa miniminormer, inte utöver vad som är nödvändigt för att uppnå detta mål.
- (51) Arbetsmarknadens parter har en viktig roll att spela när det gäller hur åtgärderna för insyn i lönesättningen tillämpas i medlemsstaterna, i synnerhet i de medlemsstater där kollektivavtal tillämpas i stor utsträckning. Medlemsstaterna bör därför ha möjlighet att överlåta åt arbetsmarknadens parter att genomföra hela eller delar av detta direktiv, förutsatt att medlemsstaterna vidtar alla nödvändiga åtgärder för att alltid säkerställa att direktivet får önskad verkan.
- (52) Vid tillämpningen av detta direktiv bör medlemsstaterna undvika sådana administrativa, ekonomiska och rättsliga åligganden som motverkar etablering och utveckling av mikroföretag samt små och medelstora företag. Medlemsstaterna uppmanas därför att utvärdera hur deras införlivandeakter påverkar små och medelstora företag för att säkerställa att dessa inte blir oproportionerligt drabbade, och då vara särskilt uppmärksamma på mikroföretag, på att underlätta den administrativa bördan och på att offentliggöra resultaten av sådana utvärderingar.
- (53) Europeiska datatillsynsmannen har hörts i enlighet med artikel 42 i förordning (EU) 2018/1725⁶⁰ och avgav ett yttrande den **XX XXXX**.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

KAPITEL I

Allmänna bestämmelser

⁵⁹ Rådets förordning (EG) nr 530/1999 av den 9 mars 1999 om strukturstatistik över löner och arbetskraftskostnader (EGT L 63, 12.3.1999, s. 6).

⁶⁰ Europaparlamentets och rådets förordning (EU) 2018/1725 av den 23 oktober 2018 om skydd för fysiska personer med avseende på behandling av personuppgifter och om det fria flödet av sådana uppgifter och om upphävande av förordning (EG) nr 45/2001 och beslut nr 1247/2002/EG (EUT L 295, 21.11.2018, s. 39).

Artikel 1

Innehåll

I detta direktiv fastställs minimikrav för att stärka tillämpningen av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete som stadfästas i artikel 157 i EUF-fördraget och diskrimineringsförbudet som stadfästas i artikel 4 i direktiv 2006/54/EG, i synnerhet med hjälp av insyn i lönesättningen och skärpt efterlevnad.

Artikel 2

Tillämpningsområde

1. Detta direktiv är tillämpligt på arbetstagare i både den offentliga och den privata sektorn.
2. Detta direktiv ska tillämpas på alla arbetstagare som har ett anställningsavtal eller ett anställningsförhållande enligt definitionen i den lagstiftning, de kollektivavtal eller den praxis som gäller i varje medlemsstat med hänsyn till domstolens rättspraxis.

Artikel 3

Definitioner

1. I detta direktiv gäller följande definitioner:
 - (a) *lön*: den gängse grund- eller minimilönen samt alla övriga förmåner i form av kontanter eller naturaförmåner som arbetstagaren får, direkt eller indirekt (de sistnämnda nedan kallade *lönetillägg eller varierande ersättningar*), av sin arbetsgivare på grund av anställningen.
 - (b) *lönenivå*: årslön brutto och motsvarande timlön, brutto.
 - (c) *löneskillnad*: skillnaden mellan de genomsnittliga lönenivåerna bland kvinnliga och manliga arbetstagare hos arbetsgivaren, uttryckt i procent av de manliga arbetstagarnas genomsnittliga lönenivå.
 - (d) *medianlönenivå*: nivån på lönen för den arbetstagare som ligger i mitten av lönefältet, där hälften av arbetstagarna tjänar mer och hälften tjänar mindre.
 - (e) *medianlöneskillnad*: skillnaden mellan de genomsnittliga lönenivåerna bland kvinnliga och manliga arbetstagare hos arbetsgivaren, uttryckt i procent av de manliga arbetstagarnas medianlönenivå.
 - (f) *lönekvartil*: fyra grupper arbetstagare, uppdelade i lika stora delar från lägsta till högsta delen av löneskalan.
 - (g) *arbetstagarkategori*: arbetstagare som utför samma eller likvärdigt arbete som grupperats av arbetsgivaren enligt de kriterier som fastställs i artikel 4 i detta direktiv och beskrivits av den berörda arbetsgivaren.
 - (h) *direkt diskriminering*: när en person på grund av kön behandlas mindre förmånligt än en annan person behandlas, har behandlats eller skulle ha behandlats i en jämförbar situation.
 - (i) *indirekt diskriminering*: när en skenbart neutral bestämmelse eller ett skenbart neutralt kriterium eller förfaringssätt särskilt missgynnar personer av ett visst

kön jämfört med personer av det andra könet, om inte bestämmelsen, kriteriet eller förfaringssättet objektivt kan motiveras av ett berättigat mål och medlen för att uppnå detta mål är lämpliga och nödvändiga.

- (j) *jämställdhetsorgan*: det eller de organ som utsetts enligt artikel 20 i direktiv 2006/54/EG för att främja, analysera, övervaka och stödja likabehandling av alla personer utan könsdiskriminering.
- (k) *yrikesinspektion*: det eller de nationella organ som har en tillsynsfunktion på arbetsmarknaden i en medlemsstat.

2. I detta direktiv avses med diskriminering

- (a) trakasserier och sexuella trakasserier enligt artikel 2.2 i direktiv 2006/54/EG samt varje form av mindre förmånlig behandling på grund av att en person avvisar eller låter bli att reagera mot ett sådant beteende, om trakasserier eller behandlingen har anknytning till eller följer av utövandet av de rättigheter som anges i detta direktiv;
- (b) instruktion att diskriminera personer på grund av kön;
- (c) varje form av mindre förmånlig behandling av en kvinna i samband med graviditet eller barnledighet i den mening som avses i rådets direktiv 92/85/EEG.⁶¹

3. Lönediskriminering inom detta direktivs tillämpningsområde omfattar också diskriminering som grundar sig på en kombination av kön och någon annan grund som omfattas av diskrimineringsförbudet i direktiv 2000/43/EG eller direktiv 2000/78/EG.

Artikel 4

Lika eller likvärdigt arbete

1. Medlemsstaterna ska vidta nödvändiga åtgärder för att säkerställa att arbetsgivarna har infört lönestrukturer som säkerställer att kvinnor och män får lika lön för samma eller likvärdigt arbete.
2. Medlemsstaterna ska vidta nödvändiga åtgärder för att säkerställa att verktyg och metoder inrättas för att bedöma och jämföra arbetets värde i enlighet med de kriterier som fastställs i denna artikel. Dessa verktyg och metoder kan omfatta system för könsneutral arbetsvärdering och arbetsindelning.
3. Dessa verktyg och metoder ska göra det möjligt att vid arbetsvärderingen bedöma om arbetstagare befinner sig i jämförbara situationer, med hjälp av objektiva kriterier som ska omfatta krav på utbildning, arbetslivserfarenhet och fortbildning, färdigheter, arbetsinsats och ansvarsområden, arbetsresultat och arbetets karaktär. De ska inte innehålla eller bygga på kriterier som direkt eller indirekt bygger på arbetstagarens kön.

⁶¹ Rådets direktiv 92/85/EEG av den 19 oktober 1992 om åtgärder för att förbättra säkerhet och hälsa på arbetsplatsen för arbetstagare som är gravida, nyligen har fött barn eller ammar (tionde särdirektivet enligt artikel 16.1 i direktiv 89/391/EEG) (EGT L 348, 28.11.1992, s. 1).

4. När skillnaderna i lön kan tillskrivas en och samma källa som fastställer lönevillkor, begränsas bedömningen av huruvida de anställda utför samma eller likvärdigt arbete inte bara till situationer där kvinnliga och manliga anställda har samma arbetsgivare, utan får utvidgas till att även omfatta källan. Bedömningen ska inte begränsas enbart till arbetstagare anställda samtidigt som den berörda arbetstagaren. Om ingen faktiskt jämförbar person kan fastställas, ska det vara tillåtet att jämföra med en hypotetisk person eller använda andra bevismedel som kan stärka den misstänkta diskrimineringen.
5. Om ett system för arbetsutvärdering och arbetsindelning används för att fastställa lönerna ska systemet använda samma kriterier för båda könen, så att man utesluter alla förutsättningar för könsdiskriminering.

KAPITEL II

Insyn i lönesättning

Artikel 5

Insyn i lönesättningen före anställning

1. Den som söker anställning ska ha rätt att från den presumtiva arbetsgivaren få information om ingångslön eller löneintervall, som bygger på objektiva och könsneutrala kriterier och avser den tjänst som ska tillsättas. Dessa uppgifter bör anges i den offentliggjorda platsannonsen eller på annat sätt lämnas till de sökande innan anställningsintervjun utan att den sökande ska behöva be om uppgifterna.
2. En arbetsgivare ska varken muntligt eller skriftligt själv eller via en företrädare fråga den sökande om lönehistorik från deras tidigare anställningar.

Artikel 6

Insyn i löne- och karriärutvecklingspolicy

Arbetsgivaren ska se till att arbetstagarna lätt kan få tillgång till en beskrivning av de kriterier som används för att fastställa de anställdas lönenivåer och karriärutveckling. Dessa kriterier ska vara könsneutrala.

Artikel 7

Rätt till information

1. Arbetstagare ska ha rätt att få ut information om sin egen lönenivå och de genomsnittliga lönenivåerna, som visar könsfördelningen i lönesättningen för kategorier av anställda som utför samma eller likvärdigt arbete, i enlighet med punkterna 3 och 4.
2. Arbetsgivarna ska varje år informera arbetstagarna om deras rätt att få ut den information som avses i punkt 1.
3. Arbetsgivarna ska tillhandahålla den information som avses i punkt 1 inom rimlig tid efter arbetstagarens förfrågan. Informationen ska på begäran tillhandahållas i ett format som är tillgängligt för arbetstagare med funktionsnedsättning.

4. Arbetstagare ska ha möjlighet att begära den information som avses i punkt 1 via sina företrädare eller ett jämställdhetsorgan.
5. Arbetstagarna ska inte hindras ifrån att redovisa sin lön för att kunna återropa principen om lika lön för kvinnor och män för lika eller likvärdigt arbete.
6. Arbetsgivare får kräva att arbetstagare som fått den information som avses i denna artikel inte ska använda informationen i andra syften än att försvara sin rätt till lika lön för samma eller likvärdigt arbete och inte på annat sätt sprida informationen.

Artikel 8

Rapportering om löneskillnader mellan kvinnor och män

1. Arbetsgivare med minst 250 anställda ska tillhandahålla följande information om organisationen, i enlighet med punkterna 2, 3 och 5:
 - (a) Löneskillnader mellan alla kvinnliga och manliga arbetstagare.
 - (b) Löneskillnader mellan alla kvinnliga och manliga arbetstagare med avseende på lönetillägg eller varierande ersättningar.
 - (c) Medianlöneskillnader mellan alla kvinnliga och manliga arbetstagare.
 - (d) Medianlöneskillnader mellan alla kvinnliga och manliga arbetstagare med avseende på lönetillägg eller varierande ersättningar.
 - (e) Andelen kvinnliga respektive manliga arbetstagare som får lönetillägg eller varierande ersättningar.
 - (f) Andelen kvinnliga respektive manliga arbetstagare i varje lönekvartil,
 - (g) löneskillnader mellan kvinnor och män i varje arbetstagarkategori, fördelat på sedvanlig grundlön samt lönetillägg och varierande ersättningar.
2. Arbetsgivarens ledningsskikt ska bekräfta att informationen är korrekt.
3. Arbetsgivaren ska offentliggöra den information som avses i punkt 1 a–f varje år på sin webbsida eller på annat sätt göra informationen allmänt och enkelt tillgänglig. Information från de fyra föregående åren, om den finns, ska på begäran också hållas tillgänglig. Arbetsgivaren ska även dela denna information med det tillsynsorgan som avses i punkt 6.
4. Medlemsstaterna får besluta att sammanställa den information som avses i punkt 1 a–f själva, med hjälp av sådana administrativa uppgifter som arbetsgivarna lämnat till skatte- eller socialförsäkringsmyndigheter. Denna information ska ställas till allmänhetens förfogande i enlighet med punkt 6.
5. Arbetsgivaren ska lämna den information som anges i punkt 1 g till alla arbetstagare och deras företrädare, samt till det tillsynsorgan som avses i punkt 6. Arbetsgivaren ska på begäran lämna informationen till yrkesinspektionen och jämställdhetsorganet. Information för de fyra föregående åren, om sådan finns tillgänglig, ska också lämnas ut på begäran.
6. Medlemsstaterna ska anförtro det tillsynsorgan som utsetts i enlighet med artikel 26 att samla in de uppgifter som lämnats av arbetsgivarna i enlighet med punkt 1 a–f och att säkerställa att uppgifterna offentliggörs och på ett användarvänligt sätt möjliggör en jämförelse mellan arbetsgivare, branscher och regioner i den berörda medlemsstaten.

7. Arbetstagare och deras företrädare, yrkesinspektion och jämställdhetsorgan, ska ha rätt att begära att arbetsgivaren ska lämna ytterligare förtydliganden och detaljuppgifter eller förklaringar avseende eventuella skillnader i lön mellan könen. Arbetsgivaren ska besvara en sådan begäran inom rimlig tid genom att lämna ett motiverat svar. Om löneskillnader mellan könen inte kan motiveras med hänvisning till objektiva och könsneutrala kriterier ska arbetsgivaren avhjälpa situationen i nära samverkan med arbetstagarföreträdare, yrkesinspektion och/eller jämställdhetsorgan.

Artikel 9

Gemensam lönebedömning

1. Medlemsstaterna ska vidta lämpliga åtgärder för att säkerställa att arbetsgivare med minst 250 anställda i samverkan med arbetstagarföreträdarna utför en gemensam lönebedömning om båda av de följande förutsättningarna är förhanden:
 - (a) Den lönerapportering som gjorts enligt artikel 8 visar åtminstone fem procents skillnad i genomsnittslönen för kvinnor och män i någon arbetstagarkategori.
 - (b) Arbetsgivaren har inte motiverat skillnaderna i genomsnittlig lönenivå med hänvisning till objektiva och könsneutrala faktorer.
2. Den gemensamma lönebedömningen ska omfatta följande:
 - (a) En analys av andelen kvinnliga respektive manliga arbetstagare i varje arbetstagarkategori.
 - (b) Närmare upplysningar om kvinnors och mäns genomsnittslön samt lönetillägg och varierande ersättningar för varje arbetstagarkategori.
 - (c) En kartläggning av alla skillnader i lönenivå för kvinnliga respektive manliga arbetstagare i varje arbetstagarkategori.
 - (d) Skälen till dessa skillnader i lönenivå och, i förekommande fall, en objektiv könsneutral motivering på ett sätt som gemensamt fastställts av arbetstagarföreträdarna och arbetsgivaren.
 - (e) Åtgärder för att avhjälpa sådana skillnader, om de inte kan motiveras med hänvisning till objektiva och könsneutrala kriterier.
 - (f) En rapport om effektiviteten i eventuella åtgärder som nämnts i tidigare gemensamma lönebedömningar.
3. Arbetsgivarna ska ställa de gemensamma lönebedömningarna till förfogande för arbetstagarna, arbetstagarföreträdarna, det tillsynsorgan som utsetts enligt artikel 26, jämställdhetsorganet och yrkesinspektionen.
4. Om det vid den gemensamma lönebedömningen framkommer skillnader i genomsnittslön för kvinnor och män som utför lika eller likvärdigt arbete, vilka inte kan motiveras med hänvisning till objektiva och könsneutrala kriterier, ska arbetsgivaren avhjälpa situationen i nära samverkan med arbetstagarföreträdare, yrkesinspektion och/eller jämställdhetsorgan. Sådana åtgärder ska omfatta införandet av könsneutral arbetsutvärdering och arbetsindelning för att säkerställa att man utesluter all direkt eller indirekt lönediskriminering på grund av kön.

Artikel 10

Skydd av personuppgifter

1. I den mån åtgärderna enligt artiklarna 7, 8 och 9 inbegriper behandling av personuppgifter bör detta ske i enlighet med förordning (EU) 2016/679.
2. Personuppgifter som samlas in av arbetsgivarna i enlighet med artiklarna 7, 8 eller 9 får inte användas i andra syften än att genomföra principen om lika lön för lika eller likvärdigt arbete.
3. Medlemsstaterna får besluta att endast arbetstagarföreträdare eller jämställdhetsorgan ska ha tillgång till den information som avses i artiklarna 7, 8 och 9 om yppandet av uppgifterna skulle leda till att man direkt eller indirekt får kännedom om en identifierbar kollegas lön. Arbetstagarföreträdarna eller jämställdhetsorganet ska bistå arbetstagaren med råd om en eventuell talan enligt detta direktiv, men utan att röja faktiska lönenivåer för enskilda arbetstagare som utför samma eller likvärdigt arbete. Det tillsynsorgan som avses i artikel 26 ska ha tillgång till informationen utan några inskränkningar.

Artikel 11

Dialog mellan arbetsmarknadens parter

Utan att det inskränker handlingsfriheten för arbetsmarknadens parter och i enlighet med nationell lagstiftning och praxis bör medlemsstaterna säkerställa att de rättigheter och skyldigheter som följer av detta direktiv diskuteras med arbetsmarknadens parter.

KAPITEL III

Rättsmedel och efterlevnad

Artikel 12

Tillvaratagande av rättigheter

Medlemsstaterna ska säkerställa att alla arbetstagare som anser sig förfördelade på grund av att principen om lika lön för lika eller likvärdigt arbete inte har tillämpats på dem, efter eventuell förlikning, har tillgång till rättsliga förfaranden för att säkerställa efterlevnaden av de rättigheter och skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete. Förfarandena bör vara lättillgängliga för arbetstagarna och de som agerar i deras ställe, även efter det att det arbetsförhållande som lett till misstänkt diskriminering har upphört.

Artikel 13

Förfaranden för eller till stöd för arbetstagare

1. Medlemsstaterna ska säkerställa att sammanslutningar, organisationer, jämställdhetsorgan och arbetstagarföreträdare eller andra rättsliga organ som i enlighet med de ovannämnda kriterierna i nationell lagstiftning, har befogat intresse av att säkerställa jämställdheten mellan könen får delta i alla rättsliga eller administrativa förfaranden för att återöppna de rättigheter eller skyldigheter som följer

av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete. De får med arbetstagarens godkännande agera för dennes räkning eller till stöd för den arbetstagare som fallit offer för en överträdelse av någon av de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete.

2. Jämställdhetsorgan och arbetstagarföreträdare ska även ha rätt att agera för eller till stöd för flera arbetstagare, med deras godkännande.

Artikel 14

Rätt till kompensation

1. Medlemsstaterna ska säkerställa att arbetstagare som lidit skada på grund av att de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete inte efterlevts har rätt att begära och få full kompensation eller gottgörelse på det sätt som medlemsstaten fastställer för åsamkad skada.
2. Den kompensation eller gottgörelse som avses i punkt 1 ska säkerställa faktisk och verksam kompensation för åsamkade förluster och skador på ett sätt som är avskräckande och proportionerligt i förhållande till den skada som lidits.
3. Kompensationen ska återinsätta den skadelidande arbetstagaren i samma situation denne skulle ha haft om ingen könsdiskriminering förekommit och inga överträdelser gjorts av någon av de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete. Kompensationen ska omfatta fullständig retroaktiv återvinning av utebliven lön och därmed sammanhängande bonusar eller in-naturaförmåner, kompensation för förlorade möjligheter och ideell skada. Den ska även ge rätt till dröjsmålsränta.
4. Kompensationen eller gottgörelsen får inte begränsas av en i förväg fastställd övre gräns.

Artikel 15

Övriga rättsmedel

Medlemsstaterna ska säkerställa att domstol eller annan behörig myndighet som vid rättslig prövning om säkerställande av efterlevnaden av alla de rättigheter och skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete, på karendens begäran och på svarandens bekostnad, ska ha rätt att utfärda föreläggande om följande:

- (a) Ett föreläggande som fastställer överträdelse av någon av de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete.
- (b) Ett föreläggande som ålägger svaranden att vidta strukturella eller organisatoriska åtgärder, för att säkerställa efterlevnaden av någon av de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete, eller att upphöra med en överträdelse av dessa.

Om dessa förelägganden inte efterlevs kan detta i förekommande fall leda till återkommande straffavgift som ska säkerställa efterlevnaden.

Artikel 16

Omvänd bevisbörda

1. Medlemsstaterna ska vidta lämpliga åtgärder i enlighet med sina nationella rättssystem för att säkerställa att bevisbördan, när arbetstagare som anser sig förfördelade på grund av att likalöneprincipen inte har tillämpats på dem vänder sig till domstol eller annan behörig myndighet för att få det fastställt om de konkreta omständigheterna ger anledning att anta att direkt eller indirekt diskriminering har förekommit, ska åligga svaranden och att det är denne som ska föra i bevisning att ingen direkt eller indirekt lönediskriminering förekommit.
2. När rättsliga eller administrativa förfaranden om direkt eller indirekt diskriminering inleds mot arbetsgivare som inte efterkommit de rättigheter och skyldigheter som följer av artiklarna 5–9 i detta direktiv om rätt till insyn i lönesättning, ska medlemsstaterna säkerställa att det åligger arbetsgivaren att bevisa att ingen sådan diskriminering förekommit.
3. Alla eventuella kvarstående tveksamheter ska bedömas till kärandens fördel.
4. Detta direktiv hindrar inte att medlemsstaterna inför bevisregler som är mer gynnsamma för käranden vid talan som åberopar rättigheter eller skyldigheter avseende lika lön för kvinnor och män för lika eller likvärdigt arbete.
5. Medlemsstaterna kan avstå ifrån att tillämpa punkt 1 på förfaranden där det åligger domstolen eller den behöriga instansen att utreda fakta i målet.
6. Denna artikel ska inte tillämpas på straffrättsliga förfaranden, såvida inte annat sägs i nationell lagstiftning.

Artikel 17

Tillgång till bevis

1. Medlemsstaterna ska säkerställa att nationella domstolar eller behöriga myndigheter vid talan om lika lön för kvinnor och män för lika eller likvärdigt arbete har rätt att förelägga svaranden att yppa all relevant bevisning i dennes besittning.
2. Medlemsstaterna ska se till att nationella domstolar är behöriga att utfärda ett föreläggande om utlämnande av bevis som innehåller konfidentiella uppgifter, om de anser detta vara relevant för talan. Medlemsstaterna ska se till att nationella domstolar, när de begär utlämnande av sådan information, har tillgång till effektiva åtgärder för att skydda denna information.
3. Denna artikel ska inte hindra medlemsstaterna ifrån att bibehålla eller införa bestämmelser som är fördelaktigare för käranden.

Artikel 18

Preskriptionstid

1. Medlemsstaterna ska anta bestämmelser om preskriptionstid för talan om lika lön för kvinnor och män för lika eller likvärdigt arbete. Dessa regler ska fastställa när preskriptionsfristen börjar löpa, dess löptid och under vilka förhållanden den ska avbrytas eller tillfälligt upphöra att löpa.
2. Preskriptionstiden ska inte börja löpa innan överträdelsen av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete eller överträdelse av andra rättigheter och skyldigheter som följer av detta direktiv har upphört och käranden har, eller rimligen kan antas ha, vetskap om överträdelserna.
3. Medlemsstaterna ska säkerställa att preskriptionstiden för att väcka talan uppgår till minst tre år.
4. Medlemsstaterna ska säkerställa att preskriptionstiden uppskjuts, eller beroende på nationell lagstiftning, avbryts så snart käranden väcker talan genom stämning eller genom att påtala ärendet hos arbetsgivaren, arbetstagarföreträdare, yrkesinspektion eller jämställdhetsorgan.

Artikel 19

Arvoden och rättegångskostnader

Kärande vars talan om lönediskriminering bifallits ska ha rätt att utöver annan kompensation från svaranden få ersättning för rimliga utlägg för arvoden till jurister och experter samt rättegångskostnader. Kärande vars talan om lönediskriminering bifallits ska inte ha rätt att få ersättning från svaranden för utlägg för arvoden till jurister och experter eller rättegångskostnader, om talan väckts i ond tro, var uppenbart ogrundad eller om bifall av ersättning bedöms vara orimlig med tanke på de särskilda omständigheterna i fallet.

Artikel 20

Sanktioner

1. Medlemsstaterna ska fastställa regler om sanktioner för överträdelse av nationella bestämmelser som antagits enligt detta direktiv och vidta alla nödvändiga åtgärder för att säkerställa att de tillämpas. De fastställda sanktionerna ska vara effektiva, proportionella och avskräckande. Medlemsstaterna ska snarast underrätta kommissionen om sådana regler och åtgärder samt eventuella ändringar som berör dem.
2. Medlemsstaterna ska säkerställa straffavgifter för överträdelser av de rättigheter och skyldigheter som följer av principen om lika lön för samma eller likvärdigt arbete. De ska fastställa en miniminivå för sådana straffavgifter som säkerställer en faktisk avskräckande verkan. Straffavgiftens nivå ska fastställas med hänsyn till
 - (a) överträdelsens allvar och varaktighet,
 - (b) eventuellt uppsåt eller grov försumlighet från arbetsgivarens sida,
 - (c) eventuella andra försvårande eller förmildrande omständigheter som är tillämpliga på ärendet.
3. Medlemsstaterna ska fastställa särskilda sanktioner vid upprepade överträdelser av de rättigheter och skyldigheter som avser lika lön för kvinnor och män, såsom indragning av offentliga förmåner eller uteslutning under viss tid från tilldelning av ekonomiska incitament.

4. Medlemsstaterna ska vidta alla nödvändiga åtgärder för att säkerställa att de sanktioner som föreskrivs tillämpas på ett verkningsfullt sätt i praktiken.

Artikel 21

Lika lön vid offentlig upphandling och koncession

1. De lämpliga åtgärder som medlemsstaterna vidtar i enlighet med artikel 30.3 i direktiv 2014/23/EU, artikel 18.2 i direktiv 2014/24/EU eller artikel 36.2 i direktiv 2014/25/EU ska omfatta åtgärder för att säkerställa att ekonomiska aktörer i samband med offentlig upphandling eller koncession fullgör skyldigheterna i fråga om lika lön för kvinnor och män för lika eller likvärdigt arbete.
2. Medlemsstaterna ska överväga att, i tillämpliga fall, låta upphandlande myndigheter använda sanktioner och uppsägningsklausuler för att säkerställa efterlevnaden av likalöneprincipen vid offentlig upphandling eller koncession. När medlemsstaternas myndigheter vidtar åtgärder i enlighet med artikel 38.7 a) i direktiv 2014/23/EU, artikel 57.4 a) i direktiv 2014/24/EU eller artikel 80.1 i direktiv 2014/25/EU, i förening med artikel 57.4 a) i direktiv 2014/24/EU, får de utesluta eller av medlemsstaterna åläggas att utesluta alla ekonomiska aktörer från deltagande i en given offentlig upphandlingsomgång om de på något sätt kan påvisa att de skyldigheter som avses i punkt 1 överträts, endera därför att skyldigheterna avseende rätten till insyn i lönesättningen åsidosatts, eller därför att det förekommer löneskillnader på mer än 5 procent i en arbetstagarkategori, som arbetsgivaren inte kan motivera med hjälp av objektiva, könsneutrala kriterier. Detta hindrar inte tillämpningen av andra rättigheter eller skyldigheter som följer av direktiv 2014/23/EU, direktiv 2014/24/EU eller direktiv 2014/25/EU.

Artikel 22

Skydd mot repressalier och mindre förmånlig behandling

1. Arbetstagare och deras företrädare får inte behandlas mindre förmånligt på grund av att de åberopat sina rättigheter avseende lika lön för kvinnor och män.
2. Medlemsstaterna ska i sina rättsordningar införa nödvändiga bestämmelser för att skydda arbetstagare, inbegripet arbetstagarföreträdare enligt nationell lag och/eller praxis, mot uppsägning eller annan ogynnsam behandling som utgör en reaktion från arbetsgivarens sida på ett klagomål inom företaget eller ett rättsligt förfarande som syftar till att säkerställa efterlevnaden av alla rättigheter och skyldigheter avseende lika lön för kvinnor och män.

Artikel 23

Förhållande till direktiv 2006/54/EG

Kapitel III i detta direktiv ska tillämpas på förfaranden som avser de rättigheter eller skyldigheter som följer av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete i enlighet med artikel 4 i direktiv 2006/54/EG.

KAPITEL IV

Övergripande bestämmelser

Artikel 24

Skyddsnivå

1. Medlemsstaterna får införa eller behålla bestämmelser som är förmånligare för arbetstagare än de som fastställs i detta direktiv.
2. Införlivandet av detta direktiv får inte under några omständigheter utgöra skäl för att försämra skyddsnivån på de områden som omfattas av direktivet.

Artikel 25

Jämställdhetsorgan

1. Utan att det påverkar behörigheten för yrkesinspektioner eller andra organ som genomdriver arbetstagares rättigheter, däribland arbetsmarknadens parter, ska nationella jämställdhetsorgan som inrättats i enlighet med direktiv 2006/54/EG vara behöriga i frågor som ingår i det här direktivet tillämpningsområde.
2. Medlemsstaterna ska aktivt vidta åtgärder för att säkerställa nära samarbete och samordning mellan landets jämställdhetsorgan och andra nationella tillsynsorgan på arbetsmarknaden.
3. Medlemsstaterna ska förse jämställdhetsorganet med sådana resurser att det effektivt kan utföra sina uppgifter avseende rätten till lika lön för kvinnor och män för samma eller likvärdigt arbete. Medlemsstaterna ska överväga att till jämställdhetsorganen omfördela sådana belopp som enligt artikel 20 drivits in i form av straffavgifter.

Artikel 26

Tillsyn och ökad medvetenhet

1. Medlemsstaterna ska säkerställa fortlöpande övervakning av hur principen om lika lön för kvinnor och män för lika eller likvärdigt arbete tillämpas och hur tillgängliga rättsmedel åberopas.
2. Varje medlemsstat ska utse ett organ (*tillsynsorgan*) som ska utöva tillsyn över och främja tillämpningen av nationella lagar och föreskrifter som införlivar detta direktiv och ska vidta nödvändiga åtgärder för att organet ska kunna fungera väl. Tillsynsorganet får utgöra en del av redan befintliga organ eller strukturer på nationell nivå.
3. Medlemsstaterna ska säkerställa att tillsynsorganets uppgifter omfattar följande:
 - (a) Öka medvetenheten bland privatägda och offentligägda företag och organisationer, arbetsmarknadens parter och allmänheten i syfte att främja likalöneprincipen och rätten till insyn i lönesättningen.
 - (b) Ta fram verktyg för att analysera och bedöma löneskillnader för att komma till rätta med orsakerna till löneskillnader mellan könen.
 - (c) Sammanställa uppgifter som arbetsgivarna lämnat i enlighet med artikel 8.6, och offentliggöra dessa uppgifter på ett användarvänligt sätt.
 - (d) Samla in rapporterna om de gemensamma lönebedömningarna enligt artikel 9.3.

- (e) Sammanställa uppgifter om hur många och vilken typ av lönediskrimineringsärenden som anhängiggjorts vid domstol och som påtalats till behöriga myndigheter, däribland jämställdhetsorgan.
4. Medlemsstaterna ska varje år förse kommissionen med de uppgifter som avses i punkt 3 c, d och e.

Artikel 27

Förhandlingsrätt och rätt till kollektiva åtgärder

Direktivet ska inte heller på något sätt påverka rätten att förhandla om, ingå och tillämpa kollektivavtal samt att vidta kollektiva åtgärder i enlighet med nationell rätt eller praxis.

Artikel 28

Statistik

Medlemsstaterna ska varje år och i god tid förse kommissionen (Eurostat) med aktuella uppgifter om löneskillnader mellan könen. Statistiken ska innehålla uppgifter om könsfördelning, ekonomisk sektor, arbetstid (heltid/deltid), ägarförhållanden (privat/offentligt ägande) och ålder och bör framställas för varje år.

Artikel 29

Informationsspridning

Medlemsstaterna ska aktivt vidta åtgärder för att säkerställa att de bestämmelser som de antar i enlighet med detta direktiv, samt andra relevanta bestämmelser som redan är i kraft, på lämpligt sätt uppmärksammas av de berörda personerna inom hela sitt territorium.

Artikel 30

Genomförande

Medlemsstaterna får överlåta åt arbetsmarknadens parter att genomföra detta direktiv, på gemensam begäran från dessa och förutsatt att medlemsstaterna vidtar alla nödvändiga åtgärder för att alltid säkerställa att direktivet får önskad verkan.

Artikel 31

Införlivande

1. Medlemsstaterna ska sätta i kraft de lagar och andra författningar som är nödvändiga för att följa detta direktiv senast [två år efter ikraftträdandet]. De ska genast underrätta kommissionen om detta.
2. Medlemsstaternas information till kommissionen ska åtföljas av en sammanfattning av hur deras bedömning av hur införlivandeakten påverkat små och medelstora företag, samt en hänvisning till var bedömningen är offentliggjord.

3. När en medlemsstat antar dessa bestämmelser, ska de innehålla en hänvisning till detta direktiv eller åtföljas av en sådan hänvisning när de offentliggörs. Närmare föreskrifter om hur hänvisningen ska göras ska antas av respektive medlemsstat.

Artikel 32

Rapportering och översyn

1. Senast [åtta år efter ikraftträdandet] ska medlemsstaterna rapportera till kommissionen om hur detta direktiv tillämpats och vilken verkan det haft i praktiken.
2. Med utgångspunkt i informationen från medlemsstaterna ska kommissionen överlämna en rapport till Europaparlamentet, rådet om genomförandet av detta direktiv, och om så är lämpligt lägga fram förslag till ändringar i lagstiftningen.

Artikel 33

Ikraftträdande

Detta direktiv träder i kraft den tjugonde dagen efter det att det har offentliggjorts i *Europeiska unionens officiella tidning*.

Artikel 34

Adressater

Detta direktiv riktar sig till medlemsstaterna.

Utfärdat i Bryssel den

På Europaparlamentets vägnar
Ordförande

På rådets vägnar
Ordförande



Brussels, 4.3.2021
COM(2021) 93 final

2021/0050 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**to strengthen the application of the principle of equal pay for equal work
or work of equal value between men and women through
pay transparency and enforcement mechanisms**

{SEC(2021) 101 final} - {SWD(2021) 41 final} - {SWD(2021) 42 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for the proposal

The right to equal pay between women and men for equal work or work of equal value is one of the EU's founding principles enshrined in the Treaty of Rome. The requirement to ensure equal pay is set out in Directive 2006/54/EC (the 'Recast Directive')¹ as complemented in 2014 by a Commission Recommendation on pay transparency (the '2014 Recommendation')². Despite this legal framework, the effective implementation and enforcement of this principle in practice remains a challenge in the EU. Lack of pay transparency has been identified as one of the key obstacles³. The gender pay gap⁴ in the EU remains around 14%. The pay gap has long-term impact on the quality of women's life, their increased risk of exposure to poverty and on the persisting pension pay gap, which is 33% in the EU⁵. The Covid-19 pandemic and its economic and social consequences makes it even more pressing to tackle this issue, given that the crisis has hit female workers especially hard⁶.

The European Parliament has repeatedly called for more action at EU level to enhance the application of the equal pay provisions. The Council has called for action from both the Member States and the Commission. In June 2019, it asked the Commission to develop concrete measures to improve pay transparency⁷.

The European Pillar of Social Rights includes gender equality and the right to equal pay among its 20 principles⁸. In its 2017-2019 action plan on tackling the gender pay gap⁹, the Commission assessed the need for further legal measures to improve the enforcement of the principle of equal pay and opportunities for improving pay transparency. In her political

¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23). The Directive consolidated the existing directives on gender equality in the field of employment, incorporating case law of the Court of Justice of the European Union, i.e. Directive 75/117/EEC on equal pay, Directive 86/378/EEC (as amended by Directive 96/97/EC) on equal treatment in occupational social security schemes, Directive 76/207/EEC (amended by Directive 2002/73/EC) on equal treatment of men and women, and Directive 97/80/EC (amended by Directive 98/52/EC) on the burden of proof in cases of discrimination based on sex.

² Commission Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency (OJ L 69, 8.3.2014, p. 112).

³ See the Commission evaluations and implementation reports respectively [SWD\(2020\)50](#) and [COM\(2013\) 861 final](#).

⁴ The gender pay gap indicator measures the difference between the average gross hourly earnings of male and female paid employees as a percentage of average gross hourly earnings of male paid employees, Eurostat, [sdg_05_20](#).

⁵ <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200207-1>

⁶ <https://www.eurofound.europa.eu/publications/policy-brief/2020/women-and-labour-market-equality-has-covid-19-rolled-back-recent-gains>

⁷ EPSCO Conclusions, June 2019 (doc. 10349/19).

⁸ The Pillar of Social Rights is about delivering new and more effective rights for citizens, built upon 20 key Principles, See more: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

⁹ COM(2017) 678 final, see also the related [implementation report \(COM\(2020\) 101 final\)](#).

guidelines¹⁰, President von der Leyen announced that the Commission would bring forward new binding pay transparency measures. This commitment was reaffirmed in the gender equality strategy 2020-2025¹¹.

This initiative follows the Commission's retrospective evaluation¹² of the relevant legal provisions (the '2020 evaluation') and several other reports on the matter¹³. Those assessments concluded that the right to equal pay is not adequately applied nor enforced in practice and that pay transparency is lacking in many Member States.

Objectives of the proposal

The initiative aims at tackling the persisting inadequate enforcement of the fundamental right to equal pay and ensuring that this right is upheld across the EU, by establishing pay transparency standards to empower workers to claim their right to equal pay.

The proposed directive pursues these objectives by:

- establishing pay transparency within organisations;
- facilitating the application of the key concepts relating to equal pay, including 'pay' and 'work of equal value'; and
- strengthening enforcement mechanisms.

Pay transparency allows workers to detect and prove possible discrimination based on sex. It also shines light on gender bias in pay systems and job grading that do not value the work of women and men equally and in a gender-neutral way, or that fail to value certain occupational skills that are mostly seen as female qualities. Since such bias is often unconscious, pay transparency can help raise awareness of the issue among employers and help them identify discriminatory gender-based pay differences that cannot be explained by valid discretionary factors and are often unintentional. Pay transparency is thus an essential tool for dispelling doubts on equal pay between men and women and for supporting the elimination of gender bias in pay practices. It can also foster change in attitudes towards women's pay by raising awareness and stimulating debate around the reasons for structural gender pay differences. Beyond the simple compliance with the principle of equal pay, it may also constitute a trigger for reviewing gender equality policies more generally at company level, and promote closer cooperation between employers and workers' representatives.

• Consistency with existing policy provisions in the policy area

Building on the Recast Directive and the 2014 Recommendation, this proposal introduces new and more detailed rules to ensure compliance with the principle of equal pay between men and women for equal work or work of equal value.

¹⁰ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

¹¹ COM(2020)152 final.

¹² SWD(2020)50.

¹³ Implementation report on Directive 2006/54/EC (SWD (2013) 512 final); impact assessment accompanying the Pay Transparency Recommendation (SWD (2014) 59 final); report on the implementation of the Commission Recommendation on strengthening the principle of equal pay between men and women through transparency (COM(2017) 671 final).

The European Pillar of Social Rights and its 20 principles are the EU's compass to build a fairer Europe and to promote better living and working conditions for all. On 3 March 2021, the Commission put forward an ambitious Action Plan to ensure its implementation across the EU.

This proposed directive is part of a broader package of measures and initiatives addressing the root causes of the gender pay gap and economic empowerment of women. Pay discrimination and bias in pay structures are only one of the root causes of this gender pay gap of 14%, besides other causes and factors, such as horizontal and vertical labour market segregation, full time versus part-time work as well as unpaid care-related constraints. Even without these causes and factors, there is still a so-called “unexplained” gender pay gap, which accounts for two thirds of the gender pay gap in the EU Member States, and which this initiative aims to tackle. It is also important to note that the employment history, including the gender pay gap, together with the design of the pension system, affects the gender pension gap.

This initiative is part of a multipronged approach, including, among others, the Work-Life Balance Directive¹⁴, sectoral initiatives to fight stereotypes and improve gender balance, and a proposed directive on improving gender balance on the boards of large EU listed companies¹⁵.

The proposed Directive is fully in line with the EU's commitment to the UN 2030 agenda and contributes to the implementation of the UN Sustainable Developments Goals (SDG), in particular SDG 5 on achieving gender equality and empowering all women and girls¹⁶.

- **Consistency with other Union policies**

This proposal is coherent with the initiative aimed at increasing companies' reporting of relevant non-financial information¹⁷. It is consistent with and supported by the EU minimum wage initiative¹⁸ and the upcoming sustainable corporate governance initiative¹⁹.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed directive is based on Article 157(3) of the Treaty on the Functioning of the European Union (TFEU), which provides for the EU to adopt measures to ensure the application of the principle of ‘equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value’.

Article 157(3) TFEU is the legal basis for the Recast Directive and the 2014 Recommendation. It therefore also serves as the legal basis for the binding pay transparency

¹⁴ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

¹⁵ <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52012PC0614>

¹⁶ https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en

¹⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-reporting-directive>

¹⁸ COM(2020) 682 final.

¹⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>

measures under this initiative, which support the implementation and better enforcement of the principle of equal pay under Article 157 TFEU and the Recast Directive.

- **Subsidiarity**

The implementation of the EU principle of equal pay was established at EU level already in the 1957 Treaty establishing the European Economic Community (Article 119 EEC Treaty, then Article 141 EC and now Article 157 TFEU), which shows its status as a fundamental EU value. Initially, the principle had a primarily economic function, in that the aim was to avoid distortions of competition. In 1976, however, the Court of Justice of the European Union recognised the social objective of Article 119 EEC and its horizontal direct effect²⁰. Later, the Court added that ‘the economic aim pursued by Article 119 of the Treaty, namely the elimination of distortions of competition between undertakings established in different Member States, is secondary to the social aim pursued by the same provision, which constitutes the expression of a fundamental human right’²¹.

As demonstrated in the 2020 evaluation, comparable efforts throughout the EU to promote equal pay are not likely to materialise without an initiative at EU level. There is a need for a coordinated approach, the lack of which jeopardises the attainment at national level of pay equality between men and women, pursuant to Article 157(1) TFEU.

The fact that national pay transparency measures are fragmented and scarce increases the risk of competition being distorted by having different levels of social standards. There is a risk of businesses competing on an uneven playing field, which would hamper the operation of the internal market. Action at EU level is needed in order to ensure a similar level of protection for workers across the EU and a level playing field for operators in the internal market.

The proposed directive is based on minimal harmonisation of Member States’ systems and allows them to set higher standards should they decide to. It explicitly allows them to entrust implementation to social partners, provided they are at all times able to guarantee delivery of the required outcomes required by this directive. This combined approach, allowing to implement the mix of substantive rights and obligations set out in this Directive by collective agreement, respects different features of national social dialogue and collective bargaining systems and the autonomy of social partners.

- **Proportionality**

Article 5(4) of the Treaty on European Union provides that ‘[u]nder the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’.

The 2014 Recommendation has not achieved the objective of more effective implementation of the equal pay principle through pay transparency; this is due to its non-binding nature and resulting limited implementation by Member States²². The Recast Directive should therefore

²⁰ Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* (Defrenne II) ; Case 43/75, ECLI:EU:C:1976:56, paragraphs 8-10.

²¹ Case 50/96, *Deutsche Telekom AG v Lilli Schröder*, ECLI:EU:C:2000:72, p. 57.

²² SWD(2020)50.

be complemented and supported by the proposed directive. The adoption of binding legal measures is a proportionate response to the clear need for practical action to uphold the equal pay principle and does not go beyond what is necessary to achieve this goal.

The proportionality principle is fully respected as the pay transparency and enforcement mechanisms' measures are designed in such a way as to achieve the objective of strengthening the application of the principle of equal pay between women and men. On the one hand, the proposal ensures that workers have the right to information on the basis of which they can detect gender-based pay discrimination and defend their right to equal pay and, on the other hand, it takes account of possible costs and burdens for employers, especially micro, small and medium-sized companies.

As indicated in the accompanying impact assessment, the associated costs are expected to be moderate²³. They are justified in the light of the accrued, longer-term benefits: the main benefit is the full protection of a fundamental EU value. In addition, it contributes to the EU's wider social ambitions as set out in the European Pillar of Social Rights. Moreover, further benefits may come from more secure employment, workforce retention and more productive workers and firms. Therefore, it will have a positive impact on business profitability and the functioning of the internal market.

The proposal leaves the Member States the option of keeping or setting more favourable standards for workers through more proactive provision of pay information and reporting. It also takes account of the diversity of labour market models across the EU and it allows Member States to entrust the social partners with the implementation of the directive.

In the light of the above, since the objective of improving pay transparency cannot be sufficiently achieved by the Member States, but can (by reason of the need to establish common minimum requirements) be better achieved at EU level, the EU may adopt measures, in accordance with the principles of subsidiarity and proportionality (set out in Articles 5(3) and 5(4) TFEU).

- **Choice of instrument**

A legal instrument in the form of a directive laying down a framework to enhance the application of the equal pay principle through pay transparency and strengthened enforcement mechanisms is considered as the appropriate instrument. It makes it possible to strengthen existing provisions while leaving Member States discretion as to how to implement the new rights and obligations taking into account their national context. This approach is in line with that taken in regard to other matters in EU law on employment and discrimination²⁴.

²³ The impact assessment's estimated cost related to the individual right of information was 20 EUR per single request (the total cost per company thus depending on number of requests), while the overall cost for employers' pay reporting would amount to between a minimum of 379-508 EUR and a maximum of 721-890 EUR per employer depending on the size. Depending on actual pay differences requiring a joint pay assessment, the average cost per employer to carry out such assessment was estimated between a minimum of 1,180-1,724 EUR and a maximum of 1,911 and 2,266 EUR. See SWD (2021) 41, p. 74.

²⁴ For example, Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal

It was decided not to amend or replace the Recast Directive due to its wider scope to combat sex-based discrimination in employment and occupation; a self-standing chapter concerning pay transparency and related enforcement provisions would not fit the existing structure of that directive and would be disproportionate in relation to the provisions of the Recast Directive regulating other aspects of equal treatment of women and men in employment and occupation matters.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The 2020 evaluation of the legal framework on equal pay, in particular the relevant parts of the Recast Directive and the 2014 Recommendation, concluded that the Recast Directive is considered relevant by all stakeholders and that compliance with it in Member States and across sectors is medium to high. However, the effective implementation of the principle of equal pay and the enforcement of this principle in practice remains a challenge. It could be more effective if the legal concepts of ‘pay’ and ‘work of equal value’ were to be clarified on the basis of the case law of the Court of Justice of the European Union. These concepts are not defined uniformly across national legislations and uncertainties of interpretation and application remain. The availability of clear criteria across the EU would contribute to the effective application of the equal pay principle.

As regards efficiency, the 2020 evaluation did not find evidence of significant administrative burden linked to the implementation of the Recast Directive and the 2014 Recommendation. The pay transparency measures proposed in the 2014 Recommendation involved only limited costs for employers. Intangible costs could arise from possible dissatisfaction (and hence lower productivity) among workers who become aware of large wage differences between men and women, while it may also have a positive impact on job satisfaction and worker engagement, increasing employer attractiveness. The lack of pay transparency impaired individuals’ ability to detect and challenge gender pay discrimination. In addition, workers filing a pay discrimination complaint faced several obstacles to access to justice and ran the risk of stigmatisation and retaliation by the employer.

The 2020 evaluation confirmed that the Recast Directive brings clear EU added value, generating action that would otherwise not have been taken to promote the equal pay principle in Member States. However, the EU added value was limited by insufficient and diverse implementation of the directive and confusion (especially in the courts and among employers and workers) around legal concepts central to the implementation of equal pay measures.

• Stakeholder consultations

- (a) Advisory Committee on equal opportunities for women and men²⁵

Market Information System (OJ L 159, 28.5.2014, p. 1) and Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

²⁵ The Advisory Committee was established under Commission Decision 2008/590/EC setting up an Advisory Committee on Equal Opportunities for Women and Men. It assists the Commission in formulating and

In an opinion adopted in December 2017²⁶, the Advisory Committee pointed to greater transparency on wages as the first step in ensuring the application of the equal pay principle. It highlighted a lack of transparency at three levels:

- companies rarely publish salary scales and the criteria for setting wages remain unclear;
- there is no clear legal enforcement of pay transparency; and
- the monitoring of the application of national measures is incomplete.

The Committee called for action to improve pay transparency by establishing an individual right to request and obtain information on both individual and aggregated pay levels, so as to prevent the creation of adversarial workplaces. This right could also be given to local union representatives or other worker's representatives.

(b) Public consultations and targeted surveys

A public consultation²⁷ was carried out from 11 January through 5 April 2019, in order to collect information, views and experiences on problems appearing from gaps and weaknesses of national and EU pay transparency measures. It also sought evidence on the extent to which the 2014 Recommendation had helped to reinforce the implementation of the equal pay principle enshrined in Article 157 TFEU and the Recast Directive. Finally, the respondents replied to forward-looking questions on relevant aspects of the transparency initiative, including the need for further EU-level action to address gender-based pay discrimination²⁸.

In response to the subsequent public consultation (5 March to 28 May 2020), national authorities, trade unions, employers' organisations, business associations, non-governmental organisations and private individuals gave their views on gender-based pay discrimination, pay transparency and challenges relating to the enforcement of the right to equal pay for the same work or work of equal value²⁹.

Finally, the Commission organised three targeted surveys of Member States, social partners and employers³⁰.

• **Impact assessment**

The impact assessment report accompanying this proposal³¹:

implementing EU activities aimed at promoting equal opportunities for women and men. It also fosters ongoing exchanges of relevant experience, policies and practices between the Member States and the various parties involved.

²⁶ https://ec.europa.eu/info/sites/info/files/adopted_opinion_gpg.pdf

²⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1839-Evaluation-of-the-provisions-in-the-Directive-2006-54-EC-implementing-the-Treaty-principle-on-equal-pay-/public-consultation>

²⁸ For a summary of the responses, see Annex 2 to the 2020 evaluation report.

²⁹ For a summary of the responses, see Annex 2 to the impact assessment report accompanying this proposal.

³⁰ For a summary of the responses, see Annex 2 to the impact assessment report accompanying this proposal.

³¹ SWD (2021) 41.

- describes the problems arising from the implementation of the current legal framework and its enforcement;
- sets out policy options for addressing these problems; and
- assesses the social and economic impact of the policy options.

The policy options involve creating transparency at the level of individual workers, creating transparency at employers' level and facilitating the implementation and enforcement of the existing legal framework. The options provide differentiated scenarios ranging from maximum intervention (in terms of coverage of the workforce and organisations) to minimum intervention (balancing workers' fundamental right to equal pay with the possible burden and costs of the envisaged measures for employers).

The impact assessment concluded that the combination of measures proposed here was the most proportionate and coherent in the light of the general and specific objectives of this initiative.

The specific national impacts will depend on a number of factors, including the extent of the necessary legislative adjustments and the broader socioeconomic context. Overall, benefits can be expected in terms of greater awareness among employers, of workers being empowered through better enforcement of their right to equal pay for the same work or work of equal value, a reduction of gender bias in pay structures, addressing the systemic undervaluation of women's work, and ultimately a reduction in the share of the gender pay gap possibly due to pay discrimination. Effects at macroeconomic level could also be expected though they cannot be estimated with precision, as the precise size of pay discrimination (and therefore its contribution to the gender pay gap) is not available. Greater pay equality could boost total gross earnings at EU level and reduce market income inequality in all Member States. Furthermore, the 'at risk of poverty' rate is expected to decrease, with the risk of poverty mostly reduced for single parent households (of which women represent 85%). Overall, the initiative could lead to a rise in government revenues from direct taxes and social contributions and a rise in aggregate demand following the increase in total gross earnings.

Eliminating gender bias in employers' pay setting practices will have a positive effect on job satisfaction and worker engagement, both crucial in a post-crisis context. In turn, it may benefit employers through better retention of talent, improved reputation and consequently potential higher profits. Enhanced enforcement measures will improve access to justice and the enforcement of rights granted under EU law. Clearer rules will promote the understanding and awareness of the legal framework and enhance consistency in its application.

The draft impact assessment was endorsed by the Regulatory Scrutiny Board (RSB) on 27 January 2021. The opinions of the Board, the final impact assessment and its executive summary are published together with this proposal.

- **Regulatory fitness and simplification**

The Commission has looked at ways of simplifying and reducing burdens, in particular for smaller companies. The measures in this proposal, which are based on national practices in the EU and elsewhere, are designed to strengthen the right to equal pay while limiting possible costs and burdens and taking account of the difficult economic situation in the EU as a result of the COVID-19 pandemic. The proposal thus takes account of the principle of proportionality. In particular, given the potential effort required to extract and report on pay information, the reporting obligation applies only to employers with at least 250 workers. The

joint pay assessment will apply only to those employers in respect to which, following their annual report, there is a strong reason to believe that problems of gender pay inequalities may exist. The analysis shows that the measures proposed in this directive involve modest costs and no evidence was presented of cheaper ways of achieving the same objectives with the same effectiveness.

- **Fundamental rights**

The objectives of this proposal are in line with the Charter of Fundamental Rights of the European Union, in particular Article 23, which provides that ‘equality between women and men must be ensured in all areas, including employment, work and pay’, and Article 31, which provides that ‘every worker has the right to working conditions which respect his or her health, safety and dignity’.

Furthermore, Article 27 of the Charter stipulates that ‘workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices’.

4. BUDGETARY IMPLICATIONS

The proposal does not require additional resources from the EU budget.

5. OTHER ELEMENTS

- **Monitoring, evaluation and reporting arrangements**

Member States must transpose this directive within 2 years of its adoption and communicate their transposition measures to the Commission. In line with Article 30 of the directive, they may entrust the social partners with the transposition through collective agreements.

To assess how effectively this initiative achieves its general and specific objectives, Member States will report on its application after 8 years. The Commission will adopt a report on that basis.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I – General provisions

Article 1 – Purpose and subject matter

This provision specifies the purpose and subject matter of the Directive. The Directive aims at laying down minimum requirements strengthening the application of the principle of equal pay between men and women and the prohibition of discrimination on grounds of sex through pay transparency and reinforced enforcement mechanisms.

Article 2 – Scope

This provision defines the personal scope of the Directive, i.e. persons entitled to benefit from the rights provided by this Directive.

Article 3 – Definitions

This provision defines the terms and concepts, clarifying upfront how they should be understood in the context of the Directive.

These terms and concepts include the relevant existing definitions of the Recast Directive (pay, direct discrimination, indirect discrimination) but also new concepts specifically related to the right of equal pay, such as pay levels, pay gap, median pay, median pay gap, quartile pay band, and categories of workers.

The concept of ‘pay’ includes salary and any other consideration, whether in cash or in kind, which the workers receive directly or indirectly (‘complementary or variable components’), in respect of their employment from their employer. This includes any additional benefits such as bonuses, overtime compensation, travel facilities (including cars provided by the employer and travel cards), housing allowances, compensation for attending training, payments in case of dismissal, statutory sick pay, statutory required compensation and occupational pensions. It should include all elements of remuneration due by law or collective agreement.

Gender-based pay discrimination may involve an intersection of various axes of discrimination: on the basis of sex on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation (as protected under Directive 2000/43/EC or Directive 2000/78/EC) on the other hand. A new definition aims at clarifying that, in the context of gender pay discrimination, such combination should be taken into account, thus removing any doubt that may exist in this regard under the existing legal framework. This will ensure that the courts or other competent authorities take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed. One particular case of such intersectionality refers to the situation of migrant women who may risk multiple forms of discrimination based on their sex, racial or ethnic origin, or religion or belief.

Article 4 – Equal work and work of equal value

Respect for the right to equal pay between women and men, enshrined in the Treaty, requires employers to have pay structures ensuring that women and men are paid equally for the same work or work of equal value. In order to allow workers and employers to assess what constitutes work of equal value, this provision requires Member States to establish tools or methodologies to assess and compare the value of work in line with a set of objective criteria which include educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved. This provides the basis to assess whether workers are considered to be in a comparable situation performing work of equal value and will help employers to better categorize and remunerate job positions based on objective, gender-neutral criteria.

The availability of clear criteria at national level will help workers to establish a valid comparator and assess whether they are treated less favourably than the comparator performing the same work or work of equal value.

This provision further incorporates two clarifications established in the case law of the Court of Justice of the European Union. Firstly, the Court has clarified³² that in order to determine whether workers are in a comparable situation, the comparison is not necessarily limited to

³² Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

situations in which men and women work for the same employer. Workers may be in a comparable situation even when they do not work for the same employer, whenever the pay conditions can be attributed to a single source setting those conditions (e.g. arising from statutory provisions, collective labour agreements relating to pay applicable to several companies, or when the terms and conditions of employment are laid down centrally for more than one company within a holding corporation or conglomerate). The Court also clarified that the comparison is not limited to workers employed at the same time as the claimant.³³ The incorporation of these clarifications will improve the application in practice of the principle of equal pay.

Furthermore, in case no real-life comparator exists, a comparison with a hypothetical comparator or using other evidence (statistical or other available information) allowing to presume alleged discrimination should be permitted. The possibility to use a hypothetical comparator will allow a worker to show that they have not been treated in the same way as a hypothetical comparator of another sex would have been treated.

Finally, this provision recalls the requirement set out in Article 4, paragraph 2 of the Recast Directive, that where job evaluation and classification systems are used for determining pay, they should be based on the same gender-neutral criteria for both men and women to exclude any discrimination on grounds of sex. This means that the criteria to evaluate the value of a job or position must be described and defined in a way applicable to both men's and women's jobs in an objective and neutral way.

Chapter II – Pay transparency

Article 5 – Pay transparency prior to employment

So far, no minimum standards on pay transparency prior to employment exist at EU level. This provision requires that employers indicate the initial pay level or its range (based on objective and gender-neutral criteria) to be paid to the future worker for a specific position or job. Such information may be provided in a job vacancy notice or otherwise prior to the job interview without the applicant having to request it (for instance, in the invitation to the interview or directly by the social partners).

In addition, it prohibits employers to ask prospective workers about their pay history of their former employment relationship.

The aim of this provision is to ensure that workers have the necessary information to engage in balanced and fair negotiations regarding their salaries when they enter into an employment relationship. It would also ensure that existing pay discrimination and bias is not perpetuated over time, especially when workers change jobs. This does not limit the employer's, worker's or social partners' bargaining power to negotiate a salary outside the indicated range. This transparency measure would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds.

Article 6 – Transparency of pay setting and career progression policy

In order to ensure the gender-neutrality of pay setting and career progression, this provision requires employers to make accessible to workers a description of the gender-neutral criteria

³³ Case 129/79 *Macarthys*, ECLI: ECLI:EU:C:1980:103.

used to define their pay and career progression. Where appropriate, to avoid unreasonable burden on micro and small enterprises, an employer may have flexibility in the way it complies with this obligation taking into account its size, based on the number of employees.

Article 7 – Right to information

This provision aims at providing workers with the necessary information to assess whether they are paid in a non-discriminatory manner compared to other workers in the same organisation carrying out equal work or work of equal value, and to enforce their right to equal pay if needed.

This provision is based on the existing 2014 Commission’s Recommendation on pay transparency. It provides the right to workers to request information from their employer on their individual pay level and on the average pay levels, broken down by sex, for categories of workers doing the same work or work of equal value.

The employer is obliged to inform all workers, on an annual basis, of their right to receive such information and provide the requested information within a reasonable period of time and in accessible formats for workers with disabilities upon their request.

To address possible reprisals or a fear of reprisals by the employer on the part of workers, the provision allows them to request the information through their representatives or through an equality body.

In order to further assist possible victims of gender pay discrimination, the provision prohibits confidentiality clauses insofar as the disclosure of pay information aims at enforcing the right of equal pay between men and women for equal work or work of equal value. On the other hand, employers may request that the use of any information obtained remains limited to the enforcement of the right to equal pay.

Article 8 – Reporting on pay gap between female and male workers

This provision requires employers with at least 250 workers to make publicly available and accessible certain information such as the pay gap between female and male workers in their organisation, also in complementary or variable components (see explanation of Article 3 above), beyond the ordinary basic salary.

The information provided under letters (a) to (f) in paragraph 1 of this Article is based on information that is readily available within an organisation and gives an overall picture of gender differences in pay in the organisation, e.g. the distribution of workers by gender in the quartile pay bands informs on the proportion of women in the highest/lowest paid positions. The publication of this information allows for a certain comparison between employers, which creates incentives for employers to prevent potential pay gaps, stimulates debate around pay equality and triggers action.

The information referred to under letter (g) in paragraph 1 of this Article, on the pay gap between female and male workers by categories of workers doing the same work or work of equal value, is employer-specific and more sensitive than overall pay gap figures. The categorization of workers performing work of equal value is based on a combination and weight of criteria, which are relevant to the specific employer concerned. The differences in pay by category are therefore not comparable across employers, which is the reason why this information should not be made public. Employers should provide such information to all workers and their representatives, and labour inspectorate and equality bodies should be able to obtain the information upon request. Information on the pay gap between female and male

workers by categories of workers will be instrumental to reinforce a self-regulatory approach by employers and enable workers and their representatives to require compliance with the principle of equal pay. This information also serves as a trigger to launch a joint pay assessment as set out in Article 9.

As an alternative measure to pay reporting by employers, especially to limit the possible burden pay reporting may entail, Member States can choose to entrust an existing body to compile the required information on the basis of administrative data, such as data provided by employers to the tax or social security authorities, and make the information available instead of employers. The provision further requires the monitoring body designated pursuant to Article 26 to collect the data received from employers, ensuring wide access allowing a comparison of the data of individual employers, sectors and regions within the Member State concerned.

Based on the information provided, workers and their representatives, labour inspectorates and equality bodies have the right to ask the employer for clarifications and details regarding such information, including explanations concerning any gender pay differences. The employer is required to respond to such requests within a reasonable time by providing a substantiated reply. In case gender pay differences are not justified by objective and gender-neutral factors, the employer is required to remedy the situation in close cooperation with the workers' representatives, the labour inspectorate and/or the equality body.

Article 9 – Joint pay assessment

Where the pay reporting conducted in accordance with Article 8 demonstrates a difference of average pay between female and male workers in the organisation of at least 5 per cent in any category of workers doing the same work or work of equal value, which has not been justified by objective and gender-neutral factors, the employer concerned shall be obliged to carry out a pay assessment. The employer is required to justify any pay difference in any category of workers, including differences below 5 per cent, by objective and gender-neutral factors and remedy the situation pursuant to Article 8 paragraph 7.

The joint pay assessment should be conducted by employers in cooperation with workers' representatives. If formal workers' representatives are absent in the organisation, the employer should designate one or more workers for this purpose.

The requirement of a joint pay assessment aims at triggering mandatory action on the part of employers to look into their pay setting practices and address any potential gender bias in pay structures infringing the equal pay principle. The cooperation between employers and workers' representatives ensures a supported approach and leads to common action.

Differences in average pay levels between female and male workers in each category of worker doing the same work or work of equal value must be objectively justified, as established jointly by workers' representatives and the employer. Where the differences cannot be justified by objective factors, the employer must take remedial measures; where previous assessments took place, the employer must include a report on the effectiveness of any measures taken pursuant to such assessments. The measures should be taken in close cooperation with workers' representatives, the labour inspectorate, and/or the equality body and should include the establishment of gender-neutral job evaluation and classification to ensure that any direct or indirect pay discrimination on grounds of sex is excluded.

Article 10 – Data protection

The provision prescribes that the potential processing and/or disclosure of personal data pursuant to the pay transparency measures under this Directive should be carried out in accordance with the General Data Protection Regulation (EU) 2016/679 (GDPR)³⁴.

It specifies that any personal data collected by employers pursuant to Articles 7, 8 or 9, shall not be used for any other purpose than to implement the principle of equal pay for the equal work or work of equal value.

An additional safeguard is foreseen in case the disclosure of information pursuant to Articles 7, 8 and 9 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable co-worker. Member States may decide that in such case, accessibility of the information shall be limited to the workers' representatives or to the equality body. These will advise the worker regarding a possible claim, without disclosing actual pay levels of individual workers doing the same work or work of equal value. As certain information about pay levels may already be publicly available, for instance in the public sector, Member States shall be allowed to implement this safeguard in accordance with national practice.

Article 11 – Social dialogue

The involvement of social partners in advancing gender equality in employment relations is important. They are best placed to detect the strengths and weaknesses of action at national, regional, and local level to prevent and combat pay discrimination based on sex. They play a key role, for instance, in setting up gender-neutral job evaluation and classification methods. Therefore, this article requires Member States, without prejudice to the autonomy of social partners and in accordance with national law and practice, to ensure that the rights and obligations under this Directive are discussed with social partners. This could be achieved through different policy measures aimed at developing active social partnership.

Chapter III – Remedies and enforcement

Article 12 – Defence of rights

Building on Article 17 of the Recast Directive, this provision requires Member States to ensure the availability of judicial procedures for the enforcement of the rights and obligations under this Directive. It strengthens access to justice by clarifying that prior recourse to non-judicial proceedings may consist of conciliation or proceedings before an equality body. In any event, access to justice should not be hindered by mandatory intermediate administrative proceedings.

Article 13 – Procedures on behalf or in support of workers

This provision requires that associations, organisations, equality bodies and workers' representatives or other legal entities with an interest in ensuring equality between men and women can engage in judicial or administrative procedure for the enforcement of the obligations under this proposal. Such entities should have the right to act on behalf or in

³⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1.

support of a worker, with the worker's approval, in such procedures. Especially equality bodies do not currently have the right to bring claims in court in all the Member States.

In addition, this provision also introduces the right for equality bodies and workers' representatives to bring claims on behalf of more than one worker, with the workers' approval. This aims at overcoming the procedural and cost-related obstacles that victims of gender pay discrimination face when seeking to enforce their right to equal pay and to enforce the transparency measures under this proposal. The possibility to bring collective claims is limited to recognised bodies, i.e. equality bodies and workers' representatives.

Article 14 – Right to compensation

A strengthened requirement to compensation will provide incentives for victims of gender pay discrimination to seek justice and uphold their right to equal pay. This provision requires Member States to ensure that any worker who has suffered harm caused by an infringement of any right or obligation related to the principle of equal pay has the right to claim and to obtain full compensation for the harm caused in a way, which is dissuasive and proportionate to the damage suffered.

Building on Article 18 of the Recast Directive, this provision requires, in line with the Court of Justice's case law, the discriminated worker to be placed in the position in which that person would have been if no discrimination had occurred. This includes the full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities and moral prejudice. It finally provides that compensation or reparation may not be restricted by setting a prior ceiling.

Article 15 – Other remedies

In order to step up enforcement of the right to equal pay this provision ensures that courts or competent authorities can issue injunction orders establishing an infringement of any right or obligation relating to the principle of equal pay between men and women for equal work or work of equal value and to stop such infringement. Furthermore, courts or competent authorities must be able to require the defendant to take structural or organisational measures to comply with its obligations relating to equal pay.

In order to ensure swift compliance, the courts or competent authorities may impose a recurring penalty payment.

Article 16 – Shift of burden of proof

As already set out in Article 19 of the Recast Directive, this provision requires that in cases of *prima facie* discrimination, it is for the defendant to prove that there has been no breach of the principle of equal pay. In addition, in legal or administrative proceedings concerning direct or indirect discrimination, and in line with the existing case law³⁵, this Directive strengthens the position of the worker: in case the employer did not comply with the pay transparency

³⁵ Case C-109/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, ECLI:EU:C:1989:383.

obligations set out by the Directive, the burden of proof should be shifted to the defendant without requiring the worker to establish even a prima facie case of discrimination.

The strengthening of the shift of the burden of proof will not only facilitate enforcement of their right to equal pay by workers but also provide an additional incentive for employers to comply with their transparency obligations under this Directive.

Article 17 – Access to evidence

This article provides that national courts or other competent authorities be able to order the defendant to disclose relevant evidence lying in their control, during proceedings concerning a gender pay discrimination claim. In particular, national courts shall have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the claim while having effective measures to protect such information. Confidential information could take the form of legal advice given to the management, a protocol of a shareholders' meeting, personal data etc. necessary for the exercise or defence of legal gender pay discrimination claims.

Article 18 – Limitation periods

Short limitation periods and related procedural obstacles were identified as one of the barriers preventing victims of pay discrimination from enforcing their equal pay right. This is why this Directive establishes common standards on limitation periods for bringing gender pay discrimination claims.

It provides that the limitation period for bringing claims under this proposal must be at least three years and should not begin to run before the violation of the equal pay principle or any infringement of the rights or obligations under this Directive has ceased and the claimant knows about the violation. Furthermore, a limitation period should be suspended or interrupted as soon as a claimant undertakes action by lodging a claim or bringing the claim to the attention of the employer, the workers' representatives, labour inspectorate or equality body.

Article 19 – Legal and judicial costs

The costs of litigation constitute a key procedural obstacle creating a serious disincentive for victims of gender pay discrimination to claim their right to equal pay, leading to insufficient protection and enforcement of the right to equal pay. In order to ensure a greater access to justice and to incentivise workers to enforce their right, this provision ensures that claimants who prevail on a pay discrimination claim have the right to recover legal and experts' fees and costs from the defendant. It specifies, on the other hand, that defendants who prevail on a pay discrimination claim shall not have a similar right, i.e. to recover any legal and experts' fees and costs from the claimant(s), except where the claim was brought in bad faith, was frivolous or where the non-recovery is considered unreasonable under the specific circumstances of the case (e.g. in the case of micro-enterprises with a weak financial situation).

Article 20 – Penalties

This provision strengthens the existing minimum standards on penalties to apply to any infringement of the rights and obligations relating to equal pay between men and women for the same work or work of equal value by furthering the deterrence effect for employers

engaging in illegal behaviour. At the same time, meaningful penalties have a preventive effect in stimulating employers to comply pro-actively with their obligations.

Any penalties set in Member States should include fines, the amount of which must take into account a number of aggravating elements such as the gravity and duration of the infringement as well as any intent or serious negligence on the part of the employer.

This Article also requires Member States to establish specific penalties applied to repeated infringements of the rights and obligations related to the principle of equal pay between men and women for equal work or work of equal value. Such penalties could include, for instance, the revocation of public benefits or the exclusion, for a certain period of time, from any further award of financial or credit inducements.

Article 21 – Equal pay matters in public contracts or concessions

In accordance with Directive 2014/23/EU³⁶, Directive 2014/24/EU³⁷, and Directive 2014/25/EU³⁸, Member States should take appropriate measures to ensure that, in the performance of public contracts or concessions, economic operators (including the subcontracting chain thereafter) comply with the obligations relating to equal pay between men and women. This means that they should in particular ensure that economic operators have pay setting mechanisms that do not lead to a pay gap between female and male workers that cannot be justified by gender-neutral factors in any category of workers carrying out equal work or work of equal value.

Furthermore, in implementation of these obligations, Member States should consider for contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. This provision also clarifies that the existing optional exclusion grounds under Directive 2014/23/EU, Directive 2014/24/EU, and Directive 2014/25/EU can be used to exclude an operator violating the principle of equal pay.

The obligations set in this provision fall within applicable obligations in the field of social and labour law set in Articles 18(2) and 71(1) of Directive 2014/24/EU on public procurement, Articles 36(2) and 88(1) of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive 2014/23/EU on the award of concession contracts. Clarifying and explicitly referring to the

³⁶ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1.

³⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.

³⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243.

above provisions is intended to support and strengthen their implementation in regard to the right to equal pay.

Article 22 – Victimisation and protection against less favourable treatment

Workers and their representatives should not be treated less favourably after having exercised their right to equal pay or any right provided for in this directive. Member States should introduce, at national level, measures to protect workers, including workers' representatives, against dismissal or any other adverse treatment by employers following a complaint or following legal proceedings aimed at enforcing compliance with the any right or obligation relating to equal pay for the same work or work of equal value.

Article 23 – Relationship with Directive 2006/54/EC

This provision clarifies the relationship with Directive 2006/54/EC in regard to enforcement measures. The enforcement measures of this Directive shall apply to proceedings concerning any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value set out in Article 4 of Directive 2006/54/EC instead of Articles 17, 18, 19, 24 and 25 of that Directive.

CHAPTER IV - Horizontal provisions

Article 24 – Level of protection

This is a standard provision allowing Member States to provide a higher level of protection than that guaranteed by the Directive. It also precludes Member States in reducing the level of protection in regard to the matter of equal pay between men and women for the same work or work of equal value.

Article 25 – Equality bodies

National equality bodies play a crucial role in enforcing anti-discrimination and equality legislation in the European Union. The Recast Directive already provides that Member States should designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, including in regard to pay. This provision establishes that national equality bodies should equally be competent with regard to matters falling within the scope of this Directive. It further requires Member States to take active measures to ensure close cooperation and coordination between the national equality bodies and labour inspectorates and to ensure that equality bodies are duly resourced to carry out their functions in regard to the respect for the right to equal pay. In doing so, Member States should consider allocating amounts recovered as fines pursuant to Article 20 to the equality bodies for that purpose.

Article 26 – Monitoring and awareness-raising

In order to ensure proper monitoring of the implementation of the right to equal pay between men and women for the same work or work of equal value, Member States should set up a

dedicated monitoring body. This body, which may be part of an existing body pursuing similar objectives, should have specific tasks in relation to the implementation of the pay transparency measures foreseen in this Directive and gather certain data to monitor pay inequalities and the impact of the pay transparency measures. Member States will have to make the necessary arrangements for the proper functioning of such body.

The main functions of the monitoring body should be to aggregate the data and reports produced pursuant to the pay transparency measures foreseen in this Directive and, where relevant, ensure their publication in a user-friendly manner. It should also tackle causes of the pay gap between female and male workers and provide tools to analyse and assess pay inequalities. Moreover, it should be in charge of providing the Commission with annual data on the number and types of pay discrimination cases brought before the courts and complaints brought before the competent public authorities, including equality bodies. Finally, its task should be to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay for equal work or work of equal value and pay transparency.

Article 27 – Collective bargaining and action

This Directive acknowledges the diversity of labour market models across the EU, including the role of social partners in different Member States with regard to matters related to the subject matter of this Directive. This provision therefore reaffirms that the Directive does not affect in any way the right of social partners to negotiate, conclude and enforce collective agreements, as well as to take collective action.

Article 28 – Statistics

Council Regulation (EC) No 530/1999³⁹ requires Member States to compile four-yearly structural earnings statistics (SES) at micro level that provide harmonized data for the calculation of the gender pay gap. In the four yearly interval between two SES, Member States transmit, on a voluntary basis, annual gender pay gap data broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age. Even if pay discrimination is only one component of the gender pay gap, improving the frequency of the available data is needed to allow for an annual monitoring. This provision therefore makes the compilation of annual gender pay gap data mandatory to ensure a complete set of data every year.

Article 29 – Dissemination of information

This provision aims at ensuring awareness-raising in Member States on the rights granted by this Directive, as well as other already existing rights in the same field.

Article 30 – Implementation

³⁹ Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs (*OJ L 63, 12.3.1999, p. 6*).

This article provides that, taking into account the diversity of labour market models across the EU and the level of involvement of the social partners in some Member States with regard to laying down rules relevant to matters covered by this Directive, Member States may entrust the social partners with the implementation of relevant provisions of the Directive, provided that the results sought by this Directive are guaranteed at all times.

Article 31 – Transposition

This provision establishes the maximum period that Member States have in order to transpose the Directive into national law and communicate the relevant texts to the Commission. This period is set at two years from entry into force of this directive.

Article 32 – Reporting and review

This provision establishes an obligation for Member States to communicate to the Commission all information concerning the application of the Directive at the latest eight years after the entry into force, allowing the Commission to review the application of the Directive.

Article 33 – Entry into force

This is a standard provision stipulating that the Directive is to enter into force on the twentieth day following its publication in the Official Journal.

Article 34 – Addressees

This is a standard provision on addressees, making clear that the Directive is addressed to the Member States.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**to strengthen the application of the principle of equal pay for equal work
or work of equal value between men and women through
pay transparency and enforcement mechanisms**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Articles 2 and 3(3) of the Treaty on European Union enshrine the right to equality between women and men as one of the essential values and tasks of the Union.
- (2) Articles 8 and 10 of the Treaty on the Functioning of the European Union ('TFEU') provide that the Union shall aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based on sex in all its activities.
- (3) Article 157(1) of the TFEU obliges each Member State to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
- (4) Article 23 of the Charter of Fundamental Rights of the European Union provides that equality between women and men must be ensured in all areas, including employment, work and pay.
- (5) The European Pillar of Social Rights⁴¹, jointly proclaimed by the European Parliament, the Council, and the Commission, incorporates among its principles equality of treatment and opportunities between women and men, and the right to equal pay for work of equal value.

⁴⁰ OJ C, p.

⁴¹ https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

- (6) Directive 2006/54/EC of the European Parliament and of the Council⁴² provides that for the same work or for work of equal value, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration is to be eliminated. In particular, where a job classification system is used for determining pay, it should be based on the same criteria for both men and women and should be drawn up so as to exclude any discrimination on grounds of sex.
- (7) The 2020 evaluation⁴³ found that the implementation of the equal pay principle is hindered by a lack of transparency in pay systems, a lack of legal certainty on the concept of ‘work of equal value’, and by procedural obstacles faced by victims of discrimination. Workers lack the necessary information to make a successful equal pay claim and in particular information about the pay levels for categories of workers who perform the same work or work of equal value. The report found that increased transparency would allow revealing gender bias and discrimination in the pay structures of an undertaking or organisation. It would also enable workers, employers and social partners to take appropriate action to enforce the right to equal pay.
- (8) Following a thorough evaluation of the existing framework on equal pay for equal work or work of equal value⁴⁴ and a wide-ranging and inclusive consultation process⁴⁵, the gender equality strategy 2020-2025⁴⁶ announced binding measures on pay transparency.
- (9) The gender pay gap is caused by various factors, part of which can be attributed to direct and indirect gender pay discrimination. A general lack of transparency about pay levels within organisations maintains a situation where gender-based pay discrimination and bias can go undetected or, where suspected, are difficult to prove. Binding measures are therefore needed to improve pay transparency, encourage organisations to review their pay structures to ensure equal pay for women and men doing the same work or work of equal value, and enable victims of discrimination to enforce their right to equal pay. This needs to be complemented by provisions clarifying existing legal concepts (such as the concept of ‘pay’ and ‘work of equal value’) and measures improving enforcement mechanisms and access to justice.
- (10) The application of the principle of equal pay between men and women should be enhanced by eliminating direct and indirect pay discrimination. This does not preclude employers to pay differently workers doing the same work or work of equal value on the basis of objective, gender-neutral and bias-free criteria such as performance and competence.

⁴² Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

⁴³ [SWD\(2020\)50](#). See also the 2013 Report on the implementation of Directive 2006/54/EC to the European Parliament and the Council, COM (2013)861 final.

⁴⁴ Evaluation of the relevant provision in Directive 2006/54/EC implementing the Treaty principle on ‘equal pay for equal work or work of equal value’, SWD(2020)50; Report on the implementation of the EU Action Plan 2017-2019 on tackling the gender pay gap, COM(2020)101.

⁴⁵ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-33490_en

⁴⁶ Communication from the Commission ‘A Union of Equality: Gender Equality Strategy 2020-2025’ of 5 March 2020, COM(2020)152 final.

- (11) This Directive should apply to all workers, including part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State, taking into account the case-law of the Court of Justice of the European Union ('the Court'). In its case law, the Court established criteria for determining the status of a worker⁴⁷. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.
- (12) In order to remove obstacles for victims of gender pay discrimination to enforce their right to equal pay and guide employers in ensuring respect of this right, the core concepts related to equal pay, such as 'pay' and 'work of equal value', should be clarified in line with the case law of the Court. This should facilitate the application of these concepts, especially for small and medium-sized enterprises.
- (13) The principle of equal pay for equal work or work of equal value for women and men should be respected with regard to wage or salary and any other consideration, whether in cash or in kind, which the workers receive directly or indirectly, in respect of their employment from their employer. In line with the case-law of the Court⁴⁸, the concept of 'pay' should comprise not only salary, but also additional benefits such as bonuses, overtime compensation, travel facilities (including cars provided by the employer and travel cards), housing allowances, compensation for attending training, payments in case of dismissal, statutory sick pay, statutory required compensation and occupational pensions. It should include all elements of remuneration due by law or collective agreement.
- (14) Article 10 of the Treaty on the Functioning of the European Union provides that, in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 4 of Directive 2006/54/EC provides that there shall be no direct or indirect discrimination on grounds of sex, notably in relation to pay. Gender-based pay discrimination where a victim's sex plays a crucial role can take many different forms in practice. It may involve an intersection of various axes of

⁴⁷ Case C-66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg*, ECLI:EU:C:1986:284; Case C-428/09, *Union Syndicale Solidaires Isère v Premier ministre and Others*, ECLI:EU:C:2010:612; Case C-229/14, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, ECLI:EU:C:2015:455; Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, ECLI:EU:C:2014:2411; Case C-216/15, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, ECLI:EU:C:2016:883; Case C-658/18, *UX v Governo della Repubblica italiana*, ECLI:EU:C:2020:572.

⁴⁸ For example, Case C-58/81, *Commission of the European Communities v Grand Duchy of Luxembourg*, ECLI:EU:C:1982:215; Case C-171/88 *Rinner-Kuhl v FWW Spezial-Gebaudereinigung GmbH*, ECLI:EU:C:1989:328; Case C-147/02 *Alabaster v Woolwich plc and Secretary of State for Social Security*, ECLI:EU:C:2004:192; Case C-342/93 - *Gillespie and Others* ECLI:EU:C:1996:46; Case C-278/93 *Freers and Speckmann v Deutsche Bundespost*, ECLI:EU:C:1996:83; Case C-12/81, *Eileen Garland v British Rail Engineering Limited*, ECLI:EU:C:1982:44; Case C-360/90, *Arbeiterwohlfahrt der Stadt Berlin e.V. v Monika Bötzel*, ECLI:EU:C:1992:246; Case C-33/89, *Maria Kowalska v Freie und Hansestadt Hamburg*, ECLI:EU:C:1990:265.

discrimination or inequality where the worker is a member of one or several groups protected against discrimination on the basis of sex, on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation (as protected under Directive 2000/43/EC or Directive 2000/78/EC), on the other hand. Migrant women are among groups who face such multiple forms of discrimination. This directive should therefore clarify that, in the context of gender-based pay discrimination, such a combination should be taken into account, thus removing any doubt that may exist in this regard under the existing legal framework. This should ensure that the courts or other competent authorities take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed.

- (15) In order to respect the right to equal pay between men and women, employers must have pay setting mechanisms or pay structures in place ensuring that there are no pay differences between male and female workers doing the same work or work of equal value that are not justified by objective and gender-neutral factors. Such pay structures should allow for the comparison of the value of different jobs within the same organisational structure. In line with the case law of the Court, the value of work should be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.⁴⁹
- (16) The identification of a valid comparator is an important parameter in determining whether work may be considered of equal value. It enables the worker to show that they were treated less favourably than the comparator of a different sex performing equal work or work of equal value. In situations where no real-life comparator exists, the use of a hypothetical comparator should be allowed, allowing a worker to show that they have not been treated in the same way as a hypothetical comparator of another sex would have been treated. This would lift an important obstacle for potential victims of gender pay discrimination, especially in highly gender-segregated employment markets where a requirement of finding a comparator of the opposite sex makes it almost impossible to bring an equal pay claim. In addition, workers should not be prevented from using other facts from which an alleged discrimination can be presumed, such as statistics or other available information. This would allow gender-based pay inequalities to be more effectively addressed in gender-segregated sectors and professions.
- (17) The Court has clarified⁵⁰ that in order to compare whether workers are in a comparable situation, the comparison is not necessarily limited to situations in which men and women work for the same employer. Workers may be in a comparable situation even when they do not work for the same employer whenever the pay conditions can be attributed to a single source setting up those conditions. This may be the case when

⁴⁹ For example, Case C-400/93, *Royal Copenhagen*, ECLI:EU:C:1995:155; Case C-309/97, *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse*, ECLI:EU:C:1999:241; Case C-381/99, *Brunnhofner*, ECLI:EU:C:2001:358; Case C-427/11, *Margaret Kenny and Others v Minister for Justice, Equality and Law Reform and Others* [2013] ECLI:EU:C:2013:122, paragraph 28.

⁵⁰ Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

pay conditions are regulated by statutory provisions or collective labour agreements relating to pay applicable to several companies, or when such conditions are laid down centrally for more than one organisation or business within a holding company or conglomerate. Furthermore, the Court clarified that the comparison is not limited to workers employed at the same time as the claimant.⁵¹

- (18) Member States should develop specific tools and methodologies to support and guide the assessment of what constitutes work of equal value. This should facilitate the application of this concept, especially for small and medium-sized enterprises.
- (19) Job classification and evaluation systems may, if not used in a gender-neutral manner, in particular when they assume traditional gender stereotypes, result in gender-based pay discrimination. In such case, they contribute to and perpetuate the pay gap by evaluating male and female dominated jobs differently in situations where the worth of the work performed is of equal value. Where gender-neutral job evaluation and classification systems are used, however, they are effective in establishing a transparent pay system and are instrumental to ensure that direct or indirect discrimination on grounds of sex is excluded. They detect indirect pay discrimination related to the undervaluation of jobs typically done by women. They do so by measuring and comparing jobs whose content is different but of equal value and so support the principle of work of equal value.
- (20) The lack of information on the envisaged pay range of a job position creates an information asymmetry which limits the bargaining power of applicants. Ensuring transparency should enable prospective workers to make an informed decision about the expected salary without limiting in any way the employer's or worker's bargaining power to negotiate a salary even outside the indicated range. It would also ensure an explicit and non-gender biased basis for pay setting and would disrupt the undervaluation of pay compared to skills and experience. This transparency measure would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds. The information to be provided to applicants prior to employment, if not published in a job vacancy notice, could be provided to the applicant prior to the job interview by the employer or in a different manner, for instance by the social partners.
- (21) In order to disrupt the perpetuation of a pay gap between female and male workers affecting individual workers over time, employers should not be allowed to enquire about the prior pay history of the applicant for a job.
- (22) Pay transparency measures should protect workers' right to equal pay while limiting as much as possible costs and burden for employers, paying specific attention to micro and small enterprises. Where appropriate, measures should be tailored to the size of employers taking into account employers' headcount.
- (23) Employers should make accessible to workers a description of the criteria used to determine pay levels and career progression. The employer should have flexibility in the way it complies with this obligation taking into account the size of the organisation.

⁵¹ Case 129/79 *Macarthys*, ECLI:EU:C:1980:103.

- (24) All workers should have the right to obtain information, upon their request, on their pay and on the pay level, broken down by sex, for the category of workers doing the same work or work of equal value. Employers must inform workers of this right on an annual basis. Employers may also, on their own initiative, opt for providing such information without workers needing to request it.
- (25) Employers with at least 250 workers should regularly report on pay, in a suitable and transparent manner, such as including the information in their management report. Companies subject to the requirements of Directive 2013/34/EU of the European Parliament and of the Council⁵² may also choose to report on pay alongside other worker-related matters in their management report.
- (26) Pay reporting should allow employers to evaluate and monitor their pay structures and policies, allowing them to proactively comply with the principle of equal pay. At the same time, the gender-disaggregated data should assist competent public authorities, workers' representatives and other stakeholders to monitor the gender pay gap across sectors (horizontal segregation) and functions (vertical segregation). Employers may wish to accompany the published data by an explanation of any gender pay differences or gaps. In cases where differences in average pay for the same work or work of equal value between female and male workers cannot be justified by objective and gender-neutral factors, the employer should take measures to remove the inequalities.
- (27) To reduce the burden on employers, Member States could decide to gather and interlink the necessary data through their national administrations allowing for a computation of the pay gap between female and male workers per employer. Such data gathering may require interlinking data from several public administrations (such as tax inspectorates and social security offices) and would be possible if administrative data matching employers' (company/organisational level) to workers' (individual level) data, including benefits in cash and in-kind, are available. Member States could decide to gather this information not only for those employers covered by the pay reporting obligation under this Directive, but also with regard to small and medium-sized enterprises. The publication of the required information by Member States should replace the obligation of pay reporting on those employers covered by the administrative data provided that the result intended by the reporting obligation is achieved.
- (28) In order to make the information on the pay gap between female and male workers at organisational level widely available, Member States should entrust the monitoring body designated pursuant to this Directive to aggregate the data on the pay gap received from employers without putting additional burden on the latter. The monitoring body should make these data public, allowing to compare the data of individual employers, sectors and regions of the Member State concerned.
- (29) Joint pay assessments should trigger the review and revision of pay structures in organisations with at least 250 workers that show pay inequalities. The joint pay assessment should be carried out by employers in cooperation with workers' representatives; if workers' representatives are absent, they should be designated for

⁵² Directive 2013/34/EU, as amended by Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

this purpose. Joint pay assessments should lead to the elimination of gender discrimination in pay.

- (30) Any processing or publication of information under this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council⁵³. Specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable co-worker. On the other hand, workers should not be prevented from voluntarily disclosing their pay for the purpose of enforcing the principle of equal pay between men and women for equal work or work to which equal value is attributed.
- (31) It is important that social partners discuss and give particular attention to matters of equal pay in collective bargaining. The different features of national social dialogue and collective bargaining systems across the Union and the autonomy and contractual freedom of social partners as well as their capacity as representatives of workers and employers should be respected. Therefore, Member States, in accordance with their national system and practices, should take appropriate measures, such as programmes supporting social partners, practical guidance as well as an active participation of the government in a social dialogue at national level. Such measures should encourage social partners to pay due attention to equal pay matters, including discussions at the appropriate level of collective bargaining and the development of gender-neutral job evaluation and classification systems.
- (32) Workers should have the necessary procedures at their disposal to facilitate the exercise of their right to access justice. National legislation making use of conciliation or the intervention of an equality body compulsory or subject to incentives or penalties should not prevent parties from exercising their right of access to court.
- (33) Involving equality bodies, besides other stakeholders, is instrumental in effectively applying the principle of equal pay. The powers and mandates of the national equality bodies should therefore be adequate to fully cover gender pay discrimination, including any pay transparency or any other rights and obligations laid down in this Directive. In order to overcome the procedural and cost-related obstacles that workers who believe to be discriminated against face when they seek to enforce their right to equal pay, equality bodies, as well as associations, organisations, bodies and workers' representatives or other legal entities with an interest in ensuring equality between men and women, should be able to represent individuals. They should be able to decide to assist workers on their behalf or in their support, which would allow workers who have suffered discrimination to effectively claim their rights and the principle of equal pay to be enforced.
- (34) Equality bodies and workers' representatives should also be able to represent one or several workers who believe to be discriminated against based on sex in violation of the principle of equal pay for the same work or work of equal value. Bringing claims on behalf of or supporting several workers is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of victimisation and also when workers are facing discrimination on multiple grounds which can be difficult to disentangle. Collective claims have the potential to

⁵³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1.

uncover systemic discrimination and create visibility of equal pay and gender equality in society as a whole. The possibility of collective redress would motivate pro-active compliance with pay transparency measures, creating peer pressure and increasing employers' awareness and willingness to act preventively.

- (35) Member States should ensure the allocation of sufficient resources to equality bodies for the effective and adequate performance of their tasks related to pay discrimination based on sex. Where the tasks are allocated to more than one body, Member States should ensure that they are adequately coordinated.
- (36) Compensation should cover in full the loss and damage sustained as a result of gender pay discrimination⁵⁴. It should include full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities and moral prejudice. No prior fixed upper limit for such compensation should be allowed.
- (37) In addition to compensation, other remedies should be provided. Courts should, for instance, be able to require an employer to take structural or organisational measures to comply with its obligations regarding equal pay. Such measures may include, for instance, an obligation to review the pay setting mechanism based on a gender-neutral evaluation and classification; to set up an action plan to eliminate the discrepancies discovered and to reduce any unjustified gaps in pay; to provide information and raise workers' awareness about their right to equal pay; to establish a mandatory training for human resources staff on equal pay and gender-neutral job evaluation and classification.
- (38) Following the case law of the Court⁵⁵, Directive 2006/54/EC established provisions to ensure that the burden of proof shifts to the defendant when there is a *prima facie* case of discrimination. Member States should not be prevented from introducing, at any appropriate stage of the proceedings, rules of evidence which are more favourable to workers making a claim. In any legal or administrative proceedings concerning direct or indirect discrimination, in case the employer did not comply with the pay transparency obligations set out by the Directive, the burden of proof should be automatically shifted to the defendant, irrespective of the worker showing a *prima facie* case of pay discrimination.
- (39) Although it is necessary only to establish a presumption of discrimination before the burden of proof shifts to the employer, it is not always easy for victims and courts to know how to establish even that presumption. Pay transparency measures have the potential to support the use of the reversal of the burden of proof, by helping workers determine the average pay levels for women and men performing the same work or work of equal value. Enabling workers to provide *prima facie* evidence which allows discrimination to be presumed would swiftly trigger the reverse burden of proof to the benefit of the worker.
- (40) In accordance with the case-law of the Court, national rules on time limits for the enforcement of rights under this Directive should be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of

⁵⁴ Case C-407/14, *María Auxiliadora Arjona Camacho v Securitas Seguridad España SA*, ECLI:EU:C:2015:831, para. 45.

⁵⁵ Case C-109/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, ECLI:EU:C:1989:383.

those rights. Limitation periods create specific obstacles for victims of gender pay discrimination. For that purpose, common minimum standards should be established. Those standards should determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended and provide that the limitation period for bringing claims is at least three years.

- (41) Litigation costs create a serious disincentive for victims of gender pay discrimination to claim their right to equal pay, leading to insufficient protection and enforcement of the right to equal pay. In order to remove this strong procedural obstacle to justice, successful claimants should be allowed to recover their procedural costs from the defendant. On the other hand, claimants should not be liable for successful defendant's proceedings costs unless the claim was brought in bad faith, was clearly frivolous or if the non-recovery by the defendant would be considered unreasonable by the courts or other competent authorities under the specific circumstances of the case, for instance having regard to the financial situation of micro-enterprises.
- (42) Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the right to equal pay between men and women for the same work or work of equal value. Such penalties should include fines, which should be set at a minimum level having due regard to the gravity and duration of the infringement, to any possible intent to discriminate or serious negligence, and to any other aggravating or mitigating factors that may apply in the circumstances of the case, for instance, where pay discrimination based on sex intersects with other grounds of discrimination. Member States should consider allocating amounts recovered as fines to the equality bodies for the purpose of effectively carrying out their functions in regard to the enforcement of the right to equal pay, including to bring pay discrimination claims or assist and support victims in bringing such claims.
- (43) Member States should establish specific penalties for repeated infringements of any right or obligation relating to equal pay between men and women for the same work or work of equal value, to reflect the severity of the act and further deter such infringements. Such penalties may include different types of financial disincentives such as the revocation of public benefits or the exclusion, for a certain period of time, from any further award of financial inducements or from any public tender procedure.
- (44) Obligations on employers stemming from this Directive are part of the applicable obligations in the fields of environmental, social and labour law whose compliance Member States have to ensure under Directive 2014/23/EU of the European Parliament and of the Council⁵⁶, Directive 2014/24/EU of the European Parliament and of the Council⁵⁷, Directive 2014/25/EU of the European Parliament and of the Council⁵⁸ in regard to participation in public procurement procedures. In order to

⁵⁶ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1.

⁵⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.

⁵⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243.

comply with these obligations as far as the right to equal pay is concerned, Member States should in particular ensure that economic operators, in the performance of a public contract or concession, have pay setting mechanisms that do not lead to a pay gap between female and male workers that cannot be justified by gender-neutral factors in any category of workers carrying out equal work or work of equal value. In addition, Member States should consider for contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. They may also take into account non-compliance with the principle of equal pay by the bidder or one of his subcontractors when considering the application of exclusion grounds or a decision not to award a contract to the tenderer submitting the most economically advantageous tender.

- (45) The effective implementation of the right to equal pay requires adequate judicial and administrative protection against any adverse treatment as a reaction to an attempt to exercise workers' rights relating to equal pay between men and women, to any complaint to the employer or to any legal or administrative proceedings aimed at enforcing compliance with the right to equal pay.
- (46) In order to improve the enforcement of the equal pay principle, this Directive should strengthen the existing enforcement tools and procedures in regard to the rights and obligations laid down in this Directive and the equal pay provisions set out in Directive 2006/54/EC.
- (47) This Directive lays down minimum requirements, thus respecting the Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the rights of workers in regard to equal pay between men and women for the same work or work of equal value.
- (48) In order to ensure proper monitoring of the implementation of the right to equal pay between men and women for the same work or work of equal value, Member States should set up or designate a dedicated monitoring body. This body, which may be part of an existing body pursuing similar objectives, should have specific tasks in relation to the implementation of the pay transparency measures foreseen in this Directive and gather certain data to monitor pay inequalities and the impact of the pay transparency measures.
- (49) Compiling wage statistics broken down by gender and providing the Commission (Eurostat) with accurate and complete statistics is essential for analysing and monitoring changes in the gender pay gap at Union level. Council Regulation (EC) No 530/1999⁵⁹ requires Member States to compile four-yearly structural earnings statistics at micro level that provide harmonized data for the calculation of the gender pay gap. Annual high-quality statistics could increase transparency and enhance monitoring and awareness of gender pay inequality. The availability and comparability of such data is

⁵⁹ Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs (OJ L 63, 12.3.1999, p. 6).

instrumental for assessing developments both at national level and throughout the Union.

- (50) This Directive aims at a better and more effective implementation of the principle of equal pay for equal work or work to which equal value is attributed between men and women through the establishment of common minimum requirements which should apply to all undertakings and organisations across the European Union. Since this objective cannot be sufficiently achieved by the Member States and should therefore be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive, which limits itself to setting minimum standards, does not go beyond what is necessary in order to achieve that objective.
- (51) The role of social partners is of key importance in designing the way pay transparency measures are implemented in Member States, especially in those with high collective bargaining coverage. Member States should therefore have the possibility to entrust the social partners with the implementation of all or part of this Directive, provided that they take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.
- (52) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act, on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises, to alleviate the administrative burden, and to publish the results of such assessments.
- (53) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725⁶⁰ and delivered an opinion on **XX XXXX**.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

This Directive lays down minimum requirements to strengthen the application of the principle of equal pay between men and women for equal work or work of equal value enshrined in Article 157 TFEU and the prohibition of discrimination laid down in Article 4 of Directive 2006/54/EC, in particular through pay transparency and reinforced enforcement mechanisms.

⁶⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 2

Scope

1. This Directive applies to employers in the public and private sectors.
2. This Directive applies to all workers who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice.

Article 3

Definitions

1. For the purposes of this Directive, the following definitions apply:
 - (a) ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind which the worker receives directly or indirectly (‘complementary or variable components’), in respect of his/her employment from his/her employer;
 - (b) ‘pay level’ means gross annual pay and the corresponding gross hourly pay;
 - (c) ‘pay gap’ means the difference of average pay levels between female and male workers of the employer, expressed as percentage of the average pay level of male workers;
 - (d) ‘median pay level’ means the pay of the worker that would have half of the workers earn more and half less than they do;
 - (e) ‘median pay gap’ means the difference between the median pay level of female and median pay level of male workers expressed as percentage of the median pay level of male workers;
 - (f) ‘quartile pay band’ means each of four equal groups of workers into which they are divided according to their pay levels – from the lowest to the highest;
 - (g) ‘category of workers’ means workers performing the same work or work of equal value grouped by the workers’ employer based on criteria as laid down in Article 4 of this Directive and specified by the employer concerned;
 - (h) ‘direct discrimination’ means the situation where one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;
 - (i) ‘indirect discrimination’ means the situation where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
 - (j) ‘equality body’ means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex;
 - (k) ‘labour inspectorate’ means the national body or bodies that have an inspection function on the labour market in a Member State.

2. For the purposes of this Directive, discrimination includes:
 - (a) harassment and sexual harassment, within the meaning of Article 2(2) of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;
 - (b) instruction to discriminate against persons on grounds of sex;
 - (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC⁶¹.
3. Pay discrimination under this Directive includes discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC.

Article 4

Equal work and work of equal value

1. Member States shall take the necessary measures to ensure that employers have pay structures in place ensuring that women and men are paid equally for the same work or work of equal value.
2. Member States shall take the necessary measures ensuring that tools or methodologies are established to assess and compare the value of work in line with the criteria set out in this Article. These tools or methodologies may include gender-neutral job evaluation and classification systems.
3. The tools or methodologies shall allow assessing, in regard to the value of work, whether workers are in a comparable situation, on the basis of objective criteria which shall include educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved. They shall not contain or be based on criteria which are based, whether directly or indirectly, on workers' sex.
4. Whenever differences in pay can be attributed to a single source establishing the pay conditions, the assessment whether workers are carrying out the same work or work of equal value shall not be limited to situations in which female and male workers work for the same employer but may be extended to that single source. The assessment shall also not be limited to workers employed at the same time as the worker concerned. Where no real comparator can be established, a comparison with a hypothetical comparator or the use of other evidence allowing to presume alleged discrimination shall be permitted.

⁶¹ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

5. Where a job evaluation and classification system is used for determining pay, it shall be based on the same criteria for both men and women and drawn up so as to exclude any discrimination on grounds of sex.

CHAPTER II

Pay transparency

Article 5

Pay transparency prior to employment

1. Applicants for employment shall have the right to receive from the prospective employer information about the initial pay level or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned. Such information shall be indicated in a published job vacancy notice or otherwise provided to the applicant prior to the job interview without the applicant having to request it.
2. An employer shall not, orally or in writing, personally or through a representative, ask applicants about their pay history during their previous employment relationships.

Article 6

Transparency of pay setting and career progression policy

The employer shall make easily accessible to its workers a description of the criteria used to determine pay levels and career progression for workers. These criteria shall be gender-neutral.

Article 7

Right to information

1. Workers shall have the right to receive information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs, in accordance with paragraphs 3 and 4.
2. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1.
3. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time upon a worker's request. The information shall be provided in accessible formats for workers with disabilities upon their request.
4. Workers shall have the possibility to request the information referred to in paragraph 1 through their representatives or an equality body.
5. Workers shall not be prevented from disclosing their pay for the purpose of enforcing the principle of equal pay between men and women for equal work or work of equal value.

6. Employers may require that any worker having obtained information pursuant to this Article shall not use that information for any other purpose than to defend their right to equal pay for the same work or work of equal value and not disseminate the information otherwise.

Article 8

Reporting on pay gap between female and male workers

1. Employers with at least 250 workers shall provide the following information concerning their organisation, in accordance with paragraphs 2, 3, and 5:
 - (a) the pay gap between all female and male workers;
 - (b) the pay gap between all female and male workers in complementary or variable components;
 - (c) the median pay gap between all female and male workers;
 - (d) the median pay gap between all female and male workers in complementary or variable components;
 - (e) the proportion of female and male workers receiving complementary or variable components;
 - (f) the proportion of female and male workers in each quartile pay band;
 - (g) the pay gap between female and male workers by categories of workers broken down by ordinary basic salary and complementary or variable components.
2. The accuracy of the information shall be confirmed by the employer's management.
3. The employer shall publish the information referred to in paragraph 1, points (a) to (f) on an annual basis in a user-friendly way on its website or shall otherwise make it publicly available. The information from the previous four years, if available, shall also be accessible upon request. In addition, the employer shall share this information with the monitoring body referred to in paragraph 6.
4. Member States may decide to compile the information set out in paragraph 1, points (a) to (f) themselves, on the basis of administrative data such as data provided by employers to the tax or social security authorities. This information shall be made public in accordance with paragraph 6.
5. The employer shall provide the information referred to in paragraph 1, point (g) to all workers and their representatives, as well as to the monitoring body referred to in paragraph 6. It shall provide it to the labour inspectorate and the equality body upon their request. The information from the previous four years, if available, shall also be provided upon request.
6. Member States shall entrust the monitoring body designated pursuant to Article 26 to collect the data received from employers pursuant to paragraph 1, points (a) to (f) and to ensure that this data is public and allows a comparison between employers, sectors and regions of the Member State concerned in a user-friendly way.
7. Workers and their representatives, labour inspectorates and equality bodies shall have the right to ask the employer for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences. The employer shall respond to such request within a reasonable time by

providing a substantiated reply. Where gender pay differences are not justified by objective and gender-neutral factors, the employer shall remedy the situation in close cooperation with the workers' representatives, the labour inspectorate and/or the equality body.

Article 9

Joint pay assessment

1. Member States shall take appropriate measures to ensure that employers with at least 250 workers conduct, in cooperation with their workers' representatives, a joint pay assessment where both of the following conditions are met:
 - (a) the pay reporting conducted in accordance with Article 8 demonstrates a difference of average pay level between female and male workers of at least 5 per cent in any category of workers;
 - (b) the employer has not justified such difference in average pay level by objective and gender-neutral factors.
2. The joint pay assessment shall include the following:
 - (a) an analysis of the proportion of female and male workers in each category of workers;
 - (b) detailed information on average female and male workers' pay levels and complementary or variable components for each category of workers;
 - (c) identification of any differences in pay levels between female and male workers in each category of workers;
 - (d) the reasons for such differences in pay levels and objective, gender-neutral justifications, if any, as established jointly by workers' representatives and the employer;
 - (e) measures to address such differences if they are not justified on the basis of objective and gender-neutral criteria;
 - (f) a report on the effectiveness of any measures mentioned in previous joint pay assessments.
3. Employers shall make the joint pay assessments available to workers, workers' representatives, the monitoring body designated pursuant to Article 26, the equality body and the labour inspectorate.
4. If the joint pay assessment reveals differences in average pay for equal work or work of equal value between female and male workers which cannot be justified by objective and gender-neutral criteria, the employer shall remedy the situation, in close cooperation with the workers' representatives, labour inspectorate, and/or equality body. Such action shall include the establishment of gender-neutral job evaluation and classification to ensure that any direct or indirect pay discrimination on grounds of sex is excluded.

Article 10

Data protection

1. To the extent that any information provided pursuant to measures taken under Articles 7, 8, and 9 involves the processing of personal data, it shall be provided in accordance with Regulation (EU) 2016/679.
2. Any personal data collected by employers pursuant to Articles 7, 8 or 9, shall not be used for any other purpose than to implement the principle of equal pay for equal work or work of equal value.
3. Member States may decide that, where the disclosure of information pursuant to Articles 7, 8 and 9 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable co-worker, only the workers' representatives or the equality body shall have access to that information. The representatives or equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers doing the same work or work of equal value. The monitoring body referred to in Article 26 shall have access to the information without restriction.

Article 11

Social dialogue

Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States shall ensure that the rights and obligations under this Directive are discussed with social partners.

CHAPTER III

Remedies and enforcement

Article 12

Defence of rights

Member States shall ensure that, after possible recourse to conciliation, judicial procedures for the enforcement of rights and obligations related to the principle of equal pay between men and women for equal work or work of equal value are available to all workers who consider themselves wronged by a failure to apply the principle of equal pay for equal work or work of equal value. Such procedures shall be easily accessible to workers and to those who act on their behalf, even after the labour relationship in which the discrimination is alleged to have occurred has ended.

Article 13

Procedures on behalf or in support of workers

1. Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with the criteria laid down by national law, a legitimate interest in ensuring equality between men and women, may engage in any judicial or administrative procedure to enforce any of the rights or obligations related to the principle of equal pay between men and women for equal work or work of equal value. They may act on behalf or in support of a worker who is victim of an infringement of any right or obligation related to the

principle of equal pay between men and women for equal work or work of equal value, with the latter's approval.

2. Equality bodies and workers' representatives shall also have the right to act on behalf or in support of several workers, with the latter's approval.

Article 14

Right to compensation

1. Member States shall ensure that any worker who has suffered harm as a result of an infringement of any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value shall have the right to claim and to obtain full compensation or reparation, as determined by the Member State, for that harm.
2. The compensation or reparation referred to in paragraph 1 shall ensure real and effective compensation for the loss and damage sustained, in a way which is dissuasive and proportionate to the damage suffered.
3. The compensation shall place the worker who has suffered harm in the position in which that person would have been if he or she had not been discriminated based on sex or if no infringement of any of the rights or obligations relating to equal pay between men and women for equal work or work of equal value had occurred. It shall include full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities and moral prejudice. It shall also include the right to interest on arrears.
4. The compensation or reparation may not be restricted by the fixing of a prior upper limit.

Article 15

Other remedies

Member States shall ensure that, in legal proceedings aimed at ensuring the enforcement of any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value, the courts or other competent authorities may order, at the request of the claimant and at the expense of the defendant:

- (a) an injunction order establishing an infringement of any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value and stopping the infringement;
- (b) an injunction order ordering the defendant to take structural or organisational measures to comply with any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value or to stop an infringement thereof.

Non-compliance with any of these orders shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance.

Article 16

Shift of burden of proof

1. Member States shall take the appropriate measures, in accordance with their national judicial systems, to ensure that, when workers who consider themselves wronged because the principle of equal pay has not been applied to them, establish before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no direct or indirect discrimination in relation to pay.
2. Member States shall ensure that, in any legal or administrative proceedings concerning direct or indirect discrimination, where an employer failed to comply with any of the rights or obligations related to pay transparency set out in Articles 5 through 9 of this Directive, it shall be for the employer to prove that there has been no such discrimination.
3. The claimant shall benefit from any doubt that might remain.
4. This Directive does not prevent Member States from introducing evidential rules which are more favourable to the claimant in proceedings instituted to enforce any of the rights or obligations relating to equal pay between men and women for equal work or work of equal value.
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.
6. This Article shall not apply to criminal procedures, unless otherwise provided by national law.

Article 17

Access to evidence

1. Member States shall ensure that in proceedings concerning a claim regarding equal pay between men and women for equal work or work of equal value, national courts or competent authorities are able to order the defendant to disclose any relevant evidence which lies in their control.
2. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the claim. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.
3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to claimants.

Article 18

Limitation periods

1. Member States shall lay down rules applicable to limitation periods for bringing claims regarding equal pay between men and women for equal work or work of equal value. Those rules shall determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended.
2. Limitation periods shall not begin to run before the violation of the principle of equal pay between men and women for equal work or for work of equal value or infringement of the rights or obligations under this Directive has ceased and the

claimant knows, or can reasonably be expected to know, about the violation or infringement.

3. Member States shall ensure that the limitation periods for bringing claims are set at three years at least.
4. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, as soon as a claimant undertakes action by lodging a claim or bringing the claim to the attention of the employer, workers' representatives, labour inspectorate or equality body.

Article 19

Legal and judicial costs

Claimants who prevail on a pay discrimination claim shall have the right to recover from the defendant, in addition to any other damages, reasonable legal and experts' fees and costs. Defendants who prevail on a pay discrimination claim shall not have the right to recover any legal and experts' fees from the claimant(s) and costs, unless the claim was brought in bad faith, was clearly frivolous or where such non-recovery is considered manifestly unreasonable under the specific circumstances of the case.

Article 20

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.
2. Member States shall ensure that fines are applied to infringements of the rights and obligations relating to equal pay for the same work or work of equal value. They shall set a minimum level for such fines ensuring real deterrent effect. The level of the fines shall take into account:
 - (a) the gravity and duration of the infringement;
 - (b) any intent or serious negligence on the part of the employer;
 - (c) any other aggravating or mitigating factor applicable to the circumstances of the case.
3. Member States shall establish specific penalties to be imposed in case of repeated infringements of the rights and obligations relating to equal pay between men and women, such as the revocation of public benefits or the exclusion, for a certain period of time, from any award of financial inducements.
4. Member States shall take all measures necessary to ensure that the penalties provided for are effectively applied in practice.

Article 21

Equal pay matters in public contracts and concessions

1. The appropriate measures that the Member States take in accordance with Article 30(3) of Directive 2014/23/EU, Article 18(2) of Directive 2014/24/EU and Article 36(2) of Directive 2014/25/EU, shall include measures to ensure that, in the performance of public contracts or concessions, economic operators comply with the obligations relating to equal pay between men and women for equal work or work of equal value.
2. Member States shall consider for contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. Where Member States' authorities act in accordance with Article 38(7)(a) of Directive 2014/23/EU, Article 57(4)(a) of Directive 2014/24/EU, or Article 80(1) of Directive 2014/25/EU in conjunction with Article 57(4)(a) of Directive 2014/24/EU, they may exclude or may be required by Member States to exclude any economic operator from participation in a public procurement procedure where they can demonstrate by any appropriate means the infringement of the obligations referred to in paragraph 1, related either to a failure to comply with pay transparency obligations or a pay gap of more than 5 per cent in any category of workers which is not justified by the employer on the basis of objective, gender-neutral criteria. This is without prejudice to any other rights or obligations set out in Directive 2014/23/EU, Directive 2014/24/EU or Directive 2014/25/EU.

Article 22

Victimisation and protection against less favourable treatment

1. Workers and their representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay between men and women.
2. Member States shall introduce in their national legal systems such measures as necessary to protect workers, including those who are workers' representatives as provided for by national law and/or practice, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with any rights or obligations relating to equal pay between men and women.

Article 23

Relationship with Directive 2006/54/EC

Chapter III of this Directive shall apply to proceedings concerning any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value set out in Article 4 of Directive 2006/54/EC.

CHAPTER IV

Horizontal provisions

Article 24

Level of protection

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive.
2. Implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive.

Article 25

Equality bodies

1. Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, national equality bodies established in accordance with Directive 2006/54/EC shall be competent with regard to matters falling within the scope of this Directive.
2. Member States shall take active measures to ensure close cooperation and coordination between the national equality bodies and other national bodies that have an inspection function in the labour market.
3. Member States shall provide equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay between men and women for the same work or work of equal value. Member States shall consider allocating amounts recovered as fines pursuant to Article 20 to the equality bodies for that purpose.

Article 26

Monitoring and awareness-raising

1. Member States shall ensure the consistent monitoring of the implementation of the principle of equal pay between women and men for equal work or for work of equal value and the enforcement of all available remedies.
2. Each Member State shall designate a body ('monitoring body') for the monitoring and support of the implementation of national legal provisions implementing this Directive and shall make the necessary arrangements for the proper functioning of such body. The monitoring body may be part of existing bodies or structures at national level.
3. Member States shall ensure that the tasks of the monitoring body include the following:
 - (a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;
 - (b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;
 - (c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner;
 - (d) to collect the joint pay assessment reports pursuant to Article 9(3);
 - (e) to aggregate data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.

4. Member States shall provide the Commission with the data referred to in paragraph 3, points (c), (d), and (e) to the Commission annually.

Article 27

Collective bargaining and action

This Directive shall not affect in any way the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law or practice.

Article 28

Statistics

Member States shall provide the Commission (Eurostat) with up-to-date gender pay gap data annually and in a timely manner. These statistics shall be broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age and be calculated on an annual basis.

Article 29

Dissemination of information

Member States shall take active measures to ensure that the provisions they adopt pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

Article 30

Implementation

Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force]. They shall immediately inform the Commission thereof.
2. When informing the Commission, Member States shall also accompany it with a summary of the results of their assessment regarding the impact of their transposition act on small and medium-sized enterprises and a reference to where such assessment is published.
3. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their

official publication. The methods of making such reference shall be laid down by shall be laid down by Member States.

Article 32

Reporting and review

1. By [*eight years after the entry into force*] Member States shall communicate to the Commission all information on how this Directive has been applied and what has been its impact in practice.
2. On the basis of the information provided by Member States, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive and propose, where appropriate, legislative amendments.

Article 33

Entry into force

The Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 34

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 4.3.2021
SWD(2021) 41 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
to strengthen the application of the principle of equal pay for equal work or work of
equal value between men and women through pay transparency and enforcement
mechanisms**

{COM(2021) 93 final} - {SEC(2021) 101 final} - {SWD(2021) 42 final}

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GLOSSARY

<i>Term or acronym</i>	<i>Meaning or definition</i>
CJEU	Court of Justice of the European Union
COVID-19	Severe acute respiratory syndrome coronavirus disease 2019
DG JUST	Directorate-General for Justice and Consumers of the European Commission
ECSR	European Committee of Social Rights of the Council of Europe
EIGE	European Institute for Gender Equality
ETUC	European Trade Union Confederation
FTE	Full-Time Employment
FRA	European Union Agency for Fundamental Rights
GDPR	General Data Protection Regulation
GPG	Gender Pay Gap
ILO	International Labour Organisation
ISCED	International Standard Classification of Education
ISCO-08	International Standard Classification of Occupations
JRC	Joint Research Center
LFS	Labour Force Survey
NACE	Statistical Classification of Economic Activities in the European Community (Nomenclature statistique des Activités économiques dans la Communauté Européenne)
NFRD	Non-Financial Reporting Directive
RSB	Regulatory Scrutiny Board
SCM	Standard Cost Model
SES	Structure of Earnings Survey
SMEs	Small and Medium Enterprises
STEM	Science, Technology, Engineering and Math
TFEU	Treaty on the Functioning of the European Union

1. Introduction: Political and legal context

The right to equal pay between women and men for equal work or work of equal value has been a founding principle of the European Union since the Treaty of Rome in 1957. The requirement to ensure equal pay is set out in Article 157 TFEU and in Directive 2006/54/EC¹ (the ‘Recast Directive’), as complemented in 2014 by a Commission Recommendation on Pay Transparency² (the ‘2014 Recommendation’). Despite this legal framework, the effective implementation and enforcement of this principle in practice remains a major challenge in the European Union. In 2019, the European Committee of Social Rights identified the lack of pay transparency as one of the key obstacles to the implementation of the principle of equal pay³.

The European Parliament has repeatedly called for more action at EU level to enhance the application of the equal pay provisions⁴. Also the Council has asked for action both on the side of Member States and on the side of the Commission. In June 2019, the Council called on the Commission to develop concrete measures to increase pay transparency.

The European Pillar of social rights includes gender equality and the right to equal pay among its 20 principles⁵. The EU Action Plan for 2017-2019 on tackling the gender pay gap⁶ specified that the Commission will assess the opportunities for improving pay transparency. Following European Commission’s President von der Leyen’s announcement in her political guidelines⁷ to introduce binding pay transparency

¹ European Parliament and the Council, [Directive on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation \(recast\)](#), 2006. The directive consolidated the existing directives on gender equality in the field of employment, incorporating CJEU case-law: Directive 75/117/EEC on equal pay; Directive 86/378/EEC, as amended by Directive 96/97/EC, on equal treatment in occupational social security schemes; Directive 76/207/EEC, as amended by Directive 2002/73/EC, on equal treatment of women and men; Directive 97/80/EC, as amended by Directive 98/52/EC, on the burden of proof in cases of discrimination based on sex.

² European Commission, [Recommendation on strengthening the principle of equal pay between women and men through transparency](#), 2014.

³ See also Commission evaluations and implementation reports referred to in footnote 11; The European Committee of Social Rights (ECSR) monitoring of commitments under the European Social Charter (the Council of Europe treaty that guarantees fundamental social and economic rights) showed in 2019 that out of 15 countries (Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden), 14 are not compliant with set standards in the field of equal pay: (1) recognising the right to equal pay for equal work or work of equal value in the legislation; (2) ensuring access to effective remedies for victims of pay discrimination; (3) ensuring and guaranteeing pay transparency and enabling pay comparisons; and (4) maintaining effective equality bodies and relevant institutions in order to ensure equal pay in practice. Sweden was the only country to be found to be compliant with the [European Social Charter](#).

⁴ In its recent report, the Parliament underlines that pay transparency is crucial in counteracting unfair wage differentials and discrimination and urges the swift adoption of these measures. See: European Parliament, [Employment and social policies of the euro area](#), 2020.

⁵ The [Pillar of Social Rights](#) is about delivering new and more effective rights for citizens, built upon 20 key principles.

⁶ European Commission, [EU Action Plan 2017-2019: tackling the gender pay gap](#), 2017, COM (2017)678 final. See also the related [Report on the implementation of the EU Action Plan 2017-2019 on tackling the gender pay gap](#), 2020, COM(2020) 101 final.

⁷ See [A Union that strives for more: My agenda for Europe – Political Guidelines for the next European Commission 2019-2024](#), 2019.

measures, the Commission reaffirmed its commitment to present this initiative in the Gender Equality Strategy 2020-2025⁸.

The present initiative follows on the Commission's evaluation⁹ of the relevant legal provisions (the '2020 evaluation') and previous Commission work¹⁰. These assessments concluded that there was limited progress on enforcing the right to equal pay in Member States and evidenced, in particular, vastly distinct and largely inefficient systems operating in most Member States – making equal pay an inert legal provision. The evaluation pointed to a number of problems deterring victims of pay discrimination from enforcing their right and deemed to require further action: despite the 2014 Recommendation, a very limited number of countries put forward measures to improve transparency in pay setting systems within organisations; key legal definitions and concepts are not applied uniformly in practice and are insufficiently implemented across national legislations; victims have difficulties to claim their rights.

This initiative aims at tackling the persisting inadequate implementation and enforcement of the fundamental right to equal pay and ensuring the respect of this right across the EU by establishing transparency on pay. It is part of a broader package of measures and initiatives that focus on tackling the root causes of the gender pay gap, such as the adoption and implementation of the Work-Life Balance Directive 2019/1158, sectoral initiatives fighting stereotypes and ensuring better gender balance, and the proposed Directive on improving gender balance on company boards of large EU listed companies¹¹. In addition, the initiative is coherent with the initiative aimed at increasing reporting by companies of relevant non-financial information.¹² It is also consistent with and supported by the EU Minimum Wage initiative¹³ and the sustainable corporate governance initiative¹⁴.

⁸ [COM\(2020\)152 final](#).

⁹ [SWD\(2020\)50 final](#).

¹⁰ Implementation report on Directive 2006/54/EC (SWD(2013) 512 final; Impact Assessment accompanying the Pay Transparency Recommendation (SWD(2014) 59 final); Report on the implementation of Commission Recommendation on strengthening the principle of equal pay between women and men through transparency (COM(2017) 671 final).

¹¹ European Parliament and the Council, [Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures](#), 2012.

¹² The present initiative would require certain employers to make information regarding the gender pay gap publicly available. Some of these employers may also be covered by the forthcoming revision of the Non-Financial Reporting Directive 2014/95/EU (NFRD). The publication of information pursuant to both initiatives pursues different objectives; while the Pay Transparency initiative aims at allowing workers to enforce their individual right to equal pay, the NFRD aims at meeting the needs of investors and other stakeholders to appreciate the risks and social and environmental impacts of investments and companies' operations respectively. Both initiatives will be aligned so that any public reporting on the gender pay gap pursuant to the Pay Transparency Directive by companies subject to the NFRD would be taken into account in the future standards for non-financial reporting under the NFRD.

¹³ The minimum wage initiative aims at improving the adequacy of minimum wages. This will have a beneficial effect in addressing the gender pay gap in particular at the lower end of the wage distribution, including of women who represent a relevant share of total low paid workers. See [COM\(2020\) 682 final](#).

¹⁴ See <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>

While addressing the implementation of the principle of equal pay through pay transparency, this initiative takes into account different features of national social dialogue and collective bargaining systems as well as the autonomy of social partners and their contractual freedom. It also recognises the important role of social partners in addressing gender pay inequalities, including through pay transparency.

2. Problem definition

2.1. What is the problem?

The problem tackled in this initiative is the failure to **realise in the European Union the fundamental right to equal pay for the same work or work of equal value**, despite this right being enshrined in EU law for more than 60 years. The information and data presented in the 2020 evaluation¹⁵ and in this chapter show that this failure persists¹⁶.

The failure to realise the right to equal pay means that women and men may still be discriminated either directly or on the basis of pay structures that do not value the work of women and men equally, i.e. according to objective and gender-neutral criteria.

In many cases, discrimination or bias is the result not of deliberate discriminatory behaviour but rather of a failure to grasp, both by workers and employers, what it means in practice to pay men and women equally for the same work or for work of equal value.¹⁷ This might not be straightforward, especially when it comes to ‘work of equal value’ since it must first be assessed what is the value of the jobs concerned and second whether the pay received by men and women for jobs of same value is not discriminatory on the basis of sex¹⁸. It is important to stress at the outset that under the current state of the law in the EU, the concept of ‘work of equal value’ only applies to different occupations defined as of equal value in the same organisation.

A number of legal cases illustrate the matter at stake. For instance, in a landmark case in Belgium regarding equal pay for the same work, a female researcher in the European Trade Union Institute did not receive the same automatic promotion going with seniority as her male counterparts. The Labour Court of Appeal of Brussels found the employer’s pay system opaque and, referring to the CJEU’s decision in Case 109/88 Danfoss¹⁹, concluded that there had been gender-based pay discrimination.²⁰

¹⁵ [SWD\(2020\)50](#).

¹⁶ See e.g. European Parliament, ‘[European Added Value Assessment on the application of the principle of equal pay for men and women for equal work of equal value](#)’, *EAVA 4/2013, 9*: ‘[...] no matter how we evaluate the data, the pay gap remains, [...]. In other words, [...], pay discrimination is a real and persistent problem that continues to be detrimental to European (and not only European) women and their families.’.

¹⁷ See [Oelz M. et al., ILO Equal Pay: An Introductory Guide, 2013](#), page iii: ‘While the principle of equal remuneration for men and women for work of equal value, often referred to as “equal pay”, has been widely endorsed, what it actually entails and how it is applied in practice has proved difficult to grasp.’.

¹⁸ Work of equal value is therefore a somehow more difficult concept whose complexity is recognised also by the International Labour Organisation (ILO) who introduced it with the [Equal Remuneration Convention \(No. 100\)](#) in 1951.

¹⁹ In its preliminary ruling on the Danfoss case, the CJEU found that ‘where an undertaking applies a system of pay which is totally lacking in transparency, it is for the employer to prove that his practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large

In another case, the French Supreme Court was faced with an equal pay claim from a female mushroom packer comparing her work with more highly paid male packers²¹. The Court noted that it was clear that women packers were systematically paid less than their male equivalents and that the employer could not produce any objective reasons for such difference between men and women doing the same work.

A UK landmark case from 2018 concerned the right to equal pay for work of equal value. In this case, about 30,000 claimants, mostly women working in ASDA supermarkets as shop-floor staff, brought equal pay claims against their employer on the basis of comparisons with the pay of male workers employed at depots as part of ASDA's distribution operation. The Court of Appeal of England and Wales held that the women were discriminated as the work of the shop-floor staff should be considered of equal value as the work in the distribution center.²²

It was only possible for the claimants in the above cases to claim their right because they had the necessary information on the average pay levels of their male colleagues and because, in the UK case, they were able to group their 30,000 claims. Landmark cases like these only show a small top of a possible iceberg. Many women in the EU having salaries below those of their male colleagues doing the same work or work of equal value, do not necessarily know about it as they do not have the necessary information about average pay levels. This means they cannot enforce their right to equal pay. Lack of transparency thus hinders uncovering pay discrimination and allows discriminatory pay structures to remain in place.

Gender pay discrimination and the gender pay gap

Individual pay discrimination and systemic bias in pay structures are only one of *the root causes*²³ of the gender pay gap, besides other causes such as horizontal and vertical segregation. The gender pay gap accumulates to and remains at 14% in the European Union overall.²⁴

From a policy perspective, it would be useful to know in which sectors/occupations/types of employment gender-based pay discrimination is more widespread or whether pay discrimination affects some groups of workers more than others (e.g. among specific

number of employees, that the average pay for women is less than that for men.' (Case 109/88 Danfoss [1989] ECR 3199, at paragraph 16).

²⁰ Cour Trav. Bruxelles, 19.10.2004 (Chr.D.S., 2005, 16, obs. J. Jacqmain).

²¹ Case No. 95-41694 of 12 February 1997. See Burri, S., *National cases and good practices on equal pay*, 2019, for other examples.

²² England and Wales Court of Appeal (Civil Division), *Asda Stores Ltd v Brierley & Ors*, 2019. [2019] ICR 1118, [2019] WLR(D) 56, [2019] EWCA Civ 44, [2019] IRLR 335, [2019] 2 CMLR 18, [2019] 4 All ER 450. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2019/44.html>.

²³ See *Annex 5, section 2* below – on the other root causes, in particular sectoral segregation.

²⁴ The *ILO Global Wage Report 2018/19* shows not only that a persisting feature of labour markets around the world is that women earn on average less than men do, but more importantly that, though in many countries women are more highly educated than men within the same occupational categories, they nonetheless earn lower wages. This illustrates the fact that women tend to have lower wage returns for their education than men, even when they work in the same occupational category. See [International Labour Organisation](#), 2018, p.xvii.

contract types or age groups). However, precisely quantifying the overall size of gender-based pay discrimination at that level is not possible as of today.

Indications on the existence of the problem of pay discrimination and gender bias in pay settings can be derived from available EU statistics on the gender pay gap at aggregate national level (e.g. the Structure of Earnings survey (SES) or other national data) and from the analysis of the related SES micro-data.

The ‘unadjusted’²⁵ gender pay gap can be decomposed into two parts. A first component, the ‘statistically explained’ part, is the gap between male and female average earnings due to the differences in the average characteristics (sector of activity, age, occupation, full time versus part time, etc.)²⁶ of male and female employees.

The second, residual component measures the difference between the financial returns to men and women with identical characteristics. It depends on any other factor for which no observable variable was available, measurable or omitted from the analysis, such as pay discrimination. This second, **‘unexplained part’ includes gender pay discrimination** and accounts for 2/3 of the gender pay gap in the EU Member States.²⁷ It is also the highest portion of the national pay gap in 21 out of 24 countries analysed in the support study²⁸.

The same study shows that the relevance of the unexplained part is confirmed **also at sectoral level**. The unexplained part, including pay discrimination, is the largest factor responsible for gender pay differences at sectoral level. It is more important than the ‘occupation’ factor, which is the second largest cause. In other words, even when excluding the statistical impact on the difference in pay related to working in different sectors and occupations (i.e. women work in sectors and occupations which are generally less paid), the analysis of pay gap data still points to a potential problem with respect of equal pay (see *Annex 5.2*). This finding does not necessarily apply to all employers. The only way to ascertain whether pay discrimination actually exists is to recalculate the unexplained gender pay gap at organisational/employer level and verify whether these differences subsist and why.

Moreover, as explained above, under the current case law of the Court of Justice of the European Union, workers can enforce their right to equal pay only in comparison to workers within the establishment in which they work or, beyond such establishment, when the wage setting is derived from a single source (e.g. a parent company in a

²⁵ It is called ‘unadjusted’ because it does not correct for national differences in individual characteristics of employed women and men. It is defined as the the difference between the average gross hourly earnings of women and men expressed as a percentage of the average gross hourly earnings of men. See Eurostat, [Gender pay gap statistics](#), 2018, for details. This indicator refers to the national averages and the weighted EU average. The same concept can be computed also at employer level with their specific earnings data.

²⁶ Note that the fact that these differences can be linked to objective factors does not necessarily mean that they are free from gender bias. For instance, the choice of education, occupation and work pattern might have been constrained by (unconscious) gender bias. These issues are, however, out of the scope of this initiative.

²⁷ [Eurostat, 2018](#), table 3, ex. 4, p. 16.

²⁸ Micro-data for the SES database are available with different granularity for the MS, therefore the computations could be carried out only for 24 countries. See *Annex 4* for details.

corporate group) setting the working conditions including pay.²⁹ As a result, the occurrence and **the extent of pay discrimination can only be measured at employer level** by comparing categories of workers doing the same work or work of equal value as defined by a given employer.

Other relevant indications of possible pay discrimination to be further explored at employer level, which the statistical analysis from the support study evidences at aggregate level, include:

- Pay penalties in hourly pay³⁰ for **part-time jobs** (compared to full-time). Since part-time jobs are predominantly held by women³¹, this indicates indirect discrimination: even if penalties apply in a gender-neutral way, in practice they put women at a particular disadvantage as regards pay. At employer level, it should be checked whether this difference is justified by some factor that cannot be captured at aggregate level (e.g. in case part-time is coupled with exemption from some specific tasks performed instead by the full-time employees in the same category).
- The pay gap is higher in **managerial occupations** and among **graduate workers**. The reason for this may be that women in such positions are not aware of the value of their work and do not request, negotiate or obtain their wages in the same way as men do. The peaks in high-pay occupation statistics highlight how much wage negotiation processes influence the gendered pay. At employer level, one should check whether the difference persists when everything else is equal (e.g. task performed, level of responsibilities, quality of deliverables etc.).
- Women earn less and work in lower paid occupations than men do, even if working in the same sector and with otherwise identical observable characteristics; this holds true for 70 out of 72 investigated sectors (see *Annex 5.2*). This puts into question the notion that women ‘have a preference’ for lower paid occupations and raises instead concerns that they are to some extent constrained into **undervalued female-dominated occupations**, and not only **sectors**. At employer level, one can verify whether this is the case by looking into job descriptions/definitions versus attributed responsibilities. In other words, checking whether e.g. the tasks performed are identical (‘same work’), but labelled differently, or require skills that are not properly recognised and valued (e.g. social skills) because of gender bias (‘equal value’).

²⁹ Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

³⁰ In the spirit of the Directive 2006/54/EC, assuming all characteristics being equal, part-time workers should have lower monthly earnings, not lower hourly pay.

³¹ Around 30% of women (15-64) – as compared to only 5% of men – in the EU are working part-time due to care responsibilities. Source: Eurostat, LFS, data code [lfsa_epgar](#).

- With regard to **irregular payments** (i.e. fringe benefits³²), women have a lower participation in job-related cash benefits, with particularly pronounced participation gender gaps in SE and NO and the UK. Moreover, these payments drop sharply in women's late careers in terms of payment receipts (cash and in-kind benefits) compared to men. For those who receive them, **gender gaps in monetary fringe benefits** are much higher than gender gaps in (regular) wages. In 22 countries, the magnitude is 1.5 to 10 times higher for fringe gaps than for wage gaps. A large review of research found that employers systematically under-reward women performing relatively similarly to or better than men.³³ Again, the possible reasons for these differences might be found at employer level.

To sum up, differences in pay by gender drawn from available statistics, both at EU, national and sectoral level tend to indicate pay discrimination. These same differences might or might not turn out to be perfectly legitimate from an equal pay perspective when verified at an individual employer level. Nevertheless, in countries where pay transparency measures have been introduced, an important number of employers discovered that pay differences could not be explained from an equal pay perspective (see below).

Empirical evidence of pay discrimination

The **empirical analyses** also show indications that pay discrimination takes place even in countries with the highest gender equality ratings.³⁴ Evidence from countries that introduced pay transparency measures suggest that the latter allowed gender bias in pay to come to light (*see box below*).

After pay audits were introduced in Sweden, over 40% of (surveyed) employers identified and corrected unjustified wage differences between women and men.³⁵ In Iceland, a survey among 76 employers credited with the Equal pay standard certification revealed that the results of wage analyses prompted corrections in salaries of staff and of groups, as well as changes of job titles or reviews of perks and bonuses.³⁶ According to a preliminary reporting on the evaluation of the Transparency Act in Germany (Federal Republic of Germany, 2019), 43% of the employers surveyed had reviewed their pay structures as a result of assessments under the Transparency Act.³⁷ In France, the first phase of the implementation of the Equality Index showed that: (i) 1 out

³² These include only cash fringe benefits. SES data includes information on in-kind benefits only for five MS plus NO and UK. The findings on participation of women and men in such benefits are mixed. In all countries but one, the magnitude of in-kind benefits was much lower than that of cash benefits.

³³ Joshi, Aparna et al., '[When can women close the gap? A meta-analytic test of sex differences in performance and rewards](#)', *Academy of Management Journal*, 2014, carried out a meta-analysis of nearly two hundred studies conducted across hundreds of thousands of employees between 1985 and 2013 on the differences in performance evaluations and organizational rewards such as salary, bonuses and promotions between male and female workers.

³⁴ Iceland ranks first in the [Global Gender Gap Index 2020 of the World Economic Forum](#). Finland and Sweden are 3rd and 4th in the world, respectively.

³⁵ See Jamstalldhetsfeministern, [The Milion Study \(Miljongranskningen\)](#), 2008.

³⁶ See [European Commission, The EU Mutual Learning Programme in Gender Equality Equal Pay - Summary Report](#), 2019.

³⁷ See Bundesministerium für Familie, Senioren, Frauen und Jugend, [Bericht der Bundesregierung zur Wirksamkeit des Gesetzes zur Förderung der Entgelttransparenz zwischen Frauen und Männern](#), 2019.

of 3 employers did not respect the legal obligation to grant the statutory salary increase to women returning from maternity leave in undertakings of over 1,000 workers which scored below 75/100; whilst (ii) 1 out of 5 employers did not respect this legal obligation in undertakings between 250 and 1,000 workers which scored below 75/100.³⁸ Without transparency measures such as the Equality Index, workers and employers would not have been aware of unjustified pay differences and no further action would have been taken. Finally, the Institute for Public Policy Research reports that although equal pay cases made up 11% of all labour court cases in the UK in 2017, ‘many more cases on unequal pay go unchallenged’.³⁹

Public perception of gender pay discrimination

Results of recent surveys on pay discrimination show a non negligible perception of gender pay discrimination. The majority of respondents (60%) in the public consultation carried out for this impact assessment, though not a representative sample, reported that they have experienced gender pay discrimination directly or know someone who has. In addition, a significant number of respondents (39%) think that women and men are not paid equally in their organisation. This corresponds to data gathered in surveys on discrimination more generally.⁴⁰ For instance, over a third (35%) of respondents across the EU think discrimination based on gender is widespread in their country – ranging from over 50% in France to 16% in Bulgaria⁴¹. When asked about gender equality in their company, only half of respondents in the EU believe that female and male employees are paid the same for equivalent positions by their employer – ranging from 68% in the Netherlands to 30% in Czechia⁴².

A study in Belgium found that three in four women workers have faced at least one form of discrimination, prejudice or issue at work in relation to their pregnancy or maternity; 12% have been discriminated in terms of pay or career⁴³. A survey conducted in Ireland showed that ‘women are almost twice as likely as men to experience discrimination at work, in terms of pay and promotion’⁴⁴.

³⁸ See Ministère du travail, [Index de l'égalité professionnelle entre les femmes et les hommes - Point d'étape de son déploiement auprès des entreprises de plus de 250 salariés](#), Dossier de Presse 17 Septembre 2019.

³⁹ Institute for Public Policy Research, [The Fair Pay Report](#), *How pay transparency can help tackle inequalities*, 2018, p. 9 (there were a total of 22,531 equal pay cases before HM Courts and Tribunals Service and Employment Tribunal in 2018).

⁴⁰ European Commission, [Special Eurobarometer 465: Gender Equality](#), 2017. Public consultations launched by the Commission on discrimination, in particular discrimination based on sex including in regard to pay, attracted an impressive interest by citizens and other stakeholder groups. For instance, the [public consultation](#) on a legislative initiative on strengthening the principle of equal pay between women and men through pay transparency, the [public consultation](#) on the gender equality Strategy 2020-2024, and the [public consultation](#) on the evaluation of the provisions in the Directive 2006/54/EC implementing the Treaty principle on 'equal pay' received 559, 1335 and 386 answers, respectively. Overall, citizens' views converge on gender equality matters, whilst employers tend to engage less with the problem.

⁴¹ European Commission, [Special Eurobarometer 493: Discrimination in the EU](#), 2019.

⁴² European Commission, [Special Eurobarometer 465, Gender Equality](#), 2017.

⁴³ See Institute for Equality between Women and Men, [Grossesse au travail. Expériences de candidates, d'employées et de travailleuses indépendantes en Belgique](#), 2017.

⁴⁴ See ESRI, [Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules](#), 2017.

Legal cases

Successful **legal cases**⁴⁵ equally point to gender pay discrimination. The number of cases concerning pay discrimination is extensive in the UK⁴⁶ and France⁴⁷, whilst being relatively rare in other countries. However, case law statistics most probably do not accurately reflect the size of the problem. In many cases, workers are not aware of the fact that they are underpaid on the basis of sex (lack of transparency). In addition, several Member States reported, in the targeted consultation, that these numbers are also under-representative due to procedural obstacles in claimants' access to justice and to the prevalence of out of court settlements⁴⁸. Among trade unions, the large majority of respondents highlighted that it is 'difficult' for their members to enforce equal pay rights in their country for various reasons while one third of employer associations identify that there is difficulty in assessing work of equal value without otherwise reporting difficulties to any significant level (See *Annex 2*).

Other circumstantial evidence

In practice, **gender norms** in the workplace, in particular on work valuation, have been shown to result in labour market discrimination against women⁴⁹, and therefore in differences in pay, in various ways. Not all skills relevant for today's modern service economy are valued in more traditional job valuations. For instance, an analysis of the retail sector in France⁵⁰ showed that occupational skills such as having a sense of human relations and ability to serve with care, skills that are highly relevant in retail, are mostly considered as innate and are therefore not valued in the evaluation of the position of retail

⁴⁵ For instance, in October 2019, a French retired woman has received 161,000 euros in compensation for unequal pay compared to a male colleague during her 41-year career (Labour Tribunal of Nantes). (Le Figaro, [Elle obtient 161.000 euros aux prud'hommes pour avoir été moins payée qu'un collègue masculin](#), 23/10/2019.) In Malta, a female employee was found to be receiving some 6,000 euros per year less than her male colleagues. (Times of Malta, [Woman finds male colleagues are paid €500 more per month - investigation proves her right](#), 24/01/2018). See Burri, S., *National cases and good practices on equal pay*, 2019 for further examples.

⁴⁶ In the UK, the number of legal cases and the size of the settlements point to widespread discriminatory pay practices (O'Reilly, J. et al., 'Equal Pay as a Moving Target: International perspectives on forty-years of addressing the gender pay gap', *Cambridge Journal of Economics*, Volume 39, Issue 2, March 2015; Deakin, S. et al., 'Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act', *Cambridge Journal of Economics*, 2015). The analysis of a number of equal pay cases carried out for the UK Impact assessment before introducing pay transparency measures in 2014 revealed that employers are often still not able to show any clear rationale for the pay rates that they offer individuals. From a sample of 41 successful equal pay cases over the last decade, less than a quarter appeared to have a gender-neutral salary structure. The situation may be expected to gradually improve as a result of the mandatory pay transparency measure in the UK.

⁴⁷ The targeted consultation received replies from only 10 Member States, which indicated no case (LT, SI) up to a large number of cases (FR: 9,508 in 2019, a six-fold increase in 3 years – from 1605 in 2016).

⁴⁸ CZ, DE, DK, FR, IT, MT, RO, SI, SE.

⁴⁹ See for example Murphy E., Oesch D., *The Feminisation of Occupations and Change in Wages: A Panel Analysis of Britain, Germany, and Switzerland*, 2015, pp. 1 and 20-21, 'wage disparities between male and female occupations are, to some extent, rooted in unequal gender norms that accord higher value to male work effort, and thus imply labor-market discrimination against women'; Auspurg K., Hinz T., Sauer C., 'Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments', *American Sociological Review*, 82(1), 2017, p. 203.

⁵⁰ A-F. Bender, F. Pigeyre, '[Job evaluation and pay equity: stakes and methods](#)', Conference EURAM, 2014.

workers. Also, the estimation of potential productivity of prospective workers that employers must make in order to take decisions at hiring/evaluation point⁵¹ can be influenced, consciously or unconsciously, by gender bias; lacking specific information, employers may tend to rely on gender biased assumptions or experiences⁵². A bias towards more critical review of women, particularly as for personality aspects,⁵³ is especially prevalent for jobs traditionally held by men and has obvious consequences in self-perpetuating differences in pay. A gender bias has also been evidenced in wage/rise/bonus negotiations, showing that the frequency and outcomes of pay negotiations are not gender-neutral.⁵⁴ Gender norms influence both women employees (who tend to negotiate less⁵⁵ and have lower expectations as to salary level⁵⁶) and employers (e.g. expecting that women will accept lower pay offers than men; or perceiving their request differently).

Impact of intersectional discrimination

Finally, it is worth mentioning that the problem of pay discrimination is likely to be **more profound for women incurring also other types of discrimination (intersectionality)**, for instance for women with a minority racial or ethnic background or a disability.⁵⁷ Other groups are also more likely to be affected by pay discrimination such as single parents (of which 85% are women)⁵⁸ and LGBTIQ people⁵⁹.

⁵¹ See *Annex 5* for a short discussion on the relation between employers rational (profit maximising) behaviour and discrimination.

⁵² Expectations about the traits and capabilities of women and men may produce biased evaluations of their respective competencies. Men can be seen as a good match for high-status roles such as leadership and women as more adept for interpersonal roles such as nurse or teacher – see literature quoted in Brosi, P.; Schwarzmüller, T.; Welpel, I., [Ensuring equal pay and equal access to employment through gender-neutral job evaluation and classification](#), 2015. Moreover, there might be an underlying assumption that men are the sole/main ‘bread earners’ in the family, provided for through their salary, and women are secondary/complementary earners, whose salary does not require financing an entire family and therefore somehow less relevant.

⁵³ An example is the ‘abrasiveness trap’, studied by Snyder, K., ‘The abrasiveness trap: High-achieving men and women are described differently in reviews’, *Fortune*, 2014.

⁵⁴ For instance, a 2012 study (Leibbrandt, A.; List J.A., ‘[Do women avoid salary negotiations? Evidence from a large-scale natural field experiment](#)’, *Management Science*, 2012 – published in 2015) found that women were less likely to negotiate their salary. However, when researchers explicitly told all job seekers that pay was negotiable, this ‘negotiation gap’ disappeared completely. For an overview of research on how salary transparency affects gender pay differences, see Chamberlain, A., ‘[Is Salary Transparency More Than a Trend?](#)’, *Glassdoor Economic Research Report*, 2015.

⁵⁵ See e.g. Babcock et al., ‘[Nice girls don't ask – Women negotiate less than men – and everyone pays the price](#)’, *Harvard business review*, 2003. 57% of men against only 7% of women negotiated.

⁵⁶ Auspurg K., Hinz T., Sauer C., ‘Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments’, *American Sociological Review*, 82(1), 2017, 179–210; Davison, H., ‘[The Paradox of the Contented Female Worker: Why Are Women Satisfied with Lower Pay?](#)’, *Employee Responsibilities and Rights Journal*, 2014.

⁵⁷ See AAUW, [Black Women & the Pay Gap](#). Available at: <https://www.aauw.org/resources/article/black-women-and-the-pay-gap/>.

⁵⁸ See EIGE, ‘Poverty, gender and lone parents’, *EU Review of the implementation of the Beijing Platform for Action*, 2016.

⁵⁹ European Union Agency for Fundamental Rights, *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey*, 2014, ‘25% of the respondents who had a paid job during the previous five years said they experienced unequal treatment with respect to employment conditions or benefits in this period because of having a same sex partner. [...] Of those transgender respondents who were

Lack of data on the extent of pay discrimination

It is hard, at aggregate level, to know whether differences observed on the labour market (e.g. in terms of salary level, bonuses, promotions) result from employers' discriminatory behaviour or from gender-biased pay setting practices as opposed to legitimate differences stemming from objective factors, e.g. different rewarding of merit⁶⁰. Discriminatory behaviour is rarely openly stated; the reasons for differential treatment are often only in the mind (consciously or unconsciously) of the perpetrators and their victims⁶¹ or they are hidden in pay structures which have not been evaluated for many years. It is therefore difficult to provide specific and extended data about pay discrimination under today's rules. Promoting and realising pay transparency at employer level will increase the amount of data available and may thus enable to fine-tune the statistical analysis of the gender pay gap, providing a better understanding of the share which is justified by objective factors and the share which is not justified objectively, and thus likely to be linked to gender pay discrimination.

2.2. What are the problem drivers?

The intervention logic (see *Annex 6*) depicts the two key problem drivers, namely i) a market failure linked to the asymmetry of pay information at employer level and persisting gender bias in pay setting mechanisms and valuation of women's work, ii) a regulatory failure linked to an inconsistent and inadequate application of key legal concepts, in particular the concept of 'work of equal value', and procedural obstacles such as a lack of proper remedies and an insufficient victims' support. Both of these drivers leave room for pay discrimination to appear at individual but also at employer level.

1) Market failure - asymmetries of information on pay and persisting bias in pay

Pay discrimination can be viewed as a **market failure** caused by **information asymmetries** between worker and employer about market wages.

This asymmetry creates a problem for individual workers, as they do not have the information necessary to understand the relative value of their work⁶² compared to that of their colleagues of opposite sex and therefore to detect sex-based pay discrimination when they negotiate wages⁶³. In many instances, the information may simply not be available, due to a lack of transparency in wages and wage setting.

The problem of information asymmetry may be reinforced because of other factors. Workers may be reluctant to ask for such information because of fear of victimisation, or

employed in the previous five years, around a third (35%) experienced this type of unequal treatment at work during this period, compared with ca one in four lesbian (26%), gay (24%) or bisexual (20% of bisexual women and 23% of bisexual men) respondents', p. 32.

⁶⁰ See *Annex 8* of European Commission, *Evaluation SWD(2020)50* on the difficulties of measurement of pay discrimination and other types of discrimination more in general.

⁶¹ European Agency for Fundamental rights, *Handbook on European non-discrimination law*, 2011, pp. 123- 124.

⁶² One third of employees in the EU are unaware of the salaries of their immediate colleagues (Eurobarometer 465).

⁶³ Trotter, R.G. et al., 'The new age of pay transparency', *Business Horizons*, 2017.

because of a prohibition or cultural reticence to discuss salary levels. Moreover, their own expectations⁶⁴ on pay can be gender-biased (i.e. stemming from gender norms⁶⁵). This might happen because women tend to compare their salaries to other women's salaries⁶⁶ and might therefore simply not be aware of a gender wage inequality in their occupation⁶⁷. Furthermore, people tend to compare themselves with workers belonging to the same job category but do not normally question whether the occupation is possibly only labelled differently or is of equal value to their own. Pay differences may therefore look justified while they are not (i.e. they cannot be justified by objective, gender-neutral factors). Finally, as indicated above, gender norms might also discourage women from self-advocacy⁶⁸, lower the likelihood that they negotiate salary offers⁶⁹ and raises⁷⁰ or lessen the results of such negotiations⁷¹ in comparison to those of their male colleagues⁷². Lack of pay transparency contributes to pay discrimination remaining hidden and its effects accumulate from point of entry into the labour market along the whole career.

This implicitly creates a problem also *at employers' level*: the fact that discrimination is not known by individuals and therefore rarely challenged in practice masks the problem of **discrimination** at employer level, even in the case of employers who want to treat their employees equally on the basis of sex.

⁶⁴ The so-called paradox of 'the contented female workers' shows that female workers might end up being paid less than men but being more satisfied of their wage, in part because they consider lower wages as justified. The concept was originally introduced by Crosby F., *Relative Deprivation and Working Women*. New York: Oxford University Press, 1982. More recently, Mueller C.W. et al, found, with data collected from 30 countries, that the paradox is essentially a universal, worldwide phenomenon. Recent literature (Valet, P., 'Social Structure and the Paradox of the Contented Female Worker: How Occupational Gender Segregation Biases Justice Perceptions of Wages', *Work and Occupations*, 2018) contested the existence of inherent differences in justice perception between women and men. See Mueller C.W. et al, 'The contented female worker: Still a paradox?', Hegtvedt, K.A. and Clay-Warner, J. *Justice*, 2008.

⁶⁵ Avent-Holt, D., & Tomaskovic-Devey, D., 'A relational theory of earnings inequality'. *American Behavioral Scientist*, 2014.

⁶⁶ Research also shows a gendered attitude towards privacy on wages. Women tend to be more private and less informed about the market value of labour than men (Babcock et al., 'Nice girls don't ask – Women negotiate less than men – and everyone pays the price'. *Harvard Business Review*, 2003). Cullen and Pakzad-Hurson also find in a field experiment that women are more likely to keep the information received private while men will disseminate it among their male peers, causing them to renegotiate bonuses with their employer. (Cullen, Z.B. and Pakzad-Hurson B., 'Equilibrium Effects of Pay Transparency in a Simple Labor Market' Working Paper, April 2019).

⁶⁷ Castilla, E.J., 'Accounting for the Gap: A Firm Study Manipulating Organizational Accountability and Transparency in Pay Decisions', *Organization Science*, 2015; Kim, 'Pay Secrecy and the Gender Wage Gap in the United States', *Industrial Relations*, 2015.

⁶⁸ O'Neill, O.A. and O'Reilly III, C.A. (2011), [Reducing the backlash effect: Self-monitoring and women's promotions. Journal of Occupational and Organizational Psychology](#), 84: 825-832.

⁶⁹ 40% versus 49% for men according to Special Eurobarometer 465.

⁷⁰ World Economic Forum, *Women are still not asking for pay rises: here's why*, 2018.

⁷¹ Artz B., Goodall A.H., Oswald A.J., 'Do Women Ask?', *Industrial Relations: A Journal of Economy and Society*, 2018, 'this paper documents evidence [...] that women do ask but do not get. Such a finding is potentially consistent with the existence of discrimination in the labour market', p. 13.

⁷² See e.g. The Commission's 2020 edition of the [Employment and Social Developments in Europe \(ESDE\), chapter 2](#): 'Fewer women than men state that they have received fair opportunities in education, and particularly in getting the jobs they seek. Controlling for age, activity status, country and ability to get by on income, the average gender gaps in perceived fairness amount to 2.5 percentage points for education, and 5 percentage points for jobs. There is ample evidence of widespread gender inequalities in the labour market, linked to unequal pay, career prospects or occupational segregation'.

Regulatory failure – lack of legal clarity and difficulty to apply key legal concepts and lack of access to justice

The **second key problem driver** is related to a **regulatory failure** due to a *lack of legal clarity of key legal concepts* and the related *difficulty to apply them in practice* and a *lack of access to justice to ensure the enforcement of the right to equal pay*. This was clearly illustrated by the 2020 evaluation and other surveys such as a 2019 survey carried out among trade union confederations⁷³.

Lack of clarity of/difficulty to apply key legal concepts. Even though the concept of ‘pay’ has been clarified by the Court of Justice of the European Union, a number of national legislators (e.g. AT, FI, IT, LV, SE) have not incorporated such clarifications in national law⁷⁴. In a similar vein, despite the Court’s guidance on the concept of ‘work of equal value’⁷⁵, the application of the concept in practice, by employers, social partners, enforcement bodies and courts, remains subject to varied and incoherent interpretations⁷⁶. Stakeholders in the public consultation⁷⁷ stressed that the definition of ‘work of equal value’ elaborated by the Court of Justice should be visible in the law and that substantial guidance on how to evaluate work of equal value is needed, even for individual employers.

These problems lead to the fact that, at *individual level*, workers do not know what elements are relevant to assess whether they are paid equally on the basis of sex and to whom they should compare themselves as regards carrying out equal work or work of equal value. This lack of clarity deters victims from bringing claims and makes running a case even more difficult. Without clear criteria for assessing ‘work of equal value’, workers cannot exercise their right to equal pay effectively.

The above problems are a problem also *at employer level*. Employers and business associations still underline the difficulties in applying the concept of work of equal value.⁷⁸ This may allow unconscious bias in pay setting and gives room to gender pay discrimination. While gender bias is particularly relevant in the application of the concept of ‘work of equal value’, it also still exists as regards ‘equal work’.⁷⁹ A structural

⁷³ A recent survey among ETUC member organisations asked whether the legislation was easy to use, and a clear majority of trade union confederations considered it hard or very hard to make use of the legislation, pointing in particular to: (1) difficulty in making comparisons between different occupations; complexity of the legislation; (2) the idea that public opinion believes that there is no problem; (3) the lack of information about pay levels of comparators; and (4) a lack of resources by the bodies responsible for implementing the legislation (ETUC, *Annual Gender Equality Survey*, 2019).

⁷⁴ European Commission, *Evaluation of the relevant provisions in the Directive 2006/54/EC implementing the Treaty principle on ‘equal pay for equal work or work of equal value’*, 2020, SWD (2020)50, p. 18.

⁷⁵ Case C-400/93 Royal Copenhagen, ECLI:EU:C:1995:155: the Court clarified that the value of work should be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.

⁷⁶ See ICF, *Final Report - Study to support the evaluation of the relevant provisions in Directive 2006/54/EC implementing*, DG JUST, 2019.

⁷⁷ E.g. the European Women’s Lobby and Make Mothers Matter.

⁷⁸ See the results of the public consultation in *Annex 2*.

⁷⁹ Gender pay discrimination for the same work relates to two people who only differ by gender carrying out the same job but being paid differently. Examples are presented in [Burri](#) (2019). The concept is not always as straightforward as it might seem: it also applies when people performing the same job are given

undervaluation of female work, related to specific occupations in the organisation or to women's work in general, could influence wage structures due to institutional inertia:⁸⁰ in the absence of an external trigger, a legal obligation, or a very strong commitment at managerial level, there is no incentive for employers to evaluate the gender neutrality of their wage structures and revise them where needed, also because employers might simply not be aware that there could be a problem of gender pay inequality.

Lack of access to justice. The existing EU legal framework already makes efforts to support potential victims in bringing their claim, e.g. with protection against victimisation and rules on remedies and sanctions or penalties. However, the 2020 evaluation identified persistent problems with regard to the effective enforcement of the right to equal pay and procedural obstacles to this enforcement, leading to an insufficient protection of victims. It reported major problems related to the costs of litigation, the lack of a proper mandate for equality bodies to help potential victims of sex-based pay discrimination, the lack of possibility of collective action, the practical application of the reversed burden of proof, and the low level of compensation awarded. National experts reported the **costs** of court proceedings as a barrier to access to justice (AT, BE, EE, FI, HR, HU, LV, NL, PL)⁸¹. While legal aid is only available to (very) low income earners, in most countries the 'loser pays' principle is a disincentive for many victims to go to court. **Compensation** for material damages may be claimed in only 18 Member States and non-material damages may be compensated in 14 Member States.⁸² Most national experts consider compensation or reparation of victims as a significant problem as remedies are too low and not dissuasive for defendants while they discourage victims from taking action especially when compared to litigation costs.⁸³

Nine Member States (AT, DE, DK, EE, HR, NL, PL, PT, SE) foresee no **sanctions** or penalties in addition to compensation.⁸⁴ Symbolically, the absence of sanctions or penalties suggests that society at large would not be concerned by gender pay discrimination.

The lack of enforcement and insufficient protection of victims were confirmed by participants in the public consultation.

different titles depending on gender e.g. 'chef' versus 'cook'; or 'information manager' versus 'librarian'; or 'management assistant' versus 'secretary'. See [ILO, Global Wage Report 2018/19: What lies behind gender pay gaps](#), p. 95, and [Oelz et al, 2013](#), p. 31.

⁸⁰ England, P., *Comparable Worth: Theories and Evidence. Social institutions and social change*, 1992, p. 22: '[...] skills common in women's jobs [...] may come to be devalued via stigma that gets institutionalized into wage systems, so that this skill [...] carry a low rate of reward'; p. 43: '[...] if a job starts out as female or male, considerable inertia develops around that initial label. Also, if entry level jobs are of one sex or the other, this segregation will be perpetuated over time and up the mobility ladders that comprise internal labor markets.'

⁸¹ Foubert, P., *The enforcement of the principle of equal pay for equal work or work of equal value, A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, DG JUST, 2017, p. 53.

⁸² SWD (2020)50 final, p. 24.

⁸³ Ibid.

⁸⁴ SWD (2020) 50 final, p. 28; see also Article 25 of the Recast Directive.

2.3. Why is it a problem?

The Charter of Fundamental Rights of the EU prohibits discrimination, in particular on the basis of sex (Article 21), and states that equality between women and men must be ensured in all areas (Article 23). Equality between women and men is a fundamental value in the European Union (Article 2 TEU). Gender-based pay discrimination and the improper enforcement of the principle of equal pay is therefore first of all a **breach of an individual's fundamental right** protected under Union law.

Article 23 of the Charter explicitly refers to equality between women and men in employment, work and pay. Article 153 TFEU lists equality between women and men with regard to labour market opportunities and treatment at work as one of the main objectives of the Union's social policy. Article 157 TFEU calls on Member States to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. In practice this means that employers must have pay structures ensuring that women and men be paid equally for the same work or work of equal value. Gender-based pay discrimination hence **breaches individuals' social rights** protected under Union law.

Besides violating fundamental and social rights, pay discrimination has negative economic consequences as it entails **inefficiencies in how the labour market operates** and lowers **competitiveness in the internal market**. From an individual worker's viewpoint, insufficient protection from gender pay discrimination, even if only suspected, contributes to lowering personal expectations regarding prospective earnings. As such, it can distort **decisions relating to employment and occupation**. It also impacts workers' decisions on **time worked and career patterns**, in particular when balancing household responsibilities with earnings' perspectives; the expectation of a potentially lower income may influence women's apparent own choice to engage in unpaid care rather than paid work. This happens even if the household would equally share housework and care (or have no care responsibilities) due to employers' possible biased expectations of future caring responsibilities for women or the assumption that they are not the sole or main earners in a family. All this has negative consequences on **poverty rates** and ultimately on the **gender pension gap** (which stands at 30%⁸⁵ in the EU overall). Finally, personal beliefs regarding different levels of fairness in pay/pay structures may influence workers' propensity to *mobility* across sectors or countries.

The above elements bring a clear risk of **potential loss of productivity**, due to suboptimal female labour market participation. Such suboptimal participation increases as a consequence of women's increasingly higher level of education compared to men.⁸⁶ An economy cannot afford such a waste of talents, especially in an ageing society confronted with skills shortages.

⁸⁵ Eurostat: [ilc_pnp13](#).

⁸⁶ 45.8% of tertiary attainment against 35.7%. See the European Commission, [Education and training Monitor](#), 2019 for an overview of differences. An increase in female labour market participation would also be beneficial in view of demographic challenges and sustainability of welfare states.

For employers, pay discrimination has a hidden cost, as the **motivation and productivity** of employees⁸⁷ may decrease if they are – or suspect being – treated unequally. They may feel undervalued, disrespected, upset or even doubt their capacities and lose self-confidence. Pay discrimination may also result in a **loss of talent and investment in people** in case workers would decide to move to a different employer.

Furthermore, even if the guiding principle of equal pay for the same work or work of equal value is set at EU level, the differences in approach among Member States continue to be an obstacle, not only to workers' mobility (*see above*) but also for employers to operate across Member States. Indeed, the very inclusion of the equal pay principle in the EU's founding treaties (at the time the 1957 Treaty of Rome) explicitly aimed at ensuring a level playing field among employers in the internal market.⁸⁸ Ensuring a consistent equal pay between women and men is therefore inherently a market condition to safeguard fair competition among employers across the EU. Finally, without an EU approach there could be no action taken on matters of equal pay as employers might overlook the long term productivity gains and concentrate on a perceived risk of loss of competitiveness due to potential salary adjustments.

2.4. How will the problem evolve?

As evidenced in the previous sections, gender pay discrimination is a persisting phenomenon, even if its extent may not be evaluated precisely. Because it is hard to identify and evaluate by Member States, employers, workers, enforcement bodies such as equality bodies and courts, the situation is likely to continue to evolve only very slowly: if not identified, existing discriminations may persist. Without further policy intervention towards more pay transparency, it is likely to remain largely hidden, with workers deprived of tools to have their rights respected, employers lacking the incentive to analyse and revise their pay structures, and governments and policy makers unable to grasp the extent of the problem effectively enough to tackle it.

National legislative actions to correct this situation have been scarce and there are no indications that their rate would increase. This hesitation conflicts with an increasing

⁸⁷ Research show a positive impact of pay transparency on productivity. See e.g. Chamberlain, A., 'Is Salary Transparency More Than a Trend?', Glassdoor Economic Research Report, 2015; Allen, A. et al., *International study on compensation and pay transparency practices*, 2018; Alterman, V. Bamberger, P., Belogolovsky, E., et al., 'Looking for Assistance in the Dark: Pay Secrecy, Expertise Perceptions, and Efficacious Help Seeking Among Members of Newly Formed Virtual Work Groups', *Journal of Business and Psychology*, 2016; Bamberger, P.; Belogolovsky E. 'Signaling in Secret: Pay for Performance and the Incentive and Sorting Effects of Pay Secrecy', *Academy of Management Journal*, 2014; Bennett, R.J.; Marasi S., 'Pay communication: Where do we go from here?', *Human Resource Management Review*, 2016; Bennett, R.J.; Marasi, S.; Wall, A., 'Pay openness movement: Is it merited? Does it influence more desirable employee outcomes than pay secrecy?', *Organization Management Journal*, 2018.

⁸⁸ See C. Barnard, 'The Economic Objectives of Article 119' in D. O'Keefe and T. Hervey (eds), *Sex Equality Law in the European Union* (Wiley, 1996). In the words of the Court of Justice: 'The aim of Article 119 [now Article 157 TFEU] is to avoid a situation in which undertakings established in states which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-community competition as compared with undertakings established in states which have not yet eliminated discrimination against women workers as regards pay' in CJEU, Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena (Defrenne II)*, Case 43/75, ECLI:EU:C:1976:56, para. 9.

openness⁸⁹ and demands for pay transparency from the general public as related to the broader concept of fair pay⁹⁰, even though these have to some extent been embraced by certain employers⁹¹, notwithstanding potential costs⁹². The shift towards rebalancing the asymmetry of pay information between workers and employers remains, however, very slow overall. The 2014 Recommendation, which is per definition non-binding, received a limited follow up by Member States. As a result, there are no incentives for employers to act. In practice, the situation relies essentially on individual workers' responsibility to become aware, collect information (if available) and take action against pay discrimination while balancing the cost-opportunity of doing so. This is unlikely to change on its own.

The support study carried out in the context of this impact assessment confirms that the unexplained part of the gender pay gap, which includes pay discrimination, is not likely to decline significantly over time without further interventions.⁹³

The main factor that might shape future trends on the labour market, and therefore potentially impact on gender pay discrimination as part of the gender pay gap, is the impact of the **COVID-19 crisis**. The latter has already shown a gendered impact and a strong backlash on gender equality.^{94 95} It also reversed the usual pattern of a recession: this time, it is women, rather than men, who experience larger employment losses and higher unemployment. Women are overrepresented in lower paid jobs which are the first and the most affected by redundancies in the crisis, for instance hospitality, retail, care, and personal services.⁹⁶ To the extent that these women might not find their way back into the labour market (also because employers might restructure supply chains by recurring to more automation in order to allow for social distancing), the gender pay gap might even decrease and give the illusion that gender pay discrimination will also decrease.

In addition, the share of pay discrimination in the overall gender pay gap may reasonably be expected to increase with the recession. An increase of precarious and atypical jobs⁹⁷ (e.g. due to more digitalisation) could reinforce this trend. Precarity risks increasing wage discrimination as it further limits negotiating power on the side of workers, which

⁸⁹ Almost two thirds of Europeans according to Eurobarometer 465, 2017.

⁹⁰ Trotter, Richard G., Zacur, Susan Rawson and Stickney, Lisa T., (2017), The new age of pay transparency, *Business Horizons*, 60, issue 4, p. 529-539..

⁹¹ CIPD, *Survey Report Reward management: focus on pay*, December 2017.

⁹² SimanTov-Nachlieli, I., & Bamberger, P. (2020), [Pay communication, justice, and affect: The asymmetric effects of process and outcome pay transparency on counterproductive workplace behavior](#), *Journal of Applied Psychology*, Advance online publication.

⁹³ EY, *Support study for the impact assessment*, 2021.

⁹⁴ EC, JRC (2020), *How will the COVID-19 crisis affect existing gender divides in Europe*.

⁹⁵ Eurofound, *Women and labour market equality: Has COVID-19 rolled back recent gains?*, Publications Office of the European Union, Luxembourg, 2020.

⁹⁶ Eurostat, *Covid-19 labour effects across the income distribution*, October 2020.

⁹⁷ See Eurofound for a definition: 'Atypical work refers to employment relationships that do not conform to the standard or "typical" model of full-time, regular, open-ended employment with a single employer over a long time span. [...] includes part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.'. Available at: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/atypical-work>.

especially affects women. It may further reinforce the drivers mentioned in section 2.2 (market and regulatory failures). While these larger trends on the labour market are out of the scope of this initiative, their possible impact on the problem addressed in this initiative cannot be denied.

Besides transparency on wages and wage structures, there is no indication that the other problem drivers would be addressed. Even if the Court of Justice may shed further light on how to assess work of equal value, such guidance is unlikely to reach individual employers if this concept is not encoded in the legal framework and there are no practical tools to implement it in practice. Furthermore, there are no indications that the procedural obstacles to access to justice are addressed at national level, even though they have been known and acknowledged for many years.

Section 4.3 on the baseline scenario develops these points further.

3. Why should the EU act?

3.1. Legal basis

The Union's specific right to act in this field is set out in detail in Title X of the TFEU related to social policy. Its right to act on matters of gender equality in employment and occupation follows from Article 157(3) TFEU. The Treaty provides that, although Member States shall ensure the application of the principle of equal pay for male and female workers for equal work or work of equal value (Article 157(1) TFEU), the EU shall adopt measures to ensure the application of the principle of 'equal opportunities and equal treatment of women and men in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value' (Article 157(3) TFEU).

Article 157(3) TFEU is the legal basis for the Recast Directive and for the 2014 Commission Recommendation on pay transparency. It should therefore also serve as the legal basis for legally binding pay transparency measures, which support the implementation and better enforcement of the principle of equal pay under Article 157 TFEU and the Recast Directive. Unlike for an 'internal market' legal basis, the existence of an internal market problem is not a prerequisite to the availability of Article 157(3) as a legal basis: the pursuit of equal treatment is sufficient in that respect.

Article 157 TFEU governs a specific subject matter (*lex specialis*) compared to Article 153 TFEU, which provides a legal basis for all measures implementing the principle of non-discrimination on grounds of sex in the field of 'equal opportunities' and in 'matters of employment and occupation'. The *lex specialis* prevails over the general norm. Article 157(3) TFEU therefore constitutes the proper legal basis for this initiative.

3.2. Subsidiarity: Necessity of EU action

The principle of subsidiarity (Article 5(3) TEU) requires that the Union shall act only and insofar as the objectives of the proposed actions cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reasons of the scale or effects of the proposed action, be better achieved at Union level.

The EU principle of equal pay was established by the founding Treaties as a fundamental **support for the functioning of the internal market**. Equal pay between women and

men for the same work or work of equal value ensures fair competition for companies which have to comply with a similar fundamental social requirement, thus creating a level playing field for companies operating in the internal market. In the words of the Court of Justice (1976):

*The aim of article 119 [now 157 TFEU] is to avoid a situation in which undertakings established in states which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-community competition as compared with undertakings established in states which have not yet eliminated discrimination against women workers as regards pay.*⁹⁸

The Treaty itself thus confirms that harmonised requirements facilitate cross-border operations and create equal conditions for investment in Member States. This objective cannot be achieved by individual Member States as national measures would inevitably distort competition and create market barriers and could not achieve the envisaged level playing field.

While the principle of equal pay initially had primarily an economic function aiming at avoiding distortions to competition, in 1976 the Court of Justice recognised, in addition to its economic goal, the **social objective** of Article 119 EEC and its horizontal direct effect⁹⁹. The latter effect means that the principle of equal pay 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, even if there are no implementing provisions at EU or national level.¹⁰⁰

Later on, the Court added that the social goal prevails over its economic function and that equal pay is a **fundamental right**.¹⁰¹ Articles 2 and 3(3) TEU include the right to equality between women and men as one of the essential values and objectives of the EU.

Article 23 of the Charter of Fundamental Rights of the EU confirms that equality between women and men must be ensured in all areas, including employment, work and pay. Articles 8 and 10 TFEU add that the EU shall aim to eliminate inequalities, to promote equality between women and men and to combat discrimination based on sex in all its policies and activities. The TFEU also provides that, although Member States shall ensure application of the principle of equal pay for male and female workers for equal work or work of equal value (Article 157(1) TFEU), the EU *shall* adopt measures to achieve that aim (Article 157(3) TFEU).

It is important to note that Article 157 is mandatory in nature and that the prohibition of discrimination, as confirmed by the Court of Justice, applies not only to the action of

⁹⁸ Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* (Defrenne II), ECLI:EU:C:1976:56, para. 9.

⁹⁹ *Ibid*, para. 8-10.

¹⁰⁰ *Ibid*, para. 40.

¹⁰¹ Case 50/96, *Deutsche Telekom AG v Lilli Schröder*, ECLI:EU:C:2000:72, p.57.

public authorities, but extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals.¹⁰²

The EU acted to implement the Treaty principle, in particular, through the 1975 Equal Pay Directive, subsequently merged into the Recast Directive. The evaluation of the Recast Directive showed that further action was needed, in particular in order to create transparency on pay and pay settings. This was done through the 2014 Commission Recommendation on pay transparency. The 2017 evaluation of the Pay Transparency Recommendation showed that it had not brought about the necessary change (see below). This was confirmed by the 2020 evaluation, which reiterated that EU-level action remains necessary to better enforce the right to equal pay through pay transparency. Member States and social partners did not so far take sufficient measures to combat such discrimination.

Pay transparency measures as outlined in the 2014 Recommendation were implemented only in some Member States, and the fragmented level of implementation raises doubts on the effectiveness of non-binding measures.

The measures introduced by some Member States¹⁰³ vary broadly in effectiveness, and many Member States did not take any action in this area. There might be several reasons for this, depending on the perceived relevance of the equal pay issue, that may cause reluctance to impose possible costs on employers that might put them at a competitive disadvantage *vis-à-vis* foreign employers who are not applying similar norms (yet).

Member States are therefore unlikely to be able to address the problem on their own based on the existing non-binding measures. The existing legal framework will therefore not bring about significant improvements in pay equality without a new impetus.

3.3. Subsidiarity: Added value of EU action

Action at EU level would ensure that pay equality between women and men, enshrined in Article 157(1) TFEU, is effective and that all citizens can claim their rights according to the harmonised minimum standards applicable in all Member States.

EU action does not only create a harmonised minimum standard protecting workers (social objective), it creates equal market conditions for companies operating in the internal market, thus preventing unfair competition (economic objective). Only a coherent and comprehensive European approach can ensure a level playing field for market operators in all Member States and exclude possible unfair competitive advantages that could be derived from pay discrimination (see above). As shown in the report on the evaluation of the 2014 Recommendation, national measures regarding pay transparency are fragmented, scarce and most often set lower thresholds than those proposed by the 2014 Recommendation. Their variety, different levels of ambition, and the progressive nature of the changes bring unnecessary complexity and uncertainty and constitute barriers to operating across Member States.

¹⁰² Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* (Defrenne II), ECLI:EU:C:1976:56, para 39.

¹⁰³ See Table 2 in the *Annex 5, Section 3*.

EU action establishing pay transparency and related enforcement mechanisms would ensure that workers across the EU can experience the same level of protection of the equal pay right, and that employers can operate across Member States with lower risks/uncertainties. It would realise a fundamental and social right while preventing businesses from competing on an uneven playing field and therefore improve the operation and competitiveness of the internal market.

4. Objectives: What is to be achieved?

4.1. General objectives

The overall objective of the initiative is to **improve the implementation and enforcement of the principle of equal pay for equal work or for work of equal value** both as a fundamental right and social objective to be achieved in the European Union and as an economic objective linked to the full realisation of gender equal conditions on the internal market. It does so by creating transparency both at the individual worker and at employer level, based on a facilitated implementation of the legal concepts of equal pay for equal work or for work of equal value. It balances the responsibility for taking action between workers claiming their EU right and employers ensuring these rights are respected.

4.2. Specific objectives

The initiative more specifically aims at:

1. *Empowering workers to enforce their right to equal pay*: the initiative aims at bringing instances of pay discrimination to light through transparency, giving workers, especially female workers, the necessary information to act upon them. This objective could be supported by addressing the difficulties relating to the application of the key legal concepts relating to equal pay and the inadequate access to justice.
2. *Addressing systemic undervaluation of women's work at employer level*: the initiative aims, through transparency, at correcting biases in pay setting mechanisms that perpetuate the undervaluation of work done by women. Such undervaluation occurs when women's skills are not or not sufficiently valued in pay structures. This objective could equally be supported by addressing the difficulties relating to the application of the key legal concepts relating to pay and the inadequate access to justice.

At the same time, pay transparency measures will help to collect more information and data on the existence and extent of pay discrimination.

4.3. What is the baseline from which options are assessed?

EU action through the 2014 Recommendation and the European Semester.

Under the baseline scenario, the **2014 Recommendation** would remain the main action at EU level to address the problems set out above. In addition, the Commission could continue to issue Country Specific Recommendations (CSRs) in the context of the

European Semester. In principle, CSRs have the potential to address the phenomenon of the gender pay gap but only from a global perspective and highlight its root causes in Member States. In 2019, the pay gap was addressed in the country reports of 11 Member States¹⁰⁴ and a country-specific recommendation on the gender pay gap was issued to one Member State¹⁰⁵. The CSRs can contribute to tackle some of the root causes of the overall gender pay gap e.g. by supporting measures to strengthen work-life balance policies, counter sectoral segregation, or even suggesting wage transparency.

The above actions are, however, unlikely to bring about the desired change and fulfil the objectives set out in sections 4.1 and 4.2. First of all, as shown above, the Recommendation has had limited follow-up in Member States and while a few Member States have recently moved towards more transparency (e.g. PT, ES), most Member States are not undertaking any action or action remains very limited (e.g. only for very large employers, only voluntary, no structural measures) and does not create the necessary level playing field. In regard to action through the European Semester, given the many issues addressed in the European Semester, the CSRs cannot reach the necessary level of detail to address the implementation of the principle of equal pay at employer level nor to reinforce victims' protection or support. In addition, the European Semester is being reshaped towards a focus on the monitoring of Recovery and Resilience Plans and relevant challenges, in particular in the context of the green and digital transition. Hence, while country specific recommendations could be a useful policy tool, they could only *complement* legislative measures on pay transparency and, more generally, strengthen a comprehensive approach in tackling the gender pay gap.

Trends in the labour market (see *Annex 5, section 6*). Before the *COVID-19 pandemic*, women had largely reduced, if not reversed, some differences in the average characteristics relating to pay compared to men: they have surpassed men regarding the level of education and are moving, though slowly, into areas that were traditionally men-dominated such as construction, transport and automotive services. These elements, which were important in explaining differences in average pay in the past, may be expected to contribute less and less in further reducing the relative pay differences. Today, the justified pay gap represents a third of the total gender pay gap; in the future, a further reduction in the gender pay gap may be expected to result mainly from changes in the unexplained component, including gender pay discrimination. At the same time, trends in wage setting – e.g. moving away from collective towards more individualised payments linked to new forms of work – are increasing the scope for discretionary pay and therefore could put women further in disadvantage (as they are more likely victims of pay discrimination) (*see section 2.1*). As a consequence, it seems unlikely that without any positive intervention through binding measures, the rate of reduction of the

¹⁰⁴ AT, CZ, DE, EE, FI, FR, HU, MT, PT, SK, UK.

¹⁰⁵ EE.

unexplained part of the gender pay gap – which covers possible discrimination – could accelerate.¹⁰⁶

Effects of the COVID-19 pandemic. The profound changes in the socio-economic landscape¹⁰⁷, though still to be fully manifested, have already shown a *gendered effect* (see section 2.4). The pandemic has had a strong impact¹⁰⁸ in sectors in which women are overrepresented¹⁰⁹, namely retail trade, transport, hospitality and tourism. Women have also been more affected in their work-life balance, due to increased care responsibilities.¹¹⁰ While the boost towards smart working might increase women's possibilities for entry into and retention within higher level jobs, there is also a risk that these might lead to more precarious and atypical jobs (e.g. replacing employment contracts of some teleworking workers with outsourcing of services via online platform work). The shift towards more automation to allow social distancing could also, once the pandemic will be over, push in the same direction. It is also still unclear what will be the effect of policy efforts from the EU¹¹¹ and Member States to limit the economic impact of the pandemic and sustain the subsequent recovery, and to what extent these might take into account a gender-sensitive perspective.

5. SME test

The specific impact of all policy measures on SMEs has been screened ex ante for all options. The aim of the analysis was to check whether SMEs¹¹² would be disproportionately affected and, where relevant, to include mitigating measures in the design of the policy options.

The measures envisaged are aimed at protecting a fundamental right. They should therefore in principle apply to all workers, independently from sector, employer size or type of contract. As a large majority of workers work in SMEs,¹¹³ it would not be consistent with the purpose of this initiative to exclude all SMEs from its field of application, as their exclusion would not allow to reach the goals of the initiative and

¹⁰⁶ With current progress, the [ILO](#) estimates that the world GPG could be closed only in 2086. In 2018, the gender pay gap for EU 27 was 14.1%, less than two percentage points lower than in 2010.

¹⁰⁷ For an analysis of the economic and social impact of the COVID-19 crisis, see European Commission, ESDE, 2020.

¹⁰⁸ EIGE is, among others, monitoring the evolution of the pandemic from a gender perspective and will deliver a dedicated research note on the topic to the Portuguese presidency in the first half of 2021. For more information, please access: <https://eige.europa.eu/topics/health/covid-19-and-gender-equality>.

¹⁰⁹ The gender pay gap (and the corresponding share linked to gender pay discrimination) could, therefore, paradoxically, even decrease.

¹¹⁰ See Eurofound, 'Women and labour market equality: Has COVID-19 rolled back recent gains?', *Publications Office of the European Union*, Luxembourg, 2020.

¹¹¹ European Commission, *Recovery and resilience facility: Helping EU countries to come out of the coronavirus crisis stronger*, 2020.

¹¹² For the SME definition, please see: European Commission, *Commission Recommendation concerning the definition of micro, small and medium-sized enterprises*, C(2003) 1422), 2003. It includes local authorities under certain criteria.

¹¹³ According to the Structural business statistics overview (Eurostat, April 2020), SMEs represented in 2017 the overwhelming majority (99.8%) of enterprises active within the EU-27's non-financial business economy, i.e. some 22.2 million. More than 9 out of 10 (93.1%) enterprises were micro enterprises. As a consequence, and most relevant for our analysis, around two thirds (67.0%) of the EU's non-financial business economy workforce was employed in an SME in 2017.

would undermine a fundamental right. Nevertheless, the measures may be designed in such a way as to achieve the objectives of this initiative without imposing a disproportionate burden on SMEs.

Consultation of SME stakeholders

82% of respondents from business/employers' organisations and associations in the targeted consultation agree that pay transparency measures should be tailored to the size of the organisations. At the dedicated hearing, for instance, SMEUnited (the association of Crafts and SMEs in Europe) requested the exemption of SMEs from a directive on pay transparency at EU level, especially as regards small and microenterprises (see *Annex 2*).

Assessment of alternative mechanisms and mitigating measures

Taking into account the principle of proportionality, concerns expressed by stakeholders, and technical feasibility of some individual measures, it seems advisable to modulate the measures according to the size of the employers. This was also the conclusion of the impact assessment for the 2014 Recommendation and is in line with what is done at Member State level. In addition, specific measures may be added to shield SMEs and in particular micro-enterprises from increased business risk linked e.g. to exposure to legal costs. Furthermore, SMEs will benefit from the guidance and methodologies developed to assess work of equal value. Member States could also provide as mitigating measures ready-made templates with info line support or off-the-shelf software, since these were found to reduce costs for employers (Eurofound, 2020).

The definition of the exemption thresholds

The thresholds applied to tailor the design of the measures in this initiative are directly derived from the 2014 Recommendation. Similar thresholds are found in national legislation of a number of Member States.¹¹⁴

The definition of the thresholds is linked to the number of workers.¹¹⁵ The reason for not referring to other criteria often used to define small and medium sized employers, such as turnover or annual balance sheet (e.g. based on Commission Recommendation 2003/361), is that the focus and scope of the proposed Directive is worker-oriented, based on the enforcement of an individual fundamental right, and it uses statistical methods for the implementation of which only staff headcount is relevant. Moreover, this reference simplifies the implementation by avoiding the complexity and administrative burden in verifying the compliance criteria by Member States and employers.

The proposed measures are adapted depending on the size of the employers, to find a balance between the interest of all workers in seeing their right protected and minimising costs and burden on employers, even if the latter would also benefit from an increase in productivity. While a number of considerations are taken into account to define the

¹¹⁴ Thresholds of 50+ or lower are implemented for pay reporting or pay auditing in the majority of countries: BE, DK, EE, ES, FI, FR, LT, LU, PT, SE. Larger thresholds apply in AT (150+), IT (100+), and UK (250+). Only DE applies a threshold of 500+.

¹¹⁵ See *Annex 3* for the calculation of workforce and company coverage by thresholds.

thresholds, the ultimate decision on the exact threshold to apply in this initiative is a question of political determination and a choice made on this trade-off. Focusing on larger employers also follows a cautious approach. It will allow to collect more data on the extent of gender pay discrimination and therefore bring more arguments for or against extending it further to smaller companies. The details of this tailored design of the measures are explained in the description of the options and analysed further for each measure in Section 7. SMEs could always on a voluntary basis adopt more far-reaching measures than those set out for them in this initiative in order to build a more attractive employer profile. Member States could also decide to extend the scope of the measures envisaged by this initiative.

6. Description of the policy options for EU level action

The policy options described in Sections 6.3 through 6.5 below can be broadly described as follows:

- **Option 1** aims at creating transparency at the level of individual workers, mainly aiming at empowering workers (first specific objective of this initiative). It includes two possible levels of ambition, with Sub-option 1A presenting a higher level of ambition than Sub-option 1B;
- **Option 2** aims at creating transparency at employers' level, mainly aiming at addressing structural undervaluation of women's work (second specific objective of this initiative). It includes four possible levels of ambition, with Sub-options 2A and 2B presenting a more ambitious level while Sub-options 2C and 2D go for a lower level of ambition;
- **Option 3** aims at facilitating the implementation and enforcement of the existing legal framework, contributing to both specific objectives of this initiative.

The basic work done in terms of data gathering by an employer to create transparency either at individual or at organizational level is the same for most Sub-options under Options 1 and 2 (see Section 8.5). The options differ as to the way in which the information is made transparent.

The three options can be effective on their own, depending on the political decision to achieve to a greater or lesser extent the policy objectives of this initiative.

6.1. Options discarded at an early stage

Council Recommendation

This instrument has been considered as an option aimed at anchoring pay transparency measures at political level and enhancing Member States' engagement on the matter. It would replace the 2014 Commission Recommendation providing general guidance to Member States on how to address the lack of pay transparency. Given the limited follow-up to the 2014 Recommendation, the involvement of Member States in the decision-making process, even as regards non-binding measures, might constitute a step forward.

A Council Recommendation has the advantage of being a flexible instrument that could be adapted to national contexts. Moreover, it could provide a basis towards a level playing field between Member States on how to address the lack of pay transparency, based on a consensus by Member States at Council level endorsing their political commitment. For this reason, it could presumably be more effective than the 2014 Commission Recommendation.

This option would, however, present several drawbacks. First of all, providing general guidance to Member States, in nature not binding, is very uncertain in terms of compliance. Furthermore, the scope of such initiative would most likely be limited to pay transparency measures only as this instrument is not suitable to introduce changes to enforcement measures aiming to ensure the effective implementation of the measures and enhance workers' access to justice that are already at least partly covered by the 2006/54 Directive. Thirdly, implementation would remain uneven, with different modalities corresponding to different levels of ambition, and without ensuring a minimum level of worker protection. Fourthly, there would be no enforcement at EU level allowing to assess and ensure the effectiveness of any measures taken. Finally, the analysis of existing Council recommendations shows that such type of policy instrument is more appropriate to address areas covered by Member States' exclusive competence with a purpose to undertake political commitments by all Member States supported by existing EU financial instruments and programmes¹¹⁶.

Conclusion: Since this option is not likely to effectively achieve the general and specific objectives of the initiative, it has not been considered further in this impact assessment.

6.2. Option 0: Status Quo

The first possible course of action would be not to undertake further action and let the situation evolve under the current framework (*See sections 2.4 and 4.3*).

6.3. Option 1: Legislative action to create transparency for individual workers

This option aims at realising the specific objective of empowering workers to claim their right to equal pay. Indirectly, by raising awareness among employers when preparing pay information it could affect gender bias in pay setting mechanisms and valuation of women's work, but such effect would depend on the self-motivation of employers to launch action in that respect. Two alternative sub-options (1A and 1B) are suggested below. They present different levels of ambition, balancing the rights of workers against the cost and burden on employers, especially SMEs.

¹¹⁶ For example on: youth guarantee – [2013/C 120/01](#); key competences for lifelong learning – [2018/C 189/01](#); Roma integration – [2013/C 378/01](#); access to social protection – [2019/C 387/01](#); high-quality early childhood education and care systems – [2019/C 189/02](#).

Sub-option 1A: Empower workers by granting a right to receive pay information

Measure 1: Transparency of salary information prior to employment

This measure aims to ensure that the employer informs prospective workers about the initial salary offer or a reasonable range expected to apply to the position concerned. It would strengthen workers' bargaining power when it comes to pay setting and their understanding of their paid position compared to other workers carrying out equal work or work of equal value in the organisation. It would also ensure that the employer is not allowed to ask about the applicant's previous salary or to require them to sign non-disclosure agreements concerning the wages they receive. The measure would be applicable to all employers.

Measure 2: Employer's obligation to provide all workers with individual information on pay compared to their category

The existing obligations under the Treaty require employers to have pay structures ensuring that women and men are paid equally for the same work or work of equal value. In order to comply with this existing requirement, employers should group workers in their organisation according to the carrying out of equal work or work of equal value. This measure would require the information on average pay levels in such groupings to be made available to workers insofar as it relates to them. Workers would receive information on average pay levels, broken down by sex, only for their own category of workers doing the same work or work of equal value within the organisation. On the basis of the information received, workers would be able, in line with the requirements set by the Court of Justice, to compare their position and job description against a comparator attributed to the same category; this would enable them to evaluate whether or not they may be victim of pay discrimination based on sex.

The information would be provided by employers to workers periodically (e.g. synchronised with performance evaluation performed usually every year), without any prerequisite request from the worker.

Exemption: the measure would exempt employers with **less than 50 workers** from producing such periodic information **in the absence of a worker's request**. This means that workers in such organisations would still be able to obtain the information, however only upon request. To address the possible fear of victimisation, workers would be protected by a strengthening of the existing framework regarding the *burden of proof* (from the Recast Directive) by adding an additional alleviation of this burden regarding compliance with the pay transparency requirements set out by the initiative. Thus, in case an employer does not comply with its pay transparency obligations under the initiative, the burden of proof would be automatically shifted on the employer in case of a worker's

complaint. In addition, minimum standards on access to evidence would be set. Such alleviated provision would at the same time better reflect the case law¹¹⁷ of the Court.

Sub-option 1B: Empower workers by granting a right to request pay information

Measure 1: Transparency of salary information prior to employment

Same as measure 1 of Sub-option 1A.

Measure 2: Right of worker to receive individual information on pay compared to their category – upon request

The right to information would be the same as in Sub-option 1A above, with the difference that the pay information under this Sub-option would be provided by the employer only upon an individual worker's request (or by workers' representatives or equality bodies). The measure would apply to all employers without exemption.

6.4. Option 2: Legislative action to create transparency at employer level

This option aims at increasing transparency about pay structures of employers and organisations and thus bringing to light any potential structural gender bias. It would have an indirect effect on the problem driver of asymmetries of information on pay as some information would be shared with workers or made public. However, this latter effect would be limited because of exemptions excluding a significant share of the workforce and the potential difficulty of an individual worker to position themselves with the information provided. Four alternative Sub-options are suggested under this option. As in Option 1, they balance, on the one hand, the fundamental right and the need for protection of workers and, on the other hand, the costs and burden on employers, especially SMEs.

Sub-option 2A: Equal pay certification

This option would introduce the obligation for employers to receive by an accredited certification body the Standard accreditation 'Equal Pay Standard' (Standard ÍST 85: 2012 – Equal Pay Management System – Requirements and Guidance), which is the only example existing in the world. The accreditation certifies, *ex ante*, the gender-neutrality of the employer's pay structure.¹¹⁸ The certification ensures that the difference in the average pay of women and men for the same work or work of equal value (assessed by the employer according to the standard) is solely linked to objective factors (including employers' discretion based on explicit gender-neutral criteria regarding both the position and the performance of the employee). There are four main criteria (expertise/competence, responsibility, strain and working conditions). Each workplace

¹¹⁷ Case C-109/88, *Handels-og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening*, acting on behalf of Danfoss, ECLI:EU:C:1989:383.

¹¹⁸ Icelandic Standards (IST) is an independent association whose role is the publication of Icelandic standards and the representation of Iceland in international and regional standards bodies. ISO is an independent, non-governmental international organization with a membership of 165 national standards bodies that represent ISO in their country. IST is the only national standards body in Iceland.

must then define its own sub-criteria. This Sub-option fundamentally differs from the next approaches considered under Option 2, which are limited to *ex post* actions, aiming at uncovering pay inequalities in *ad hoc* cases.

Exemption: employers with **less than 50 workers** would be exempted from this measure.

Sub-option 2B: Employers' obligation to carry out a joint pay assessment

This option would require employers to carry out an annual pay assessment in cooperation with workers' representatives. Such joint pay assessment could also be conducted by an external audit firm. It would include an assessment of the employer's pay structure and any pay differentials based on sex, with the aim of identifying any unjustified gender pay differences. If the assessment brings to light such differences, these would need to be remedied.

This option would trigger a systematic evaluation by employers on the extent to which their own policies and practices may be, even unconsciously, biased or discriminatory and how they may thus contribute to the gender pay gap, as opposed to factors justified or outside the employer's control. This option therefore aims at uncovering the often unconscious systemic undervaluation of women's work. It will require remedial action.

The main difference with Sub-option 2A is that all action would be at organisational, employer level, with no mandatory external or Government involvement/certification.

Exemption: employers with **less than 50 workers** would be exempted from this measure.

Sub-option 2C: Basic pay reporting combined with joint pay assessment

This Sub-option presents a less ambitious alternative, reserving the joint pay assessment to larger employers (measure 1), combining it with a less demanding requirement of pay reporting on the basis of easily accessible data for medium-sized employers (measure 2).

Measure 1: Employers' obligation to carry out a joint pay assessment

The content of this measure would be similar to the one set out in Sub-option 2B. In light of the annual publication of a pay report (see measure 2), the assessment could be carried out on a less regular basis, every three years.

Exemption: employers with **less than 250 workers** would be exempted from this measure.

Measure 2: Employers' obligation to report on average differences in pay between female and male workers

This measure would require employers to publish annually the information on the average difference in pay between female and male workers as a percentage of the average salary of male workers in their organisation. Reporting on average differences in pay between men and women in the organisation permits to see how such differences are distributed among the overall workforce within the employer, whether they are visible in regard to the basic wage or rather/also in regard to other, complementary or variable components such as benefits and bonuses and the proportion of male and female workers receiving such components. The information could be easily processed by employers on

the basis of existing data. It would not contain precise information on categories of workers doing the same work or work of equal value; it can therefore only give a rough indication of possible pay inequalities. No remedial action by employers would be required. The information made accessible under this measure would ensure a minimum transparency of easily available information; as such, it would complement the more detailed pay information envisaged under option 1, which would only be available upon request. This measure can still contribute to achieving the policy objectives, since the publicity of the information and the possibility for workers and their representatives, equality bodies and labour inspectorates to ask for an explanation of any differences shown in the report is expected to work as an incentive for employers to analyse further the drivers of pay differences and act upon them.

The information provided under this measure is to be shared with the national authorities which could use it for monitoring compliance with the obligation to report, to assess aggregated data, and possibly to tailor further targeted policy measures e.g. by sector or geographical area.

Member States could alleviate the impact of this measure on employers by gathering the information by employer on the basis of administrative data, if available and interlinked.

Exemption: employers with **less than 50 workers** would be exempted from this measure.

Sub-option 2D: Strengthened pay reporting and joint pay assessment in case of pay differences which cannot be justified by objective, gender-neutral factors

This Sub-option further reduces costs and burden for employers by limiting the obligation to carry out a joint pay assessment only to those employers which have a problem of pay inequality in their organisation. Such targeted action would be based on a strengthened pay reporting obligation which gives a more refined view on pay inequalities than the pay reporting under Sub-option 2C above.

Measure 1: Employers' obligation to report on the average difference in pay between female and male workers by worker category

This measure would be similar to measure 2 under Sub-option 2C above but would extend the reporting exercise by the calculation of the average difference in pay between female and male employees ***by categories of workers doing the same work or work of equal value***. As such, it would provide for a more refined diagnosis of possible pay inequalities in the organisation. This latter information would only be made available to workers and their representatives (and equality bodies and labour inspectorates upon request). The reason for this is that the categorization of workers performing work of equal value is based on a combination and weight of criteria which are relevant to the specific employer concerned. Such information may more appropriately remain within the employer concerned or be shared only with designated public bodies; it does not have much added value for the general public. The overall average pay gap at employer level would be made public as in Sub-option 2C.

Exemption: employers with **less than 250 workers** would be exempted from this measure.

Measure 2: Employers' obligation to carry out a joint pay assessment if pay reports show pay differences which cannot be justified by objective, gender-neutral factors

Under this Sub-option, a joint pay assessment would only be required if the pay report under measure 1 shows a difference of average pay between female and male workers at employer level of 5% in any category of workers doing the same work or work of equal value, unless the employer can justify this difference by objective factors. In case of disagreement between the employer and workers' representatives on the need to launch a joint pay assessment, this obligation may need to be enforced through the competent enforcement authorities.

Exemption: employers with **less than 250 workers** would be exempted from this measure.

6.5. Option 3: Legislative action to facilitate the application of and enforce the existing legal framework

This option consists of a package of 3 measures aimed at facilitating the application of and better enforcing the existing legal framework. It would tackle the regulatory problem driver relating to the inconsistent and inadequate application of key legal concepts relating to the principle of equal pay (measure 1). It also addresses the problems relating to access to justice and deficient enforcement through addressing the procedural obstacles and victims' support (measures 2 and 3).

Measure 1: Facilitate the application of the existing key concepts of 'pay' and 'work of equal value'

This measure especially would ensure a common approach on the application and interpretation of the EU rules on equal pay. It would enshrine the main guidelines and objective criteria set by the CJEU¹¹⁹ (which is of general nature and authoritative in all Member States) in the law. The application of such criteria would facilitate compliance with the existing obligation to ensure that the pay structures of all employers are designed to uphold equality of pay between women and men doing equal work or work of equal value.

The *legal concept of 'pay'* will be clarified to reflect that 'pay' comprises not only salary, but also its complementary components whether in cash or in kind, which the workers receive directly or indirectly, in respect of their employment from their employer. This clarification will ensure that the equal pay principle applies to all components constituting pay – not only its fixed amount, but also variable components such as bonuses, overtime compensation, travel facilities, compensation for attending training,

¹¹⁹ For example, CJEU Case C-400/93 (Royal Copenhagen); Case C-309/97 (Angestelltenbetriebsrat der Wiener Gebietskrankenkasse); Case C-381/99 (Brunnhof); Case C-61/81 (Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland).

payments in case of dismissal, overtime supplements, and gratuities paid at the discretion of an employer, statutory sick pay, statutory required compensation and occupational pensions. The principle of equal pay does not mean that all workers should be paid equally; it means that any pay differences should be based on objective criteria, not related to sex.

In regard to the concept of ‘*work of equal value*’, the Court stresses that the comparison of jobs should be made in the light of objective criteria, such as education, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved¹²⁰. The existing legislation would benefit from an incorporation of these criteria, as examples, in the law. In practice the application of this concept means that employers have to identify key criteria which are relevant to the organisation and its business model and based on which workers doing the same work or work of equal value get comparable pay. Again, it does not preclude employers to pay workers doing the same work or work of equal value differently, as long as such differences are based on objective, gender-neutral and bias-free criteria as for example performance and competence.

In order to comply with the current legal framework, all employers should be able to define which workers in their organisation are carrying out work of equal value. The application of the criteria to assess the value of work also assists workers, both women and men, who may have reason to believe their work is under-valued because of gender based discrimination, to obtain the necessary information to resolve the problem through negotiation or, as a last resort, to bring the matter to the equality body, labour inspectorate or national courts. In situations where human resource management is not formalised or clear criteria are not established by the employer, the evaluation of the categorisation of workers by value of the work within a given employer or organisation may require effort at managerial level.

It is important to note that the comparison of ‘work of equal value’, under the existing case law of the Court, has to be done between workers **at employer (as opposed to sectoral) level. It does not compare similar jobs at sectoral level nor similar jobs between different employers** except in a situation where pay structures are laid down centrally for more than one organisation or business within a holding company or conglomerate. So far, the concept has not been used under EU law to address horizontal gender segregation, i.e. the part of the gender pay gap linked to the fact that women are overrepresented in low paid sectors, or other root-causes of the gender pay gap. This initiative does not aim to change this situation at this stage.

Besides clarifying the concept of ‘equal value’ in the law, its implementation in practice would be improved by *tools or guidelines developed at EU and national level*. At EU level, such guidance would be foreseen as a flanking non-legislative measure under the Communication accompanying the legislative initiative. Flexibility would be left to

¹²⁰ Case C-400/93 (Royal Copenhagen); Case C-309/97 (Angestelltenbetriebsrat der Wiener Gebietskrankenkasse); Case C-381/99 (Brunnhöfer).

Member States as to the choice of the tools or guidelines at national level; these could be developed by Governments and/or social partners.

The tools to support the application of the concept of work of equal value could consist, for instance, of gender-neutral job evaluation and classification methodologies (see *Annex 5, Section 14*)¹²¹ or IT tools such as Logib¹²². Job evaluation and classification systems, can be exploited as a basis for an equitable pay structure, though they usually go beyond matters relating to equal pay, including all matters relating to labour relations, such as hiring, training, health and safety, etc. Any disputes related to pay or performance evaluation can be settled conveniently by referring to the existing job evaluation mechanism. For job evaluation mechanisms to be effective in removing gender inequalities in pay structures, they must include criteria relevant to modern job descriptions and be formulated in a gender neutral way¹²³, i.e. not influenced e.g. by traditional stereotypes.

Measure 2: Improved access to justice for potential victims of pay discrimination

This measure includes a set of tools aimed at improving worker's access to justice in case of alleged pay discrimination, addressing specifically the obstacles raised in the studies and consultations carried out for the 2020 Evaluation and this impact assessment.

Victims' representation (legal standing and representative actions)

This measure would strengthen the provisions of the Recast Directive regarding the defence of rights (Article 17) in matters of pay equality. Equality bodies and workers representatives' organisations would have the capacity to act not only in support but also on behalf of victims in any judicial or administrative procedure. The aim is to relieve the burden of bringing a claim from the individual victim of pay discrimination, who may be in a precarious and vulnerable situation and fear victimisation. The measure would include the possibility for equality bodies or workers' representatives to join claims of several victims, with the aim of supporting the latter but also possibly address structural discrimination in pay structures.

An alternative would be to extend the right of action also to associations, organisations or other legal entities pursuing the enforcement of the right to equal pay.

¹²¹ The introduction of such systems was already recommended by the European Parliament in one of the Recommendation of the so-called Bauer report (*European Parliament, Resolution with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value*, 2012, (2011/2285(INI)), Texts adopted, P7_TA(2012)025).

¹²² The Logib tool ([Lohngleichheit im Betrieb](#) – Pay Equality in Companies) is a web-based tool that provides a standardised report on differences in pay by gender, including an analysis of the wage gaps within the organisation (or department), both unadjusted and adjusted. It was originally developed in Switzerland and is now also used in Germany, Austria and Luxembourg.

¹²³ Brosi, P.; Schwarzmüller, T.; Welpe, I., *Ensuring equal pay and equal access to employment through gender-neutral job evaluation and classification* 2015.

Strengthened and new remedies (compensation and injunction orders)

This measure would strengthen the already existing right to compensation under the Recast Directive (Article 18) by requiring Member States to enable victims who have suffered harm caused by unjustified pay differences to obtain full compensation. The CJEU already clarified that measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer.¹²⁴ This measure aims at translating this general requirement into more specific minimum standards applicable to matters covered by the initiative. It would ensure that the worker is placed in the position they would have been in if no unjustified pay difference had taken place (including full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, and moral prejudice).

Furthermore, under this measure, national courts would have the possibility to stop an infringement or to order the implementation of structural or organisational measures to comply with the obligations foreseen under the proposed initiative.

Limitation periods and legal costs

One of the obstacles raised in the context of gender pay discrimination claims is the deadlines for claims to be brought before the courts (limitation periods). If they are too short or start running before the victim may actually be aware of the existing discrimination, limitation periods may make it impossible in practice for the victim to exercise their rights. Under this measure, therefore, Member States would be required to comply with minimum standards set out by the initiative and applicable to matters covered by the initiative. Member States will determine when the period starts, its duration and the circumstances under which it is interrupted or suspended.

Probably the most important obstacle preventing access to justice is the financial burden of enforcing the equal pay right. Such burden could be alleviated by allowing successful claimants to recover proceedings' costs while defendants who are successful in rebutting a pay discrimination claim would, on the other hand, not have the right to recover such costs from the claimant. The envisaged rule would be accompanied by an additional safeguard so that the claimant-friendly rule would not apply in case of claims brought in bad faith, claims which are clearly frivolous or when the non-recovery by the defendant would be considered unreasonable under the circumstances. An alternative could be that the claimant would always be allowed to recover proceedings' costs in an equal pay case from the defendant whether successful or not.

Measure 3: Other measures to enhance enforcement and implementation

Penalties

¹²⁴ Case C-407/14, *María Auxiliadora Arjona Camacho v Securitas Seguridad España SA*, ECLI:EU:C:2015:831, para. 31.

This measure would require Member States to lay down administrative or criminal sanctions or penalties aimed at enforcing rights and obligations under the initiative. The level of sanctions/penalties should be effective, proportionate and dissuasive. The level of fines should include a minimum level and be set at such a level as to reflect the value of equal pay as a core element of the fundamental right to equality and equal opportunities, ensuring a deterrent effect.

Involvement of the social partners

Social partners at all levels (e.g. employer, sectoral, national) play a crucial role in ensuring the proper implementation of the right to equal pay. While the matter is high on the agenda of social partners in some Member States, it is hardly ever discussed in some others¹²⁵. The initiative, with due respect to the autonomy of social partners and in accordance with national law and practice, would require Member States to take appropriate measures ensuring that the implementation of the rights and obligations under this initiative be discussed with social partners. This could be achieved through different policy measures to help develop active social partnership and inclusion of equal pay matters, especially ensuring proper implementation of the right to equal pay for work of equal value as a key element of collective bargaining. The participation of social partners is important, for instance, in case gender-neutral job evaluation and classification methods are established to prevent or identify and tackle possible direct or indirect gender-based pay discrimination.

6.6. Overview of the policy options

Option 1: Legislative action to create pay transparency for individual workers
<i>Sub-option 1A: Empower workers by granting a right to pay information</i>
<i>Measure 1:</i> Transparency of salary information prior to employment (exemption: none)
<i>Measure 2:</i> Employers' obligation to provide all workers with individual information on pay compared to their category doing the same work or work of equal value within the organisation (exemption: <50 workers)
<i>Sub-option 1B: Empower workers by granting right to request pay information</i>
<i>Measure 1:</i> Transparency of salary information prior to employment (exemption: none)
<i>Measure 2:</i> Right of workers to receive individual information on pay compared to their category doing the same work or work of equal value within the organisation - upon request (exemption: none)
Option 2: Legislative action to create pay transparency at employer level

¹²⁵ EY, *Support study for the impact assessment*, forthcoming 2021.

<i>Sub-option 2A: Equal pay certification</i> (exemption: <50 workers)
<i>Sub-option 2B: Joint pay assessment</i> (exemption: <50 workers)
<i>Sub-option 2C: Basic pay reporting combined with joint pay assessment</i>
<i>Measure 1:</i> Employers' obligation to carry out a joint pay assessment (exemption: <250 workers)
<i>Measure 2:</i> Employers' obligation to report on average differences in pay between female and male workers at employer level (exemption: <50 workers)
<i>Sub-option 2D: Strengthened pay reporting and joint pay assessment if pay report shows pay differences which cannot be justified by objective, gender-neutral factors</i>
<i>Measure 1:</i> Employers' obligation to report on average differences in pay between female and male workers at employer level and by worker category doing the same work or work of equal value within the organisation (exemption: <250 workers)
<i>Measure 2:</i> Employers' obligation to carry out joint pay assessment if pay report shows pay differences which cannot be justified by objective, gender-neutral factors
Option 3: Legislative action to facilitate the application of and enforce the existing legal framework
<i>Measure 1:</i> Facilitate the application of the existing key concepts of 'pay' and 'work of equal value'
<i>Measure 2:</i> Improved access to justice for potential victims of pay discrimination
<i>Measure 3:</i> Other measures to enhance enforcement and implementation

7. What are the impacts of the policy options?

7.1. Option 0: Status Quo

See the Baseline (*Section 4.3*).

7.2. Option 1: Legislative action to create transparency for individual workers

The policy sub-options identified in this section primarily address the first specific objective (*see Section 4.2*) of this initiative, i.e. *empowering workers to enforce their right to equal pay*. They aim at strengthening workers' bargaining power when it comes to pay setting and their understanding of their position in regard to pay compared to other workers carrying out equal work or work of equal value in the organisation (not across sectors).

Sub-option 1A: Empower workers by granting a right to receive pay information

Measure 1: Transparency of salary information prior to employment

This measure is likely to reduce the risk of gender bias when salary is set for a newly hired worker. The measure is twofold: first, it provides workers with information on the range of the salary envisaged for the vacancy *before* starting negotiating their salaries¹²⁶. As such, it strengthens workers' bargaining position by ensuring they have all relevant information to negotiate on an appropriate basis. Secondly, it prohibits to ask for previous salary, something which has been shown to perpetuate gender gaps in pay over time, especially when changing job. Overall, this measure would ensure that parties to the salary negotiation are on equal footing as regards the information relating to the value (or range) assigned by the employer to that position. It would ensure that salary negotiations are unbiased by possible gendered expectations, which tend to work (more frequently) to the disadvantage of women, with consequences lasting during the entire career. *Stakeholders' views*: the targeted consultation with social partners informed that the inclusion of expected salary in job postings is supported by the large majority of trade unions (78%) that participated in the consultation. It is also the most preferred option for action on the side of employer association respondents, though not reaching a majority (41%) among them. As for the prohibition to ask about previous salaries, in the targeted consultation with Member States, seven out of the 13 who replied to the question included this option in their ideal preferred package of measures, five included the prohibition to ask for previous salary and six the prohibition of confidentiality agreements. In the targeted consultation with social partners about 38% supported this option, as the envisaged measures are yet known only in a limited number of Member States (see below).

Costs: there are no direct costs related to the right to information on pay before employment, and the prohibition to ask about previous salary. Indirect costs could arise if the measure would lead to a limitation of the negotiating space for both parties, which is not the case. The measure only requires to share/receive information on the starting offer (or reasonable range) and would not constrain the negotiating power of either employer or worker.¹²⁷ Employers could be protected from the risk of having prospective candidates 'poached' in very competitive job markets by the possibility, in the absence of a vacancy notice, to inform about the initial offer only at the beginning of the interview. While this would to some extent reduce the effectiveness of the measure, it would still

¹²⁶ For instance, the Austrian Supreme Court held that the fact that a woman expressed a lower salary requirement at her job interview than her male comparator cannot justify different payments. The Court held that it is the employer's responsibility to pay equally, since they can assess the performance of their employees, having information about the respective level of remuneration. The Court added that, in evaluating alleged discrimination on grounds of sex, the social environment cannot be ignored. From a statistical point of view, women in Austria are paid less than men. Women are also more frequently willing to accept lower paid work than men, particularly because women's work is generally regarded as less difficult and consequently ranking lower in job evaluations. Equinet, *How to build a case on equal pay*, 2016, available at: <https://equineteurope.org/2016/equinet-handbook-how-to-build-a-case-on-equal-pay>.

¹²⁷ The measure does not preclude employers to vary workers' pay, as long as such differences are based on objective, gender-neutral and bias-free criteria as for example performance and competence.

enable workers to come better informed at the negotiating table. This measure would only carry an opportunity cost if the employer had intended to benefit from a gender-biased salary offer, which would be discriminatory and therefore illegal. Finally, in general terms, it is also more efficient to avoid having good candidates competing for positions that they would eventually refuse because paid below their minimum expectations.

Benefits: Beyond rebalancing the information asymmetry and reducing the risk of gender bias in negotiations¹²⁸, disclosing the pay range offered shows to prospective workers how the skills and job requirements are evaluated and valued (*process transparency*). It also motivates employers to analyse the pay setting criteria due to be applied when making the offer, and to ensure that these are gender neutral. The measure is expected to have a positive gender effect, as studies show that women negotiate better in transparent environments¹²⁹. Finally, it contributes to building trust between workers and employers therefore promoting a better work environment. It is further reinforced by the prohibition to ask about previous salary that breaks a vicious circle of path dependency in salary setting.

The measures envisaged may be expected to gradually benefit an increasing number of workers entering the labour market or changing job.¹³⁰ They may lead to an increase in women's salaries. Estimating such increase cannot, however, be predicted with reliability – it would need to be based on an estimate of the gender biased difference in salary¹³¹ that would have been offered in the absence of measures applied to an also estimated share of job applicants for each employer. This measure may benefit most women in precarious situations, such as single mothers, and women potentially subject to multiple discrimination, two categories which can be expected to face higher gender discrimination (see problem definition). Finally, the consequent increase in women's salaries may have a negative impact on the profits made by employers, profits which, however, were potentially based on illegal behaviour.

Legal change: Transparency of salary information prior to employment is currently available in 4 Member States (AT, LV, PT, SK) and the prohibition to ask about previous salary only exists in PT.¹³² No concern has been expressed in the support study that introducing this measure would raise questions of feasibility.

Conclusion: This measure entails low costs in comparison to related benefits, remedying the asymmetry of information on pay prior to employment and preventing a perpetuation of an existing unjustified pay difference between women and men. The cost/benefit analysis is therefore positive, even if it entails a change in the majority of Member States.

¹²⁸ See problem definition in *Section 2*.

¹²⁹ Leibbrandt, A.; List J.A., 'Do women avoid salary negotiations? Evidence from a large-scale natural field experiment', *Management Science* 61.9, 2012 (published in 2015), pp. 2016-2024. .

¹³⁰ At aggregate level, this increase of salary for workers offsets the decrease in profit for employers.

¹³¹ An ongoing behavioural study by JRC might provide useful insight on the order of magnitude. See *Annex 4* for details on the methodology.

¹³² Information received from the European Equality Law Network.

Measure 2: Employers' obligation to provide all workers with individual information on pay compared to their category

In order to be able to meaningfully exercise their right to equal pay, workers must have the information necessary to assess *prima facie* whether they may be the victim of pay discrimination. This measure would achieve that objective, by making available the information on the average level of pay of their comparators (i.e. workers carrying out the same work or work of equal value). In order to best address a possible fear of victimisation on the part of workers, the information would be provided without workers having to ask for it.

To the extent that employers have a firm-specific grouping or classification available, the information to be provided can easily be gathered (see Section 6.3, Sub-option 1A). If no such grouping or classification is available, the employer would need to determine first which workers carry out the same work or work of equal value. The transparent classification of jobs and positions by the employer provides an objective picture of the pay structure and implicitly of the pay setting and progression mechanisms. As such, it brings to light possible biases on which employers could, but would not be obliged to act unless a worker were to show an unjustified gender-based pay difference.

Exemption regarding the *automatic* provision of information for smaller employers.

The grouping of workers into categories based on the content or value of the work they are attributed to do requires a minimum number of observations to be effective.¹³³ This minimum number is influenced by the specific field, the organisation of work in the organisation and the proportion between women and men. In general, one can expect that smaller employers may have less room for differentiating between categories of workers or may possibly have categories with no possible gender split. In Member States that have such type of measure in place, the threshold varies very widely, between 10 and 500 workers - most often it is set below or at 50 workers. Studying the preparation of measures under national law shows that the applicable threshold is mostly the result of political decision-making. For this initiative, it may reasonably be assumed that the useful headcount making this measure meaningful, also in statistical terms, may be set at least 50 workers. Requiring smaller employers to pro-actively classify their workers and provide regular information may be considered as disproportionate. The '50+ workers' threshold is also the one retained in the 2014 Recommendation. Using such threshold, the right to receive relevant information on pay automatically would apply to **50%** of the EU27 workforce and on average **1%** of EU27 enterprises.

To protect the right of workers in organisations with less than 50 workers, it must be ensured that the latter always have the right to request the information on the comparators that is relevant for them. Nevertheless, additional protection seems to be needed since experience in Member States (e.g. Germany) shows that workers frequently

¹³³ This technical issue is recognised even by existing dedicated softwares e.g. Payanalytics: 'an organization size of around 50 people is needed for the full utilization of all the softwares capabilities'. Available at: <https://www.payanalytics.com/faq>

hesitate to request information on their comparators for fear of victimisation (e.g. being perceived as uncollegial or pushy). Although workers would have the right to request pay information, they might be reluctant to do so. Therefore, their right to request is accompanied by a strengthened mechanism regarding the shift of the burden of proof in case of pay discrimination. Under this mechanism, would an employer not reply to a worker's request, this would trigger a presumption of gender pay discrimination and the burden to prove that there is no discrimination would automatically shift to the employer. Though this would not dispel fear of victimisation, it might provide more motivation for workers to act.

Data protection. During the targeted hearing with social partners, employers' organisations raised certain concerns about *data protection*, especially on the conciliation of potential transparency obligations with their obligations under the EU General Data Protection Regulation (GDPR). These concerns were not shared by trade unions (see *Annex 2*). Disclosure of private data is allowed if required by a legal obligation with a legitimate aim – here the enforcement of the equal pay principle.¹³⁴ Nevertheless, as the culture around pay secrecy varies across Member States and in order to address the concerns, safeguards may be needed. First of all, disclosure of personal data of an identifiable individual could be avoided while protecting workers' right to information. This could be done by disclosing the information through a third party, such as an equality body, bound to maintain the confidentiality of the data. In addition, the initiative would permit to limit the use of the information obtained for purposes of making a claim relating to equal pay only.

Stakeholder views: EU citizens who replied to the public consultation largely favour this measure (88%), as do trade union organisations (89%). Among employers' organisations, only 18% support the measure. The main concerns expressed by employers relate not to the measure itself, but to the possible difficulties relating to the grouping of workers in categories of equal work or work of equal value (see Option 3) and data protection. The consultation with Member States revealed that a majority (59%) of them thinks this measure would be the most effective and would best support a better enforcement of the equal pay principle across the EU.

Costs: For employers, the direct cost would arise from assembling the necessary information and communicating it to workers in a transparent manner. The communication cost itself would be very low: automatic information can be easily added to the payslip and punctual replies to requests are even less costly overall. The **overall communication cost for employers in EU27¹³⁵** was estimated **at between 70 and 137 million EUR, i.e. an average cost per employer between a minimum of 32-135 EUR and a maximum of 53-262 EUR depending on size** (see *Annex 5, section 11* for details by Member State/employer size). These costs are recurring.

¹³⁴ See article 6 (1) (c) and (f), *General Data Protection Regulation*, EU/2016/679.

¹³⁵ Data on the number of companies are only available for the business economy. See *Annex 4* for the methodology.

If the employer has not yet compared the value of work carried out by workers in its organisation, the direct cost of this measure might be more substantial. Such cost would, however, only arise from the non-respect of the current legal obligations under the EU Treaty and Recast directive. In that case, the preparatory work might be the most time-consuming and therefore costly activity under this measure, though the bulk of this cost would be one-off. The time would depend on the level of preparedness of the employer, the complexity of the organisation and the tasks performed in the different positions¹³⁶.

In practice, the employer will build on the existing pay structure, hence no employer is likely to start entirely from scratch. Employers must review the criteria used to reward the different positions (not workers) and then group workers accordingly. The only constraint is that these criteria must not be gender biased and must apply to all workers. They can however be defined taking into account discretionary elements as long as these elements are objective and free from gender bias. Collective agreements may already provide for classifications that can further inform the process and therefore their coverage is another factor influencing how demanding the process would be and how many employers would be concerned. In addition, as set out in Option 3, the initiative could propose tools to support the classification exercise, thus limiting any burden which the measure may entail.

For employers with 50 workers or more, this classification would need to take place proactively in order to deliver the required information to workers. For employers with less than 50 workers, such classification would only need to be carried out in case of a request and would be limited to the category to which the requesting worker belongs.

The possible additional estimated average cost of setting up the grouping of workers would be between 217 and 1080 EUR per employer depending on employer size (taking into account that several Member States already have tools available to support the classification). It is not possible to reliably estimate the number of employers that would have to incur these costs and therefore the total cost at EU level. This action is necessary only the first year and only requires adaptations in the following years.

For Member States: the costs of this measure is negligible. It was estimated in the 2014 Recommendation impact assessment as negligible¹³⁷, linked to adding an additional task consisting of regular monitoring of employers' compliance and dealing with possible complaints.

Unintended effects: Granting access to information on pay could produce a '**disgruntlement effect**', i.e. a decrease in productivity from workers who find out to be paid unfairly. Would the difference be large, workers might decide to leave the employer

¹³⁶ Job evaluation methods help to determine when two jobs that differ in content are of "equal value" and, thus, entitled to equal remuneration. For a review see for instance Chicha, M.-T., '[A comparative analysis of promoting pay equity: models and impacts](#)', ILO Working Papers, International Labour Organization, 2006. A project to develop a methodology for a gender bias free assessment of value of work in a specific sector and in a context of social dialogue was cofunded by the EU in 2005-2008. See CGTP-IN et al, '[Value of work and gender equality – Guide to applying a methodology for assessing the value of work free from gender bias](#)', Lisbon, November 2008

¹³⁷ It was estimated in 2014 at a current value between 4,000 and 25,000 EUR per Member State.

with a turnover cost to organisations estimated at 100-150% of the salary of the worker concerned¹³⁸. Other concerns include **upward pressure**¹³⁹ on wages or **pay compression**¹⁴⁰, and potential tensions and conflicts¹⁴¹, which may contribute to increased rates of **absenteeism**. While these effects cannot be excluded, it should be noted, that even without this measure, workers could in any case¹⁴² suspect pay discrimination or misinterpret informal information on salaries. This underlines the importance of addressing possible unjustified pay differences and establishing effective communication on what justifies differences. A PayScale survey of 70,000 US employees in 2015 showed that when people know why they earn what they earn through open and honest discussions about pay, they are less likely to quit their job¹⁴³.

There are only two empirical studies in the EU on this topic with divergent findings. Bennedsen et al. (2019) found some evidence of ‘disgruntlement’ after the introduction of pay transparency measures in Denmark, though there was no effect¹⁴⁴ on firms’ profitability because the reduction in productivity was offset by the lower wage growth of male employees. Gulyas et al. (2020)¹⁴⁵ found that in Austria, introducing pay transparency laws led to an increased retention rate of workers, pointing towards higher job satisfaction. There is no evidence on the extent to which these results can be generalised, although there is evidence that pay transparency has a positive effect on motivation (*see section 2.1 and below*).

Benefits: The most important benefit for *workers* is **empowerment** as they have the necessary information to assess whether they are paid in a non-discriminatory manner compared to other workers in the same organisation carrying out equal work or work of equal value – and *a fortiori* to enforce their right to equal pay. As to *employers*, while no remedial action is required unless a claim about unjustified pay differences is made, the measure may nevertheless invite them to look at their pay structures as regards the category/ies of work of equal value for which information is given.

Conclusion: This measure has a positive impact on empowering workers to enforce their fundamental right to equal pay by requiring employers to provide information automatically to workers. While being effective in reaching the first specific objective, it would be less effective in removing bias in pay structures. In addition, it would impose a

¹³⁸ See for instance <https://builtin.com/recruiting/cost-of-turnover>

¹³⁹ Gomez, R.;Wald, S., ‘When Public-Sector Salaries Become Public Knowledge: Academic Salaries and Ontario’s Public Sector Salary Disclosure Act’, *Canadian Public Administration*, 2010.

¹⁴⁰ Kahn, L., ‘[Wage compression and the gender pay gap](#)’, *IZA World of Labor, Institute of Labor Economics*, 2015.

¹⁴¹ Trotter, R. G., Zacur, S. Rawson and Stickney, L. T., The new age of pay transparency, *Business Horizons*, 60, issue 4, p. 529-539, 2017..

¹⁴² Al-Zu'bi, H. A., ‘A study of relationship between organizational justice and job satisfaction’, *International Journal of Business and Management*, 2010.

¹⁴³ See Smith, D., ‘[Most People Have No Idea Whether They’re Paid Fairly](#)’, *Harvard Business Review*, 2015. Available at: <https://hbr.org/2015/10/most-people-have-no-idea-whether-theyre-paid-fairly>.

¹⁴⁴ However, Cullen and Pakzad-Hurson (2019) found that firms’ profits actually increased after the implementation of pay transparency, due mainly to the fall in average wages.

¹⁴⁵ Gulyas et al.,‘[Does Pay Transparency Affect the Gender Wage Gap? Evidence from Austria](#)’, *Discussion Paper Series – CRC TR 224*, 2020.

burden of communicating information to a great number of organisations, including those that may not have a problem of pay inequalities. Therefore, while having a positive impact on protecting the fundamental right to equal pay, this Sub-option may be disproportionate, particularly taking into account the lack of hard data on the extent of the problem. Also, the current economic crisis as a result of the COVID-19 pandemic already puts enterprises under a lot of strain; imposing a broad measure covering all employers, including those that may have no problem, would be difficult to justify at the present time.

Sub-option 1B: Empower workers by granting a right to request pay information

Measure 1: Transparency of salary information prior to employment

As in Sub-option 1A.

Measure 2: Right of workers to receive individual information on pay compared to their category upon request

Under this sub-option, the right to information would only be enforced upon request from a worker. The type of impact of this measure would be the same as for Sub-option 1A; the difference would mainly lie in a lower administrative burden on employers, depending on the number of worker requests; there would be no requirement to proactively inform each worker on an annual basis.

Costs: It can reasonably be assumed that the communication cost¹⁴⁶ for a single request would be proportionally higher than the cost of a single request under Sub-option 1A/measure 2, as there would be no economies of scale. The total cost per employer would, however, remain below the cost of the automatic right to information, at least up to the point where the loss of economies of scale in replying to single requests would make it more efficient for the company to automatically provide the information to all employees.

An accurate estimate of the number of requests is not possible¹⁴⁷. Estimating this number requires hypotheses on the percentage of employees that would request the information. This depends on many factors, e.g. the level of awareness about gender pay differences, the perception of gender pay differences being justified or not, the availability of relevant comparators, the fear of victimisation etc. The number would also depend on whether or not this measure is combined with Option 2. Considering that the overall cost is not likely to remain substantial, an estimate is not provided. As a reference, in Germany, the cost of a single request (under the German law) was estimated at 20 EUR¹⁴⁸ and a request was filed by 4% of those entitled to ask, i.e. workers in

¹⁴⁶ The possible cost to group employees would be the same as for Sub-option 1A, Measure 2, i.e. between 217 and 1,080 EUR per employer depending on the size.

¹⁴⁷ An estimation per class-size would also require to know the distribution of employees per class, which is not available.

¹⁴⁸ Eurofound, [Measures to promote gender pay transparency in companies: How much do they cost and what are their benefits and opportunities?](#), 2020.

organisations with more than 500 employees (i.e. for a company of 500 employees, the cost of the requests would be of 400 EUR).

For *Member States*: the costs of this measure, as in measure 2 sub-option 1A, would be linked to monitoring compliance and negligible.

Benefits: The benefits of this sub-option are, at individual level, of the same nature as in sub-option 1A, insofar as the worker has the possibility to obtain the information relevant to assess potential gender pay discrimination. However, under this Sub-option the responsibility, including risk of victimisation, left to the individual worker is larger as it is the worker who needs to initiate action to uncover gender pay discrimination. This could be countered, however, by alleviating the worker's burden in accessing justice, especially by further alleviating the burden of proof as in sub-option 1A.

Legal change across Member States: The right to request information exists, in various forms, in 10 Member States, either *directly from the employer* and/or *through a third party*.¹⁴⁹ No major institutional or legal barriers to the implementation of this measure have been highlighted.

Conclusion: This measure has a positive impact on empowering workers to enforce their fundamental right to equal pay. Compared to Sub-option 1A, it shifts the responsibility of triggering transparency on the worker. As such, it may be considered less effective than Sub-option 1A. On the other hand, it gives greater consideration to the proportionality arguments and the lack of knowledge about the size of the problem: it is less demanding for employers and would be more coherent with the current economic recovery policy. In order to counter the lower effectiveness for workers, it could be accompanied by an alleviation of workers' burden in accessing justice.

7.3. Option 2: Legislative action to create transparency at employer level

The policy sub-options identified in this section aim at realising mainly the specific objective of *addressing a systemic undervaluation of women's work at employer level* by reducing the scope for gender pay discrimination attracting management's attention to possible gender pay inequalities in wage structures. This recognises that pay inequalities do not only concern individual workers comparing their pay to co-workers of the other sex carrying out the same work or work of equal value, but can be embedded in a systemic way in the pay structures of an organisation, which may not value all relevant skills, and/or do so in a discriminatory manner.

Sub-option 2A: Equal pay certification

This certification, as developed in Iceland, ensures that 'women and men, working for the same employer, are paid equal wages and enjoyed equal terms of employment for the same jobs or jobs of equal value, unless such differences can be justified by relevant considerations'. (IST 85).

¹⁴⁹ CY, DE, ES, FI, IE, LV, PT, NL, RO, SE – see *Annex 5, section 3*.

Small employers' exemption: The application of the standard in SMEs may be hampered by the lack of formal human resource practices (e.g. where each member of staff carries out multiple tasks and there exists no HR management) or may require hiring specialised staff. The measure may therefore involve proportionally more costs. In Iceland the measure applies to employers with more than 25 workers – a threshold which also applies for the obligation to develop equality plans at employer level – and follows a very strong and sustained political commitment at political level. To limit the burden which certification may bring for smaller employers and in coherence with the other envisaged measures, we rather propose a threshold of **at least 50 employees**, which allows to **cover 50% of the EU27 workforce**. Again, also in Iceland it appears that the decision on the threshold ultimately was a political decision, balancing workers' coverage with employers' burden. This balance also depends on the distribution of workers by employer size, which explains why a higher threshold may be justified in the EU than in Iceland.

Costs – The requirement currently exists only in Iceland. It was introduced without a formal impact assessment (See *Annex 5, section 9* for details) and the implementation is still being rolled out, so there is no comprehensive evaluation yet. Empirical data are also scarce. The estimates of costs are based on preliminary information from employers having already applied the scheme, as shared in a Mutual Learning Seminar organised by Icelandic authorities in 2019.

For national administrations. This option is the most demanding among those proposed. As the standard was developed by Icelandic Standards, national administrations/social partners incur no costs beyond negligible adaptations to each country's specific labour market and labour laws. However, a public authority must be tasked to manage the scheme, i.e. organise the accreditation of auditors, keep the companies' register, possibly control the use of a logo, monitor application and levy possible sanctions in case of non-respect of the standard. This function could be carried out by an existing body or department in a ministry or an entirely new body, which could presumably also take up additional tasks related to gender equality in general. Extrapolating the cost for a voluntary labelling scheme computed in the impact assessment carried out for the 2014 Recommendation, the cost of setting up a **new dedicated body** may be estimated in current prices at **190,000 EUR**¹⁵⁰. This cost, if incurred, would come **in addition** to the costs estimated for monitoring compliance, i.e. a one-off cost of **around 400,000 EUR for setting up a database and website and a recurrent maintenance cost of around 50,000 EUR annually**. Running costs would depend on the number of new employees assigned to these functions.

For employers - A certification is more demanding than a pay reporting or a joint pay assessment presented under the next Sub-options, especially in terms of time invested

¹⁵⁰ This is in line with estimates from Estonia for setting up an equal pay competence centre at cost of around 1 million EUR over 4 years (including IT investments and administration costs, information, communication and other support activities).

and burden on the part of employers¹⁵¹. Interestingly, according to unpublished information from a survey among the first employers that introduced the standard in Iceland, it appears that employers at the beginning of the process had overestimated the costs but underestimated the time and efforts needed for the implementation¹⁵². The main reported challenges were the job classification, the implementation of procedures, the lack of time for implementation, and the certification process itself. The financial cost was not among the main challenges cited by employers; it was named only on 8th place out of a choice of 11 factors. Employers that already apply other management quality standards can build on those and reduce costs. Moreover, after the initial cost, the costs are likely to be significantly lower in the following years.

The estimated cost is relatively high (and substantially higher than for the other Sub-options presented below): **between a minimum of 2.2 and a maximum 3.4 billion EUR for all companies with at least 50 employees, i.e. an average cost per employer between a minimum of 5,791 and 13,136 EUR and a maximum between 8,301 and 24,512 EUR depending on the size of the organisation.** For comparison, the estimated costs of an audit in the UK impact assessment on the national pay transparency measures was around 15,000 EUR. The impact assessment for the 2014 Recommendation estimated an actualised amount of between 1,500 and 5,600 EUR, depending on the size of employer, for applying a voluntary labelling scheme. Finally, the more employers apply the scheme the lower the consultancy fees are likely to be.

Benefits – Based on the experience from Iceland, there are indications of behavioural changes triggered by the certification. Most surveyed employers¹⁵³ are satisfied with the standard: **it increased the quality of human resource management and pay systems and highlighted pay inequalities** as well as **the intersectional dimension of discrimination**. Employers are able to **improve their job evaluation¹⁵⁴ systems and correct undervalued salaries**. 60% of the surveyed employers corrected salaries of specific people and 11% corrected it for wage groups. 1/3 made improvements to the evaluation system or reviewed the salary system, and 1/4 changed job titles or reviewed perks and bonuses. One-third of respondents also looked at **equality factors not strictly required by the standard**, e.g. number of women administrators, appointments to

¹⁵¹ According to information reported during a mutual learning seminar in 2019, the National Bank of Iceland estimated the average cost of obtaining the equal pay certification at: 2-3 million ISK (15-22,000k EUR) for a consulting firm, 800.000 ISK / 6,000 EUR for the certification process itself and having one employee on the payroll for a year. In 2017, the monthly median income of in the category ‘personnel and career professionals’ was 759,000 ISK (around 6000 EUR). The Directorate of Customs, the first organisation to voluntarily obtain the certification, had one employee on the payroll for six months. These estimates are in line with the results of a survey of the first (big) companies that obtained the certification: the cost varied from several hundred thousand icelandic kronas (ISK) to over 4 million, with an average of 3 million ISK (22,000 EUR) and 40% of respondents spending below 2 million ISK.

¹⁵² The average length for the implementation was 18 months for the bigger companies in the first survey, varying from 6 months to 2 years.

¹⁵³ 81% of the 58 (large) employers who applied the standard and between 46 and 58% of the 206 smaller companies surveyed later. The difference depends on the stage of implementation and interestingly companies which had not started yet had much more negative opinions (13.3% very negative) compared to those which had almost concluded it (3%).

¹⁵⁴ See *Annex 5, section 15* for some examples.

boards and committees, gender ratio in job classification, training and other professional growth opportunities within the job. Finally, over 30% which did not previously have any **written procedures or quality systems** developed them according to the standard. These findings correspond to the objective of the Standard to have better organised and formalised remuneration practices. The whole process required the involvement of senior management and reinforced the priority given to equality within the employer. Other benefits included increased **employee satisfaction** and a **reduction in staff turnover**. We can expect that similar benefits would come from an application at EU level.

Conclusion: This option would in principle eliminate any difference (at employer level) in pay by gender not linked to objective factors (including gender-neutral factors specific to the position or to the worker). As such, it would in particular address a systemic undervaluation of women's work and remove hidden gender bias. It would also be very visible and increase awareness of the equal pay principle. Theoretically, there should not even be a further need to empower workers in organisations covered by certification nor to increase access to justice as the absence of differences in pay linked to gender bias is certified *ex ante*. In order to guarantee the right to equal pay also in smaller organisations, this option could be combined with Sub-option 1B, especially Measure 2, which ensures that workers always have access to pay information relevant to assess whether they may be victim of pay discrimination. Nevertheless, it might be that the great visibility of the measure might already motivate smaller employers to comply voluntarily with the Equal pay standard, which would reduce the number of individual requests. To optimise its effectiveness, the certification could be supported by a clarification of the key legal concepts relating to 'pay' and 'equal value' (see [Option 3](#)).

The main limitation of this measure consists in the **costs and the burden** it brings for **employers**. Taking into account the difficulty in assessing the scale of the problem and at a time of economic downturn,¹⁵⁵ it makes it score low from a proportionality perspective. It requires a strong commitment from the management at employer level and a strong political commitment to pass and monitor the implementation of the certification. Iceland has a longstanding tradition in this regard: employers with 25 workers or more are already required to have a gender equality plan and boards of employers with 50 or more workers are required to have gender balance (60/40 at least).

Sub-option 2B: Joint pay assessment

The joint pay assessment involves a systematic revision of pay structures combined with remedial action where needed.

Exemption: There may be an issue in implementing this measure in smaller organisations as the computation of the average pay differences can be easily distorted by outliers - few employees at the top or at the bottom of the wage distribution. In light of this possible

¹⁵⁵ The latest economic forecasts indicate that recovery prospects are subject to a high degree of uncertainty, with downside risks to the outlook (European Commission, [Autumn 2020 European Economic Forecasts](#), Institutional Paper 136, November 2020).

distortion and weighing this risk against the burden of producing the assessment, the initiative would limit the obligation of pay assessment to **employers with at least 50 workers**. Applying such threshold, the pay assessment would apply to **50% of the EU27 workforce** and an average of **1% of EU27 enterprises**.

Carrying out, on a regular basis, an assessment of the employer's pay structure and any pay differentials based on sex, would ensure a regular analysis of the proportion of female and male workers in each category doing the same work or work of equal value, information on average pay levels in those categories, and an analysis of the reasons for any pay differences between women and men.

The effectiveness of the measure would depend on the follow-up action on problems brought to light in the assessment. The Eurofound study showed significant differences between employers and workers in terms of perception of actions taken (Eurofound, 2020), suggesting the importance of addressing and communicating the pay audit results with workers. It also relies on the relevant expertise available at workers' representatives level to be able to assess the root-causes of possible differences in pay – which might be stronger than workers' own assessment of the same information.

This measure provides for a diagnosis helping the development of targeted action on equal pay within the organisation and would contribute to bringing to light conscious or unconscious gender bias in pay setting and discriminatory pay practices.

Ideally, an assessment should take place on an annual basis. This would allow to include short term, seasonal and interim workers where relevant and would follow from the definition of 'pay' encompassing all the elements going beyond basic pay that are best accounted for on an annual basis. It would also reduce the costs as it may be expected that no relevant major changes take place from one year to the next one, thus allowing employers and workers' representatives to easily build on the results and actions from the previous year. It also allows to link the exercise to regular the workers' evaluation, normally carried out every year, which might result in a revision of job descriptions (and possibly of pay) or the introduction of new profiles at employer's level. Nevertheless, despite all the above reasons for an annual exercise, it may be noted that, in those Member States that have introduced a similar type of measure, the decision on the frequency of the assessment (between 1 to 4 years) is typically subject to political decision-making.

Stakeholders' views: pay auditing/assessment is among the most preferred options for trade union respondents to the consultation strategy (95.6%), but received limited support from employers' associations (23.5%). The *ILO* highlighted pay audits as a platform for change in helping to expose pay differentials and to reveal the need for structural change in the workplace. It pointed to the value of providing practical support for employers to implement measures; making employer action plans public; involving employers' and workers' organisations; recognising the effective contribution made by collective bargaining; and strengthening complaint mechanisms. The *European Women's Lobby* recommended the introduction of mandatory joint pay assessments in all organisations, regardless of size. Support to employers with up to 500 workers is recommended by the

Business & Professional Women organisation in order to create a culture of reporting and auditing on gender issues in the workplace, including pay.

Costs: The Eurofound report found that this measure would be more time consuming and costly than other transparency measures while nevertheless remaining moderate. The costs range from 88 EUR per audit in Estonia (where it is done only in the public sector) to 820 SEK (80 EUR) in Sweden (according to the reply from Sweden to the targeted survey), and to 1,390 EUR on an annual basis for the compilation of a full gender equality plan including a pay audit in Finland.

The average cost per employer (all sizes) would be between 1,800 and 2,500 EUR in their first year. This cost might decrease in the following exercises depending on the learning curve in relation to the exercise and specific context for the employer. It should be noted that the costs of an internal assessment are manifestly lower than those related to an audit carried out by an external consultant (e.g. in UK, the costs of an external audit have been calculated at around 15,000 EUR). The recurring costs relating to any subsequent assessments are expected to be lower.

The total cost for the EU 27 is estimated at **between 636 and 932 EUR million**, again taking into account that some Member States already apply similar measures. (See *Annex 5, section 11* - for the split by Member States and employer size).

For *Member States*: the costs of this measure would be linked to monitoring compliance and therefore negligible.

Benefits: The cooperation between employers and workers' representatives ensures a supported approach and leads to common action. The communication of the results contributes to a better workplace environment and has an additional deterrent effect against non-compliance or failure to follow up. This measure triggers mandatory action on the part of employers to look into their pay setting practices and address any potential gender bias in pay structures. By encouraging proactive measures, it reduces the risk of legal action for the employer and the need to respond to individual requests, hence savings of time and money. Employers could make use of tools to assess work of equal value, such as gender-neutral job evaluation and classification systems, which would effectively contribute to the implementation of the joint pay assessment.

Data protection: see Option 1, Sub-option 1A, measure 2

Legal change across Member States: several models of pay auditing are currently available in 8 Member States (BE, DE, DK, ES, FI, FR, PT, SE). Their frequency ranges between 1 and 4 years. The degree of legal change required in these Member States would vary depending on what they already have in place. The measure would need to be set up in the remaining 19 Member States which do not provide for a joint pay assessment yet.

Conclusion: In a situation where no ex-ante certification would be organised at Governmental level, an annual joint pay assessment involving workers' representatives and employers would be the second best option to create pay transparency at employer level. The overall positive scoring of this measure by experts interviewed for the support

study from across the different assessment criteria reflects the significant expected effectiveness of joint pay assessments in removing gender bias in pay structures. The institutional assessment points towards a positive conclusion in spite of challenges in relation to stakeholder resistance. There is no indication of legal barriers, including on data protection concerns as the information would not be about individual identifiable workers' data. Overall, all perspectives converge to a positive assessment with the scope to boost equality outcomes through this measure. At the same time this option would bring the same proportionality questions as mentioned in Sub-option 2A.

Finally, as with pay certification, this measure could be accompanied by an additional measure ensuring that the right to equal pay is ensured for those workers not covered by any joint pay assessment, i.e. in **employers with less than 50 workers**. This option could therefore be combined with Sub-option 1A, in particular Measure 2, which ensures that workers in such organisations have **access to pay information** relevant to assess whether they may be the victim of pay discrimination. In addition, its implementation would be strengthened if combined with measures aimed at **the facilitation of the application of the key legal concepts** relating to 'pay' and 'equal value' (see Option 3). Finally, as no ex ante screening of pay structures is organised by public authorities, this option could be further supported by measures aimed at **improving access to justice** and other **enforcement and implementation** measures (see Option 3).

Sub-option 2C: Basic pay reporting combined with joint pay assessment

Measure 1: Employer obligation to carry out a joint pay assessment

This measure would trigger a transparent revision of pay structures as set out under Sub-option 2B but only on the part of larger employers. In order to create at least some degree of transparency in medium-sized employers, it would be complemented by a pay reporting as referred to in measure 2.

Exemption: Considering that employers already produce pay reports (measure 2), action may already be triggered by stakeholders, and given the costs involved of a pay assessment, this additional measure would be limited to those employers expected to have increasingly formalised human resources in-house, i.e. usually employers with more than 250 employees. This threshold is the one usually used to refer to larger organisations in the European Union.¹⁵⁶ It is also in between the thresholds set at national level for similar measures.¹⁵⁷ The study of preparatory work at national level shows that the threshold is ultimately the subject of political decision. Finally, an integral part of a pay assessment is an analysis of pay structures and therefore also of the job evaluation and classification system in the organisation, in order to ensure that all relevant skills are

¹⁵⁶ European Commission, *Recommendation concerning the definition of micro, small and medium-sized enterprises*, 2003, p. 36–41.

¹⁵⁷ Thresholds of 50+ or lower are implemented for pay reporting or pay auditing in the majority of countries: BE, DK, EE, ES, FI, FR, LT, LU, PT, SE. Larger thresholds apply in AT (150+), IT (100+), and UK (250+). Only DE applies a threshold of 500+.

valued and that they are valued in a gender-neutral way. This brings benefits mostly for employers of a certain size.¹⁵⁸ **Exempting** employers with **less than 250 employees** from the obligation of conducting the joint pay assessment, while further reducing the administrative burden from employers (as compared to Sub-option 2A), would limit the coverage of the measure to **33% of the EU27 workforce** and an average of **0.2% of EU27 enterprises**.¹⁵⁹

Costs: The total cost of the measure for employers in the class size ‘250+ workers’ in the EU27 for ensuring the joint pay assessment can be estimated **between around 90 and 125 million**,¹⁶⁰ **i.e. an average cost between 1,829 and 2,175 EUR per employer** (the detailed calculations per country and employer size are in *Annex 5, section 11*). One could expect that these costs would decrease following a first assessment, as subsequent assessments may be based on the previous one. Also, in order to reduce costs, the assessment could be carried out every three years, considering that the pay reporting would fill in the gap between the joint pay assessments.

For *Member States*: as in Sub-option 2B, the costs of this measure would be linked to monitoring compliance and therefore negligible.

Benefits: As in Sub-option 2B but for less employers and workers.

Measure 2: Employer obligation to report on average differences in pay between female and male workers

The information under this measure gives a general idea about the situation regarding pay equality in the organisation. In countries where such information is published (e.g. UK, DE), it creates peer pressure, raises awareness and triggers action. It gives a basis for workers’ representatives, labour inspectorates or equality bodies to ask questions and explanations if important gender pay differences come to light.

Publishing data about average differences in pay between men and women at employer level would not in itself directly contribute to reaching the objective of empowering workers to claim their right to equal pay, but it offers sufficient details to motivate workers to request more information should they suspect gender pay discrimination. This, in addition to reputational concerns - or as a result of questions by trade unions, labour inspectorates or equality bodies - could therefore trigger action on the part of employers. It could more specifically serve as a trigger for a systematic revision of pay structures from the perspective of discrimination based on sex, even if such follow-up action would not be mandatory.

The effect of this measure could be strengthened by ensuring a centralised publication of the data by the Government, as done, for instance, in the UK.¹⁶¹ The gathering of the data by the Government would further allow public authorities to assess and monitor the impact of pay transparency measures at aggregate level. It would also allow them to

¹⁵⁸ See Impact assessment of the 2014 Recommendation, [SWD\(2014\)59 final](#).

¹⁵⁹ Ibid. The 2014 Recommendation’s impact assessment obviously still covered the United Kingdom.

¹⁶⁰ The calculations take into account that some Member States already have adopted similar measures.

¹⁶¹ See *Gender pay gap service* at <https://gender-pay-gap.service.gov.uk>.

analyse the data to detect differences per region, per sector, etc. and to develop targeted policy measures.

The national experts who contributed to the support study were particularly positive about this measure in terms of fitting within existing institutions and its likely effectiveness (behavioural feasibility).

Two important elements affecting efficiency need to be taken into account when shaping this measure:

- **Publicity on the results and follow-up/monitoring:** publicity is an important mechanism to promote change and awareness of the gender pay gap. In addition, it motivates employers to act taking into account branding, image, and capacity to attract talent. There should be follow-up action in case unjustified pay differences come to light.
- **Sanctions and/or positive incentives** should be in place to ensure that employers provide the information.

Exemption for smaller employers: There are statistical reasons to exempt smaller organisations from pay reporting. In small and very small employers, the computation of the average pay differences can easily be distorted by outliers or by few employees at the top or at the bottom of the wage distribution. Because of this possible distortion and weighing this risk against the burden of producing the report (even if the latter is low, *see below*), the initiative would limit the obligation of reporting on the pay gap to **employers with at least 50 workers**. The impact of such a limitation on the coverage of workforce and employers concerned is the same as set out under Sub-options 2A and 2B.

Stakeholders' views: The majority of respondents (78.4%) to the public consultation think pay reporting would be effective to better enforce the principle of equal pay.¹⁶² Furthermore, making the pay report available to the public at large is expected to be effective by between 65% and 78% of respondents from all groups, with the exception of only a limited minority of employers/business associations and organisations supporting this measure (20%). The Member States' consultation shows that a large majority of respondents (82%) favour this measure and selected it as the first most effective one to better enforce the principle of equal pay. No particular concerns were raised.

Costs: For *employers* – The reporting consists of three different steps: (1) information gathering, (2) computing the average pay differences, (3) writing and clearing the report for publication. Data on salaries are already available to the employer and the computation itself is not difficult; the most demanding task is the clearance process for the publication of the results and possibly developing a supporting narrative.

The impact assessment for the 2014 Recommendation assessed the average time needed for (broader) pay reporting at 40 hours per year. This assessment is consistent with the estimate for Germany of about 3.5 working days for a report obligation for an employer

¹⁶² 81% of respondents from trade unions, 90% of NGOs, 81% of EU citizens while the measure is considered effective for 46% of business/company associations and organisations.

with more than 500 workers¹⁶³ and with the estimate of 23 hours in the impact assessment of the UK government for a lighter measure. Finally, the mini-survey of employers carried out for this impact assessment showed that 7 out of 11 employers (mostly with over 250 workers) expect a cost below 1,000 EUR, noting that digitalisation and data availability simplify data processing.

Our estimation of costs for the EU27 is consistent with these figures and is of an **overall cost of around 131 and 214 million EUR, i.e. an average cost between 315 and 500 EUR per employer.**¹⁶⁴ This decreases in the following years to between 20 and 36 million EUR, i.e. an average of less than 100 EUR per employer (the detailed estimated amounts per Member State are available in *Annex 5, section 11*).

For Member States: The gathering and publication of the reports by Member States, including an analysis of the aggregate data, would entail costs on the part of Member States. The minimum costs are related to building a database to monitor compliance. This can be estimated as **one-off cost of around 400,000 EUR for project and delivery of the website and recurrent maintenance of around 50,000 EUR annually.**¹⁶⁵ **An employee should be assigned full time to monitor compliance.** The annual median earning of public employees in the EU is around 32,000 EUR. Member States could generally rely on existing administrative entities and/or hire new staff. Setting up a **new dedicated body** would be the most expensive option: the costs of setting up an equal pay competence centre in Estonia was estimated at around 1 million EUR over 4 years (including IT investments and administration costs, information, communication and other support activities). Such a body would be likely to carry out broader tasks than simply collecting and monitoring data, most likely it would also deal with additional gender equality policies.

Finally, there are no costs involved for *trade unions/workers' representatives* in regard to the implementation of the measure. There may be work involved by these organisations in the follow-up to the publication of the pay gap information, in particular when questions arise regarding a specific employer or for the purpose of wage negotiations. However, any such follow-up action is voluntary. Nevertheless, it should be noted that pro-active monitoring of the published data by trade unions/workers' representatives would significantly increase the effectiveness of this measure.

Unintended effects: Employers' accountability for the existence of average gender pay differences in their organisation would make somewhat lower **managerial wage discretion** and could even influence hiring/firing decisions. IT applications allowing to assess the impact of any prospective hiring on such differences are already available for

¹⁶³ Eurofound (2020), p.51. This estimate is based on the assumption that the required data are already available in the company.

¹⁶⁴ These estimates take into account that some countries have already applied similar measures. See *Annex 4* for the methodology.

¹⁶⁵ Estimates based on the experience in the United Kingdom.

free¹⁶⁶. The effect could be to reduce the discretion of the employer, also given the larger publicity of the information. For the same reason, however, more accountability could induce employers' voluntary implementation of gender equality plans, also considering that workers' representatives would have relevant information as basis for discussion.

Benefits: Pay reporting has intangible benefits by making employers more conscious of equal pay issues, with an added peer pressure element that could motivate a stronger focus and awareness on the gender pay gap not only among workers but also among other stakeholders e.g. NGOs, national and social media. Depending on the monitoring and action by relevant stakeholders, the measure may be expected to trigger action at employer level. However, it should be noted that the main weakness of this measure, if adopted on its own, would be the lack of pro-active remedial action by employers in case the data were to show possible pay inequalities in the organisation. Follow-up action would only be triggered in case of questions by workers, their representatives, or other stakeholders.

Legal change across Member States: several models of pay reporting are currently available in 11 Member States (AT, BE, DE, DK, ES, FR, IT, LT, LU, NL, PT). Some changes may be required in these Member States to adapt their current reporting obligation to that foreseen in this initiative. The measure would need to be set up in the remaining 16 Member States.

Alternative sub-option: Pay transparency realized through action by national administrations

It may be feasible, in some Member States, that national administrations are able to gather and interlink the necessary data allowing for a computation of the gender pay gap per employer. Where that is possible, such administrative action could replace the obligation for employers to do so.

Technically, this is only possible if administrative data matching employers' (firm level) to workers' (individual level) data, including benefits in cash and in-kind, are available¹⁶⁷. It would require interlinking data from several public administrations (such as tax inspectorates, social security offices, etc.). According to a study carried out by the OECD, some countries should already be able to carry out this task¹⁶⁸. All 20 surveyed

¹⁶⁶ This is obviously not the ultimate purpose of these softwares. They are tools by which companies can (voluntarily) analyse their pay structures and detect a potential gender pay gap and its causes. The company-specific outcome report informs about the (unadjusted and adjusted) gender pay gaps and the statistical significance of the most relevant drivers. One example is for instance the EU-funded Equal pacE, based on Logib-D, a system financed by the German government, in turn based on [Logib](#), the software used for official gender pay reporting in Switzerland.

¹⁶⁷ See Granato, S., Santangelo, G., 'Administrative data for the evaluation of Pay transparency measures', JRC Technical report, 2020.

¹⁶⁸ A survey on the availability of linked firm-level and individual-level data, carried out in cooperation with the OECD, gives the following picture. All 20 surveyed Member States, except Czechia, record firm-level information; 12 countries already link firm-level with individual-level data (Belgium, Denmark, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Malta, the Netherlands, Portugal and Sweden) and five expect to be able to do so shortly (Austria, Bulgaria, Ireland, Italy and Spain). According to this study, Czechia, Slovakia and Slovenia are not yet able to link the data, and have no specific plans to do so soon.

Member States, except Czechia, record firm-level information; 12 countries already link firm-level with individual-level data¹⁶⁹ and five expect to be able to do so shortly (Austria, Bulgaria, Ireland, Italy and Spain). According to this study, Czechia, Slovenia and Slovakia are not yet able to link the data, and have no specific plans to do so soon. Despite this study, in the targeted consultation only six Member States out of 20 confirmed that their existing national registers (tax, social security, etc.) would allow to compute the gender pay gap at organisational level¹⁷⁰. Computation by national organisations already happens for instance in Estonia and Denmark¹⁷¹. In the public consultation, Member States found pay reporting done by organisations more efficient than reporting by administrative authorities. Almost 80% of employer organisations replying to the public consultation found it ineffective for the labour inspectorate/equality body to perform automated checks based on employment, tax, and/or social security registers.

In addition, the computation of average pay differences at employer level by administrative authorities may have an additional **drawback**. It would leave employers in a reactive role, just in case they would be flagged in the system. If employers are involved in the reporting themselves, stronger buy-in and commitment from the employer's management level may be expected, eventually leading to a mind shift at employer level. Also, employers may wish to control and handle the data themselves, particularly in light of the relative small burden that calculating the average gender pay differences at employer level entails.

Nevertheless, in light of the concerns expressed by employers' associations as to the possible burden on employers in the initiative and in light of the fact that certain Member States may be able to alleviate such burden by achieving the results of this measure through administrative computation of the pay gap at employer level, the initiative could allow the flexibility for Member States to impose this as an obligation on employers or carry out the task at governmental level.

Overall conclusion of Sub-option 2C

Under this option, the regular joint pay assessment would be limited to large organisations of at least 250 workers and to a tri-annual exercise in order to limit burden on employers. A lighter obligation would be added for those organisations of at least 50 workers. This lighter annual exercise, based on available human resource data, would create a framework that would bring to light potential pay inequalities in organisations. Even if the data gathered would not be very detailed and may not trigger follow-up action from employers in the absence of action triggered by stakeholders, the publication of such data would give indicative information to stakeholders and may be expected to create peer pressure among employers. Therefore, this Sub-option would be somewhat

¹⁶⁹ BE, DE, DK, EL, FI, HU, LT, LV, MT, NL, PT and SE.

¹⁷⁰ CZ, DK, FR, LT, PT and SE.

¹⁷¹ In Denmark, annual pay reports are compiled by employers organisations, or *Statistics Denmark* for non-affiliated companies, or companies themselves; companies must then share the results with workers representatives and pay audits are voluntary. In Estonia, for the public sector, the labour authority would run automated checks of companies based on wage data.

effective in empowering workers and relatively effective in removing bias in pay structure. It would represent a proportionate measure having limited cost, imposing a limited burden on employers and therefore being relatively coherent with current economic recovery policy.

For all workers to have the possibility to access the specific information relevant to establish gender pay discrimination, the pay reporting and assessment measures above could be accompanied by the measure envisaged under Sub-option 1B, especially Measure 2.

As in Sub-option 2B above, the joint pay assessment could be supported by a clarification improved implementation of the **key legal concepts** relating to ‘pay’ and ‘equal value’ (see Option 3). As no *ex-ante* screening of pay structures is organised by public authorities, this option could be further supported by measures aimed at **improving access to justice** and improved **enforcement and implementation** (see Option 3).

Sub-option 2D: Strengthened pay reporting and joint pay assessment if pay differences which cannot be justified by objective, gender-neutral factors

Measure 1: Employer obligation to report on average differences in pay between female and male workers by worker category

The strengthened pay reporting envisaged under this option would require a slightly heavier investment on the part of employers as they would need to calculate, in addition to the average gender pay differences in their organisation overall, more specific pay differences among workers carrying out the same work or work of equal value. However, it should be noted that this measure requires processing the same information as envisaged under measure 2 in Sub-option 1A and 1B, but for all categories of workers. Depending on the situation, the employer may therefore already have the information available. Compared to the basic reporting under option 2C, access to this information is more valuable to precisely identify possible unjustified pay gaps and the reasons behind such gaps.

Exemption: Because of the heavier burden on employers and in order to remain coherent with the other thresholds chosen for the pay transparency measures, this measure would exempt small and medium sized employers, i.e. employers with **less than 250 workers**. This measure would therefore cover about **33%** of the EU27 workforce and an average of **0.2%** of EU27 enterprises. Again, ultimately the threshold is subject to political decision.

Costs: The total cost for the employers would amount to around **26 and 50 million EUR, i.e. between a minimum of 379-508 and a maximum of 721-890 EUR per employer depending on the size**. These amounts are higher by class-size than those for Sub-option 2C measure 2 (basic pay reporting for 50+), but they are lower as regards the total cost since a larger share of employers would be exempted. These costs would also be reduced in the following years.

For *Member States*: as in Sub-option 2C, the costs of this measure would be linked to the gathering and publication of the reports by Member States, including an analysis of the aggregate data and monitoring compliance.

Benefits: The measure gives a more precise insight on the side of *employers* on possible discrimination and bias of which they may not have been aware (**valuation of women's work**). As such, the measure creates a better enabling environment to trigger change, building an environment of transparency and trust. This would have a result on the employer's **reputation**, making it more attractive for new applicants and current workers (**retention of talent**), and pointing to higher job satisfaction.¹⁷² As an indirect effect it could also push the management to reflect on gender equality policies more generally. For *workers*, the measure gives them the information necessary to assess whether or not they may be subject to discrimination. This measure actually provides workers with the information foreseen under Option 1 in an automatic way, only in companies with more than 250 workers. For *Member States*, long-term intangible benefits relate to raising awareness and stimulating political and social debate on gender equality issues at employer level. The **main weakness** of this measure remains, however, that on its own it does not ensure follow-up action on the side of the employer, as it does not impose corrective measures. For that reason this sub-option envisages targeted joint pay assessment to be applied where unjustified pay differences have been discovered.

Data protection: see Option 1, Sub-option 1A, measure 2.

Measure 2: Employer obligation to carry out a joint pay assessment if pay reports show pay differences which cannot be justified by objective, gender-neutral factors

To ensure follow-up action in those organisations that show a problem of pay inequalities through the pay reporting conducted under measure 1, pay reporting would be accompanied by the obligation to carry out a joint pay assessment, for those employers showing a difference of 5% in any category of workers doing the same work or work of equal value which cannot be justified by objective factors. This measure would build on the pay report, not duplicating transparency obligations, and would remedy the main weakness of measure 1 in a targeted manner. The 5% criterion ensures statistical significance. In statistical terms 5% level gives an indication whether a phenomenon is worth paying attention to as something likely to occur beyond a mere coincidence. In most areas of scientific research it is conventionally set at 5% level.

Exemption: This measure would exempt employers with **less than 250 employees**, for similar reasons as set out under Sub-option 2C. Assuming that voluntary follow-up action may have been triggered by the publication of the pay report (measure 1), the joint pay assessment would only be imposed as a mandatory measure for statistically significant differences. As such, the measure would target follow-up action to those large employers where the pay report shows a manifest problem in regard to pay equality.

¹⁷² [Gulyas et al. \(2020\)](#) analysed the effect of the 2011 Austrian Pay Transparency Law and found that policy led to an increase in the retention rate of workers.

Cost: Based on the explanations on method followed to calculate the cost of joint pay assessments (cf. supra), the average cost of such assessment can be estimated between a **minimum of 1,180-1,724 EUR and a maximum of 1,911 and 2,266 EUR depending on size**. These costs are lower than the average cost of option 2B, as they are partly covered from the pay reporting under measure 2D1 for which employers would already have collected and published part of the information. This cost may be expected to decrease in any subsequent exercises or not be necessary at all, should the unjustified difference in pay be eliminated as aimed to by the joint pay assessment.

For *Member States*: the costs of this measure would be linked to monitoring compliance and may be considered negligible.

Benefits: The main benefit of this measure would be that follow-up action is targeted to only those employers where problems of pay inequalities are brought to light by pay reporting. See also Sub-options 2B and 2C above in relation to this measure.

Overall conclusion on Sub-option 2D

The pay reporting envisaged under this option would be more effective than under Sub-option 2C, as it would bring to light not only possible pay inequalities in organisations, but also unjustified pay differences in specific categories of workers doing the same work or work of equal value. While this information may trigger voluntary follow-up action, a mandatory joint pay assessment would be required only in case of manifest problems of pay inequalities. By limiting the obligation on employers and focusing more stringent intervention on employers which have a problem relating to pay inequalities, this Sub-option presents the most proportionate solution, taking into account current limitations regarding the measurement of the scale of the problem and the strain on companies in this time of economic downturn. The limitation of both measures to employers with at least 250 workers, while limiting their scope, would limit to the maximum extent the cost and burden on employers.

However, in order to ensure the adequate protection of all workers also in organisations with less than 250 workers, this sub-option could be combined with one of the Sub-options of Option 1; this could especially ensure that all workers have **access to the information** necessary to assess whether they are victim of gender pay discrimination.

In addition, in order to increase its effectiveness, the joint pay assessment could be combined with Option 3.

7.4. Option 3: Legislative action to facilitate and enforce the existing legal framework

This option aims to address the problem of inconsistent and inadequate application of key concepts relating to equal pay. It does so by allowing workers and employers to more easily point to possible comparators of the other sex doing work of equal value. Access to justice and enforcement of the existing legal framework would be improved not only to tackle individual instances but also systemic discrimination. As such, it would

contribute to addressing the undervaluation of women's work and to empower workers to claim their right to equal pay, even without pay transparency.

Measure 1: Facilitate the application of the existing key concepts of ‘pay’ and ‘work of equal value’

Stakeholders’ views: The public consultation showed broad consensus that the concept of ‘work of equal value’ requires clearer definition and improved implementation if pay discrimination legislation is to be effectively implemented and enforced. This could be done, it was highlighted, by ensuring the gender neutrality of job evaluation and classification, a measure that had the highest consensus in terms of effectiveness across all groups of respondents (80%). However, the targeted consultation with social partners revealed antagonist views between employers’ organisations and trade unions. While a broad majority (87%) of trade union respondents view job evaluation and classification as effective, especially in light of the direct involvement of social partners, the majority (58%) of employers’ organisations view this as ineffective.

Costs: clarification of the ‘pay’ concept and incorporating the CJEU criteria into the new legislative proposal would not bring, as such, a change to the legal framework, as these criteria already apply through the case law today; it would only enhance the visibility of these criteria in the law. Therefore, it would not entail direct costs. As for the support for companies in the implementation of the concept of ‘work of equal value’, flexibility would be left to Member States concerning the choice of the relevant tools. Any costs would largely depend on the present availability of supporting instruments and therefore cannot be calculated precisely. For instance, gender neutral job evaluation and classification systems can be implemented at company level (which may take a few days in a larger company) but equally at collective bargaining level (which then depends on negotiations which may take months or years).

Benefits: Legal clarity aimed at a uniform application of key concepts would significantly support the proper implementation of the current legal framework, reducing implementation gaps.

The availability of clear criteria in national legislation would help claimants to establish a valid comparator and evaluate whether or not they are treated less favourably than the comparator performing the same work or work of equal value. It would also allow employers to better categorize jobs based on objective criteria and ensure that such jobs are remunerated in a just and bias-free way. It is of particular relevance to note that in the consultations carried out for this impact assessment, employers’ associations raised concerns on the difficulty to assess what constitutes ‘*work of equal value*’, knowing that they already are obliged by law to apply that concept. It should be stressed that the assessment of equal value is, under the current legal framework, an assessment at company level, and not at sectoral level (which is out of the scope of the present initiative).

Legal change: No legal barriers have been identified for the implementation of this measure.

Conclusion: This measure could help workers to establish a valid comparator and could allow employers to ascertain that their pay settings are based on bias-free and objective criteria and may therefore contribute to achieve both the specific objectives of empowering workers and addressing the systematic undervaluation of work done by women. Furthermore, clarification of the ‘pay’ concept would clarify that the equal pay principle applies to all components constituting pay, whether in cash or in kind, which the workers receive directly or indirectly, in respect of their employment from their employer. These measures would benefit an improved implementation of the current legal framework, but could also be used to support the implementation of new pay transparency measures.

Measure 2: Improved access to justice for potential victims of pay discrimination

Victims’ representation (legal standing and representative actions):

- Legal standing

Stakeholders’ views: More than three fourth (76%) of respondents from all groups to the public consultation found that strengthening the mandate of equality bodies as well as workers’ representatives to support victims would be an effective measure to improve access to justice for individual victims.

Costs: this measure consists of a legislative change at EU level which entails no direct costs. In those Member States where equality bodies and workers’ representatives do not yet have legal standing, the measure might increase to some extent their workload assuming that they might, at least in the medium term, be asked to handle more claims. However, combined with the measure below on representative actions, they could ensure economies of scale as they could act on behalf of a group of victims.

Benefits: Ensuring legal standing for equality bodies and workers’ representatives would contribute to removing one of the most important obstacles which victims of pay discrimination face when claiming their rights, especially the burden of carrying a legal claim and the fear of victimisation.

Legal change required: Equality bodies have the power to bring cases to court or to represent the claimant before courts or administrative bodies in only 8 Member States (DK, FI, HU, IE, IT, SE, SI, SK).¹⁷³ This measure would thus require a legal change in 19 Member States where equality bodies presently do not have the power to act on behalf of individuals. As regards, workers’ representatives, they have legal standing in most Member States; the measure would entail a change only in four Member States (DE, EE, FI, RO).¹⁷⁴

- Representative action

¹⁷³ Information received from the European Equality Law Network.

¹⁷⁴ Foubert, 2017, pp. 49-50.

Article 17(1) of the Recast Directive contains a general requirement for Member States to ensure that judicial procedures are available for victims of sex discrimination in employment matters. Member States have mainly not implemented this provision, relying on their common civil judicial procedures laid down in national law. As a result, in most Member States victims of discrimination can only pursue an infringement of the right to equal pay on an individual basis. Experience shows, however, that structural biases in pay structures in a given organisation may affect several workers in the same way.

Costs: introducing this measure as such would not entail costs. It would enable economies of scale in the preparation and litigation of equal pay cases and may reduce coordination and transaction costs of bringing victims together for redress purposes. Qualified entities would experience procedural efficiencies from being able to assess equal pay claims in a single procedure, enabling them to bear the costs of preparing a single action. If the action is successful, it will of course entail costs, in the form of proceedings costs, sanction and/or compensation, for infringing employers. Again, however, such costs would be incurred only to comply with their current obligations under EU law.

Benefits: collective claims are a way to facilitate actions that would not otherwise have been brought because of procedural and financial barriers or fear of victimisation. In particular, allowing collective complaints can reduce the fear of reprisals and victimization and reduce the overall costs for complainants.¹⁷⁵ Furthermore, collective claims have the potential to improve compliance with pay transparency measures especially regarding businesses sensitive to reputational damage. They also allow more easily to uncover systemic discrimination and create visibility of equal pay and gender equality in society as a whole. Representative actions therefore have an important impact on employers' awareness and willingness to act preventively. This measure combined with the other proposed enforcement measures may be expected to have a preventive and deterrent effect and reduce costs linked to legal action.

Legal change: as collective action is currently only possible, in discrimination cases, in seven Member States (DK, ES, FR, IT, LV, NL, SI),¹⁷⁶ this measure would bring change in the legal framework of 20 Member States.

While it would be useful to extend the right of action also to associations, organisations or other legal entities pursuing the enforcement of the right to equal pay, the wide variety of such organisations and the interests they represent call for caution. Such alternative was therefore not retained.

Strengthened and new remedies (compensation and injunction orders)

Costs: The introduction of these requirements does not entail costs as such. Strengthened rules on compensation and court orders may entail costs for non-compliant employers, as

¹⁷⁵ That argument was as well mentioned in the *International Labour Organisation's* answer to the public consultation.

¹⁷⁶ Based on Member States' answers to the consultation.

would be the case with any non-compliance with the law. Some minimum costs of informing judicial authorities may be incurred; these may be covered, among others, by trainings such as those organised by the Academy of European Law (ERA) funded by the European Commission.

Benefits: a strengthened requirement to compensation will provide incentives for victims of gender pay discrimination to seek justice and uphold their right to equal pay. Court orders to stop infringements or impose remedial action will allow to address infringements of the pay transparency rules and systemic undervaluation of women's work. In addition, these measures would contribute to dissuade employers to infringe the workers' right to equal pay and motivate them to pro-actively undertake action.

Minimum standards on limitation periods

Costs: The introduction of this requirement does not entail any costs as such, except for training of judicial authorities which may have to apply the new rules (see above).

Benefits: for victims to have sufficient time to gather the necessary evidence to make their case and to take action once they become aware of the potential pay discrimination. Under the current framework some victims may already have moved on to another job and many other victims decide simply not to act because of the unsurmountable difficulties involved in taking the necessary action within the required time limits. Action on limitation periods requiring minimum standards would therefore enhance an effective access to justice.

Legal change: Some Member States (DE, EE, LV, SI)¹⁷⁷ have very short time limits to bring a case to court, from 30 days to 3 months. Other Member States have longer limitation periods from 3 years (AT, BG, CZ, HU, LT, PL) to 5 years (BE, FR, NL).¹⁷⁸

Support to carry legal costs

Stakeholders' views: respondents in the public consultation conducted for this initiative identified legal costs as a relevant enforcement problem in relation to pay discrimination. A large majority of respondents (92%) considers the provision of support to be important in order to lower these costs and enable action in pay discrimination cases.

Costs: Some minimum costs of informing judicial authorities may be incurred (see above).

Benefits: The possibility for prevailing claimants to recover the proceedings' costs while not having to bear the costs of a successful defendant would alleviate one of the most important barriers faced by victims to enforce their rights and have access to justice. This rule would not apply to claims brought in bad faith, which are clearly frivolous or when the non-recovery by the defendant would be considered unreasonable under the circumstances. This rule would be innovative in most Member States, as it deviates from

¹⁷⁷ ICF, 2019.

¹⁷⁸ Information received through consultation of the European Equality Law Network.

the normally applicable loser pays principle¹⁷⁹. However, it is justified in the specific case of pay discrimination because of the particular vulnerability of victims in these cases.

The envisaged alternative that the claimant would recover proceedings' costs from the defendant *whether successful or not* would pose questions of fairness and proportionality and was therefore not retained.

Overall conclusion of Measure 2:

The measure could contribute to achieving both the specific objectives of empowering workers to enforce their right to equal pay and addressing the systemic undervaluation of women's work at employer level that would potentially come to light. Furthermore, the measure may be effective in tackling the problem driver of insufficient access to justice and would trigger action to remedy systemic discrimination overall with clarification of what constitutes full compensation and providing for injunction orders in case of infringements.

However, while these measures may contribute to improving the existing legal framework, their effectiveness would remain rather limited if applied on their own because potential victims of gender pay discrimination would still lack crucial information on pay to bring gender pay discrimination claims to courts.

Measure 3: Other measures to enhance enforcement and implementation

Penalties

Costs: Strengthening rules on sanctions/penalties would require some minimum costs of informing the authorities that have the power to sanction under national law (see above).

Benefits: The proposed measure would strengthen the existing minimum standards on sanctions/penalties regarding gender pay discrimination across the EU and further the deterrence effect for employers engaging in illegal behaviour regarding pay setting practices and gender pay discrimination. At the same time, it would have a preventive effect in stimulating employers to comply pro-actively.

Conclusion: this measure could be effective in tackling the problem driver of deficient enforcement of the right to equal pay. It would contribute to achieving the specific objective of addressing the systemic undervaluation of women's work at employer level by sanctioning the infringement of the equal pay principle by employers and stimulating employers' compliance. However, its effectiveness would remain limited if applied on its own because potential victims of gender pay discrimination would still lack crucial information on pay to be able to bring gender pay discrimination claims to courts.

¹⁷⁹ Such rule exists, for instance, in the United Kingdom in certain matters (e.g. personal injury). It was recently recommended to extend it to discrimination claims before the county courts (see House of Commons Women and Equalities Committee, *Enforcing the Equality Act: The Law and the Role of the Equality and Human Rights Commission*, 10th report of session 2017 – 19, 30 July 2019 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147003.htm>)).

Involvement of social partners

The effect of this measure requiring Member States to take appropriate measures ensuring that the implementation of the rights and obligations under this initiative be discussed with social partners would depend on the culture of social dialogue in the Member States. If it would lead to equal pay matters being taken up in collective bargaining, it would concern the share of the workforce that is covered by collective agreements. This percentage varies largely in the EU. In 11 Member States the largest share of workers in the country are not covered by collective agreements. Collective bargaining coverage ranges from 7% in LT to 98% in FR and AT.¹⁸⁰ The level at which discussions take place also influences the impact of the measure, with industrial and national level being the most common modalities. If it is at employer level, social partners could discuss employer-specific implementation and identify targeted solutions to reduce gender-based pay inequalities. As a result, action at all levels of social dialogue is useful. Such action would increase in effectiveness if supported by the information made available through pay transparency measures.

Expert views. The study carried out for this impact assessment showed that this modality has the most positive score of all by experts in terms of effectiveness in addressing the problem of pay inequalities. The experts' scores on behavioural feasibility or effectiveness also underline positive outcomes. However, despite the overall positive scoring of this measure across the different perspectives, the importance attached to the autonomy of social partners on the one hand and the weak bargaining culture in some Member States on the other hand lead to a greater spread of opinions than for some other modalities (see *Annex 5, section 8* and *EY, 2021*). Institutional and legal experts, social partners and individual Member States raised these concerns. In order to respect the autonomy of social partners, the initiative would not impose an obligation of result but only an obligation on Member States to take appropriate measures ensuring that the implementation of the rights and obligations under the initiative is discussed in social dialogue, without prejudice to the autonomy of social partners and in accordance with national law and practice¹⁸¹.

Stakeholders' views: the obligation to include social partners in the implementation of equal pay matters was viewed as being effective to better enforce the principle of equal pay by 81% of respondents from the public consultation. The social partners' targeted consultation shows that employers' organisations and trade unions have opposite views regarding regular equal pay bargaining. A large majority of the trade unions respondents (85%) answered that this measure would be effective to better enforce the principle of equal pay while 64% of employers' organisations answered that this measure would be ineffective. However, outside the context of collective bargaining as such, the involvement of social partners is generally considered positive.

¹⁸⁰ European Trade Institute, *What's happening to collective bargaining in Europe?*, April 2019.

¹⁸¹ For example, during the consultation process, although this initiative does not concern wage formation or setting, the Confederation of Swedish Enterprises emphasized that in Sweden social partners are responsible for wage formation and wage setting is to be determined in collective agreements.

Costs: In accordance with the impact study for the 2014 Recommendation, the average annual administrative cost of this measure for *employers* may be assessed as inexistent since the obligation only concerns social partners. For *social partners* the consideration of equal pay issues does not imply any significant costs, as it is part of their institutional discussions with no obligation of result. If the discussion would include matters such as the desirability of gender-neutral job evaluation and classification tools, this would require a minimum level of expertise for both parties. Several experts signalled that this is not necessarily always the case; some training would therefore be useful.

For *Member States*, this measure could require ensuring that social partners are involved in the implementation of the rights and obligations under the directive. The obligation could be monitored by labour inspectorates or by other competent authorities as part of the regular monitoring and enforcement of the equal pay legislation. Estimates on the time spent to monitor social dialogue are not available in the literature. If Member States would go beyond the obligation to ensure debate on the matter, and go into the monitoring of collective agreements themselves, it may be referred to the impact assessment for the 2014 Recommendation which reports that the monitoring of approximately 2,000 company level collective agreements would take 100 hours. That would mean an average updated amount of around 15,000 EUR per year per Member State. However, this would not be mandatory under the current initiative.

Benefits: The measure would raise awareness of equal pay matters among social partners, key stakeholders in ensuring protection of the right to equal pay. As a result of this measure, employers and trade unions could e.g. present a diagnosis of the situation, identify a list of possible measures to address equal pay issues and/or the discussion could feed into wage negotiations. In the context of this initiative, this measure contributes to addressing the systemic undervaluation of women's work.

Legal change across Member States: In principle, this measure would not require legal change as social dialogue is available at national level. The measure would only require the inclusion of equal pay in the existing social dialogue and support the implementation of equal pay as such. As the 2020 evaluation identified, equal pay matters and pay audits have so far been explicitly included in collective bargaining only in 3 Member States (BE, FR and LU).

Conclusion: This measure has the potential to address the systemic undervaluation of women's work at employer level with the development of active social partnership and inclusion of equal pay matters, especially ensuring a proper implementation of the equal pay right to work of equal value as a key element of social dialogue. It would not impose an obligation of result but only an obligation on Member States to ensure that the implementation of the rights and obligations under the initiative is discussed with social partners, without prejudice to the autonomy of social partners and in accordance with national law and practice.

8. How do the options compare / preferred option

8.1. Effectiveness

Option 0 would not be effective in achieving the objectives overall as no action would be initiated to tackle the problem drivers and issues highlighted. This means, at best, continuing at a very slow pace towards better enforcement of the equal pay principle.

Option 1 Sub-option 1A scores high on achieving the specific objective of empowering workers to claim their right to equal pay as it would allow workers to have the necessary and relevant information on pay and to be most effectively protected against potential victimisation. On its own, however, it would not address the problem driver related to the persisting bias in pay setting mechanisms and valuation of women's work because of the lack of structural corrective measures. As such, it does not score well in relation to the second objective, even if it would create the conditions for potential remedial action; employers would be obliged to gather the information on a regular basis, at least in organisations with at least 50 workers, which might potentially incite them to analyse their pay structures more closely. In order to more effectively remove systemic bias in pay structures, this option could be combined with either of the Sub-options 2B, 2C or 2D.

Option 1 Sub-option 1B scores lower than Sub-option 1A but is still significant to achieve the specific objective of empowering workers to claim their right to equal pay as it would allow all workers to request the relevant information on pay to their employers. This option would reduce the administrative burden on employers by relieving them from the obligation to inform workers on a regular basis. Workers would be protected through a strengthened reversal of the burden of proof countering a possible fear of victimisation. Even less than Sub-option 1A, however, this sub-option would not address the problem driver related to the persisting bias in pay setting mechanisms and valuation of women's work. Indeed, because of the lack of systematic gathering of the information by employers, the latter would be even less triggered to analyse their pay structured on hidden pay inequalities. For similar reasons as Sub-option 1A, this Sub-option could work better if combined with either of the Sub-options 2B, 2C or 2D.

Option 2 Sub-option 2A scores very high in effectiveness for the two main specific objectives and therefore also high on the general objective. It would contribute to empowering workers *ex ante* (rather than *ex post*, once a discrimination case arises), it would strongly address the systemic undervaluation of women's work by an ex-ante screening of pay structures thus eliminating gender bias in pay setting practices at employer level. The envisaged exemption, however, would reduce its impact; in order to protect all workers, this Sub-option could be combined with one of the Sub-options under Option 1, for those organisations not covered by the certification.

Option 2 Sub-option 2B equally scores very high on achieving the two main specific objectives and thus on the general objective. The joint pay assessment is based on information needed by workers to assess possible individual discrimination which would be made available to them, even if the assessment would not be carried out *ex ante*. If the

information is provided in a transparent manner allowing workers to place themselves individually in the context of the provided salary information, it could also score well on the first specific objective. In addition, the joint pay assessment with workers' representatives would oblige employers, beyond any individual instances of discrimination, to focus the attention on potential gender bias in their pay structure and more importantly to take remedial action in case discrimination and bias are uncovered. However, the envisaged exemption would reduce the impact of this Sub-option; in order to protect all workers, it could be combined with one of the Sub-options under Option 1, for those organisations not covered by the joint pay assessment.

Option 2 Sub-option 2C scores lower than Sub-option 2A or 2B. Indeed, pay reporting as envisaged under this Sub-option would not give workers the information needed to assess possible discrimination in their individual case, but it gives a basis for workers, workers' representatives, labour inspectorates or equality bodies to ask questions and explanations on overall gender pay differences in organisations and acts as an incentive for companies to assess those more in detail. Any systematic revision of pay structures from the perspective of gender pay discrimination would nevertheless depend on the willingness to do so by the employer based on peer pressure or questions as referred to above, except for large organisations with at least 250 workers that would be subject to a joint pay assessment. In order to be more effective on the first specific objective and to ensure the protection of workers in all organisations across the EU, this Sub-option could gain in effectiveness if combined with any Sub-option under Option 1, especially in those organisations not covered by the joint pay assessment.

Option 2 Sub-option 2D scores lower than Sub-option 2C but is still relevant to achieve the two specific objectives. It covers less employers but the inclusion of the additional key element in the pay reporting allowing to better uncover pay discrimination makes this reporting more useful than the one under Sub-option 2C. The limitation of the requirement to carry out a joint pay assessment to those organisations where problems would be evidenced, would permit to target action on the part of large employers where such action is mostly needed (relevant pay difference exceeding the statistical significance threshold). The envisaged limitation of the measures to organisations with at least 250 workers would, however, reduce the impact of this Sub-option. Again, given the exemptions envisaged and to ensure that all workers, also those employed in small and medium-sized organisations, have tools to enforce their right to equal pay, it would gain in effectiveness if combined with any Sub-option under Option 1.

Option 3 scores relatively high on achieving both specific objectives. It does so by allowing workers to more easily point to possible comparators of the other sex and employers to gain insight in their pay structures through a better understanding of what is 'work of equal value'. Access to justice would be improved, not only to tackle individual instances of gender pay discrimination but also systemic discrimination. However, on its own this option would only partially achieve the objectives as it does not address the *primary* obstacle consisting in the lack of pay information necessary to assess whether one is victim of pay discrimination or whether there is gender bias in pay structures.

Therefore, in order to contribute to the overall objective, it should be combined with other measures foreseen under Options 1 and/or 2.

8.2. Efficiency

Option 0 scores null in terms of efficiency because it would not have any more costs/benefits than the current framework.

Options 1 Sub-option 1A scores relatively well on efficiency in relation to the first specific objective as it has the most benefits/social impacts on workers and brings moderate economic costs for employers. Thanks to the exemptions tailored to the size of employers, the costs and burden are minimised for smaller employers. Even if workers would not automatically receive information in smaller organisations, an effective protection of their rights would still be ensured by the reinforced burden of proof mechanism and other access to justice tools. On the other hand, this option would still impose a burden of communicating information to a great number of organisations, also those in which there may be no problem relating to pay inequalities. The Sub-Option does not score very well on the second specific objective; it would create costs for employers without triggering a systematic revision of pay structures, even if it would create the necessary conditions for such revisions.

Option 1 Sub-option 1B scores better on efficiency in relation to the first specific objective. It achieves the objective of empowering workers, while maximally reducing the burden on employers. As such, it would constitute a more proportionate measure, in that information would only need to be provided in case of suspected problem. On the other hand, it would score lower in regard to the second specific objective, as it would seem unlikely to trigger any systematic revision of pay structures in organisations.

Option 2 Sub-option 2A scores lower than the other options on efficiency as the costs and burden of the option are much higher. Although the mandatory certification scheme has the potential to drastically reduce pay discrimination, its application to all organisations with at least 50 workers would include those that might not have a problem relating to pay inequalities. In addition, its application in Iceland has not yet been evaluated, therefore it is difficult to fully assess the rather high costs against the expected benefits.

Option 2 Sub-option 2B scores better than Sub-Option 2A but still lower on efficiency than Sub-options 2C and 2D. While it would have a strong influence on addressing gender bias in pay structures and has the potential to empower workers in organisations with at least 50 workers, it would still impose a noteworthy burden on medium sized employers, even if its cost would be lower than the cost of Sub-Option 2A. In addition, it suffers from the same drawback as Sub-Option 2A in that it would entail costs and burden on the part of all employers, including those which may not have a problem of pay inequalities in their organisation.

Option 2 Sub-option 2C. The limited average time of pay reporting added to the possible simplification of the data processing through digitalisation shows that the overall costs of pay reporting as envisaged under this Sub-option remains low. This is

proportionate to the benefits it entails in terms of peer pressure and providing at least an indication of possible pay inequalities triggering questions from stakeholders. While the measure may involve more costs for Member States in regard to the monitoring of the data, they could generally rely on existing administrative entities. In term of efficiency, some Member States may be able to alleviate the administrative burden on employers by achieving the results of this measure through administrative computation of the pay gap at employer level. The joint pay assessment for employers with at least 250 employees would ensure that follow-up action takes place in large organisations; its costs remain moderate compared to the benefits it brings. However, the assessment would be imposed on all such organisations, even those that may not have a problem with pay inequalities, thus raising similar questions regarding proportionality as Sub-Options 2A and 2B above.

Option 2 Sub-option 2D would entail the least costs and burden for employers, ensuring transparency on pay structures in large organisations and providing targeted action where problems of discrimination and bias are detected. Benefits would be limited to workers in organisations with at least 250 employees. Nevertheless, this Sub-option could be considered the most adequate at this moment in time, in light of the lack of hard data on the extent of existing gender based pay discrimination on the one hand and the current economic downturn as a result of the pandemic on the other hand. It would constitute a first step, allowing to gather more data at least in large organisations and awaiting circumstances where employers could more easily carry the burden of more effective pay transparency measures. By laying down minimum standards targeting action only where necessary, this Sub-option would reach the second specific objective in a more proportionate manner. However, its efficiency in relation to the first specific objective would remain limited.

Option 3 scores relatively high on efficiency because the benefits and social impacts would be higher than the costs involved. The envisaged measures consist of legislative changes which entail no direct costs while providing strengthened protection and support to potential victims of discrimination and deterring potential infringers.

8.3. Coherence

In terms of coherence, all the options considered under this initiative are coherent with the social and economic goals of the EU as described in the *Section 1* and *Section 3.2* of this impact assessment. Together with other EU action such as the Work-Life Balance Directive, the proposed Gender Balance on Corporate Boards proposal, the EU's Skills Agenda, it contributes to combating the root causes of the gender pay gap. It is coherent to the Gender Equality Recast Directive, to which it would constitute a *lex specialis* (see *Section 8.8* below). As a targeted binding measure, the initiative would address the most problematic issue identified by the 2013 implementation report of the Recast directive – the implementation of the principle of equal pay between women and men. It does so by way of measures which already exist to a certain extent in a number of Member States. This proposal is also coherent with the initiative aimed at increasing companies'

reporting of relevant non-financial information¹⁸². It is consistent with and supported by the EU minimum wage initiative¹⁸³ and the upcoming sustainable corporate governance initiative¹⁸⁴.

The initiative is coherent with the Commission's commitment to recovery from the economic crisis resulting from the COVID-19 pandemic. It seeks to achieve the proportionate balance between protecting workers' rights and moderating the burden and costs of pay transparency for employers. Through a combination of measures, it may be ensured that a minimum level of transparency would exist in all organisations in the EU, even in small and medium-sized enterprises. The latter would thus not necessarily suffer in terms of image as attractive employers or ability to retain talent. Of course, they may always go for higher levels of transparency and remedial action if they wish to do so.

At different stages of the consultation process, including the consultation related to the 2020 Evaluation, Member States and stakeholders expressed some concerns, in particular as regards the possible interference of EU-level intervention with Member States' different labour market models, different levels of social partners' participation in the area of wage setting and related employment relations as well as the autonomy of social partners. All options are designed in a manner that effectively addresses the objective of the intervention while respecting different features of national social dialogue and collective bargaining systems and the autonomy of social partners. The initiative not only allows but would most desirably rely on social partners to be entrusted with the implementation of the measures and would allow for the necessary flexibility in this regard.

8.4. Comparison of options

The table below compares the different options taking into account the assessment criteria of effectiveness, efficiency and coherence.

Table 1: comparison of options

		Effectiveness	Efficiency	Coherence
Baseline		0	0	0
Option 1	Sub-option 1A	+++Strongly effective in ensuring access to information on pay and relevant comparators for workers. Less effective in removing bias in pay structures	++ Beneficial for workers and moderately costly for companies and Member States. Questions regarding proportionality though	++ Higher positive impact on protection of fundamental rights and social goals of the EU. Less coherent with economic recovery policy
	Sub-option 1B	++ Effective in ensuring access to information on pay and relevant comparators for workers. Not	+++ Beneficial for workers while imposing less costs and burden on employers. More proportionate	+++ Positive impact on protection of fundamental rights and social goals of the EU. Coherent with economic recovery policy

¹⁸² <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive>

¹⁸³ COM(2020) 682 final.

¹⁸⁴ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>

		effective in removing bias in pay structures		
Option 2	Sub-option 2A	+++ Very strong effectiveness in empowering workers and removing bias in pay structures (ex ante certification)	+ Addresses both specific objectives but imposes high burden and costs on employers. Questions on proportionality though	++ High positive impact on protection of fundamental rights and social goals of the EU. Less coherent with economic recovery policy
	Sub-option 2B	+++ Very strong effectiveness in removing bias in pay structures; potentially effective in empowering workers	+ Addresses mainly the systemic undervaluation of women's work while still imposing high burden and costs on employers (proportionality)	++ High positive impact on protection of fundamental rights and social goals of the EU. Less coherent with economic recovery policy
	Sub-option 2C	++ Effective in addressing removing bias in pay structures; somewhat effective in empowering workers	++ Limited costs and burden and moderate stimulus for employer's action. Better on proportionality	++ Positive impact on protection of fundamental rights and social goals of the EU. Relatively coherent with economic recovery policy.
	Sub-option 2D	+ Medium effectiveness in addressing systemic undervaluation of women's work. Limited effective in regard to empowering workers	+++ Least administrative burden and targeted action towards employers where problems of discrimination and bias are detected. Most proportionate in regard to second specific objective	+++ Positive impact on protection of fundamental rights and social goals of the EU. Most coherent with economic recovery policy
Option 3		+ Somewhat effective in offering employers the tools to assess and define which workers in their organisations are carrying out work of equal value (thus addressing the undervaluation of women's work). While helpful also for workers, nevertheless limited effectiveness in regard to the empowerment of workers because of remaining lack of crucial information on pay	+++ Least administrative burden and providing strengthened protection and support to potential victims of discrimination while deterring potential infringements of the law	+++ Positive impact on protection of fundamental rights and social goals of the EU. Most coherent with economic recovery policy

8.5. Possible combination of options

The above analysis shows that none of the options would reach the two specific objectives on its own. However, a combination of (Sub-)options would permit to reach the two specific and hence also the general objective of the initiative.

Option 3 is of limited relevance as a stand alone option. While it would improve better implementation and enforcement of the existing legal framework, it is not expected to improve the current situation tangibly if not accompanied by the possibility to gather information on a comparator and/or if employers are not involved in the gender analysis

of the pay structure. This option should therefore be combined with one of the other options to be effective and to support them.

The basic work done in terms of data gathering by an employer to create transparency both at individual or at organisational level is the same for most Sub-options under Options 1 and 2. For this reason, most combinations of such Sub-options would lead to some economies in terms of overall cost and burden. The only exception is basic pay reporting (Sub-option 2C), where this obligation is much lighter as no active grouping according to work of equal value would be triggered; the calculation would concern only the percentage of pay difference between all women and all men working within the establishment.

In choosing the preferred combination of Sub-options, it is important to avoid unnecessary duplication of obligations. For instance, combining Equal pay certification (Sub-option 2A) or Joint pay assessment (Sub-option 2B) with Option 1A would add a communication burden on employers without adding much information for workers. The latter would indeed already have pay information as a result of the certification/pay assessment (except in organisations with less than 50 workers).

On the other hand, any Sub-option under Option 2 which would not lead to (all) workers having the necessary transparency on their individual situation in regard to pay, would need to be combined with either of the Sub-options under Option 1 in order to ensure that both specific objectives could be achieved. This would be particularly the case for basic pay reporting (Sub-option 2C) where only the information on the overall gender pay difference in the company is provided.

8.6. Preferred Package

In light of the above, the preferred package should be a combination of measures creating transparency at individual worker level and at employer level. These measures should be accompanied by measures aiming at facilitating the application of the key concepts on equal pay and at strengthening access to justice.

The best combination would consist of Option 1B (ensuring **transparency prior to employment** and **right to receive information on pay upon request**), coupled with **pay reporting** on the part of large employers, including on pay differences among workers carrying out equal work or work of equal value and mandatory **joint pay assessment** in case of unjustified differences in pay between women and men in the same grouping of workers above a 5% threshold (Sub-option 2D). To be fully functional, these measures should be supported by **Option 3** with its three measures.

This preferred package would empower workers to claim their right to equal pay and start creating an incentive to more systematically assess gender bias and discrimination in pay structures. It would achieve the objectives of the initiative while balancing workers' fundamental right to equal pay with the possible burden and costs of the envisaged measures on employers. Even if Sub-option 2D only applies to employers with at least 250 workers, all workers' rights would still be protected through their right to ask for

information, reinforced further by **improved access to justice**. Moreover, the package may be expected to increase broader awareness around equal pay and could therefore prompt a voluntary move towards more transparency at employer level.

The preferred package would reach the objectives in the most proportionate manner possible as it allows to improve the practical possibility to verify and assert the respect of the equal pay principle for all workers while at the same time limiting costs to a maximum extent. It is not possible to provide an estimate of the total costs of the preferred package. As to the cost related to the individual right of information, the cost of a single request was estimated at **20 EUR**. The total cost per company as for pay information will depend on the number of requests. The overall cost for pay reporting for employers would amount to around **26 and 50 million EUR**, i.e. between a **minimum of 379-508** and a **maximum of 721-890 EUR per employer** depending on the size. Where gender pay differences are small or absent, there will be no or little follow-up action (pay assessment) triggered - the average cost **per employer** to carry out the additional assessment has been estimated between a **minimum of 1,180-1,724 EUR** and a **maximum of 1,911 and 2,266 EUR** (expected to decrease in any subsequent exercises to respectively **843-1,232 EUR and 1,461-1,675 EUR**). As described in previous sections, the cost for national administrations would amount to one-off spending of **400,000 EUR** and about **82,000 EUR** annually.

The choice for a rather modest policy intervention furthermore takes into account **the lack of hard data** on the size of the problem. The chosen pay transparency measures permit to target the more stringent obligations to companies with a gender pay discrimination problem. They may be expected to shed more light on the extent of pay discrimination in the future.

The choice is furthermore based on the uncertainty linked to the longer term **economic impact of the COVID-19** crisis which puts employers already under significant stress. The latest economic forecasts indicate that recovery prospects are subject to a high degree of uncertainty, with downside risks to the outlook.¹⁸⁵ It is hence advisable to focus on instruments which, while giving individuals some minimum tools to claim their right, do not impose unnecessary costs and burden on employers at this time.

Once the impact of the current measures as well as the impact of the current economic crisis is clear, the **opportunity for extending the scope** of the measures could be assessed with the help of the additional data on pay discrimination collected through the first measures.

8.7. Hypothetical scenario of the potential economic impact of the preferred package of measures

The impact of pay transparency measures should ideally be measured through the reduction of pay discrimination and/or a reduction of gender bias in pay structures that would affect relative wages between women and men. As a suitable metrics of the scale

¹⁸⁵ European Commission, [European Economic Forecasts Autumn 2020](#), Institutional Paper 136, November 2020.

of ‘gender pay discrimination’, or even of ‘gender discrimination’, is lacking, this impact assessment estimates – purely for illustrational purposes – distributional effects of a very modest reduction in the gender pay gap that may result from pay transparency measures. The assumption is that pay transparency will help correcting discriminatory gender differences in average wages and therefore reduce the share of the gender pay gap that is due to gender pay discrimination. Since this share, as mentioned, cannot be measured with precision, the estimates of a possible impact rely on experts’ judgement and other various, mostly qualitative, assessments of the possible reduction. More specifically, the hypothetical scenario is built based on estimates available in the impact assessment for the 2014 Recommendation for similar measures and on the qualitative assessment of experts consulted in the context of the support study for this initiative. Similar assessments have been carried out elsewhere, such as in the European Parliament’s study¹⁸⁶ and in studies assessing the impact of pay transparency measures carried out at national level¹⁸⁷.

The qualitative assessment of experts confirms the possible scale of estimates presented in the impact assessment for the 2014 Recommendation for similar measures, namely:

- *a right to pay information* would have a positive impact in the order of **1-2 percentage points** reduction of the gender pay gap;
- *pay reporting* would have a positive impact in the order of **2-3 percentage points** reduction of the gender pay gap;
- *joint pay assessment* would have a positive impact in the order of **2-4 percentage points** reduction of the gender pay gap.

In addition, if social partners are involved and this would lead to equal pay matters being included in collective bargaining, this would have a positive impact in the order **1 percentage point** reduction of the gender pay gap.

Considering that the measures in the preferred package (combination of Sub-option 1B, Sub-option 2D, and Option 3), cannot have, and do not aim at having, an impact on all the root causes of the gender pay gap, but are meant to affect pay discrimination, which is one part of the unexplained component of the gender pay gap, the percentage change is applied to the latter only. In order to estimate potential distributional effects in a hypothetical scenario, we assume a conservative **reduction of the unexplained part of the pay gap of 3 percentage points** as a result of the application of the package of measures. Pay transparency measures would influence differences in pay by gender and therefore wages and the income distribution. This change assumes that the average speed of the reduction in the unexplained pay gap would double as compared to the change

¹⁸⁶ European Parliament, [Equal pay for equal work – Binding pay-transparency measures](#), 2020.

¹⁸⁷ See *Annex 5, section 4* for a summary review, i.e. Baker et al., ‘Pay Transparency and the Gender Gap’, *NBER*, 2019 (Canada); Vaccaro, G., ‘Using econometrics to reduce gender discrimination: Evidence from a Difference-in-Discontinuity Design’, *IZA*, 2018 (Switzerland); Manning, A., ‘The Equal Pay Act as an Experiment to Test Theories of the Labour Market’, *Economica*, 1996 (UK); Bennedsen et al. ‘Do Firms Respond to Gender Pay Gap Transparency?’, *NBER*, 2019 (Denmark); Kim, M. (2015), ‘Pay Secrecy and the Gender Wage Gap in the United States’, *Industrial Relations*, 54, 2015, pp.: 648-667. (US).

observed for the years 2010-2014.¹⁸⁸ This overall estimate is more conservative than what can be found e.g. in the assessment of the Recommendations of the Bauer report.¹⁸⁹

Impact on household income distribution, risk of poverty and public budgets: The following analysis looks at the potential direct impact of a reduction in the unexplained part of the gender pay gap on the household income distribution (the at-riskofpoverty rates (per different groups) and on government budgets using the EUROMOD¹⁹⁰ model (See *Annex 4, section 4* for more details).

EUROMOD is a static tax-benefit microsimulation model, which allows simulating the immediate effects of a policy change. In this modelling framework neither behavioral responses nor general equilibrium macroeconomic effects are accounted for; thus, results should be interpreted as a “morning-after” effect.

For this analysis, the simulations focused on the impact of an externally given targeted increase in women gross hourly wages, driven by the expected reduction of the gender pay gap, while keeping constant all other variables, including male wages. The estimated impact on household disposable income on poverty and inequality indicators and the budgetary implications, come both from this external shock in gross earnings as well as from the interactions of the tax and benefit system in each country.

The micro simulations obtained from the EUROMOD model evaluate the impact of closing the gender pay gap by raising women’s gross hourly wages and applying countries’ tax-benefit systems (as of 2019). Microeconomic analysis allows to take into account the initial distribution of wages, the shares of working women in each decile, the household composition, the structure of personal income taxes (e.g., progressivity of the personal income tax, joint assessment of taxable income, etc.) and the interactions within the tax-benefit system. We present the effects of the expected reduction of 3 p.p. of the unexplained part of the gender pay gap¹⁹¹, compared to the baseline given by the policy systems in 2019 (see *Annex 4* – for a comparison with the impact of a reduction of 1 and 5 p.p.).

Main results (see further details in Annex 4):

¹⁸⁸ The unexplained gender pay gap decreased in the EU on average by 1.4 percentage points between 2010 and 2014. Boll, C., Lagemann, A., *Gender pay gap in EU countries based on SES (2014)*, 2018. Available at: <https://op.europa.eu/en/publication-detail/-/publication/828e54d8-db2c-11e8-afb3-01aa75ed71a1/language-en/format-PDF/source-178531332>

¹⁸⁹ The [Bauer](#) report assessed a potential impact of measures: to introduce an improved situational analysis and transparency of pay data, to introduce a transparent job classification process, to empower and ensure adequate funding for equality bodies within Member States, and to introduce sanctions, each between 1 and 2 percentage point reduction of the unadjusted part of the gender pay gap.

¹⁹⁰ The estimates are based on the EU-microsimulation model EUROMOD and its underlying microdata based on the European Union Statistics on Income and Living Conditions (EU-SILC), EU-SILC 2018 (incomes refer to 2017).

¹⁹¹ In the simulations, the reduction of the unexplained gender pay gap by 3 pp is focused on the subsample of women earning less than the target gross hourly wage that narrows the gap for each group. Groups of the working population are defined by occupation, sector, education and working experience (36 groups are considered).

Impact on gross earnings and inequality: Raising women's gross hourly wages in order to close the gap would lead to an **overall increase of total gross earnings of 6.9% on average at the EU level**, and a **reduction of inequality in market income** (i.e. income before taxes and benefits) **inequality for all Member States**. Due to the interaction of the tax-benefit systems, the **reduction of inequality of disposable income** (i.e. after taxes and benefits) would occur **for 18 Member States**.

Impact on poverty: The **at-risk-of-poverty rate would drop** from the initial 16.3% on average in the EU27 to around 14.6%, with important heterogeneities across countries and by household types. The risk of poverty would be **mostly reduced for single parent households, which are mostly women (85%)**.¹⁹²

Impact on public budgets: The reduction of the gender pay gap would generate a **positive budgetary impact due to a rise in government revenues** (higher collection of income taxes and social insurance contributions) **and a small decline in social (cash) transfers** (mainly explained by a reduction of means-tested cash benefits). At the EU population-weighted average level, the shrinking of the gap is expected to lead to a rise in government revenues from direct taxes and social contributions of about 7.5%, while the reduction of social transfers (cash benefits) would be of approximately 0.4% .

The results differ substantially across Member States. The growth in total market incomes and government revenues would range from around 4% to 14%. It would be particularly high in some countries, such as BG, EE, LT and LV (in between 10% and 14%), whereas it would be more limited in EL, IT, MT and NL (of about 5%).

Macroeconomic impact: The analysis of the behavioral impacts of a change in the gender pay gap could in principle be carried out with other types of models. For instance, a labour supply model could assess the impact of these changes in women gross earnings at the extensive margin (change in labour market participation) and intensive margin (change in number of hours worked for people already employed). The use of a general equilibrium model (which could estimate effects on other earnings, prices and gender pay gap) would however require a number of assumptions, which could make the macro-level effect of the reform difficult to evaluate. For example, accounting only for the wage increase would overestimate the effect at the macrolevel as it could not be excluded that male labour supply/participation would adapt to such a large increase in female earnings (e.g. within households). Firms might also just re-adjust wages on male workers in order to mitigate the higher wage costs.

Several studies have estimated the potential impact of a reduction of the gender pay gap on economic growth through different channels (See *Annex 5, section 4* – for a summary review). The main channel is the increase in labour market participation. The European Added Value Assessment carried out by the European Parliament estimates a substantial potential effect of a reduction of the gender pay gap on the GDP: **each percentage point reduction in the gender pay gap would translate into an increase in the EU gross**

¹⁹² See <https://eige.europa.eu/topics/health/covid-19-and-gender-equality>.

domestic product (GDP) of 0.1 percentage point.¹⁹³ This impact was estimated as the result of the implementation of the Recommendation of the Bauer report¹⁹⁴ mentioned above. EIGE's estimates of the effect on GDP of closing the gender pay gap are lower: they show a 0-0.2% increase in GDP per capita over the 2030-2050 period.

8.8. Choice of legal instrument

As regards the choice of the legal instrument, different types of acts were considered. A regulation would impose uniform obligations in all Member States, which would be most easy to monitor and apply across the EU. However, a regulation would make it more difficult for Member States to integrate the new measures taking into account the existing legal and administrative framework; it would also not allow flexibility to adapt the implementation in accordance with their specific labour market models. Room should be left for implementation especially considering the crucial role of Social Partners for a successful implementation.

A revision of the Recast Directive was discarded because of its wider scope and because its entire logical structure would have to be revised to include the new measures. Indeed, the new measures focus on one aspect of the Recast Directive, namely the right to equal pay, tailoring measures according to size of organisations; as a result, a specific directive dedicated to this matter, strengthening the general rules under the Recast Directive, is considered as more appropriate.

On the basis of the 2020 evaluation and this impact assessment, a new directive, laying down a framework to enhance the application of the equal pay principle through pay transparency and related reinforced enforcement mechanisms, is therefore considered to be a more appropriate instrument. A Directive allows for flexibility as to the means each Member State considers appropriate to ensure compliance with the obligations taking into account the national context. It would also be in line with the approach followed as regards similar obligations in the field of employment (posted workers) and discrimination (free movement of workers). Further development of non-binding measures, as mentioned in *Section 6.1*, is unlikely to bring pay inequalities on the political agenda and engage in setting the necessary framework to combat pay discrimination and bias in pay structures. This does not mean that the future directive may not be supported by non-legislative flanking measures, some of which may be directly relevant to a good implementation of the new rules (e.g. guidance on how to assess and define work of equal value based on the criteria set out in the new rules).

9. How will actual impacts be monitored and evaluated?

Monitoring of implementation. Transposition of the initiative into national legislation will be **monitored by the European Commission**, in particular at the end of the

¹⁹³ 'European Added Value Assessment on the application of the principle of equal pay for men and women for equal work of equal value', EAVA [4/2013](#).

¹⁹⁴ See [European Parliament resolution of 24 May 2012 with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value](#) (2011/2285(INI)), Texts adopted, P7_TA(2012)025, so called '[Bauer report](#)'.

transposition period and thereafter. The monitoring would look at legislative or non-legislative initiatives adopted by Member States beyond what is strictly required by the initiative and their effect. The Commission will evaluate the initiative 8 years after the end of the implementation deadline referred to in the initiative.

In addition, monitoring of the implementation of national legal provisions will be conducted through a body designated in accordance with the initiative. This national body may be part of existing bodies at national level pursuing similar objectives. Regular exchanges between these bodies would be organised at EU level in the context of the existing **Advisory Committee** on equal opportunities for women and men¹⁹⁵ (together with social partners and relevant NGOs represented in the Committee).

Quantitative monitoring of impacts. Ideally, progress towards achieving the objectives of the initiative should be monitored on the basis of a **quantitative indicator** of gender pay discrimination. However, the lack of data and methodological difficulties make developing such indicator a challenging exercise.¹⁹⁶ A feasibility study could be launched to investigate how to assess pay discrimination and the possibility to develop more robust indicators based on the additional information collected through the envisaged pay transparency measures.

In the absence of a pay discrimination indicator, a **refinement of the GPG indicator** at EU level could already support in-depth quantitative analysis. Such analysis should focus on the impact on people starting out in their careers and in their mid-career in order to capture changes in behaviour and outcomes. The aggregated information collected from data resulting from pay reporting could also be used with this purpose at national level e.g. by monitoring the evolution of data by employer/group of employers and checking the progression in the reduction of the gender pay gap over time. Depending on public availability of data, a selection (e.g. by size or sector) of employers could be monitored at EU level over time at aggregate level, possibly with in-depth analysis of volunteering employers. Finally, considering that the legal baseline is different across Member States, progress could be monitored with reference to tailor-made benchmarks, i.e. monitoring progress compared to the initial situation up to a common EU target. This could be done in coordination with the European Semester process¹⁹⁷.

Qualitative monitoring of impacts could be organised as follows:

- Based on data collected in Member States, the state of pay discrimination may be evaluated based on the **number and percentage of employers that will have to carry out a joint pay assessment**. Such data will give an indication of suspected

¹⁹⁵ It was established by Commission Decision 2008/590/EC: of 16 June 2008 (replacing previous decision 82/43/EEC of 9 December 1981). The Committee was set up to assist the Commission in formulating and implementing the Community's activities aimed at promoting equal opportunities for women and men. It is also aimed at fostering ongoing exchanges of relevant experience, policies and practices between the Member States and the various parties involved.

¹⁹⁶ See *Annex 8* of the 2020 Evaluation and its *Section 3* – Process, methodology and limitations.

¹⁹⁷ The [European semester](#) is the framework for the coordination of economic policies across the EU.

gender pay discrimination in the context of the pay reporting exercise set out by the initiative.

- Follow up analysis could be done on **remedial action by employers**, e.g. in terms of gender equality plans developed after the introduction of pay transparency measures or voluntary overall revisions of pay structures.¹⁹⁸
- Data on the **number of claims** brought before enforcement authorities (e.g. equality bodies, courts) would also be a useful indication of the impact of the measures. This could be monitored through the European Equality Law Network and could be combined with a periodic **survey of judicial and enforcement staff** to test the extent to which awareness and skills to deal with these matters are increasing.
- The **cooperation with social partners** would allow collective qualitative information on implementation issues and to link the monitoring process of equal pay to the broader concept of gender equality in the workplace. The presence, quality and relevance of specific measures aimed at fostering equal pay in collective agreements e.g. the successful development and implementation of tools to facilitate the application of the concept of ‘work of equal value’ (e.g. gender-neutral job evaluation and classification systems) would be monitored through **surveys or dedicated hearings with social partners**. Possible recommendations from such surveys/meetings could feed into mutual learning sessions organised under the Commission’s Mutual Learning Programme on gender equality and capacity-building seminars.
- The increase in the **level of awareness** on equal pay issues among the general public could be monitored by looking at the frequency with which equal pay is mentioned in the **press, parliamentary acts, company reports and other relevant sources**.
- Finally, a **Eurobarometer survey** (such as the one from 2017) could show change in perceptions and attitudes.

The future evaluation of impacts, i.e. to assess factually the degree of success of the initiative, would require a timeframe of at least eight years from full implementation of the initiative and would require data gathered at Member State level. The review should ideally be synchronised with the release of SES data.¹⁹⁹ Different conceptual options are in principle available:

1. Counterfactual analysis – the golden standard to determine the specific impact of a policy measure. The literature shows some national examples regarding pay transparency

¹⁹⁸ In Australia, for instance, the *Workplace Gender Equality Agency* generates public reports (excluding confidential remuneration information) on gender equality indicators, including on equal pay, for any company willing to compare itself with a benchmark of similar companies (Workplace Gender Equality Agency, [International Gender Equality Reporting Schemes](#), April 2019, p. 6).

¹⁹⁹ Data are released every 4 years. The latest release was at the end of 2020 for 2018 data. Eurostat is working to reduce the time-lag between data collection and release.

measures²⁰⁰. Due to the granularity of the data required for this exercise, the analysis would need to be tailored to the specifics of the national legislation of each Member State and should therefore be carried out at national level. The Commission could support Member States through dedicated projects.

2. Indicators on transparency in wage setting: regression of wage levels on explanatory variables such as age, occupation, economic activity, etc. can provide an indicator (the coefficient of determination – R²) on the transparency of wage setting mechanisms in the different countries. Moreover, adjusting the gender pay gap for the above mentioned explanatory factors can give indications on possible inequalities between male and female earnings. Both indicators could be further refined, by collecting, possibly, a variable to account for career breaks.

²⁰⁰ Bennedsen, M.; Simintzi, E.; Tsoutsoura, M.; Wolfenzon, D.: ‘Do Firms Respond to Gender Pay Gap Transparency?’, NBER Working Paper No. 25435, 2019.; Gulyas et. al., Does Pay Transparency Affect the Gender Wage Gap? Evidence from Austria’, Discussion Paper Series – CRC TR 224, 2020.

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ANNEXES

Annex 1: Procedural information

1. Lead DG, Decide Planning/CWP references

This impact assessment and the related initiatives are under the responsibility of the Directorate-General for Justice and Consumers (JUST).

The Agenda Planning Reference is PLAN/2019/5818.

The project has been added to the 2020 European Commission work programme²⁰¹ under the section 'A new push for European democracy', following the non-legislative Gender Equality Strategy 2020-2025, as binding pay transparency measures (legislative, including impact assessment, Article 157 TFEU, Q4 2020).

2. Organisation and timing

Work on the preparation of this initiative started during the autumn 2019. The Inception Impact assessment consultation was carried out between 06 January 2020 - 03 February 2020. The impact assessment was prepared with the involvement of JUST C.3 (Data protection) as well as the following Services through the Inter-Service Steering Group (ISG), chaired by the Secretariat General: DG BUDG, DG CLIMA, DG CNET, DG COMM, DG DEFIS, DG EAC, DG ECFIN, EEAS, DG ENV, ESTAT, DG FISMA, DG GROW, DG HOME, DG MOVE, DG RTD, JRC.

The Inter-Service Steering Group was set up in 2019. The first ISG meeting took place on 24 January 2020 and focused on a study to support an Impact Assessment of pay transparency measures, consultation strategy and on public consultation questionnaire. The following ISG meeting took place on 17 July. The interim report of the support study, the preliminary results of the consultations and the outline of the Communication were discussed. Another meeting took place on 26 August to discuss a first draft of this IA. The last meeting took place on 11 November.

On each occasion, the members of the Steering Group were given the opportunity to provide comments orally and/or in writing on the draft versions of the documents presented.

3. Consultation of the RSB

This version of the impact assessment was submitted to the RSB on 23 December 2020. It took into account comments received from the Board on 25 September and on 17 November 2020. A hearing with the Regulatory Scrutiny Board took place on 23 September 2020. An upstream meeting with the Regulatory Scrutiny Board took place on 5 May 2020.

The RSB comments were taken into account in the following way:

➤ 3rd RSB opinion:

General comments

(1) Some aspects of the policy options remain	Clarifications have been added in the description
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²⁰¹ COM(2020) 440 final, Annex I

unclear (e.g. as regards their exact content, the interplay between the different measures and their practical implementation).	of the options (see below).
(2) The report lacks an overview of the global costs and benefits of the preferred package. It does not sufficiently explain why this combination of measures is considered the most proportionate one.	The presentation of costs and benefits and the analysis of proportionality have been revised (see below).

Specific comments

(1) The report should further clarify the content of some of the options and how they would function in practice. For instance, it should better explain the complementarity or possible overlap between the proposed measure to provide individual workers with pay information and the more generalised obligation on pay reporting at company level. It should explain how a measure to report on pay differences, without differentiating between worker categories, would be able to reach the objectives. It should clarify the trigger and foreseen process for requiring companies to carry out a joint pay assessment under the preferred option, and what possibilities employers will have to contest. It should further specify how data protection would be ensured and by whom. The structure of the options would gain in clarity if it would address all objectives by combining the different options into alternative packages.	The description of options and their impacts has been further clarified in the text. It now better specifies features, complementarities and interactions among different measures and their contribution to the objectives (chapter 6). The text clarifies how the joint pay assessment is triggered and what happens if the employer and worker representatives do not agree on the need to carry it out. It further clarifies how data protection would be ensured. In order to adopt a gradual approach, and therefore to target with more demanding measures only employers for which pay discrimination is suspected, the preferred option is necessarily the best combination of possible options. A full description of all other feasible combinations was not carried out to avoid unnecessary lengthy discussion.
(2) The impact analysis should draw coherent conclusions as regards the effects of pay discrimination on companies' competitiveness (e.g. likely competitive disadvantages versus productivity gains, talent retention or reputational benefits). The impact analysis of individual pay transparency measures (e.g. ban for employers to ask for previous wage) should better take into account that pay differences play a legitimate role in rewarding performance. The report should explain in more detail the assumptions behind the analysis of economic impacts (Euromod model) and the channels which lead to the expected impacts. It should explain how male wages, business profitability and (male and female) labour market participation would evolve. It should consider the impact of these changes on prices, thus on supply and demand.	The presentation of the conclusions has been adapted and the effects on competitiveness clarified. It has been further clarified that the measures do not have in any way an effect on the possibility to reward performance. The presentation of the EUROMOD model and its assumptions and features has been expanded in the text. The text explains the analytical scope of this model. It also presents more references to studies on macroeconomic impact including on labour market participation (Chapter 7 and relevant annexes).
(3) The assessment should be clearer on the costs and benefits of the preferred combination of measures and why it is judged to be the most proportionate. The report should provide a clear estimate of the total costs of the preferred package (in the main report and in the summary table in annex).	The text of chapter 7 on impacts has been revised and its coherence with the summary table on costs and benefits in Annex 3 was ensured. A table regrouping costs and benefits of all options has been added to better illustrate the proportionality of the preferred package. The text on the preferred package was further clarified.
(4) The executive summary should be fully aligned with the revised impact assessment report.	The executive summary is now fully aligned with the main text.

➤ **2nd RSB opinion:**

General comments

<p>1) The report makes strong claims on pay discrimination, despite the limited evidence. It continues to rely on the gender pay gap indicator to show the existence of pay discrimination, to define the objectives of the initiative, and to measure the expected impacts of the policy options.</p>	<p>The problem is presented with more balanced language and necessary qualifiers were added when referring to the link between gender pay gap and pay discrimination. The report specifies that there is limited statistical evidence on the scale of pay discrimination, though maintaining that there is sufficient circumstantial and qualitative evidence about its prevalence. The report clarifies that the lack of evidence is actually to a large extent due to the lack of pay transparency. The monitoring and evaluation section includes more coordinated efforts to collect evidence in cooperation with Member States based on the pay transparency created. The objectives are narrowed down to the problem of pay discrimination, without referring to the overall gender pay gap. The report acknowledges that while gender pay discrimination is only one element of the gender pay gap indicator and therefore its reduction may be expected to have an impact on the overall gender pay gap, the extent of this impact cannot be measured precisely. The report presents alternative hypothetical simulations of the impact of a reduction of the gender pay gap specifying that they are for illustrative purposes only. The impact assessment added some possible solutions on how pay transparency will fill the gap in data in the future monitoring framework</p>
<p>2) The report does not demonstrate the proportionality of the preferred option, and the need for and suitability of all included measures.</p>	<p>The options were regrouped in a gradual way of ambition to better account for proportionality concerns. The need for and suitability of the various measures are explained in light of the specific objectives of the initiative. The complementarity of various options and of different measures within options has been clarified. A broader proportionality analysis is carried out, taking into account not only costs and benefits, but also proportionality in light of the lack of hard data on pay discrimination and the economic downturn as a result of the COVID-19 pandemic.</p>

Specific comments

<p>1) The report should avoid making strong claims on pay discrimination unless they are supported by strong evidence. Where there is not strong evidence, the text should present the arguments using more balanced language. Given the number of sources, it would be helpful to specify which evidence is most robust and of direct relevance for this impact assessment.</p>	<p>As mentioned above, language has been revised, with a narrower focus; the number of references was also reduced accordingly and limited to the most relevant.</p>
<p>2) The report acknowledges that the gender pay gap is not a good yardstick for pay discrimination.</p>	<p>As mentioned above, the objectives have been revised and the presentation of the impact on the</p>

<p>Nevertheless, it relies on this indicator throughout the report. The report should review the references to gender pay gap. It should avoid defining objectives and measuring the impact of pay transparency measures in terms of the gender pay gap.</p>	<p>adjusted gender pay gap is included for illustrative purposes only.</p>
<p>3) Given the limited evidence on pay discrimination and the importance of such information for this policy area, the report should discuss possible solutions to solve the lack of data in the future monitoring framework.</p>	<p>The monitoring framework now includes specific measures to improve the collection of both quantitative and qualitative data. It includes a feasibility study on the possibility to develop a more robust indicator of pay discrimination and various ways of gathering qualitative data, including through exchange of experience with the implementation in the context of the Advisory Committee on equal opportunities for women and men (involving Member States, social partners and relevant NGOs).</p>
<p>4) The report should discuss the feasibility of using the concept of ‘work of equal value’ in practice at large scale (not only in specific legal cases) and assess how this may affect the possibility to implement (and the success of) the measure to clarify legal concepts.</p>	<p>The text of the impact assessment clarifies that while the concept is in place since the Treaty of Rome and general criteria for its application exist at EU level, in practice it must be applied at employer level with employer-specific criteria. The application of the concept will be improved by making the EU-level criteria more visible in the legislation and by and supporting tools and methodologies to be developed by MS.</p>
<p>5) The report should justify why the option on ‘access to justice’ does not present alternative ways of addressing the relevant problem drivers.</p>	<p>A number of alternative ways are added and discussed.</p>
<p>6) For the legal option on pay transparency, the report should substantiate why all included measures are necessary and proportionate. For instance, what is the added value of an obligation to report on the gender pay gap, given that this is not a direct indicator for pay discrimination. Why is there a need for a measure on pay reporting if there is a requirement for joint pay assessments? What would an inclusion of equal pay matters in collective bargaining add to these measures? To what extent would gender-neutral job classification systems be a prerequisite (and thus an intrinsic part) of the other measures? How was the frequency of the different reporting requirements decided and why could it not be less often (e.g. some Member States are doing pay audits every four years)? On the basis of these clarifications, the report should consider presenting and assessing alternative groupings of these measures, representing different degrees of ambition.</p>	<p>The measures are regrouped and presented by degree of ambition in under each option – see the explanation at the introduction of Section 6. The report explains the different degrees in pay reporting and why one would be more useful, but also more burdensome, than the other. It explains why the role of social partners is important in supporting implementation of the measures. It further explains that gender-neutral job classification systems are only a possible tool to facilitate the application of the concept of ‘equal value’; other methodologies may exist at national level and flexibility would be left to Member States in this respect. The report explains the choice for the frequency as regards the various obligations.</p>
<p>7) The impact analysis of individual pay transparency measures should better take into account that pay differences play a legitimate role in rewarding performance. The report should integrate possible negative effects into the comparison of measures. It should also complete the impact analysis of the measure to introduce gender-neutral job evaluation and classification systems. It should provide more detail on the causal links between pay transparency measures and the expected macroeconomic income growth</p>	<p>The report clarifies that the proposed measures do not interfere with the possibility to reward performance (unless rewarding is based on gender-biased criteria). Possible unintended effects of the measures have been included when relevant in the assessment of the various measures. The report clarifies that gender – neutral job evaluation and classification systems are a possible support tool to assess work of equal value, among other possible tools that may exist at national level. The illustration of the possible impacts of the preferred</p>

	option details the link between pay transparency, wages and macroeconomic income growth
8) The report introduces exemptions for small companies. However, the report should explain how workers' rights would be respected in exempted companies. This is relevant given the large share of workers that would not be covered by certain measures. The report should also provide more coherent justifications for the different SME exemptions.	The exemptions are tailored to the specific measures and their justification takes into account the varying elements that are relevant for each measure. The revised report explains these elements in more detail and why they are relevant for the different measures. The report further clarifies the trade off between any applicable thresholds and individual workers' protection and how workers' protection is ensured when certain measures do not apply to exempted companies. Such protection is ensured, in particular, through the combination of various pay transparency measures as well as reinforced access to justice (e.g. reversed burden of proof) and enforcement mechanisms.
9) The report should fully present the content of the options in the options description. It should not introduce further option characteristics - on, for example, SME exemptions - in the impact analysis. It should number the measures consistently in the options and impacts sections.	The options description has been extended with a more detailed description of the options and with the envisaged SME exemptions. The coherence of the text has been double-checked.

➤ **1st RSB opinion:**

General comments

1) The report does not provide sufficient evidence of the problem it aims to fix. It does not explain clearly the links between the problems, the objectives and the measures.	The updated report provides more explicit evidence of pay discrimination and combines empirical analysis, data from surveys, links to sources of information and evidence as well as an overview of legal cases. The explanation on the lack of measurement of the extent of pay discrimination has been incorporated within the section on the problem definition. The report clarifies the link between problem, objectives and measures. It underlines the need for more pay transparency to let discriminatory pay practices, as well as bias in pay setting and valuation fully emerge.
2) The difference between the main policy options is unclear and some possible options are not analysed. The report does not explain how the specific measures of the options were selected.	The presentation of options has been significantly redrafted. The report explains the choice of pay transparency options, its link with the existing 2014 Pay transparency recommendation as well as opinions of stakeholders expressed during the consultation process. The report clarifies the need to minimise the administrative burden by aligning pay transparency measures to employers with a certain number of workers. It further clarifies the complementarity of the measures ensuring their effectiveness and avoiding overlap.
3) The analysis of potential impacts is incomplete. The report deals with a few expected impacts only. The analysis relies on experts' views and does not sufficiently consider stakeholders' views.	The report highlights stakeholders' views alongside the views of experts consulted for the study and covers their main concerns related to data protection, administrative burden, and social partners' autonomy. The calculation of the potential costs for employers has been developed and additional

	calculations of impacts have been included, together with literature findings about the impact of the various measures.
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Specific comments

1) The report needs to be clearer about the evidence of pay discrimination and its limitations. It should explain to what extent the gender pay gap provides an indication of pay discrimination and use these different concepts coherently throughout the report. It should be explicit about the extent to which pay differences can be decomposed into discriminatory and non-discriminatory determinants. The problem description should be clear to what extent observed pay discrimination concerns not being paid equally for the same job or work of women and men not being valued equally.	The updated report provides more explicit evidence of pay discrimination combining empirical analysis, data from surveys, links to sources of information and evidence as well as an overview of legal cases, though acknowledging the limitations of the evidence. The explanation of the extent to which pay differences can be decomposed into discriminatory and non-discriminatory determinants has been further clarified and incorporated within the section on the ‘size of the problem’. More clarification has been added on detailed analysis of the pay gap at national and at sector level.
2) The report should analyse whether the problems are linked to the policy or legal framework, to its poor implementation, or to other factors.	The report addresses these issues under the section ‘what are the problem drivers’. The description of the key drivers of the problem was further clarified namely: i) a market failure linked to asymmetries of information on pay and persisting bias in pay; ii) a regulatory failure linked to lack of legal clarity and difficulty to apply key legal concepts and lack of access to justice for potential victims.
3) With a view to designing well targeted measures, the report should include an analysis of where pay discrimination takes place. It should analyse whether pay discrimination is more widespread in certain sectors, occupations, types of companies, countries, etc., or affects certain groups of workers more than others (e.g. age, type of contract, etc.). To the extent possible, this analysis should be quantitative.	The report acknowledges limitations in regard to the quantification of pay discrimination. It highlights the need to collect data at employer level in order to detect discrimination as the available aggregate data do not have the necessary granularity to do that. Still, statistical analysis presented in the IA provides sufficient indications on where pay gap can be influenced by biased decisions, e.g.: part-time workers, managers, occupations within sectors, fringe benefits – that should be verified at employer level. Similarly, the report clarifies that only employer level data can determine whether pay discrimination affects more certain groups of workers than others (e.g. by type of contract, by age).
4) The report should consider using a more selective use of sources, focusing on those that are most relevant. More careful consideration should be given to whether the conclusions of studies in particular countries can be generalised to the EU. If evidence is not available or is incomplete, the report should acknowledge this clearly.	The updated report addresses these concerns: sources were dropped, replaced or presented in more selective manner.
5) The report should better explain the intervention logic, linking the measures to the problems and the objectives. The report should present a more analytical description of the links between pay transparency, pay discrimination and their consequences on the labour market, competition and productivity. It should show to what extent measures taken by individual Member States have resulted in a reduction in pay discrimination. It should indicate whether measures were implemented at the employer,	The narrative of the report is now better aligned to the revised intervention logic. The report explains the expected positive effect of pay transparency measures established at EU level which allow a more efficient operation of the labour market and enhanced competitiveness in the internal market. It also emphasizes that the intervention respects different models of labour markets, different levels of social partners’ participation in the area of wage setting as well as the autonomy of social partners.

sector or national level.	The report refers to the findings of the evaluation which could not find evidence of significant impact of pay transparency measures on pay discrimination, mostly because, as mentioned pay discrimination cannot be quantified. Additional hypothetical calculations using the EUROMOD model were added illustrating the effect of a GPG reduction on income distribution, poverty rates and public budgets.
6) The report should further elaborate on how the situation would evolve under the existing framework, without further action. It could discuss future trends in wage setting and how they may affect pay discrimination. It should reflect on the likely impact of the COVID-19 pandemic on developments in pay discrimination.	These considerations have been included in the section on ‘How will the problem evolve’.
7) The report should better justify the choice and design of the policy options. It should explain why other possible options were not considered, such as a non-legislative approach of issuing specific recommendations to Member States, or an option with a less comprehensive coverage of pay transparency measures. It should indicate which measures are alternatives and which ones are complementary. It should better justify the inclusion of an obligation to report on the gender pay gap, as it is not part of the identified problem.	The choice of options and description of the discarded options has been substantially revised. The non-legislative approach of issuing specific recommendations to Member States is included in the baseline from which the options are assessed. The complementarity links between measures have been highlighted. The report clarifies in particular the peer pressure and policy oriented role of pay reporting of the gender pay gap at employer level.
8) The report should explain how the specific pay transparency measures in the two retained options were selected. It should clarify the difference between the two and whether one option is more ambitious than the other.	The definition of the options has been expanded. The report explains the choice of pay transparency options, its link with the existing 2014 Pay transparency recommendation as well opinions of stakeholders expressed during consultation process. It explains the need to minimise the administrative burden by limiting more stringent pay transparency measures only to employers where potential problems have been flagged, aligning pay transparency measures to employers with a certain number of workers. It explains the complementary nature of the measures, ensuring their effectiveness while avoiding the overlap.
9) The report should discuss how the different parameters were decided, e.g. thresholds for exemptions or frequency of reporting or assessments. It should analyse for each measure why it does not take into account the size of the employer (based on turnover) for setting thresholds. The report should discuss the legal feasibility of the measures.	This has been incorporated to the report. The thresholds applied to tailor the design of the measures are linked only to the number of employees and not turnover or annual balance sheet because the scope of the proposed Directive is worker-oriented. Therefore, it focusses on the enforcement of an individual fundamental right, and it uses statistical methods for which only staff headcount is relevant for its implementation. Moreover, the reference to headcount simplifies the implementation by avoiding the complexity and administrative burden in verifying the compliance criteria by Member States.
10) The report should clarify whether soft measures are discarded or whether they complement the preferred policy option. In this case, the report should analyse the likely impact of such measures in combination with the binding measures of the main options.	An option related to non-binding measures (Council Recommendation) is included as discarded option at early stage. Soft and non-legislative measures under the remit of the Commission have been included more clearly in the baseline (as foreseen in the Gender Equality Strategy 2020-2025) as such measures on their own would not achieve the objectives of the

	initiative.
11) The report should provide a comprehensive analysis of potential impacts, including possible unintended impacts. It should substantiate the expectation that pay transparency not only reduces pay discrimination but also has wage equalising effects. It should provide total cost estimates for the whole EU, at least for those measures that entail significant obligations for business.	A qualitative assessment of possible unintended effects has been included in the report and discussed for each option. Updated estimates of the costs for employers (for the EU, by MS, by size of employer and as average cost for employer by size) have been provided.
12) The report should better justify the selection of the preferred option. It should build on an improved impact analysis and better balance experts' views with evidence and stakeholders' views. The analysis should cover the main stakeholder concerns (e.g. on data protection, reward of high performers, etc.) and explain how each of these are addressed in the options.	The updated report highlights stakeholders' views alongside the views of experts. Their main concerns, related to data protection, administrative burden, and social partners' autonomy, have been incorporated in the impact analysis. The comparison between options has been developed.
13) The report should better justify the exemptions of small companies from certain obligations. To this end, the report should show the magnitude of the problem in small vs. big companies, possibly differentiating by sector and country (problem definition). It should discuss whether these exemptions will have an impact on the effectiveness of the initiative.	The updated report clarifies the justification of the exemptions for small employers from measures such as the automatic right to information, pay reporting and joint pay assessment. To counter-balance the exemptions, measures are complementary and an enhanced access to justice and enforcement is considered. For instance, would the employer not reply to the worker's request for information, this would trigger a presumption of gender pay discrimination and the burden to prove that this is not the case would automatically shift to the employer. Assessing the magnitude of the problem in small vs. big employers is not possible as the available data do not have the necessary granularity to reach conclusions whether pay discrimination is more widespread in certain sectors, occupations, or types of companies.

4. Evidence, sources and quality

DG JUST commissioned a number of studies in support of this Initiative, namely a dedicated support study used as main source for this Impact Assessment; a revised and expanded version of the Eurofound study on costs and benefits of existing pay transparency systems; a behavioural experiment and a literature review of behavioural economics carried by JRC(See *Annex 5, section 5*); additional material on administrative data sources and a simulation with the EUROMOD model of the impacts of a reduction of the GPG also by JRC; a review on the number of case law by the Legal Network/equality bodies.

The Commission consulted widely and received input from various sources for this impact assessment work. The consultation strategy included:

Consultation of high-level representatives of Member States in the High-Level Group on Gender Mainstreaming, on 29 January 2020 and 15 September 2020.

Targeted consultation of Member States through a separate specific questionnaire issued in March 2020.

Targeted consultation of social partners organised on the basis of a separate specific questionnaire issued in March 2020 (and a mini-survey for companies) and followed by a dedicated consultation hearing of social partners run by DG JUST and DG EMPL in June 2020.

A public consultation launched in March 2020, opened for 12 weeks. The consultation covers general awareness, experience and knowledge of citizens and stakeholders regarding pay transparency issues as well as views on the possible specific measures.

Relevant previous consultation activities:

In 2019, the Commission already carried out a number of consultation activities around the equal pay principle. This process started as part of the evaluation²⁰² of the relevant provisions in Directive 2006/54/EC implementing the Treaty principle on 'equal pay for equal work or work of equal value' (and in the 2014 Commission Recommendation on strengthening the principle of equal pay between women and men through transparency). It was also embedded in the preparatory work on the future EU Strategy on gender equality and related consultation. In particular:

From 11 January 2019 to 5 April 2019, a public consultation²⁰³ was carried out for the Evaluation of the relevant provisions in Recast Directive implementing the Treaty principle on 'equal pay for equal work or work of equal value'. Among others, the consultation's objective was to collect information, views and experiences on problems appearing from gaps and weaknesses of existing pay transparency measures at national and EU level. Furthermore, it sought evidence on the extent to which the 2014 Pay Transparency Recommendation had helped to reinforce the implementation of equal pay principle enshrined in Article 157 TFEU and Recast Directive. The respondents took the opportunity to share their views regarding forward-looking questions on relevant aspects of the transparency initiative including on the need for some further EU-level action on measures to address sex-based pay discrimination.

The Evaluation process also included a targeted consultation survey and semi-structured interviews with representatives of national equality bodies, competent public authorities, trade unions, employers' representatives, labour inspectorates, NGOs and experts. The Evaluation resulted in an online discussion with selected experts from different Member States.

On 2019 International Women's Day, a public consultation²⁰⁴ on the state of gender equality in the EU at present as well as about priorities for the future was launched in order to prepare the next Commission's gender equality policy framework. More than 1300 replies were gathered from a broad range of stakeholders, including academic/research institutions, business associations, company/business organisations, consumer organisations, EU citizens, non-EU citizens, non-governmental organisations (NGOs), public authorities, trade unions and others. They showed considerable public

²⁰² SWD(2020)50 final.

²⁰³ Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-3415794/public-consultation_en.

²⁰⁴ Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/genderequalitybrp/public-consultation_en.

interest in introducing measures to further support the principle of ‘equal pay for equal work or work of equal value’, such as pay transparency.²⁰⁵

A consultation of the High Level Group on Gender Mainstreaming and the Advisory Committee for Equal Opportunities for women and men took place through dedicated meetings in 2019.

A dialogue between the European Commission and the social partners took place in May 2019 during a thematic seminar on the role, costs and benefits of pay transparency initiatives.²⁰⁶

Eurofound has compiled information on the ‘costs of pay transparency measures’ that focuses on EU countries that have already implemented pay transparency measures affecting employer level.²⁰⁷ A small set of interviews (44 in total) was conducted with companies for each Member State present in the survey.

²⁰⁵ The publication of the factual summary report is forthcoming.

²⁰⁶ Available at https://ec.europa.eu/info/publications/eu-mutual-learning-programme-gender-equality-equal-pay-iceland-27-28-may-2019_en.

²⁰⁷ The forthcoming study provides a nearly complete picture of gender pay transparency in Europe, namely on AT, DE, DK, EE, ES, FI, FR, SE and UK (not included in this selection were: BE, IE, LT, NL).

Annex 2: Stakeholder consultation

1. Consultation Strategy

The objective of the consultation was to secure stakeholder inputs in relation to the proposed legislative initiative on strengthening the principle of equal pay between women and men through pay transparency. The stakeholders identified for the consultation were: the general public; and, specifically, the Member States; the social partners; and individual employers.

An online Open Public Consultation was targeted at the general public, over the period of 5 March 2020 to 28 May 2020. The questionnaire was available in electronic format only, and the official languages of the European Union (EU) were used, for answers and replies. The questionnaire included open-ended and closed questions. Some respondents sent individually formulated contributions by email.

Three targeted surveys were implemented to complement the Open Public Consultation. They addressed the Member States, the social partners, and individual employers. The engagement with the social partners was further complemented with 8 interviews with European level social partner organisations, 4 employers' organisations and 4 trade union organisations. Information gathered during interviews are integrated here in social partners' sections. Finally, a dedicated consultation hearing was held in June 2020 with the participation of 25 employers and 25 trade unions' representatives. The Commission also received 7 position papers afterwards. The Commission's consultation with European, national and local social partner organisations in March 2020 on binding pay transparency measures resulted in mixed feedback on the need for the adoption of a legally binding measure on pay transparency.

The four surveys investigated views on the relevance, effectiveness, efficiency, coherence, and EU added value of pay transparency measures. Information on the general state of play in relation to national measures and legislation on pay transparency was gathered from the Member States and the social partners. Information about attitudes and experiences in relation to pay discrimination was gathered from the general public, social partners and individual employers. Information on the level of pay transparency in organisations was gathered from individual employers. Looking to the future, information on the effectiveness and impact of possible EU initiatives on binding pay transparency measures was gathered from the general public, the Member States, and the social partners.

Diverse information channels were used to maximise responses to the consultation, with information disseminated to: permanent representations (social attachés and counsellors) via the Council Secretariat; members of the High-Level Group for Gender Mainstreaming and of the Advisory Committee for Gender Equality; 87 social partners' organisations; the European Network of legal experts in Gender Equality and Non-Discrimination, the European network of equality bodies (EQUINET); members of the EU Platform of Diversity Charters; the European Economic and Social Committee (EESC); experts of the Scientific Analysis and Advice on Gender Equality in the EU (SAAGE) network; and members of the European Women on Boards (EWoB) network.

Information on the Open Public Consultation was posted on the Facebook and Twitter accounts of the Directorate-General for Justice and Consumers, and the public consultation was referenced in a video disseminated on these accounts. Specific information was sent to individual journalists.

Six Member States, either in addition to the questionnaire or as an alternative, submitted position papers to clarify their views, and a number of international organisations and civil society organisations provided position papers.

2. Stakeholder Participation

All identified stakeholder groups were reached: general public; Member States; social partners; and individual employers.

The Online Public Consultation received 560 responses. 51.3% of respondents were women, 21.4% were men, 0.5% were 'Other', and 26.8% did not identify. The geographical distribution of responses was somewhat unbalanced: 39.3% of respondents were from Spain, with Germany following at a distance with 11.4% of respondents, and Italy with 9.5% of respondents. 4.8% of respondents were from Belgium, 4.1% from France, 3.6% from Poland, and 3.4% from the Netherlands.

Different types of respondents are evident: 67.1% of the responses were filed by EU individual citizens, 3.2% by non-EU citizens; 9% of respondents identified themselves as being from company/business associations; 7% as being from non-governmental organisations; 5.5% as being from trade unions; 3.8% as being from public institutions; and 2.5% as being from academic/research bodies.

The targeted survey of **Member States' authorities** received 20 responses, from 17 Member States: Austria, Czechia (2), Denmark, France, Germany, Hungary, Ireland, Italy, Latvia (2), Lithuania, Malta, The Netherlands, Portugal, Romania, Slovenia, Spain (2), and Sweden. The authorities from Croatia, Estonia, France, The Netherlands, Portugal, and Sweden submitted off-line responses as an alternative or in addition to on-line responses. No responses were received from Belgium, Bulgaria, Cyprus, Finland, Greece, Luxembourg, Poland and Slovakia.

The targeted survey of **social partners** received 80 on-line responses and 4 off-line responses. 41.3% of the respondents were employer associations, and 58.7% were trade unions. The majority of respondents, in both cases, operate at Member State level (63.6% of employers' organisations and 78.7% of trade unions). Nearly 50% of responses came from five Member States: Germany (26.3%); Finland (7.5%); Belgium Czechia and Italy (5% each).

The targeted survey of **individual employers** received 24 responses. Nine of these respondents operate in all Member States, 9 respondents operate only in one Member State, and 6 respondents operate in several Member States. 12.5% of respondents are associated with the manufacturing sector(s). 21% have between 50 and 249 employees, while 79% have at least 250 employees.

3. Analytical Methodology

The preparation of the dataset involved the creation of four Excel databases to analyse the replies. The Excel files were imported in the Statistical Package for Social Science (SPSS) and elaborated using this professional statistical tool, which enabled checking for coherence and completeness, and control for duplications.

Five-point Likert scales on attitudes and expectations of respondents regarding impacts and effectiveness were systematically recoded in three-point Likert scales in the quantitative analysis, as responses were somewhat dispersed across modalities. All questions were analysed, highlighting, as relevant, differences between sub-groups. Differences had to be interpreted as they could be attributed to group distribution or to

the natural variance in responses. Where statistically significant, the disaggregation by sub-groups was reported.

Inductive coding was used to derive themes from the answers in the qualitative analysis. This was conducted on qualitative information included in the questionnaires, on documentation received from stakeholders and Member States, on the analysis of documents received from the European Commission and on qualitative interviews. Clusters of the most recurrent type of answers served as a starting point for the analysis. Additionally, particular answers, albeit not recurrent, were included if considered particularly original and relevant by the experts involved. Essential messages were identified through a distillation of the responses.

Each questionnaire had a similar initial section of information on the respondent, while the questions in the other sections differed according to the respondents targeted. Responses were analysed, grouped by the themes they refer to, with: presentation of results (frequency and breakdown of responses); quantitative analysis for closed questions; and qualitative analysis for open-ended questions.

4. Results

Public Consultation

The State of Play

The gender pay gap is viewed as being particularly at issue in the private sector, in: micro (72%), small (71%), medium-sized (70%), and larger (61%) enterprises. Nevertheless 39% of respondents viewed it as being at issue in the public sector. 49% of respondents felt women and men have equal pay for the same work or for work of equal value in the organisation where they worked, however 39% felt that this was not the case.

Costs of litigation were identified as a relevant enforcement issue by respondents in relation to pay discrimination. A very large majority of respondents (92%) considered the provision of support to individual workers to be important in order to lower these costs and enable legal action in pay discrimination cases to be undertaken.

Future Measures

The four measures presented, of the type not focused on strengthening victim rights, pay transparency measures, were each viewed as being effective by significant majorities of respondents: obligation to include equal pay matters in collective bargaining (81%); gender-neutral job evaluation and classification systems (80%); employers and employees' representatives analysing pay levels and gender pay gaps in regular pay audits (79%); and regular employer reports on pay levels and gender pay gaps (78%).

In respect of the different types of respondents, this consensus was shared to a high level by individual EU citizens and non-EU citizens, and by respondents from trade unions, academic/research bodies, and public institutions. Agreement was at a lower level among respondents from company/business associations. Nonetheless, the numbers of this type of respondent that agreed with the effectiveness of the individual measures stood at between 40% and 50%.

In identifying the possible impacts of these pay transparency measures: 90% agreed they would raise awareness about equal pay issues; 88% they should be part of wider equal pay policies; 86% they would reduce pay discrimination; 77% they would have a positive impact on employees' motivation and productivity; and 72% they would improve the work climate. The same pattern of consensus is evident in this across the different type of

respondents as for the effectiveness of prospective pay transparency measures, with low levels of agreement among respondents from company/business associations.

Respondents from company/business associations were more likely to agree that such measures might make it difficult to reward high-performing employees (78%), they limit employers' discretion (76%), and they create a significant additional burden (74%). There was a low level of agreement from the other types of respondents that such impacts would result.

The four measures presented, of the type focused on strengthening victim rights, enforcement measures, were each viewed as being effective by significant majorities of respondents: employees have a right to access information on pay levels and gender pay gaps (84%); effective and proportionate penalties for companies and compensation for victims of discrimination (80%); reinforced mandate of labour inspectorates to intervene in support of victims (77%); and strong mandate of equality bodies to intervene in support of victims (76%).

The same pattern is evident in this consensus across the different type of respondents as with the first type of prospective pay transparency measures, with lower levels of agreement from respondents from company/business associations, where agreement ranged from 28% to 40%.

In identifying the possible impacts of these pay transparency measures: 91% agreed they would help enforce the right to equal pay; 88% they would be a powerful tool for equality bodies/labour inspectorates/social partners to support employees in defending this right; and 85% they would encourage employers to better implement the principle of equal pay. The same pattern of consensus across the different types of respondent is evident as for the first type of pay transparency measures, with respondents from company/business associations expressing lower levels of agreement.

There was significant consensus among respondents in their agreement on the effectiveness of the different modalities presented for implementation: the right to access information; job evaluation and classification systems; pay audits; and pay reporting. The only modalities that had low level of agreement related to sharing of information with employee on request (right of access to information, pay audits, pay reporting) and gender equality labelling (job evaluation and classification systems). In all instances, agreement from respondents from company/business associations was significantly lower than the overall consensus. In general, the measures were considered as suitable for all sizes of organisations, except pay audits which few respondents considered suitable for micro and small enterprises.

An analysis as to whether significant differences could be observed in individual citizens' response patterns across the EU Member States found only minor cross-country differences in the response behaviour of individuals.

EU Member States

The State of Play

Responses from the Member States in relation to the current situation were highly differentiated, reflecting different contexts across the Member States. Only 4 Member State respondents reported that current legislation was influenced by the EU 2014 recommendation. Six respondents reported that pay transparency measures had not been introduced due to the low priority for this issue on the policy agenda. Few respondents reported on the number of court cases on equal pay in the past year. However, most

respondents did not think the number of cases was a valid indicator of the relevance of the gender pay gap issue. Some respondents noted that not all cases of discrimination end up in court, due to barriers of access to justice, and lack of information among employees.

Future Measures

Member State respondents reflected some consensus in their agreement with the following options: employer reports regularly on pay level and gender pay gaps (82%); employees have a right to access information on pay levels and gender pay gaps (59%); employers who advertise a job vacancy to include information about expected salary or salary range (53%). The least favoured option was: forbidding confidentiality clauses on disclosing individual pay (35%).

There was some consensus among Member State respondents on the roles of equality bodies/labour inspectorates in supervising equal pay measures as being to: impose fines for non-compliance (75%); initiate equal pay cases on behalf of individuals (55%); represent victims in legal proceedings (50%); and pursue collective equal pay claims (45%).

In relation to the role of other national actors in implementing pay transparency measures there was significant consensus in agreement that organisations have a role in reporting on pay gaps (70%). There was some consensus in agreement that labour inspectorates have a role in performing automated checks on pay gaps based on employment, tax or social security registers (55%); and that employers' organisations have a role in compiling pay statistics (50%). Only 25% agreed that statistical offices have a role in compiling pay reports; and 20% that equality bodies have a role in performing automated checks on pay gaps based on employment, tax or social security registers

In identifying the possible impacts of these pay transparency measures, there was significant consensus among Member State respondents: 100% agreed they would help enforce the right to equal pay; 90% they would contribute to raising awareness on equal pay issues; 90% they would reduce pay discrimination; 85% they would improve the work climate; 85% they are a powerful tool for equality bodies/labour inspectorates/social partners; 80% they would have a positive impact on employees' motivation and productivity; and 80% they would encourage employers to take action to better implement the principle of equal pay.

There was a low level of agreement that such measures: create additional administrative burden on organisations (50%); limit employers' discretion (35%); and need to be tailored to size of organisation (40%). Only 25% agreed that such measures should be part of wider equal pay policies.

Social Partners

The State of Play

The social partner survey points up different perspectives held by and experiences of trade unions and employer associations. Trade union respondents were more likely than employer associations to identify that gender pay discrimination is an issue and that pay discrimination legislation is difficult to use. Some trade union respondents noted the different levels of protection and of implementation of EU requirements on this issue across the Member States. These results were also confirmed by interviews.

Most employer association respondents (81%) believe that there is a conflict between General Data Protection Regulation (GDPR) and possible pay transparency measures,

while most trade unions believe there is not (57%). Most trade unions reported being often solicited by members in relation to gender equal pay (75%), while most employers had not often been solicited (79%). The comments received during the hearing as well as the analysis of the position papers received after the hearing confirm these different perspectives.

Future Measures

Five legislative options at EU level were presented. The most preferred option for employer association respondents was for the inclusion of expected salary in job postings (41%), which was supported by 78% of trade unions. The most preferred option for trade unions was for regular pay audits (96%), which was supported by 24% of employer associations. A similar pattern is evident across the other options: regular employer reports (29% for employer associations vs 89% for trade unions); employee right to access information (18% vs 89% respectively); and forbid confidentiality clauses (18% vs 76% respectively).

Five options for binding pay transparency measures involving direct social partner participation were presented. Trade unions were significantly supportive of all options, bar certification related to job evaluation systems (47%, which compares to 21% employer associations) and self-regulatory measures linked to pay reporting (32%, which compares to 39% employer associations). The most preferred option for trade unions was for an equal pay plan (98%), which was chosen by 42% of employer associations, also their most preferred option. None of the measures were considered effective by a majority of employer associations.

In relation to standardised solutions, employer associations identified employers' organisations compiling pay statistics for their members as the preferred option (42%), while this was the least favoured option for trade unions (87%). The most favoured options for trade unions was for the state to provide IT tools to organisations (87%); social partners to agree on/develop standardised tools (85%); and the labour inspectorate/equality body to conduct automated checks based on tax, social security or employment registers (79%).

When it comes to assessment of impact, a large majority of employer association respondents agree that pay transparency measures: create additional administrative burden on organisations (91%); limit employers' discretion (82%); need to be tailored to size of organisation (82%); and might make it difficult to reward highly performing employees (79%). This assessment finds low levels of support among trade unions. 100% of trade union respondents agree that pay transparency measures: are a powerful tool for equality bodies/labour inspectorates/social partners; contribute to raising awareness on equal pay issues; and help in enforcing the right to equal pay. These impacts find low support among employer associations. 98% of trade unions agree that such measures should be part of wider equal pay policy, a view shared by 52% of employer associations.

In relation to raising awareness about equal pay legal provisions both trade union (96%) and employer association (82%) respondents felt awareness campaigns were the most effective. Employer associations felt an information webpage and online guidebooks would be effective (64%) as their next preferred option. Trade union felt training and guidance on pay reporting and auditing would be effective (96%) as their next preferred option.

Difficulties in implementation of pay transparency emerged in the existing experiences in Member States led to a request for the Commission to develop a definition of work of equal value in this new initiative on pay transparency.

As regards other obstacles in implementation, trade unions agree that measures should be applicable in all sectors with no exceptions or adaptation, as the ultimate goal is to go beyond gender segregation of labour and value female-dominated sectors more, as they are usually less attractive because of lower salaries and career opportunities. Within the group of employers' organisations a resistance to have a uniform measure emerged. Additionally they mention the positive role that collective bargaining may have towards closing the gap. Social partners agree on opposing an initiative dictating on the content of collective bargaining.

In regard to the protection of privacy and the right to access salary information, the majority acknowledge that privacy can be protected with an accurate anonymisation of all pay data disclosed to employees. So this cannot be an obstacle to implementing a measure.

Finally as far as the added value of a European Union initiative employers' organisations argue that salaries are exclusively a national competence while trade unions mostly call for strong initiative from the Commission stating clear obligations can have the necessary impact to help reduce the gender pay gap in Europe. They argue that a measure protecting female workers and working to eliminate long-standing discrimination is long overdue, and to take advantage of this moment of change related to the COVID-19 crisis to build a more inclusive labour market.

Individual Employers

The State of Play

Five respondents (21%) identify that gender pay discrimination may be an issue in their organisation, all of which were companies with at least 250 employees. These 5 respondents reported some improvements in internal policy of their organisation in the last five years.

13 respondents (54%) reported that their organisation had carried out at least one gender pay gap analysis. 10 of these respondents had at least 250 employees and 3 had between 50 and 249 employees.

All respondents reported on the pay information they make available. The level of pay transparency varies according to what part of salary is included.

- 9 respondents provide a salary range at the point of hiring and information on average basic salary by category or position to employees, and 3 to employee representatives, without request.
- 6 respondents provide information on average variable pay components in cash by category of employee or position to employees, and 4 to employee representatives, without request. 7 respondents have this information available on request.
- 4 respondents provide information on average variable pay components in kind by category of employee or position to employees, and 2 to employee representatives, without request. 13 respondents have this information available on request.
- 8 respondents provide information on pay raises by category or position to employees, and 3 to employees' representatives, without request. 8 respondents have this information available on request.

- 11 respondents (46%) reported an estimation of annual costs of this pay reporting: 7 respondents costed it as less than EUR 1,000, 3 between EUR 1,000 and EUR 6,000, and 1 above EUR 10,000.

Further Contributions: International Organisations

State of Play

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) identified a set of initiatives it regards as good practice that it has collected from G7 and EU-based companies that have taken steps to address the gender pay gap, including, in particular, pay transparency measures. These include measures such as job evaluation systems, pay gap assessments and reports, annual assessment of pay equity and gender balance in company leadership, development and use of a pay assessment tool, and steps to ensure pay inequities in the labour market are not imported into an organisation.

Future Measures

The International Labour Office (ILO) highlighted limitations of pay transparency measures that only target large enterprises, as this results in a limited number of workers being covered. It pointed out that legislation on pay transparency should be part of an ecosystem with proactive legislation addressing a range of interconnected issues including: increasing the prevalence of women in leadership; incentivising women to shift to higher-paid jobs; tackling violence and harassment; and redistributing unpaid care work, through improving care and family policies and services.

The ILO emphasised the importance of direct access to information on pay differentials as a means of: ensuring transparency; monitoring the pay gap; and as a basis for remedial action, including through the development of an equal pay plan. It highlighted pay audits as a platform for change in helping to expose pay differentials and reveal the need for structural change in the workplace. It noted that pay audits may be too aggregate to provide sufficient transparency, and the importance of involving trade unions or employee representatives in the process and making the results publicly available. It pointed to a value in: providing practical supports to assist companies to implement measures; making company action plans public; involving employers' and workers' organisations throughout the process; recognising the effective contribution to be made by collective bargaining; and strengthening complaint mechanisms.

Further Contributions: Civil Society Organisations

State of Play

The European Women's Lobby stressed that the concept of work of 'equal value' remains challenging. Criteria have not been provided in law to determine the meaning for work of 'equal value'. This could usefully be a focus for a Europe wide study and would need to be addressed in pay transparency legislation. Make Mothers Matter identify the problematic of ineffective implementation and enforcement of equal pay legislation and identify the issue of definition of 'pay' and of 'work of equal value' as part of the reason for this.

Future Measures

The European Women's Lobby (EWL) pointed to the need to introduce mandatory pay audits in all companies, regardless of size. Smaller companies could be supported with technical assistance and financial support as necessary. It expressed confidence that

GDPR would not be an obstacle to accessing information to ensure pay transparency. It emphasised the need for a focus on recruitment practices and non-discriminatory recruitment policies.

The Business & Professional Women organisation emphasised the need to support companies with up to 500 employees with training and financial and human resources, to create a culture of reporting and auditing on gender issues in the workplace. Training on methodologies should be compulsory in this area for employer associations and trade unions.

Make Mothers Matter underlined that more detailed reporting measures, along with a consistently applied enforcement system, is advisable.

Confederation of Family Organisations in the European Union (COFACE) emphasised that pay transparency measures need to include reference to the EU legislative framework in the area of work and family in order to guarantee that all workers have the same rights. There is a need to take action on the causes of the gender pay gap, including unequal sharing of care duties, unequal take-up of parental leaves, and lack of affordable childcare.

5. Way Forward

A public appetite for tackling this issue can be identified from the consultation. It clearly identifies that an issue of fundamental rights is at stake, pay discrimination. Not all EU citizens enjoy this right fully. While a strong consensus is evidenced for action and for particular types of action, there is no full consensus on this. Respondents from companies/business associations generally did not share the same high level of consensus.

There are options which reach some level of consensus. These include: the obligation to adopt an equal pay plan at organisational level; employers' requirement to report regularly on pay levels and gender pay gaps; employees' right to access information on pay levels and gender pay gaps; and for employers and employees representatives to analyse information about pay levels and gender pay gaps. At the same time, the level of overall consensus evident behind the full range of proposals put forward in the consultation suggests that there is room for some further ambition in responding definitively to this issue that to-date has proven so resistant to change.

Annex 3: Who is affected and how?

1. Practical implications of the initiative

The Initiative has potential implications for national administration, social partners, companies and all workers. Direct costs are mostly on the employer, but in large part non recurrent.

Table 1 summarises the main aspects of legislative options on pay transparency (see next page).

Table 1 – Summary of coverage, support by stakeholders, costs and main impacts of main pay transparency measures

	Preferred option				Other options				
	Option1A-1/1B-1	Option 1B-2	Option 2D-1	Option 2D-2	Option 1A-2	Option 2A	Option 2B	Option 2C-1	Option 2C-2
Measure	Transparency of salary information prior to employment	Right of workers to receive individual information on pay compared to their category upon request	Employer obligation to report on average differences in pay between female and male workers by worker category	Employer obligation to carry out a joint pay assessment <i>if pay reports show pay differences which cannot be justified by objective, gender-neutral factors</i>	Employers' obligation to provide all workers with individual information on pay compared to their category	Equal pay certification	Joint pay assessment	Employer obligation to carry out a joint pay assessment	Employer obligation to report on average differences in pay between female and male workers
Scope	All EU companies	All EU companies	250+ workers	250+ workers	50+ workers	50+ workers	50+ workers	250+ workers	50+ workers
Overall support from consultations	Unions 78% Business 41%	EU citizens 88% Unions 89% Business 18% Member States 59%	EU citizens 78% Business 20% Member States 82%	Unions 95,6% Business 23,5%	EU citizens 88% Unions 89% Business 18% Member States 59%		Unions 95,6% Business 23,5%	Unions 95,6% Business 23,5%	EU citizens 78% Business 20% Member States 82%
Nbr and % of companies impacted	20 million (100%)	20 million (100%)	41 thousand (0,2%)	Depend on number of employers subject to pay assessment	249 thousand (1,1%)	249 thousand (1,1%)	249 thousand (1,1%)	41 thousand (0,2%)	249 thousand (1,1%)
% of workers impacted	100%	100%	33%	Depend on number of employers subject to pay assessment	50%	50%	50%	33%	50%
Cost per employer	Nihil	Depend on number of requests (20EUR/request)	min.379-508 EUR; max.721-890EUR the first year (costs would decrease the following years)	min.1,180-1,724EUR; max.1,911-2,266EUR for the first year (costs might decrease or not be necessary in the following years)	Communication costs: min. 32-135 EUR; max. 53-262 EUR; possible additional cost for grouping workers : 217-1080 EUR	min. 5,791-13,136 EUR; max. 8,301-24,512 EUR	Average 1,800-2,500 EUR for the first year (lower for subsequent assessments).	Average 1,829-2,175 EUR	315-500 EUR yearly (100 EUR in the following years)
Cost per MS	Nihil	negligible	400,000 EUR (82,000 EUR annual)	negligible	negligible	One-off 590,000 EUR (min. 50,000 EUR annual)	negligible	negligible	400,000 EUR (82,000 EUR annual)
Total Cost EU27	Nihil	Depend on number of requests	26-50 million EUR for employers and 10 million EUR for MS	Depend on number of employers subject to pay assessment	70-137 million EUR (+possible costs for grouping workers)	2.2-3.4 billion EUR	636-932 million EUR	90-125 million EUR	131-214 million EUR for the first year (This decreases in the following years to between 20 and 36 million)

2. Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Direct benefits		
Promote employee efficiency	Concerns victims of gender pay discrimination/undervaluation by gender	Not possible to quantify.
Help firms present better image	Potentially all employers applying the measure	Not possible to quantify.
Motivate lower paid groups	Concerns victims of gender pay discrimination/undervaluation by gender – depends on specific workplace situation	Not possible to quantify.
Awareness raising	All workers	Not possible to quantify.
Facilitation aimed at uniform application of key concepts	All workers benefit from knowing that their rights are better protected – potential victims benefit more; Employers redress the bias in pay structures and valuation	Not possible to quantify.
Procedural improvement	Potentially all workers	Not possible to quantify.
Strengthened remedies	Potentially all workers	Not possible to quantify.
Indirect benefits		
Promote employee efficiency	Potentially for all workers but real extent depends on specific situation in the workplace	Not possible to quantify.
Decreasing overall gender pay gap	A potential reduction of 3 p.p. of the <u>unexplained</u> GPG has been taken as reasonable estimate	Lacking precise information on the extent of pay discrimination the potential impact of the measure is difficult to assess
Behavioural change		Not possible to quantify.
Decrease in the at-risk-of-poverty rate	This is a likely impact of a potential increase of previously discriminatory low salaries	From the initial 16.3% on average in the EU27 to around 14.6%, with important heterogeneities across countries and by household types

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Information prior to employment — right to receive information on pay upon request for all workers (Sub-option 1B)	Direct costs	negligible	negligible	Negligible — Overall: not possible to quantify (depends on the number of requests from employees) For employers 250+: negligible (partly covered under measure 2D below). The cost of a single request was estimated at 20 EUR	Negligible — Not possible to quantify (depends on the number of requests from employees)	n.a. — negligible	n.a. — negligible
	Indirect costs	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible
Strengthened Pay reporting for 250+ (Sub-option 2D)	Direct costs	n.a./negligible	n.a./negligible	Overall: 26 - 50 million EUR Per employer: between min. 379-508 and max; 721-890 EUR depending on the size	Expected to decrease in any subsequent exercises	400,000 EUR	82,000 EUR
	Indirect costs	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible
Joint pay assessment in case of unjustified gender pay differences (Sub-option 2D)	Direct costs	n.a./negligible	n.a./negligible	Overall: not possible to quantify (depends on the percentage of employers subject to pay assessment) Per employer: between min. 1,180-1,724 EUR and max. 1,911 and 2,266 EUR depending on size.	Expected to decrease in any subsequent exercises	n.a./negligible	n.a./negligible
	Indirect costs	n.a./negligible	n.a./negligible	Not possible to quantify	Not possible to quantify	n.a./negligible	n.a./negligible

Facilitation and enforcement of the existing legal framework (Option 3)	Direct costs	n.a./negligible	n.a./negligible	Only for employers not yet compliant with the equal pay principle	n.a.	n.a./negligible	n.a./negligible
	Indirect costs	n.a./negligible	n.a./negligible	If non compliant	n.a.	n.a./negligible	n.a./negligible

(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).

3. Coverage of enterprises and workforce by employer threshold applied

	Enterprise - number (by size of company)					Enterprise coverage (by threshold)		
	0 to 9	10+	50+	250+	TOTAL	10+	50+	250+
EU28	22.600.000	1.739.195	283.993	47.810	24.378.356	7,1%	1,2%	0,2%
EU27	20.000.000	1.526.409	249.216	41.491	22.234.234	6,9%	1,1%	0,2%
BE	598.781	33.038	5.243	960	631.819	5,2%	0,8%	0,2%
BG	311.829	28.658	4.965	675	340.487	8,4%	1,5%	0,2%
CZ	978.967	40.806	8.514	1.619	1.019.773	4,0%	0,8%	0,2%
DK	198.166	25.194	4.470	693	223.360	11,3%	2,0%	0,3%
DE	2.055.093	449.277	73.773	12.139	2.504.371	17,9%	2,9%	0,5%
EE	69.069	6.719	1.198	169	75.788	8,9%	1,6%	0,2%
IE	243.956	20.778	3.565	546	264.734	7,8%	1,3%	0,2%
EL	688.217	27.920	2.932	388	719.492	3,9%	0,4%	0,1%
ES	2.512.494	148.932	19.369	3.362	2.661.427	5,6%	0,7%	0,1%
FR	2.659.644	124.349	20.921	4.059	2.783.993	4,5%	0,8%	0,1%
HR	135.797	13.527	2.277	416	149.324	9,1%	1,5%	0,3%
IT	3.517.178	194.095	23.063	3.249	3.712.043	5,2%	0,6%	0,1%
CY	43.896	3.409	545	80	52.657	6,5%	1,0%	0,2%
LV	103.316	9.551	1.632	194	112.867	8,5%	1,4%	0,2%
LT	188.376	14.146	2.616	354	202.522	7,0%	1,3%	0,2%
LU	29.471	4.270	839	156	33.741	12,7%	2,5%	0,5%
HU	536.779	33.226	5.451	935	570.005	5,8%	1,0%	0,2%
MT	26.419	2.196	399	62	28.615	7,7%	1,4%	0,2%
NL	1.108.718	51.297	10.245	1.639	1.160.015	4,4%	0,9%	0,1%
AT	289.874	42.881	6.551	1.127	332.755	12,9%	2,0%	0,3%
PL	1.672.365	71.920	18.965	3.464	1.744.285	4,1%	1,1%	0,2%
PT	826.908	41.171	6.365	883	868.079	4,7%	0,7%	0,1%
RO	431.910	53.305	9.776	1.663	485.215	11,0%	2,0%	0,3%
SI	134.614	7.539	1.415	233	142.153	5,3%	1,0%	0,2%
SK	457.439	14.252	3.098	581	471.691	3,0%	0,7%	0,1%
FI	210.392	20.487	3.542	596	230.879	8,9%	1,5%	0,3%
SE	673.255	38.889	6.558	1.031	712.144	5,5%	0,9%	0,1%
UK	1.931.336	212.786	34.777	6.319	2.144.122	9,9%	1,6%	0,3%

Source: Own calculations based on Eurostat - Annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [sbs_sc_sca_r2] – 2017 or latest available or estimate

	Persons employed - number (by size of company)					Employees coverage (by threshold)		
	0 to 9	10+	50+	250+	TOTAL	10+	50+	250+
EU28	41.412.183	103.817.204	74.895.363	50.629.946	145.229.381	71%	52%	35%
EU27	37.519.121	87.774.384	62.599.778	41.372.323	125.293.500	70%	50%	33%
BE	990.906	1.881.042	1.335.604	904.881	2.871.948	65%	47%	32%
BG	599.212	1.398.428	929.386	506.340	1.997.640	70%	47%	25%
CZ	1.135.839	2.586.951	1.940.544	1.234.241	3.722.789	69%	52%	33%
DK	343.768	1.405.825	949.689	595.198	1.749.593	80%	54%	34%
DE	5.684.119	24.084.212	16.974.114	10.955.838	29.768.330	81%	57%	37%
EE	138.956	293.859	188.101	91.412	432.815	68%	43%	21%
IE	404.280	1.052.111	718.314	424.577	1.456.391	72%	49%	29%
EL	1.137.741	960.782	527.077	287.972	2.343.485	41%	22%	12%
ES	4.569.295	7.535.644	5.045.340	3.412.672	12.104.938	62%	42%	28%
FR	4.010.604	11.711.646	9.338.792	7.331.573	15.722.250	74%	59%	47%
HR	304.326	720.158	505.901	316.868	1.024.484	70%	49%	31%
IT	6.496.451	8.055.387	5.021.082	3.108.862	14.894.596	54%	34%	21%
CY	79.206	146.192	89.802	42.891	248.711	59%	36%	17%
LV	211.818	429.483	273.943	133.097	641.301	67%	43%	21%
LT	280.194	690.488	462.604	240.695	970.682	71%	48%	25%
LU	48.456	226.717	159.505	90.897	275.173	82%	58%	33%
HU	896.754	1.818.105	1.294.692	845.206	2.714.859	67%	48%	31%
MT	44.635	99.654	65.020	33.179	148.277	67%	44%	22%
NL	1.642.367	4.150.148	3.079.839	2.021.325	5.792.516	72%	53%	35%
AT	714.956	2.078.127	1.400.732	865.209	2.850.280	73%	49%	30%
PL	3.481.387	5.752.561	4.618.052	2.994.835	9.233.948	62%	50%	32%
PT	1.321.714	1.957.189		1.289.142	3.278.903	60%		39%
RO	921.117	3.099.004	2.235.795	1.410.818	4.020.121	77%	56%	35%
SI	219.106	409.070	292.845	172.556	628.176	65%	47%	27%
SK	675.515	932.406	708.125	450.861	1.607.921	58%	44%	28%
FI	354.924	1.132.914	796.089	511.995	1.487.837	76%	54%	34%
SE	792.516	2.513.020	1.779.581	1.155.531	3.305.536	76%	54%	35%
UK	3.893.062	16.042.820	12.295.585	9.257.623	19.935.881	80%	62%	46%

Source: Own calculations based on Eurostat - Annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [sbs_sc_sca_r2] – 2017 or latest available or estimate

Annex 4: Analytical methods

1. In-depth analysis of the gender pay gap using SES microdata

Data set – The analyses were conducted based on the Structure of Earnings Survey for the reference year 2014 (EU-SES). The objective of the survey is to provide accurate and harmonised data on earnings in EU Member States and Candidate Countries, for policymaking and research purposes. The 2014 SES gives detailed and comparable information on relationships between the level of remuneration and individual characteristics of employees and their employers. The SES collects the earnings actually received by an employee of a business in the reference month and year. The information collected relates to the earnings paid to each ‘job holder’. It does not cover earnings by the same employee elsewhere in a second or third job. The SES results are produced in accordance with the relevant international classification systems. The main classifications used in this study are: (a) Economic activity (industry): Industrial classification of economic activities within the European Communities (NACE Rev. 2) – Results disseminated at the 2 digit level; (b) Occupation: International Standard Classification of Occupations (ISCO-08) – Results disseminated at the 2 digit level, and (c) Educational Level: International Standard Classification of Education (ISCED 2011) – Results disseminated in groupings as specified by EUROSTAT (basic education, secondary education, tertiary education of up to 4 years length and tertiary of more than 4 years length). All results are based on the scientific-use file (SUF) of SES 2014.3 Information is available for 22 EU countries – Belgium (BE), Bulgaria (BG), Cyprus (CY), Czechia (CZ), Germany (DE), Estonia (EE), Spain (ES), Finland (FI), France (FR), Hungary (HU), Italy (IT), Lithuania (LT), Luxembourg (LU), Latvia (LV), Malta (MT), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Sweden (SE), Slovenia (SI), Slovakia (SK) – and Norway (NO) and the United Kingdom (UK).

Sample description - The sample regularly includes enterprises which are from sections C to O of the Statistical Classification of Economic Activities in the European Community (commonly referred to as NACE). However, public administration is excluded in some countries, leading us to drop employees from this sector in our analysis. Moreover, we exclude apprentices from the analysis. Given these restrictions, we are left with 24 countries (BE, BG, CY, CZ, DE, EE, ES, FI, FR, HU, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK) and 8 831 219 individual observations (4 303 411 men and 4 527 808 women).

Data analysis - The analysis involved looking at gender pay gaps reported on the country level, for the whole workforce (univariate analyses) and for selected subgroups within countries (bivariate analyses). Bivariate relationships are likely to mask notable within-group heterogeneity. Multivariate analysis isolates the contributions of single factors to the overall gender pay gap, controlling for the contributions of other (statistically measurable)

factors while univariate and bivariate analyses offer an helpful first overview. The three complementary aspects are all relevant for policy implications. The results are presented in *Annex 5, section 2*.

2. *Assessment of legal proposal – methodology*

Three assessment criteria guided the ex-ante evaluation of the envisaged transparency measures: a) *effectiveness* (degree to which the options are likely to meet the initiative's objectives), b) *efficiency* (costs benefits and their distribution across stakeholders) and c) *coherence* (with other main EU policies/legislation). The assessment took into account social and economic²⁰⁸ impacts for different stakeholder groups and employer sizes. The necessary data and information was collected through an extensive literature review, interviews with stakeholders at the EU level, several analyses of data on the gender pay gap from the Eurostat Structure of Earnings Survey (SES), and country studies in all 27 EU member states, as well as specific data collection in Iceland, Norway, and Australia.

The effectiveness and institutional coherence have been explored using the conceptual framework of 'feasibilities' as developed by De Wispelaere and Noguera²⁰⁹. These 'feasibilities' are: Firstly, *strategic feasibility* (i.e. political actors support for a given modality); secondly, *institutional feasibility* (i.e. whether for the policy option to achieve its stated aims the existing policy framework would first need to be modified (coherence)); third *psychological feasibility* (i.e. general public support); and finally, *behavioural feasibility* (i.e. whether the behavioural incentives the policy would establish align with aims or undermine the viability of the policy (effectiveness)). These four types of political feasibility are interlinked with specific national constraints and agency that different actors possess in relation to novel policy development.

This framework allows to consider the coherence and effectiveness of policy measures in the context of heterogeneous availability of data and thus systematically analyse the constraints, possibilities and impacts at the national level. The constraints are considered both in a prospective way, i.e. the probability of adoption of the policy, and retrospectively, i.e. potential issues affecting the functioning and resilience of the possible policy. The feasibility framework therefore provides a means of structuring the experts' analyses in a variety of contexts and states of national advancement in relation to pay transparency. Experts were thus able to assess pay transparency modalities in a systematic manner even with the limited development of such measures in some national contexts and relative absence of empirical evidence. Finally, experts also offered insights on the interaction between the feasibilities at the national level and on the likely behaviours of

²⁰⁸ No environmental impacts are expected.

²⁰⁹ De Wispelaere, J., Noguera, J. A., 'On the Political Feasibility of Universal Basic Income' in Caputo, K., *Basic Income Guarantee and Politics. International Experiences and Perspectives on the Viability of Income Guarantee*, 2012.

different key stakeholders – workers, managers and HRM professionals, social partners and equality bodies and labour inspectorates.

Before the actual assessment of different options, a **baseline** against which the impacts of those options could be assessed was developed. In democratic societies strategic feasibility depends on psychological feasibility – that is, political actors and general public support. This psychological feasibility also helps inform the assessment of the baseline scenario at the Member State level in the case of no additional EU-level measures or actions. In addition, the Baseline scenario was elaborated by exploring the existing situation in Member States and their responses to the 2014 Recommendations as well as the economic environment and in particular, the potential consequences of the COVID crisis.

Drawing upon the Baseline Scenario each expert was required to score the overall desirability of a each modality and its overall feasibility (in relation to the national context) on a common grid. Further, each expert scored the coherence of the measure using the institutional and psychological feasibility for each of the stakeholders (8 measures in total). Similarly, in addition to the qualitative comments on the likely consequences of pay transparency measures, the effectiveness was scored by the expert for each of the stakeholder groups (4 measures). Expert scores varied from 1 to 5 low to high and this scoring system was used to construct indicators based on the averages across stakeholder groups both within and across countries. These indicators summarise the overall expert assessment for each measure and are reported below in relation to each of the Option 4 measures.

As for the legal coherence, the **legal analysis** of measures addressing the lack of transparency focused on coherence with EU law and selected instruments of international law. It also inventorised obstacles as well as existing practices at the national level. Legal coherence was assessed through a literature review and review of legal cases in particular in order to inventorise obstacles as well as existing practices at the national level. When assessing measures related to the lack of legal clarity, the legal analysis focused on the legal concepts of ‘equal pay’, ‘equal work’, ‘equal value’ and ‘comparator’. A separate analysis was conducted for compliance with the GDPR.

Procedural measures were assessed from a legal point of view. Their assessment looked at coherence with existing practice and legislation while identifying obstacles to the implementation. This assessment was based on literature review, existing case law, and experience of stakeholders concerned by enforcement of the equal pay principle.

Finally, **costs and benefits** included compliance and administrative costs for companies and economic and social impacts for all relevant stakeholder groups. Specific attention was paid to a possible increase of compliance and administrative cost burdens on employers, as the Public Consultation supporting this study shows this to be one of the major arguments brought by businesses forward against introducing pay transparency

measures. This assessment was also supported by a review of costs of existing measures carried out by Eurofound for this Impact Assessment (Eurofound, 2020). The results of the multiple perspectives – legal, economic, institutional – are integrated to provide a final overall assessment for each option.

3. *Methodology for computing direct costs for companies*

The discussed above, the starting point of the analysis was a qualitative assessment of each measure looking at its feasibility, legal analysis and cost-benefit assessment²¹⁰, stakeholders' views gathered through the consultation process, studies by the Commission and the results of evaluations and impact assessments carried out in individual Member States. The computation was limited to pay transparency measures, since from the scoping exercise they were assessed as being those most likely to bear costs for employers, and bring biggest changes compared to the current situation in Member States. From a methodological point of view they are also the estimate most likely to be quantified with some degree of reliability.

A fully fledged cost-benefit analysis should in principle entail:

- The mapping of all direct and indirect costs and benefits likely generated by the intervention (including distinguishing between one-off and recurring costs) for all stakeholders and in line with the intervention logic of each policy option
- A suitable timeframe to discount the flow of costs and benefits over time

Such quantification exercises are very challenging with reference to this initiative, given the great level of uncertainty surrounding the actual materialisation of costs and benefits of the different policy options (especially indirect/second order ones), as well as their size and direction. This is also acknowledged in the Better Regulation framework which states that within impact assessments 'all relevant impacts should be assessed qualitatively and quantitatively whenever possible (i.e. if they are susceptible of being quantitatively estimated through a sound methodology and if the required data exists and can be collected at a proportionate cost.). Quantification of impacts will not be possible in all cases [...].'²¹¹ Detailed calculations were performed narrowing down the scope to only to cover the direct costs to firms. This focus ensures greater reliability of estimates. Indirect, second-order effects such as changes to the wage-setting curve as well as corrective actions needed to ensure equal pay for work of equal value are assumed away.

²¹⁰ Costs have been estimated by extrapolating the costs of similar measure introduced in Member States taking into account an assessment of the extent to which the effects observed in one Member State can also be expected to materialise in other Member States.

²¹¹ European Commission, *Better Regulation Guidelines*, 2017 (Chapter III 'Guidelines on impact assessment', section 2.5.3 'Assess the most significant impacts'). Available at <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>.

The final outcome of this exercise are the estimates reported in the following tables. They include the total direct costs by Member States and in the total EU-27 calculated based on disaggregated information and costs by firm-size (small, medium, large according to Eurostat definitions). Total direct costs are presented in the form of range of values to better reflect the variability in the forecasts whenever necessary.

The point of departure for the exercise is the equation below. It presents the Total costs calculated according to the formula:

$$\left(\sum_{i=1}^n C_i * N_i \right) * A$$

Where

C = Hourly cost of work inputs needed for fulfilling the possible option requirements by one firm of a given size in a given Member State

N = Hours of work needed for each inputs to fulfill the possible requirements by one firm of a given size n in a given Member State

A = the total number of firms existing in each Member State for each size

i = the number of the considered inputs

To estimate the direct costs, the following steps were carried out:

1. **A mapping of direct costs**, identified based on information from a few Member States which have already implemented similar measures and then transformed into EU level averages (in the form of ranges whenever necessary). To this end, current experiences e.g. with the pay reports, pay audits etc in some Member States and their costs were reviewed in detail to ensure that only the costs which are directly entailed by the ('direct costs') Directive are attributed to it across the different policy options. This means that we excluded any additional burden likely generated by the way in which Member States have implemented, say, a pay report measure which does not necessarily stem from the text of the policy options discussed in this study and their modalities. All costs have been harmonised as hours of work necessary to carry out the different activities. This ensures a comparatively homogeneous basis for consistent cross-country estimations.
2. **A customisation of costs by firm size**. In general, unit costs are assumed to grow along with firm size given the increasing complexity of the phenomena under observation, but at a decreasing pace (decreasing marginal costs), in line with the standardisation of procedures and materialisation of economies of scale. The starting point for this differentiation remains that of existing experiences with the few Member States having already experimented measures which resemble those suggested by the different policy options. The fact that enterprises of different sizes

have been interviewed allow to construct a progression of costs throughout different size classes.

3. **A customisation of costs at the Member States level**, according to three main elements:

- a. **Additionality of the costs that might be generated in each Member State**, that is, the actual additional costs entailed to comply with the Directive's requirements with respect to the existing framework in each Member State. The key consideration here is that baselines differ among Member States. For instance, in Italy there is an obligation to produce pay transparency reports that is line with Sub-option 2B, but it is limited to companies with over 100 employees. In such case, the cost of complying is zero for all firms except those with less than 100 employees.
- b. **Differences in labour costs**: labour costs might differ substantially in different member states, and so might the cost of specific services (e.g. pay audits). As the main driver of these costs is essentially the hourly cost of labour, we used such information²¹² to monetise the cost of the hours of work needed to comply with the directive requirements across the different policy options.
- c. **The complexity of the labour law and payroll arrangements**: this is proxied, especially for costs linked to in-depth audit and analyses, by the international tax competitiveness index, and particularly the average hours needed for businesses to comply with Labour taxes in 2018²¹³.

4. **Aggregation of costs at the Member State Level**. EU level averages of costs by policy option at the firm level have then been calculated by firm size and contextual Member State factors as per point 2 and 3. These averages have been multiplied by the number of firms per each size class in each Member State.²¹⁴

From the outset, a distinction was made between one-off costs and recurring ones.

This distinction resulted into two different tables being produced:

- Costs for the first year (one-off costs + recurring costs for the first year), which include the typical familiarisation, training, software adaptation and design costs
- Cost for the subsequent years (only recurring costs).

The results of the calculations are presented in *Annex 5, section 11*.

²¹² Eurostat, Labour cost levels by NACE Rev. 2 activity [LC_LCI_LEV], Labour cost for LCI (compensation of employees plus taxes minus subsidies), Services of the business economy. This figure covers both HR specialists as well as external consultants.

²¹³ Based on PwC's 'paying taxes 2018' component of the 'Doing Business' report from the World Bank. See <https://taxfoundation.org/labor-tax-complexity-europe-2019/>

²¹⁴ The most consistent dataset from Eurostat (Annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [SBS_SC_SCA_R2]) is available for 2017 (several missing data for 2018), hence this was the main database used in the estimations.

4. Estimated impacts on household income distribution, inequality, poverty risk and government budgets based on the EUROMOD microsimulation model

The estimates of the impacts of reducing the adjusted gender pay gap (AGPG) on household income distribution, inequality, poverty risk and on government budgets of reducing the AGPG are obtained with the EU-microsimulation model EUROMOD model. EUROMOD is the European Union tax-benefit microsimulation model (see <https://euromod-web.jrc.ec.europa.eu/about/what-is-euromod>). EUROMOD combines country-specific coded policy rules with representative household microdata (mainly from the European Union Statistics on Income and Living Conditions database, EU-SILC 2018 for this exercise, which refers to 2017 incomes). and its underlying microdata based on EU-SILC 2018 (which refers to 2017 incomes).

EUROMOD allows the simulation of tax-benefit reforms and provides their overnight fiscal impact as well as indicators on their distributional impact, by household or individual groups according to socio-economic variables of interest. The model generates disposable individual and household incomes, applying countries' tax codes and calculating theoretical benefit entitlements and tax liabilities based on the original market income (including gross wages) reported by households in EU SILC. The model employs information on countries' tax codes and on household characteristics and economic circumstances to simulate tax liabilities and cash benefit entitlements. The model simulations take into account the role played by each tax-benefit instrument, their possible interactions, and generate the disposable (i.e. income after taxes and cash benefits) household²¹⁵ income. Therefore, the model results are particularly suitable for the analysis of the distributional, inequality and poverty impact of reforms, by household or by individual groups according to socio-economic variables of interest. EUROMOD simulations also provide estimations of the budgetary effects. Cross-country comparability is enabled by coding the policy systems of the EU Member States according to a common framework.

It should be kept in mind that EUROMOD simulations do not incorporate any behavioural effects that may also affect the fiscal as well as the distributional outcome of a reform. Thus, the model is static and delivers the first-round effects ('the morning-after effect'). Changing hourly wages may have labour supply and labour demand effects which are not captured in this modelling framework.

The impact of a rise in the gross hourly wage of women can affect disposable income and distributional outcomes in different ways and by a different magnitude, depending on

²¹⁵ The main income inequality and poverty indicators which are used to evaluate the impact of reforms are generally based on equivalised household disposable income, considering economies of scale in consumption within the household: equivalised income refers to the fact that household members are made equivalent by weighting them according to their age, using the so-called modified OECD equivalence scale.

several factors, such as: i) the tax benefit system (personal income tax progressivity, joint-taxation considering pooled taxable income at the couple level, means-tested benefits, etc.), ii) the relative position of working women through the income distribution (which depend also on other households members income), iii) household composition.

The analysis performed assumes the closing of the adjusted gender pay gap (AGPG), i.e. considering the difference in wages between women and men of different subgroups of the working population. Groups are defined by occupation, sector, education and working experience (36 groups are considered to account for sample size representativity). The narrowing of the gap is done by keeping men's wages unaltered and lifting up women's wages to the new target gross hourly wage which (ex-ante) closes the gap by the intended amount per group. Notably, wages of women who in the starting point earn more than the new reference wage are not reduced. For the subgroup of women affected by the increased wages (those below the reference wage at the starting point), the reduction of the AGPG nears the targeted amounts. However, this implies an overall generous total final effect of changes in women's gross earnings leads in many cases to an ex-post closing of the overall gender pay gap larger than the targeted one. .

The simulations are carried out for a reduction of the AGPG by 3pp, and alternatively by 1 and 5 pp, on account of the pay transparency measures. The results are provided for the whole EU as well as per country. . The results of the simulated scenarios of AGPG reduction are compared against the baseline (i.e. the policy systems in place in Member States in 2019).

Main results: Rising women's gross hourly wages in order to close the gap would lead to an **overall increase of total gross earnings of 6.9% on average at the EU level**, and a **reduction of inequality in market income** (i.e. income before taxes and benefits) **for all Member States**. Due to the interaction of the tax-benefit systems, the **reduction of inequality in disposable income** (i.e. income after taxes and benefits) would occur **for 18 Member States**.

The **at-risk-of-poverty rate would drop** from the initial 16.3% on average in the EU27 to around 14.6%, with important heterogeneities across countries and by household types. The risk of poverty rate would be **mostly reduced for the single parent households, which are mostly women**.

The reduction of the gender pay gap would generate a **positive budgetary impact due to a rise in government revenues** (higher collection of income taxes and social insurance contributions) **and a small decline in social (cash) transfers** (mainly explained by a reduction of means-tested cash benefits). At the EU population-weighted average level, the shrinking of the gap would lead to a rise in government revenues from direct taxes and social contributions of about 7.5%, while the reduction of social transfers (cash benefits) would be of approximately 0.4%.

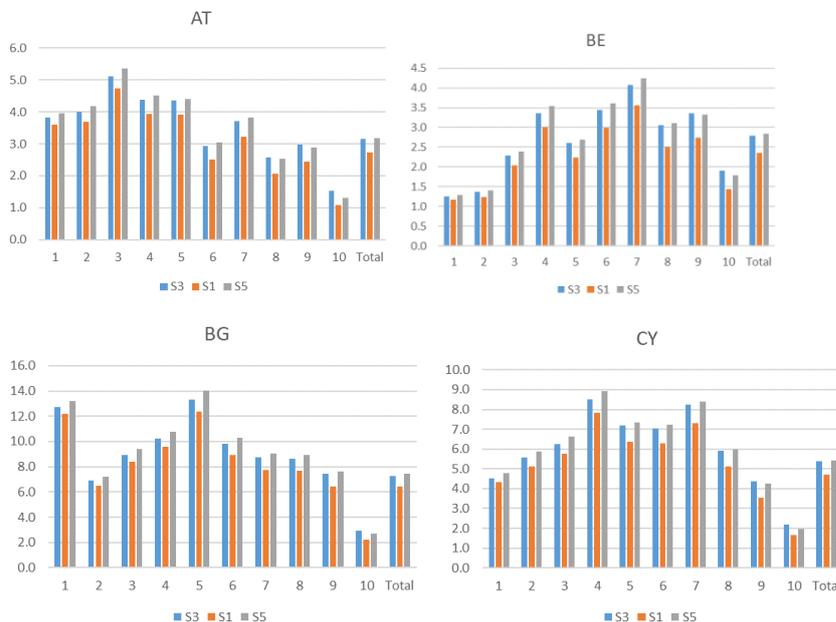
The results substantially differ across Member States. The growth in total market incomes and government revenues is estimated to range from around 4% to 14%. It would be particularly high in some countries, such as BG, EE, LT and LV (in between 10% and 14%), whereas it would be less pronounced for EL, NL, MT and IT (about 5%).

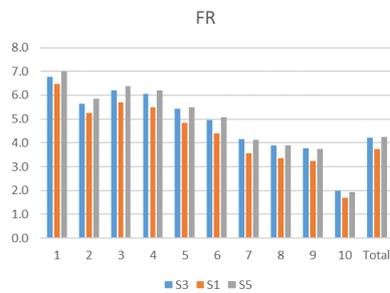
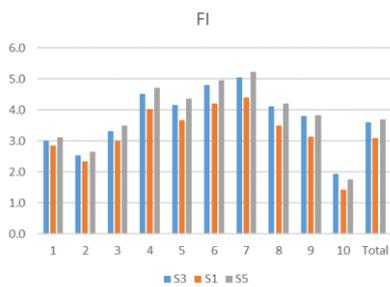
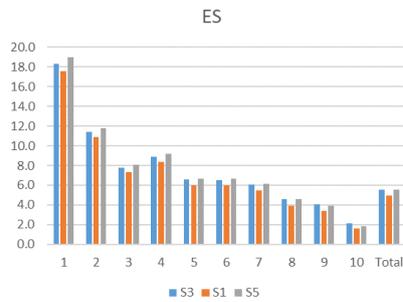
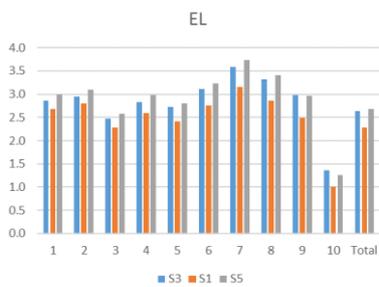
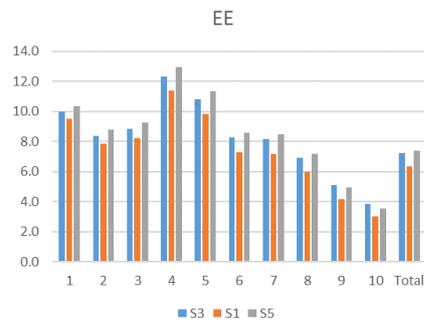
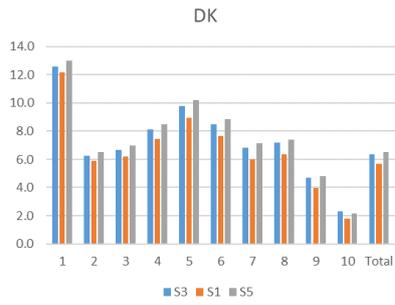
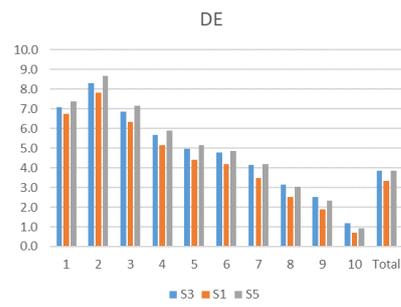
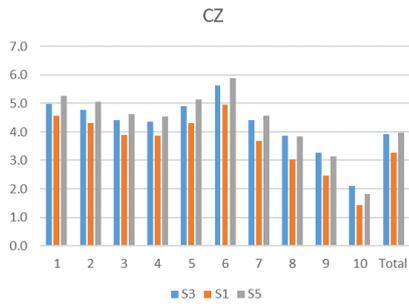
Sensitivity analysis: overall, the larger the reduction of the gap, the larger the effects, although in general the gains from moving to the 5 pp closing of the gap scenario are rather similar to the 3pp closing scenario (especially for reduction of poverty rates).

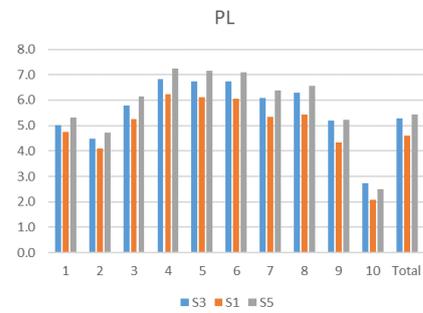
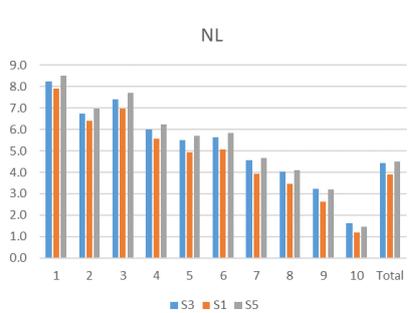
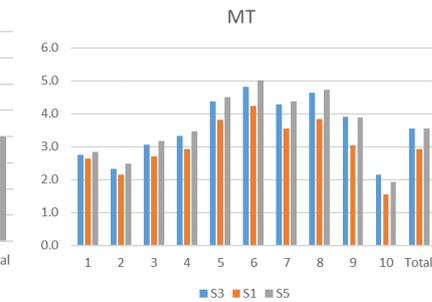
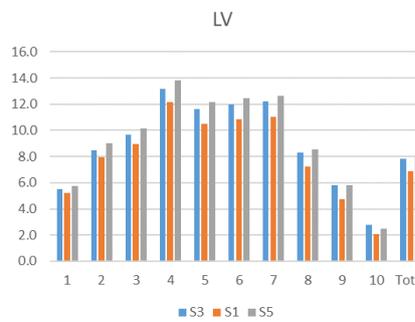
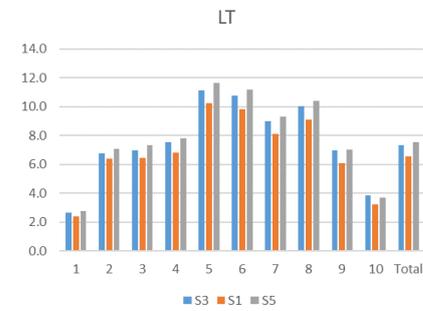
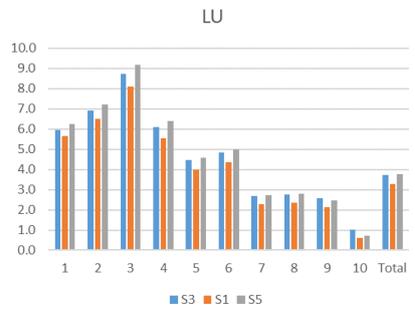
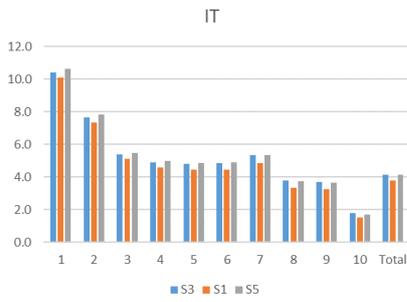
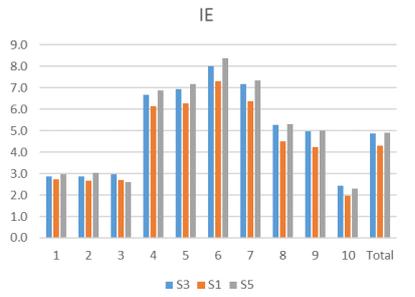
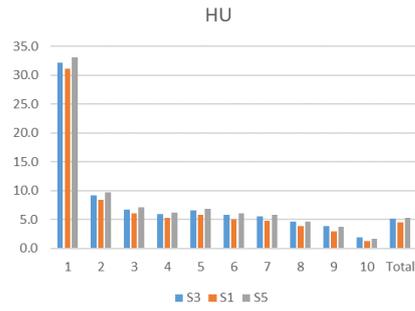
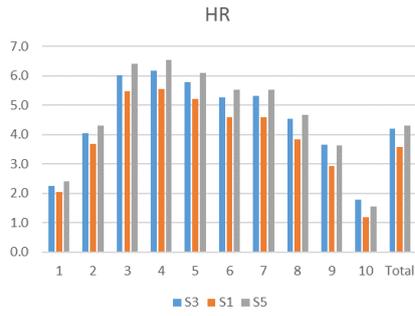
4.1 Country specific results

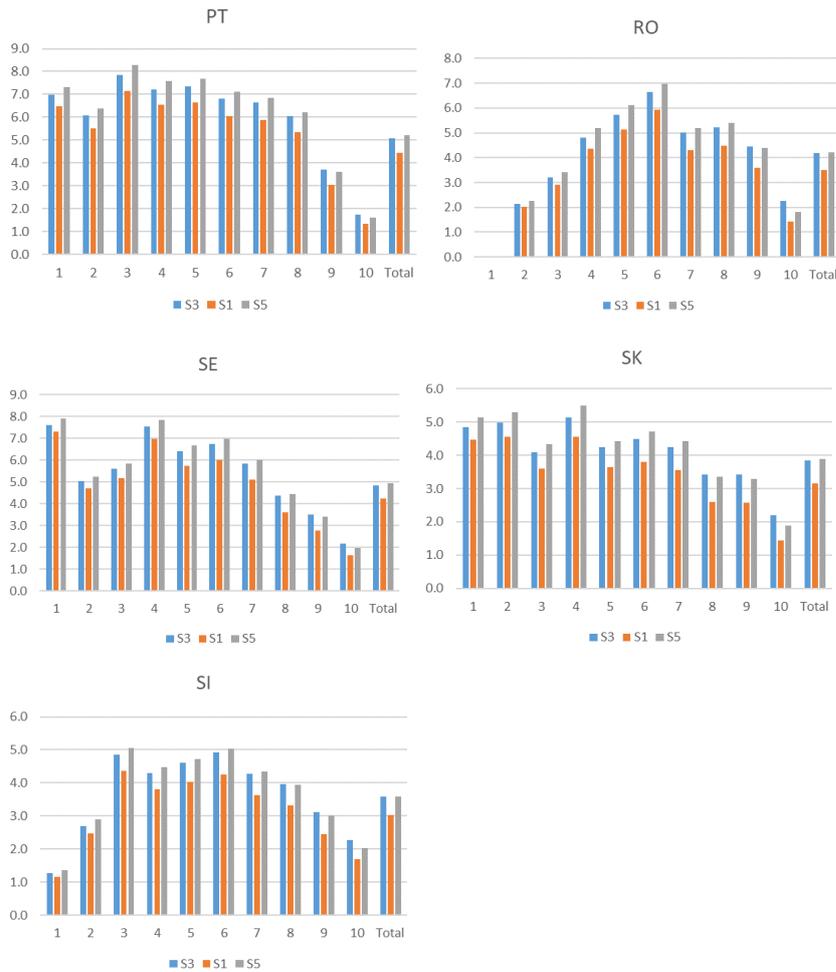
The rise in women gross hourly wages that would close the AGPG by 1, 3 or 5pp would increase both market and household disposable incomes. Figure 1 below depicts the estimated changes in the equivalised disposable income by deciles for each Member State. Changes in disposable incomes are expected to be clearly progressive for some countries - lower deciles would benefit more than the top ones - (e.g. ES, FR, HU, SE). In some others countries the change follows an inverted U shape, where middle incomes would gain more from the change (e.g. CY, HR, LT, RO,). In BE, the impact is expected more left skewed, affecting incomes at the top more than at the bottom.

Figure 1. Change in equivalised household disposable income for three scenarios of AGPG reduction (i.e. closing the adjusted gender pay gap by 1, 3, 5 pp), by decile







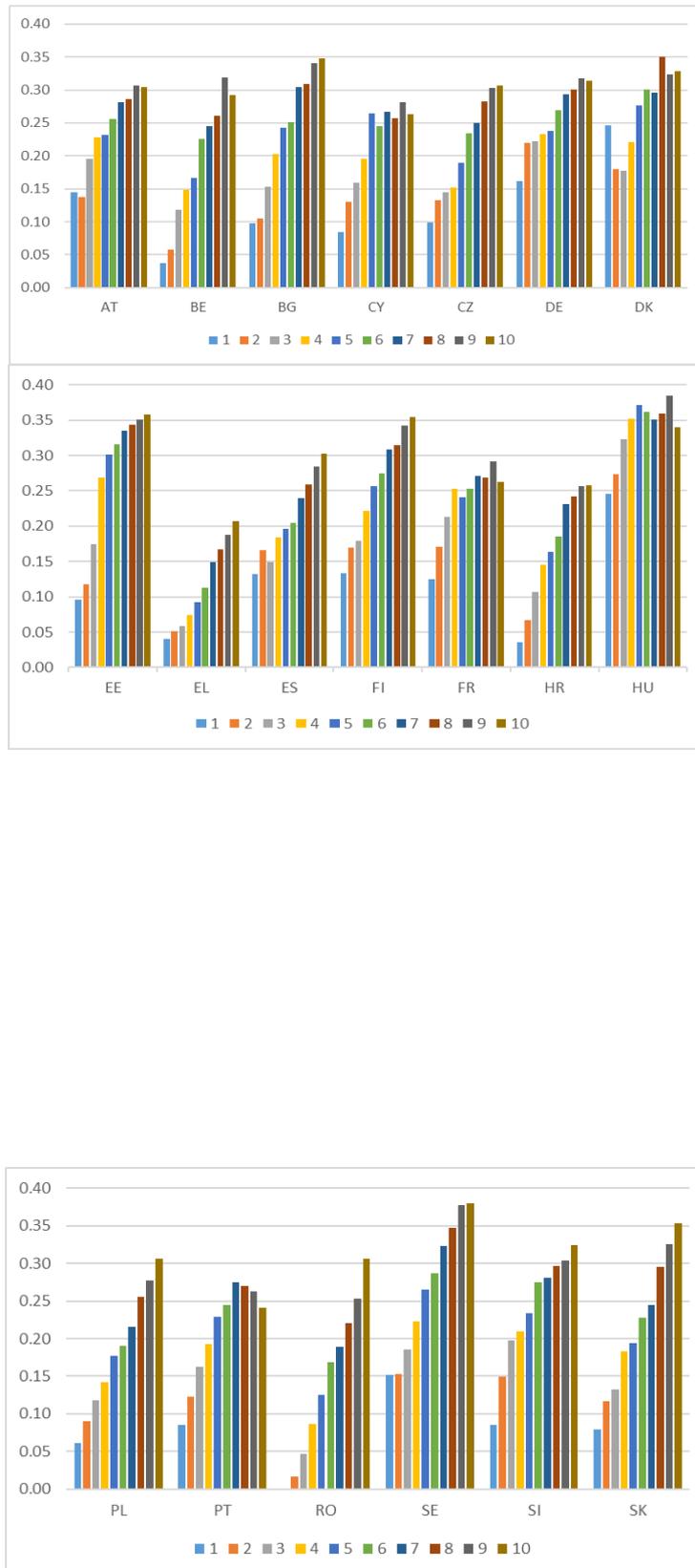


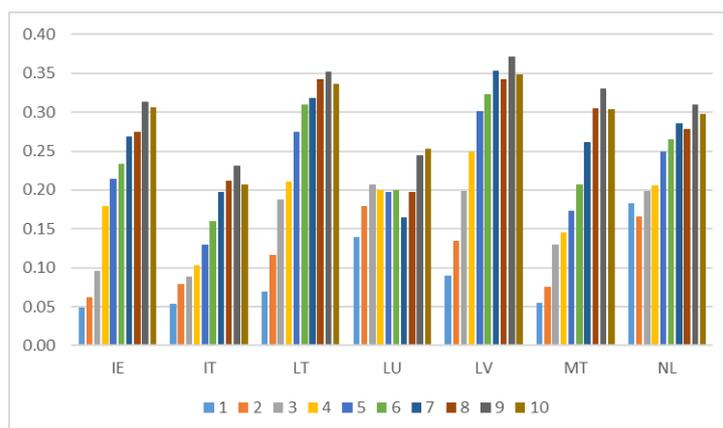
Note: Plots show the mean annual equivalised disposable income by decile (% change with respect to the baseline). The scaling of y-axis differs across countries. Source: European Commission, Joint Research Centre, based on the EUROMOD model.

The extent to which changes in market income (driven by the simulated changes in gross hourly wages of some women) would be translated into changes in household disposable income depends on several issues.

First, on the initial distribution of wages and gender gaps across income deciles, and shares of working women in each decile. For example, in some countries, when closing the AGPG by 3 pp, incomes of women concentrated in the middle of the income distribution may be changed relatively more than at the top (and vice versa). The share of employed women across the income distribution helps explain some of the country differences (see Figure 6): a stronger effect in the lower part of the income distribution is expected in countries in which the share of women employed in the first decile is higher (e.g. DK, HU) compared to countries where this share is lower (e.g. BE, RO, IE).

Figure 2. Share of employed women by income deciles





Source: European Commission, Joint Research Centre, based on the EUROMOD model.

Secondly, the structure of personal income taxes (e.g., progressivity of the personal income tax, existence of different allowances, tax credits, joint assessment of taxable income, etc.) and the interactions within the tax-benefit system also impact the translation of market income changes into disposable income changes.

Finally, some other things, such as household composition, might also play a role, as incomes used for inequality measures are assessed at the household level, i.e. accounting for the number of household members living in a household.

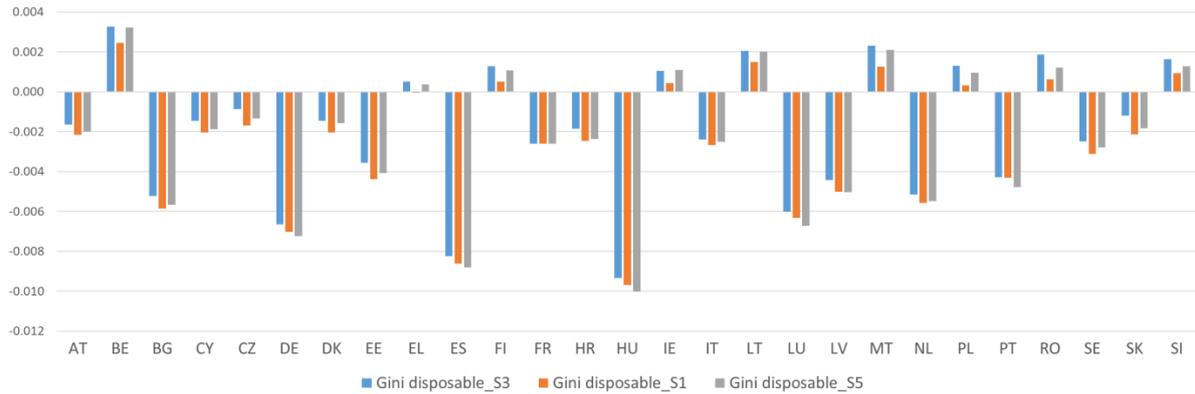
Because of the higher gross earnings of women when the AGPG narrows, **market income inequality** -measured by the Gini coefficient - **would be reduced for all countries for all scenarios** (Figure 3). However, this inequality-reducing effect in market income **would not always translate into lower inequality in disposable income**. The Gini coefficient of equivalised disposable income would be reduced in 18 out of 27 EU Member States (Figure 4). According to the simulations, the disposable income inequality is expected to increase, although to a different extent depending on the scenario, in BE, EL, FI, IE, LT, MT, PL, RO and SI. These inequality results were expected given the distributional tables shown above, as in a country like BE the upper tail of the income distribution benefited from the changes more than the lower, while all other mentioned countries showed an inverted U shape (middle-top deciles benefit more than the lower ones).

Figure 3. Change in market income inequality (Gini coefficient) for three scenarios of AGPG reduction



Source: European Commission, Joint Research Centre, based on the EUROMOD model.

Figure 4. Change in disposable income inequality (Gini coefficient) for three scenarios of AGPG reduction

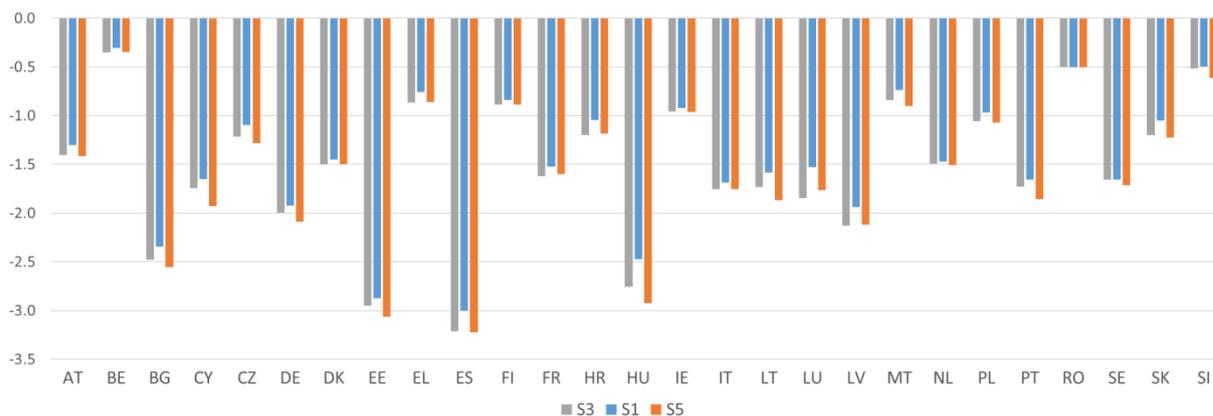


Source: European Commission, Joint Research Centre, based on the EUROMOD model.

The impact on inequality of the different scenarios of AGPG reduction does not seem to be linear: the scenarios simulating 1 and 5pp reduction of the AGPG would often lead to higher changes in the Gini inequality of disposable income than the 3 pp scenario.

The closing of the AGPG by 1, 3 or 5 pp would lead to a reduction in the at-risk-of poverty rate for all countries, more so for EE, ES and HU. The countries with the lowest decline in poverty risk would be BE, EL, FI, IE, MT and RO (Figure 5). As a rule, the more the AGPG is closed (or the more women’s gross hourly earnings increase), the more the poverty risk would be reduced. For some countries, moving from 1 to 3 pp closing of the AGPG would strengthen the effect of poverty risk reduction; but there would be little change when going from 3 to 5 pp of AGPG narrowing (e.g., AT, BE, FR, IE, IT, LV and PL). This means that a small increase would suffice to lift up women above the poverty line, while further increases in gross earnings would matter for their financial situation but not for the poverty indicator. In addition, the impact on poverty rates depends on how many working women fall below the poverty line. Most often, people below the poverty line have no or little market income. For instance, in RO the change in at-risk-of poverty rates would always be small or remain unchanged: this is because, as seen from the distributional tables, the lowest decile would not be affected by the changes, as there are virtually no working women in the first decile (and only 2 and 5% in the second and third deciles), (see Figure 6 below showing the shares of working women across deciles).

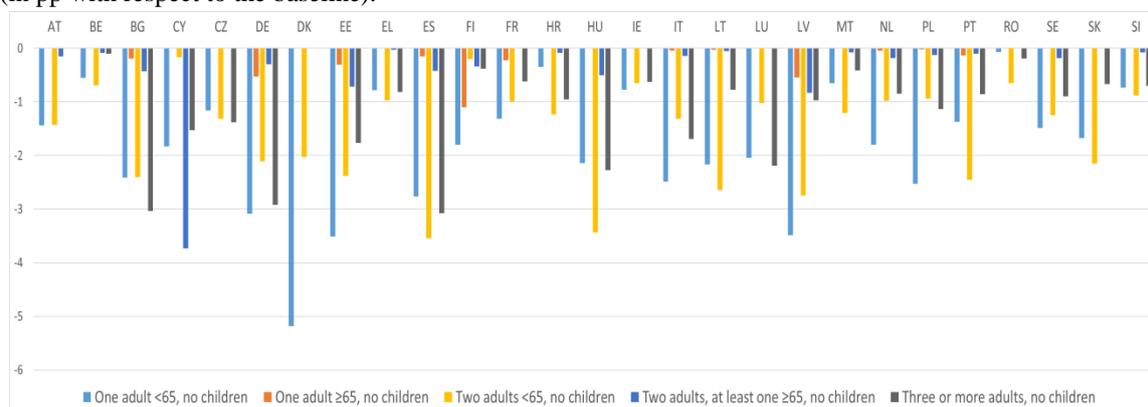
Figure 5. Change in the at-risk-of poverty rates for three scenarios of AGPG reduction

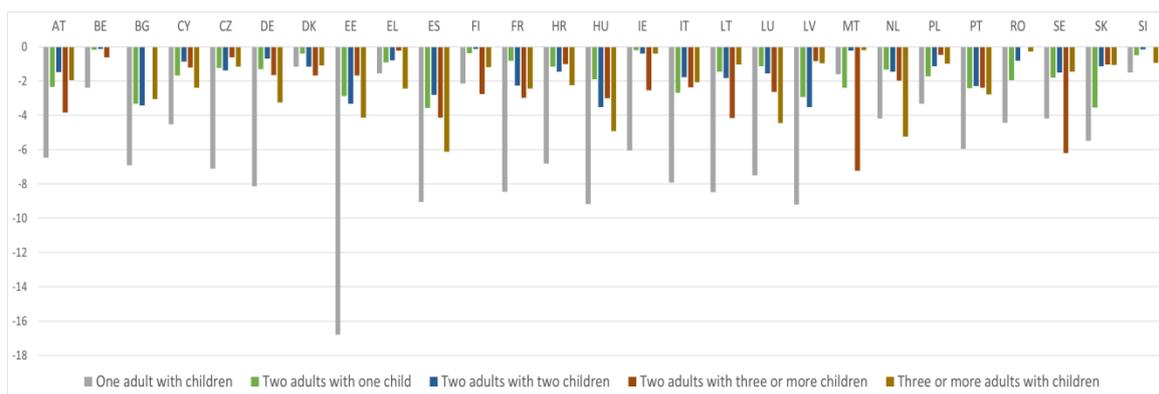


Note: The at risk of poverty rate is the share of people with an equivalised disposable income (after taxes and social transfers) below the at-risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income. The poverty line is fixed/anchored in the baseline.
Source: European Commission, Joint Research Centre, based on the EUROMOD model.

The overall change in the at-risk-of poverty rates hides important variations by household type. Figure 6 provides estimates for households with and without children separately. The increased wages of working women would have almost no effect for elderly households as their main source of income is pension benefits, which remain unchanged. On the contrary, **single parent households – that most often are women – would benefit the most.** The poverty is expected to be reduced by 8 pp in DE, ES, HU, LT, LV and even by 16 pp in EE. The other two groups that would experience a significant decrease in poverty risk are two adult with three or more children households (decrease by more than 6 pp in MT, SE) and three or more adults with children (drop of 5 or more pp in ES, HU, NL). DK stands out as a country where the poverty would be reduced more for single adults below 65 than for any household with children.

Figure 6. Change in the at-risk-of poverty rates for the 3pp AGPG reduction scenario, by household type (in pp with respect to the baseline).





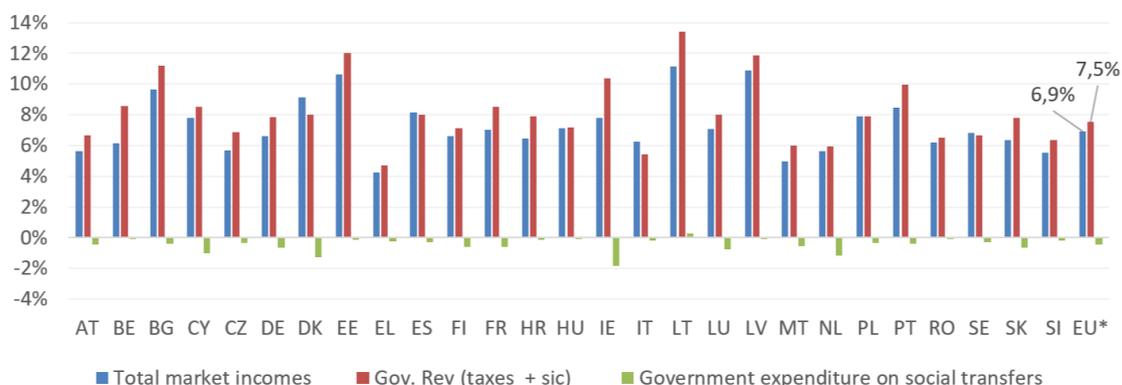
Note: The poverty line is fixed in the baseline. The first graph depicts changes for different households without children and the second for households with children. The scaling of y-axis differs for the two graphs.
 Source: European Commission, Joint Research Centre, based on the EUROMOD model.

1.2 Budgetary effects

Estimates obtained with EUROMOD simulations suggest that **the reduction of the AGPG would generate a positive budgetary impact, due to a rise in government revenues (higher revenues from the personal income taxes and social insurance contributions) and a small decline in social (cash) transfers.** Note that this is an expected outcome that results from the methodological approach taken in the simulations to reduce the AGPG, ie women’s gross hourly wages are only increased for some women (lower earning women), and the distribution of men’s earnings is left unchanged. *Different results would be obtained if the approach to close the gender pay gap was different.*

Figure 7 shows how **changes in market income and government budgets would differ substantially across Member States.** The growth in total market incomes and government revenues would range from around 4% to 14%. It is particularly high in some countries, such as BG, EE, LT and LV (in between 10% and 14%), whereas the impact would be smaller in EL, NL, MT and IT (around 5%).

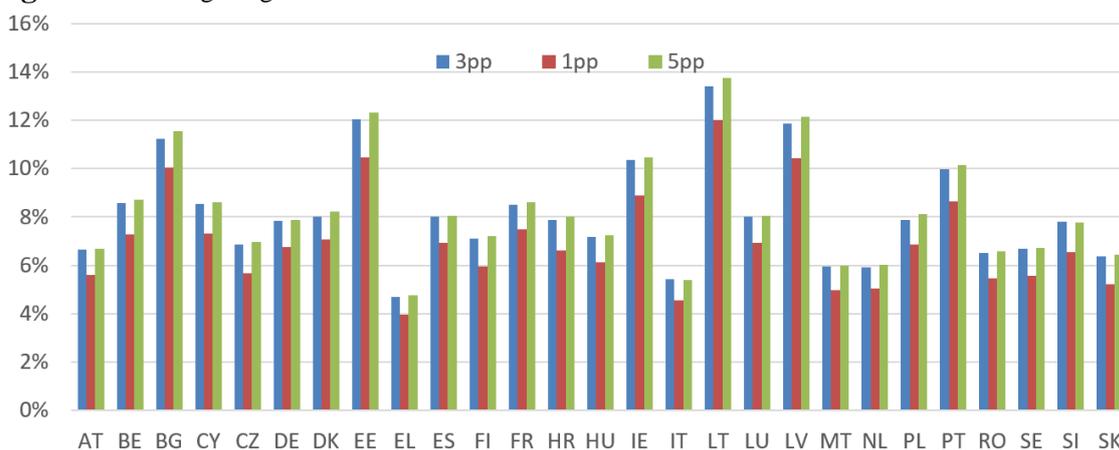
Figure 7. Changes in market income, government revenues and expenditures for the 3 pp AGPG reduction scenario



Note: EU* is the weighted average for the EU 27 countries (weights: population size).
 Source: European Commission, Joint Research Centre, based on the EUROMOD model.

At the EU population-weighted average, the scenario of 1 pp reduction would imply a rise in government revenues from direct taxes and social insurance contributions of 6.5% while the scenario of 5 pp would suggest a rise of 7.6% (which is very close to the one estimated for the 3 pp scenario, of 7.5%).

Figure 8. % change in government revenues for the three scenarios of AGPG reeduction



Note: Government revenues from direct personal income taxes and social insurance contributions.
 Source: European Commission, Joint Research Centre, based on the EUROMOD model

Comparing results for the alternative scenarios (Figure 8), it seems that closing the AGPG by either 1 or 3 pp would have rather different impact for government revenues (the more the gap closes, the larger the positive impact on revenues). But that is not the case for the further reduction of the AGPG by 5 pp, as government revenues seem to stabilize.

5. *Behavioural experiment*

In order to investigate the behavioural implications of transparency on pay levels, the Competence Centre on Behavioural Insights (hereinafter CCBI - part of the Foresight, Modelling, Behavioural Insights & Design for Policy Unit JRC I.2) is undertaking a behavioural study aimed at identifying the effects of different policy options to support the proper enforcement of the equal pay principle.

Following a preliminary literature review on gender pay transparency, reporting key behavioural insights into gender pay transparency policy with an attempt to assess the potential impact on labour market outcomes, the CCBI, with the support of an external contractor (The Behaviouralist Ltd) is currently implementing an incentivized online experiment.

In terms of geographical scope, the experiment is being conducted in three EU member states: Poland, Spain, and Germany. Further, two samples within each member state are being recruited: a representative sample of the employed adult population, and a sample of HR professionals and managers. The first sample, representing employees in the experiment, will be representative in terms of age, gender, and region. The second sample, representing employers in the experiment, will be drawn from a cross-section of sectors and companies of different sizes and will be balanced in terms of gender.

Employees and employers will form a company and interact within the experimental design. In particular, employers will know the gender and have incomplete information about the potential performance of prospective employees. Employers will also set the wages and career promotions under a budgetary constraint. Employees will work for their employers, deciding the level of effort they wish to exert, and receive a wage in exchange.

The experimental methodology translates the envisaged policy options into the following experimental conditions:

The devised labour market experiment translates policy options in the following treatments:

- **Option 0: No change of policy** (baseline scenario).
- **Option 1: Right of employees to information on pay levels.** Employees receive information on their wage and role, how many man and women work for the employer, and the average wage overall and by gender, but only for their role. **This information could be provided automatically [a] OR only upon the request of employees [b].** In the experiment the request for information has a monetary cost, representing the real life effort required by the employee to request the information to the employer.
- **Option 2: Reporting on Pay.** Employees receive information on their wage and role, how many man and women work in the employer, and the average wage overall and by gender, for every role in the employer.

The study aims at investigating the following outcome variables:

- Average level of gender pay discrimination under each treatment (employer's behaviour);
- Employees productivity and inferred effort;
- Employees gathering of the information (request or search for available info); and
- Employee's (costly) action against employer (contentiousness).

At the end of the experiment a post-experimental survey is administered to respondents. The post-experimental survey consists of a set of closed general socio-demographic questions, not sensitive in nature (i.e. gender, age, employment status, hours worked per week, education). Furthermore, a number of behavioural measures, such as risk preferences, fairness, reciprocity, and intrinsic motivation, are included. Lastly, the elicitation of beliefs on one's own and others' performance, as well as others' strategic behaviour, is incorporated by means of incentivised introspection.

Annex 5: Initiative specific annex

1. Employers' rationality and discrimination

A common misconception is the assumption that, given the perfect rationality of employers and their intent to maximize profit, the possibility to pay women (or other groups) less than men for the same work (though illegal) would result in crowding out the male labour force. While this might be the case in low paying female segregated sectors, and going beyond the simple consideration that salary might not be the one and only reason to hire someone, from an economic point of view, discrimination is difficult to rationalize: it is costly for companies and workers alike because by restricting the pool of choices results in less productive or more expensive employees to be employed. It should therefore not exist. But given that it does exist, economists have struggled to explain it. Beyond the simple issue of 'bounded rationality', i.e. the idea that rational behaviour must be necessarily compatible with the access to information and the computational capacities in a specific environment,²¹⁶ economists have identified two major reasons for discrimination: personal prejudice and statistical discrimination. The first occurs when employers tend to hire only from certain groups, employees prefer to work with specific co-workers (e.g. some white male workers might quit employers who employ women or people with a minority background), or customers prefer certain groups (e.g. trusting more a white male doctor).

Statistical discrimination occurs in turn due to a lack of information. When trying to predict the potential productivity of job applicants, employers rely on information not related to productivity or that does not apply to a specific worker. Broadly speaking this can be quite common: for instance, employers may rely on a prestigious degree for their hiring decisions whilst that degree does not necessarily ensure higher productivity. In the case of gender, the expectation that motherhood will negatively influence job attachment on the part of women is a common example. These findings have been confirmed by experimental economics. The evidence indicates that employers have a specific gender preference for certain jobs, especially for stereotypical jobs. Kuhn and Shen (2013) found that employers' relative gender preference for employees occupation- and job-specific and more strongly related to the employers' preferred age, height, and beauty of the potential employee than to their job skill levels in China.²¹⁷

There is experimental evidence as regards hiring discrimination suggesting that it is due to incorrect beliefs about the women's ability (Reuben E. et al., How stereotypes impair

²¹⁶ See: Simon, H. A., 'A Behavioral Model of Rational Choice', *Quarterly Journal of Economics*, February 1955, 69(1), pp. 99-118 also as developed looking at 'systematic biases that separate the beliefs that people have and the choices they make from the optimal beliefs and choices assumed in rational-agent models'. Kahneman, D., 'Maps of Bounded Rationality: Psychology for Behavioral Economics', *The American Economic Review*, 93(5), 2003.

²¹⁷ See Kuhn, P. & Shen, K., 'Gender Discrimination in Job Ads: Evidence From China', *The quarterly Journal of Economics*, 2003, pp. 287-336.

women's careers in science. Proceedings of the National Academy of Sciences of the United States of America. 111. 10.1073/pnas.1314788111). Other studies point out that hiring discrimination is not specifically about stereotypes, but employers are simply less willing to hire a worker from a group that performs worse on average, even when this group is defined by a non-stereotypical characteristic. (See Coffman, K. et al. 'The Role of Beliefs in Driving Gender Discrimination.' Harvard Business School Working Paper, No. 18-054, December 2017).

2. Statistical analysis of the gender pay gap

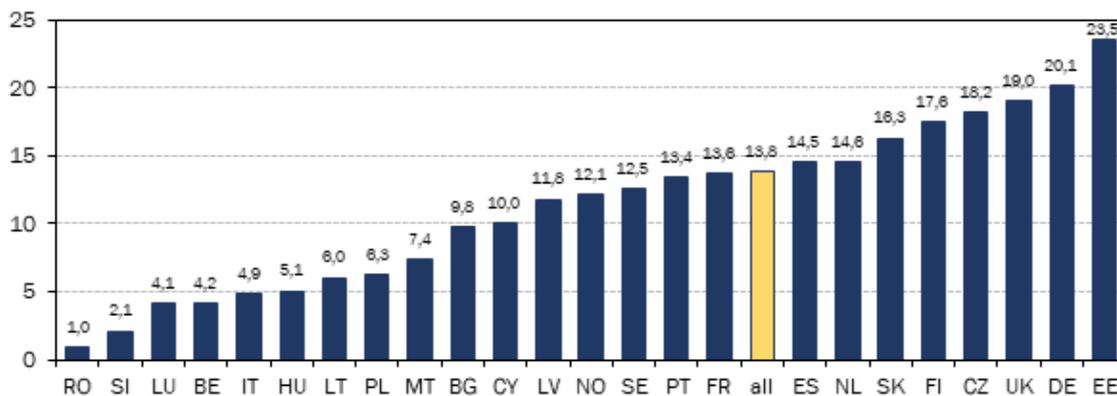
Figure 1 depicts the gaps in 22 EU countries plus NO and the UK. For these 24 countries, a mean gender pay gap of 13.8% can be observed; 9 countries (including the UK) range above; and 15 countries (including NO) range below this cross-country average.

In 2014, the **overall gender pay gap** varied substantially across European countries, ranging from 1% in RO to 23.5% in EE.

CZ, DE, EE, FI and UK are the 'Top Five' with the highest overall gaps of over 17%. In six countries (BE, HU, IT, LU, RO, SI), the gap is quite low; it ranges below or around 5%.

In between the two poles, a group of 5 countries show rather modest gaps between 6% and 10% (BG, CY, LT, PL and MT), while the remaining group of 8 countries (ES, FR, LV, NL, NO, PT, SE and SK) features notable gaps between 11% and 16%.

Figure 1: Unadjusted gender pay gaps per country (in %, 2014)

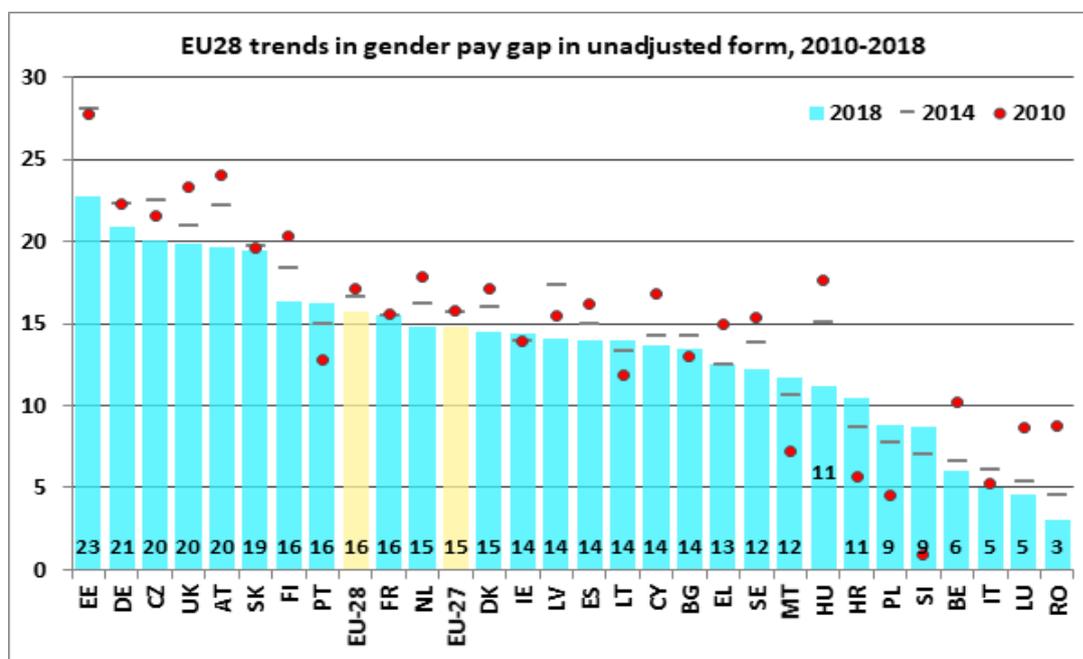


Sources: SES (2014), HWWI (2020).

The gender pay gap in the EU has been declining but at a very slow pace (Figure 2). The pattern of change has also been variable among member states: between 2010 and 2014, 13 of the EU27 countries reduced their gaps, but 11 increased them, whilst three registered no change, and from 2014 to 2018 most countries (18) reduced their gaps, one remained constant, and nine widened them.

The discussion of GPG trends is however not straightforward, as it also depends on employment patterns and on the structure of the labour force participation. In the financial crisis, gender pay gaps in some contexts narrowed, as men’s earnings were pushed down more than women’s (Karamessini and Rubery 2013). Likewise, trends in the Covid recovery may be difficult to predict as it is possible that more lower paid women may lose employment, thereby ‘improving’ the gender pay gap.

Figure 2: Trends in the unadjusted gender pay gap 2010-2018



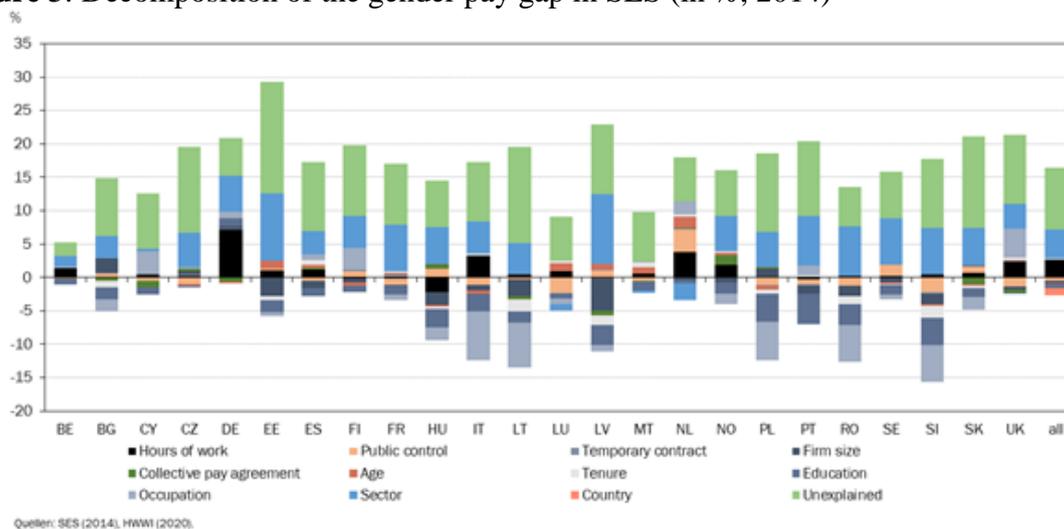
Note: 2018 values for Greece, Ireland, and Italy are not available. The values for IE and IT under column 2018 are from 2017 and the value for Greece from 2014

Source: Eurostat- structure of earnings survey methodology [earn_gr_gpr2]

The factors included as potential explanations for gender pay gaps include personal characteristics such as education and age, but also job related characteristics such as occupation, hours of work, temporary contract, tenure, and coverage by a collective agreement. Also included are employer characteristics such as sector, firm size, and the type of financial control (public or private) over the employer. The unexplained part shows the residual portion that cannot be explained with statistically observable factors. It comprises the wage differences arising from characteristics not included in the statistics, as well as different remunerations of women and men for the same (un)observed characteristics, including remuneration on the basis of sex (see Boll and Lagemann, 2018, for an interpretation).

Figure 3 shows the degree to which each factor contributes to the GPG. Factors may have a negative contribution if the data suggest women should earn more than men, for example if women’s educational level is higher.

Figure 3: Decomposition of the gender pay gap in SES (in %, 2014)



The unexplained gap constitutes the **highest portion of the overall gap in 21 out of 24 countries under investigation - the exceptions being DE, BE and NL**. Within the explained part, sector affiliation and hours of work are the most important characteristics that drive the gaps, referring to the EU average. Other factors (education, age, tenure, occupation (as associated with sector), temporary contracts, public control, firm size and collective pay agreements) are of only minor importance even on the country level. Eight countries had in fact negative explained (HU, IT, LT, LU, MT, PL, RO, SI) reflecting the fact that due to gender differences in statistically observable characteristics, women would earn higher wages than men in CEE countries. In these cases the unadjusted gender pay gap is in fact less than the unexplained gap.

To a certain extent it can be said that **higher overall gaps are associated with higher largest gaps on the sectoral level**. Among the Top 6 countries with the highest overall pay gaps are 4 (CZ, DE, EE and SK) whose highest pay gaps at sector level are also among the Top 6 across countries.

EU countries differ significantly with respect to **pay gap dispersion across sectors**. While gaps are rather compressed in the Nordic countries, they show a great diversity in other countries. The Top 3 sectors with the largest, second largest and third largest gender pay gap per country are (Table 1):

- Administrative and Support Service Activities: this sector occurs most frequently as the one with the largest gender pay gap;
- the Information and Communication sector;
- Manufacturing.

The fourth position is shared by two sectors, namely ‘Transportation and Storage’, and ‘Professional, Scientific and Technical Activities’.

Table 1: Top 3 sectors* with the highest gender pay gaps per country

	Largest gap	2nd largest gap	3rd largest gap
BE	N	R, S	C
BG	H, J, N	E	C
CY	C	K, M, N	M, Q
CZ	H, J, N	C	C, J
DE	K, M	M	C
EE	H, J, N	C	C
ES	R, S	C	N
FI	K, M, N	M, Q	N
FR	C	N	R, S
HU	C	C	C
IT	M, Q	R, S	C
LT	H, J, N	C	M, Q
LU	N	K, M, Q	I
LV	H, J, N	D, E	N
MT	M, Q	P	I
NL	C	H, J, N	K, M, N
NO	R, S	K, M, N	C
PL	C	H, J, N	C
PT	N	C	R, S
RO	C, J	C	C
SE	K, M, N	H, J, N	R, S
SI	C	R, S	C
SK	H, J, N	C	C
UK	K, M, N	P	F

* Sections to which the divisions with the largest, second largest and third largest gender pay gap refer to (based on NACE rev. 2); Sources: SES 2014.

As Table 1 shows, among sections with the largest gender pay gap on the country level, section N ‘Administrative and Support Service Activities’ is most frequently named (12 counts), followed by sections J ‘Information and Communication’ and C ‘Manufacturing’ (7 counts each). Sections H ‘Transportation and Storage’ and M ‘Professional, Scientific and Technical Activities’ rank fourth (6 counts each). Section K ‘Financial and Insurance Activities’ (4 counts), S ‘Other Service Activities’ and Q ‘Human Health and Social Work Activities’ follow with 2 counts each. For the second and third largest gaps, the same sections prove to be relevant. Additionally, sections E ‘Water Supply, Sewerage, Waste Management and Remediation Activities’, D ‘Electricity, Gas, Steam and Air Conditioning Supply’, P ‘Education’, F ‘Construction’ and I ‘Accommodation and Food Service Activities’ were named a few times (maximum 2 counts each). Further, section H is among the Top 5 sections with the highest gaps in both studies.

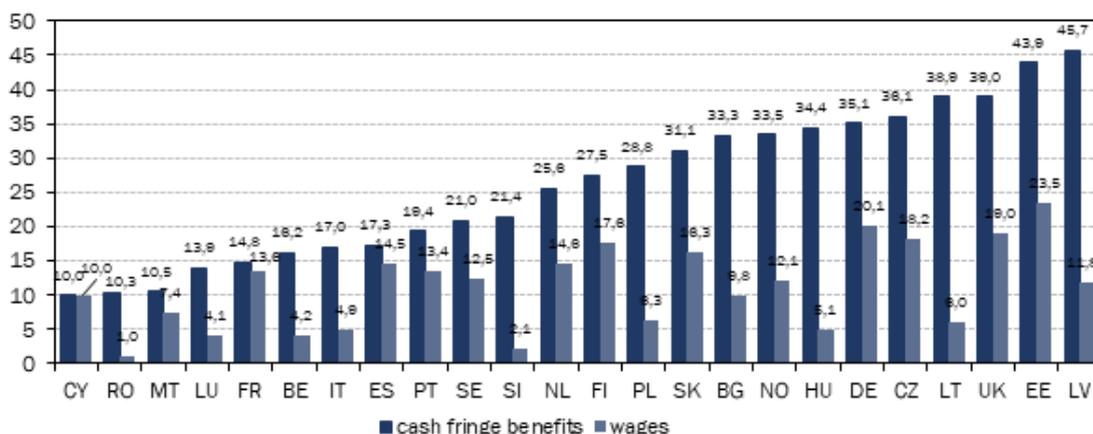
The decomposition of pay gaps at sectoral level shows that the **unexplained part** is a major **driver of sector-specific gaps**. A second major driver is **occupation**. Since occupation and sector have high correlation, usually the association of occupation with the pay gap is often not visible in statistical analysis. The analysis conducted for this

section however shows occupation to be highly relevant for the gender pay differential within sectors.

The **participation of women and men in cash bonus payments** shows a geographical divide. There are 11 countries where more men than women receive monetary fringe benefits (9 within the EU: BE, DE, ES, FI, FR, NL, RO, SE, SK and 2 outside the EU: NO and UK). Interestingly, only one Eastern European country (RO) is among those countries where men are advantaged in access to bonuses. The much higher participation of men in cash fringe benefits in the Nordic countries NO and SE as well as the UK is striking. In 11 other countries, the opposite holds true (BG, CY, CZ, EE, HU, IT, LT, LV, MT, PL and SI). Countries where women are advantaged belong to Eastern and Southern Europe without exception. In two countries (LU and PT), gender parity in participation is observed. The level of participation differs tremendously between countries. While only 9% to 19% of women and men receive cash bonuses in SE, this applies to 98% to 99% in IT.

However, for those women and men who receive monetary fringe benefits, gender gaps in monetary fringe benefits are much higher than gender gaps in (regular) wages (Figure 4). Only in CY and FR is the magnitude of gaps roughly the same. In 22 countries, the magnitude is 1.5 to 10 times higher for fringe gaps than for wage gaps. Analogous to wages, gender gaps in monetary fringe benefits also vary notably across countries, although the country order is different.

Figure 4: Unadjusted gender pay gaps in terms of monetary fringe benefits (in %)



Sources: SES (2014), HWWI (2020).

Further analysis shows provides some more detailed insights:

- Among graduates, cash bonus gaps tend to be even larger than wage gaps (this applies to EE, ES, LT and LV, with the only exception being RO). At the same time, cash bonus gaps seem to be less important than wage gaps among the medium educated groups (as shown in the BG, HU, MT, NL, NO, SE and UK) and low educated groups (as shown in IT, LU, MT, NL and SI). Note that this information does not relate to magnitude in absolute numbers, but to the relative size of gaps across educational groups.

- The very young (aged 14 to 19) tend to be less affected by gender gaps in terms of cash bonuses compared to gender wage gaps. On the contrary, older employees aged 50 or older seem to be more affected by cash bonus gaps compared to wage gaps.
- Occupational patterns in cash bonus payments resemble those in wages throughout countries. However, in half of the countries, negative bonus gaps are higher than wage gaps and/or the number of occupations in which women have a lead over men in terms of bonuses is higher than the respective number of occupations where this is the case for wages.

3. Overview of existing pay transparency measures in the Member States

The following overview is based on information mainly gathered through various studies and reports of the European Equality Law Network, the study carried out for this impact assessment, and the 2020 Eurofound report. It inevitably presents a simplified overview of what can be complex measures at national level, focussing only on elements considered relevant for the present initiative and without taking into account the broad variety of modalities related to the implementation of the measures concerned.

Table 2: Overview of existing pay transparency measures in the Member States

	Right/obligation in place in some form	
	Right/obligation in place in some form	Right/obligation not in place
Right to request information on pay ²¹⁸	CY, DE, ES, FI, IE, LV, PT, NL, RO, SE	AT, BE, BG, CZ, EE, EL, FR, HR, HU, IT, LT, LU, MT, NL, PL, SI, SK
Pay Reporting	AT, BE, DE, DK, ES, FR, IT, LT, LU, NL, PT	CZ, FI, EE, HR, IE, BG, CY, EL, HU, LV, MT, PL, RO, SE, SI, SK
Joint Pay Assessment (or Pay audit)	BE, DK, DE, ES, FI, FR, PT, SE	AT, BG, CY, CZ, EE, EL, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, SI, SK

²¹⁸ Including through a third party.

4. *Theoretical outputs/outcomes/impacts of pay transparency*

Only few studies, mostly related to the Anglo-Saxon world, explore the impact of pay transparency laws on employer and employee behaviour and outcomes and even less directly focus on the gender wage gap. Nevertheless, some studies find statistically significant reductions of around 2-3 p.p. of the reference gender wage gap due to pay transparency measures²¹⁹.

The literature review shows that the effect of transparency measures on the gender pay gap and firm outcomes is ultimately an empirical question. The effects depend on the kind of measure that is taken, the involved sanctions and their enforcement, the targeted group of workers, the institutional and labour market settings in the respective country, and the time window that is taken into consideration.

The expected effects can be tentatively summarised as follows:

First, pay transparency should decrease the scope for taste-based discrimination. Since firms exhibiting large pay gaps are liable to suffer reputational damage in the eyes of consumers, investors and potential employees employers who ‘prefer’ to pay more a specific group suffer economic damages (Bryson, A., et al., 2020²²⁰).

Second, pay transparency arguably decreases the scope for statistical discrimination. Transparent mechanisms of wage setting will highlight wage determinant, e.g. tenure, type of education, skills particularly for managerial positions and, in the long term will see behavioural changes to unfold.

Third, pay transparency may combat wage discrimination in monopsonistic labour markets and improve overall efficiency in labor markets. Information on wages that effectively circulates among peer workers can reveal monopolistic profits. Further, due to the fact that in monopsonistic markets, it is labour supply, not demand, that defines effective employment, female employment deductions in the course of reform-driven wage increases should be circumvented (depending on the structure of the local labour market). This is because in general pay transparency should allow smarter job searching and improve the quality of job matches, and therefore it may lead to shorter unemployment spells for workers. Moreover, information about job application processes improves the **diversity of applicant** pools by boosting in particular the number of female job applicants.

Fourth, fairer compensation should in principle increase women’s attachment to the labour market in multiple dimensions (employment, hours of work and managerial positions).

²¹⁹ For instance, Baker et al. (2019) find a statistically significant 2 p.p. reduction in the gender gap linked to the public sector salary disclosure laws on university faculty salaries in Canada (corresponding to a 30% reduction. Vaccaro (2018) finds that a reduction of the mean unexplained wage gap in companies with at least 50 workers declined by 3.5 p.p. after the introduction of the anti-discriminatory policy Logib introduced in Switzerland in 2006. For the UK, Manning (1996) identified a rise in the relative earnings of women due to the introduction of the UK Equal Pay Act of 1970. Bennedsen et al. (2019) find a 2 p.p. reduction of the gender pay gap (corresponding to a 13% reduction) due to a legislation change in Denmark in 2006 with average decline more pronounced at the bottom and the middle of the wage distribution. Finally, Kim (2015) finds that wages are higher for women in states that have outlawed pay secrecy, especially among women with college or graduate degrees. They experience an earnings increase by 3%, reducing the gender wage gap by 5% to 15%.

²²⁰ Bryson, A., et al., ‘[A Short History of the Gender Wage Gap in Britain](#)’, IZA, 2020.

Theoretically, the design of the measures must include: full and anonymous disclosure, information on pay criteria and automatic disclosure. To reach the goal to reduce the gender wage gap, pay transparency measures have to be accompanied by policies that support women's awareness on the matter and, second, equip them with better negotiation skills, as well as strong enforcement mechanisms. Moreover, if well-designed, pay transparency measures could support other measures promoting gender equality in the labour market such as female quotas for board members or measures to better reconcile work and family tasks.

Finally, potential costs for companies are expected to be low and decreasing after initial years. Eurofound carried out a review on these aspects that confirms this expectation based on a review among its network and targeted interviews.

5. Behavioural effects of pay transparency

By favouring unawareness, pay opacity influences employees behaviour e.g. as for salary/rise negotiations and acceptance of a lower wage, also depending on their risk aversion (Eckel and Shurchkov, 2018²²¹, Kim, 2015; Burn and Kettler, 2019²²²; Bennedsen et al., 2019). Experimental bargaining studies show that offers become more egalitarian under transparency (Bohnet and Zeckhauser, 2004²²³; Cullen and Pakzad-Hurson, 2019). Measures mandating the employers to report gender pay information publicly seems the most effective in terms of wage offers and the implementation of transparency measures (Werner, 2019²²⁴).

Pay transparency measures enable workers to observe discriminatory pay. The workers who become aware that they receive a lower wage than co-workers might reduce their effort level (Clark et al., 2010²²⁵; Gächter and Thöni, 2010²²⁶; Greiner et al., 2011²²⁷; Charness et al., 2016²²⁸) and labor supply (Bracha et al., 2015²²⁹; Bosmans et al., 2020²³⁰). They also become more likely to quit (Card, et al., 2012²³¹) or initiate collusion with colleagues (Maas and Yin, 2018²³²). The transparency of pay disparity also harms

²²¹ Eckel, C.C., Shurchkov, O., '[Gender differences in Behavioural Traits and Labour Market Outcomes](#)', *The Oxford Handbook of Women and the Economy*, 2018.

²²² Burn, I., Kettler, K., '[The more you know, the better you're paid? Evidence from pay secrecy bans for managers](#)', *Labour Economics*, 2019.

²²³ Bohnet, I., R. Zeckhauser, '[Social comparisons in ultimatum bargaining](#)', *Scandinavian Journal of Economics*, 2004.

²²⁴ Werner, P., '[Wage negotiations and strategic responses to transparency](#)', German Economic Association, 2019.

²²⁵ Clark, A. E., Masclet, D., Villeval, M. C., 'Effort and comparison income: Experimental and survey evidence'. *ILR Review*, 2010.

²²⁶ Gächter, S., Thöni, C., 'Social comparison and performance: Experimental evidence on the fair wage-effort hypothesis', *Journal of Economic Behavior & Organization*, 2010.

²²⁷ Greiner, B., Ockenfels, A., Werner, P., 'Wage transparency and performance: A real-effort experiment'. *Economics Letters*, 2011.

²²⁸ Charness, G. et al, 'Social comparisons in wage delegation: Experimental evidence', *Experimental Economics*, 2016.

²²⁹ Bracha, A., Gneezy, U., Loewenstein, G., '[Relative pay and labor supply](#)'. *Journal of labor economics*, 2015.

²³⁰ Bosmans, K., Gagnon, N., Riedl, A., '[The Effect of Unfair Chances and Gender Discrimination on Labor Supply](#)', *IZA*, 2020.

²³¹ Card, D.; Mas, A.; Moretti, E.; Saez, E., 'Inequality at work: The effect of peer salaries on job satisfaction'. *American Economic Review*, 2012.

²³² Maas, V. S., Yin, H., '[Finding Partners in Crime? How Internal Transparency Affects Employee Collusion](#)' (paper), 2018.

cooperation among peers (Breza et al., 2018²³³; Bamberger and Belogolovsky, 2017²³⁴). However, since the evidence indicate that pay transparency encourages employers to offer equal wages, we speculate that the adverse impact of the policy that emerges due to the observed discrimination may disappear in the long run.

Fair compensation practices increase the reputational capital of companies and facilitate attracting and retaining the best talent, avoiding the costs of high turnover²³⁵. Employees can accept differences in pay if these are explained to them in a fair context of clear information sharing on the criteria behind remuneration. The literature in the compensation field supports salary transparency because it has been found to foster greater trust in management, enhance employee engagement, encourage extra effort by employees, reduce turnover, and contribute to competitive advantage in the labour market.²³⁶

Employees that feel they receive a fair compensation will feel valued and likely to be more productive.²³⁷⁻²³⁸ A large survey by PayScale (71,000 U.S. employees) found that workers who are paid less than the market rate for their jobs were more satisfied if their employer was transparent about their pay, even more if someone talked to them about compensation and the reasoning behind it: their job satisfaction doubled, rising from 40 percent to 82 percent.

Pay confidentiality erodes trust in the management: employees might question the wage distribution even if it is fair, i.e. accurately reflects differences in productivity. As a consequence, their motivation can be affected. Moreover, this inefficiency on the labour market will prevent employees to maximise their value on the market and the employer to find the best fit for the job.

On the other hand, pay confidentiality makes it easier for companies to avoid direct conflicts and HR managers will not feel compelled to keep pay differences artificially low and maintain a larger margin to compensate the top talents. Indeed, high performers desire pay confidentiality more than low performers (Schuster& Colletti, 1973²³⁹) because they think to be (rightly) paid more than others, and want to avoid conflicts (and are not interested in other salaries because they think those are lower). For the same reasons, they prefer avoiding shrinking of the wage range (again because they think to be on the upper end). Finally, for very specialised companies, pay confidentiality can reduce turn-over and improve the return of costly specialised training; on the other side,

²³³ Breza, E., Kaur, S., Shamdasani, Y., '[The morale effects of pay inequality](#)'. *The Quarterly Journal of Economics*, 2018.

²³⁴ Bamberger, P.; Belogolovsky, E., '[The dark side of transparency: How and when pay administration practices affect employee helping](#)'. *Journal of Applied Psychology* 102(4), 658, 2017.

²³⁵ Gulyas, A. et al. analysed the effect of the 2011 Austrian Pay Transparency Law and found that policy led to an increase in the retention rate of workers. 'Does Pay Transparency Affect the Gender Wage Gap? Evidence from Austria', *Discussion Paper Series – CRC TR 224*, 2020.

²³⁶ Richard G. et al. found that the main factor for employee satisfaction is whether or not staff think they're being paid fairly—not if they're actually being paid fairly.

²³⁷ See Smith, D., '[Most People Have No Idea Whether They're Paid Fairly](#)', *Harvard Business Review*, 2015. Available at: <https://hbr.org/2015/10/most-people-have-no-idea-whether-theyre-paid-fairly>.

²³⁸ Businesses could significantly improve productivity 'simply by providing workers with information about the earnings of their peers'. See Huet-Vaughn, E., *Do Social Comparisons Motivate Workers? A Field Experiment on Relative Earnings, Labor Supply and the Inhibitory Effect of Pay Inequality*, Working paper, 2015.

²³⁹ Colletti, J. A., Schuster, J. R., '[Pay Secrecy: Who Is for and against It?](#)', *The Academy of Management Journal*, 1973.

employees with firm specific skills (that cannot be sold outside) will not find comparable pay information on the market and therefore can only guess that they are being paid fairly.

6. Summary of trends pre- and post-COVID-19 crisis

Trends pre and post-COVID pandemic in female pay and employment and in women's potential contributions to more resilient and productive societies

	Pre COVID-19 pandemic	Post COVID-19 pandemic
a. Trends in gender pay gap and gender-related wage discrimination		
Gender pay gap	Slight overall narrowing; variations among member states and size of gender pay gap may be lower due to higher female employment gaps (composition effects)	Trends difficult to predict as may narrow if more low paid women lose work. There may be benefits for some women if COVID-19 leads to an upward valuation of care work.
Trends in wage setting	Reduction in coverage of collective bargaining associated with decline in extension of legal collective agreements Rise in minimum wages as percent of median wages (46.4% to 50.6% 2008 to 2019*)	Recognition of value of key workers could prompt changes in value attached to key worker jobs; alternatively crisis may lead to lower increase in pay including minimum wages or even pay cuts
Gender-related wage discrimination	Evidence is variable across countries; higher minimum wages may have reduced some undervaluation but growth of individualised pay and bonuses may have increased scope for gender pay discrimination	Trends may be variable – lower minimum wages or constraints on public sector pay could increase undervaluation but recession could reduce bonuses. High unemployment may lead to lower bargaining power, less focus on equality issues
b. Trends related to household division of labour and female employment		
Gender division of labour and women's economic independence	High but stable gender gap in care activities/ improvements in women's financial resources	Mixed possible trends in opportunities for sharing care (could be positive from increased telework, but negative if care provision declines) Women's access to financial resources may decline if face disproportionate loss of employment.
Female employment rates	Steady increase and closing of gender employment gaps- headcount and FTE but declining rates among lower educated.	Likely reversal in levels of female employment rate and risk of widening gender employment gap
Adoption of new technologies	Risks of job displacement for routinised jobs (impact on lower educated) but women's employment prospects potentially protected in areas where social skills important.	Risks to jobs if automation accelerated in key service areas/ reduction in face to face work but also wider opportunities for flexible working arrangements/teleworking
Public services and childcare infrastructure	Barcelona childcare targets met for EU as a whole but only in 13 member states, with affordability and accessibility still an issue. Provision of public services on which women rely more than men eroded under austerity measures post the financial crash in 2008	Risk of return to austerity and negative impact on public service provision including childcare (and longterm care)
c. Trends towards a more resilient economy and society		
Supporting an ageing	High increase in employment rates of older workers particularly women and small	Likely halting in increased employment rate for older workers

population	improvement in gender pension gap	including women and risk to pension improvements for both women and men - trends in gap depend on employment trends
Poverty rates and women's employment	Stable but still higher risk of poverty than men since 2012 and still higher than 2005. Small decline in children at risk of poverty and social inclusion	Overall increased risk of poverty-impact by gender depends upon trends in employment.
Trends in productivity	Sluggish productivity growth post financial crisis and even before associated with switch to services and other factors ^b	Move to reduce direct labour contact in services could increase productivity but, at least temporarily, at expense of jobs. However the crisis may lead to postponement of investments.
Effective utilisation of female talent	Women have been investing more in their education and achieving more entry into high level jobs, potentially boosting firm performance but also facing glass ceilings such that the gender pay gap is largest among graduates in all countries	The expansion of telework may enable women to access more high level jobs or could lead to new forms of segregation possibly further depressing women's pay in higher level jobs.

^a Schulten, T. and Luebker, 2019.

^b Bauer, P. et al., 2020

7. Experts' recommendations on priority actions

Experts' Recommendations on priority actions	
1. Improvements to procedures:	
Simplification of the process	NL
Shortening the legal procedures	AT, CY, LV
Clearer rules on the division of the burden of proof	LV, NL
Lower costs for procedures	NL
Longer limitation periods	CY, HU, LV
Improve access to information to prove a claim	NL, RO
Standard pay information and IT processing	ES, IE
2. Improvements to Compensation rules:	
Higher level of compensation	AT, CZ, IE, IT, LV, NL, RO
Compensation proportionate to size/ turnover	CZ, EE, LV
Reinforce rules against victimization	EE, MT
3. Effectiveness of the measure:	
Legally binding pay transparency measures	BG, CY, DE, HR
Allow collective claim /class actions	DE, EE, FR
Legal standing for NGO, equality commissioner, trade unions, etc. on behalf victims:	CZ, HU, RO
Legal standing for NGO, equality commissioner, trade unions, etc. in their own name	EE
Adequate resources to Labour inspectorates and monitoring bodies	IT, LU, PL
Awareness campaigns on equal pay rights and role of Labour inspectorate and other bodies	RO
Reinforce coordination and collaboration between labour inspectorates and other organisms	IT
Link pay transparency to the ability to win public contract/public procurement:	FR
4. Avoid tick boxing exercise	
Effective monitoring of the process and the outcome	BE, DE, ES, PT, SK
Assess feasibility and administrative capability	EL, PT
Independent audit	FR
Training of stakeholders	CY, CZ, DE, HR, LU
Adequate resources to labour inspectorates and other	IT, PT
5. Scope of the measure:	
Public and the private sectors	BG, FI
Measures applied to all size of companies	EL, IE, IT
Broad definition of 'employee'/'workers'	IE
Broad definition of pay	IE

8. *Indications of the change to the legal systems introduced by the initiative*

The table shows for each Member State whether the new initiative intervenes on an already (partly) regulated policy area. For countries that already have some legal provisions in this area, the table indicates changes the new initiative would require depending on the exact form the measures introduced by the initiative will take.

This assessment was made by the country experts that conducted the country studies. The score provided here is the average of the individual scores for the four options assessed under Strand A. The average scores per option (across countries) are similar, with the exception of option 2 which has a higher average than the three other options. The assessment of the four options per country may also vary.

Acronym	Already regulated*	Conditions under which the initiative widens the scope of the existing Member State regulation
AT	Yes	The regulation would apply to companies with less than 150 employees.
BE	Yes	(i) The pay reporting duties would apply to companies: both in the public and private sector; with less than 50 employees. (ii) The biennial pay audit applicable in this Member State wouldn't be kept confidential and would be used for creating general statistics or national policy plans.
BG	No	
CY	No	
CZ	No	
DE	Yes	(i) The evaluation of pay schemes and equal pay at employer-level would be legally binding; (ii) The legal entitlement for information on pay differences would be extended to smaller companies with less than 200 employees.
DK	Yes	The initiative could improve the rather low degree of pay transparency, in particular in small companies, but also in workplaces where there are few employees within a certain job-category.
EE	No	
EL	No	
ES	Yes	Pay audit would be conducted also in employer with less than 50 employees; under the condition that it would improve monitoring on pay transparency in all the companies.
FI	Yes	(i) The regulation (pay reporting and audit obligations) would apply to companies with less than 30 employees. (ii) The regulation would ensure the accessibility to pay information for employees and their representatives. Under the condition that pay transparency would be guaranteed in private companies, too.
FR	Yes	(i) Pay transparency would be compulsory. (ii) The regulation would ensure pay transparency (reporting duties, collective bargaining, etc.) in companies with less than 50 employees.
HR	Yes	Pay transparency would be compulsory and that public discussions, campaigns and trainings on pay transparency would be ensured for public administrations of employees, trade unions, lawyers, judges in order to improve their awareness of gender based discrimination in pay.
HU	Yes	Since, according to the national expert, as the number of cases reported to the Equal Treatment Authority are decreasing 'the visibility of advocacy efforts to achieve gender equality and the infringement activity have decreased' (see national fiche), the proposed measures would improve such aspects.
IE	Yes	Adopt binding transparency measures. Under the conditions to address discrimination in wage collective bargaining.

Acronym	Already regulated*	Conditions under which the initiative widens the scope of the existing Member State regulation
IT	Yes	Recognise reporting duties also in companies with less than 100 employees.
LT	Yes	Collective bargaining will improve its potentialities in guaranteeing pay transparency and address pay discrimination.
LU	No	
LV	No	
MT	No	
NL	No	
PL	No	
PT	Yes	Pay reporting duties would apply to companies with less than 50 employees.
RO	No	
SE	Yes	Pay surveys could be carried out and used, that specific actors would provide efficient supervision, and legislation would follow up.
SI	No	In the case a pay transparency right would be recognized to the employee and eventual measures of strand C would ensure its enforceability.
SK	No	

* *The pay transparency measures envisaged under the new EU legal initiative (Strand A) are already to a lesser or greater extent regulated by the legal framework in the country.*

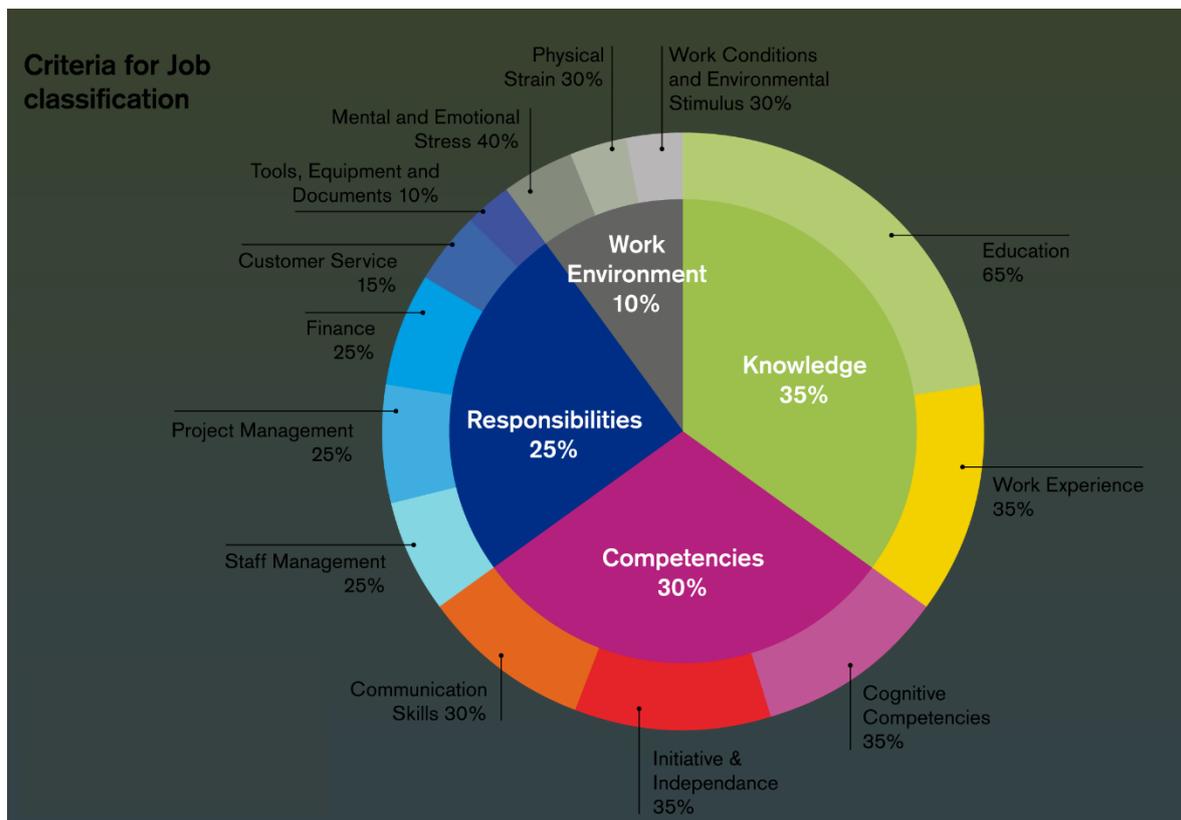
9. *The Icelandic Equal pay standard*

The Equal Pay Standard (Standard ÍST 85: 2012 – Equal Pay Management System – Requirements and Guidance) was published by Icelandic Standards in December 2012. It aims to create a system to confirm that women and men, working for the same employer, were paid equal wages for the same jobs or jobs of equal value and it is applicable to all companies and institutions, regardless of their size, field of activity and staff gender composition. In 2008, the Iceland’s Ministry of Welfare, along with the Icelandic Confederation of Labour and the Confederation of Icelandic Employers, began to develop the Equal Pay Standard under the supervision of Icelandic Standards (IST), and a dedicated Technical Committee (TC). In 2018 it was made mandatory for all companies with more than 25 employees. Full implementation was delayed one year and is now foreseen for the end of 2022.

The process starts with an assessment of pay policies, classifying jobs, according to equal value and formalizing policies and processes related to pay decisions. The organisation can then apply for certification.

Iceland Customs was the first organisation to receive the certification in 2016, when it was not yet mandatory.²⁴⁰ It first set up a project HR group tasked to come up with preliminary definitions for job classifications, and criteria for job classifications. Then, a focus group with the managers approved the definitions and criteria, ensuring a common understanding of all the elements. Finally, the actual job classifications were applied and all jobs were categorized in terms of their comparability and equal value. As a consequence 10% of workers received a pay rise, 9 p.p. were women.

²⁴⁰ According to BBC, available at: <http://www.bbc.com/news/av/magazine-41516920/the-skills-calculator-closing-the-gender-pay-gap>.



Source: <https://mag.wcoomd.org/magazine/wco-news-83/gender-equality-through-equal-pay-iceland-customs-takes-the-lead/>

10. Main literature findings on the impact of a reduction of the GPG

A study from PwC (2018) estimated that the benefits resulting from closing the gender pay gap in OECD countries would result in a 23% increase (at least) in women's annual earnings. Also, Gradin et al. (2010) found that reducing the gender wage gap would result in a reduction of the **poverty rate** by between 0.3% and 1.1%. Under complete wage equality, therefore, 2.4% – 10.5% of the poor population would be lifted out of poverty. Reducing poverty would significantly decrease the need for low income benefit payments to women and would thereby lead to a related reduction in the pressure on public finances.²⁴¹

Improved gender equality may induce more women to participate in the labour market, having a positive impact on the **gender employment gap**. The literature points to the positive effects of lower gender employment gaps on the economy, in three central ways: economic and growth gains, saving effects on welfare transfers, and benefits stemming from women taking-up managerial positions. For economic and growth gains, Ostry et al (2018) estimated the welfare gains from higher female labour force participation, deriving primarily from higher gender diversity in the labour force. They estimated that, in Europe, the **welfare gains** would be a 1% welfare increase, with an estimated 14%

²⁴¹ European Parliament, 'European Added Value Assessment on the application of the principle of equal pay for men and women for equal work of equal value', *EAVA* 4/2013.

output increase (different estimates depend on the different assumptions made for the elasticity of substitution between women and men).²⁴² Löffström (2009) estimated that full gender equality (in employment, part-time work and productivity) would lead to a **GDP** 27% higher (on average) in the EU, or a **per-capita GDP** higher by €6,800.²⁴³ Similarly, PwC (2018) estimated that reducing the gender employment gap (which in their exercise meant bringing the female employment rate in each country to the same level as that of Sweden, the country with the highest female employment rate) would result in 12% higher GDP in OECD countries. Klasen and Minasyan (2017) estimated that the growth costs of the gender employment gap (thus the gains from closing it) for European countries would be around 8.3 p.p. loss in **output** over a decade. The growth costs are annual per capita growth costs of the country relative to the best performer in the ratio of female-male participation rates in that decade (Finland in the 1970s and 1980s, and Sweden in the 1990s). Eurofound (2016) estimated that the gains from closing the gender employment gap would be €327 million. This stems from the additional earnings that would accrue to women who were not employed before.

²⁴² Their results are based on predictions using linear and non-linear least square estimation on macrodata.

²⁴³ These results should be taken as upper-bound estimates of the potential gains from closing the gender gap. The author warns that these estimates are based on some simplifying assumptions. For example, men's and women's labour market earnings only reflect labour productivity, thus higher earnings for women of a given percentage would result in a GDP increase by the same amount.

11. Summary of costs

Sub-option 1A - Right to receive information on pay					
Communication cost per MS and class-size - Minimum cost - first year					
MS	10<50	50≤N<250	250≤N<500	500≤N<1000	N≥1000
AT	2.156.369	241.456	0	0	0
BE	1.911.157	220.871	0	0	0
BG	303.270	82.368	19.440	2.916	1.836
CY	106.704	21.762	5.616	842	530
CZ	937.223	300.174	105.725	15.859	9.985
DE	31.141.397	3.833.585	0	0	0
DK	917.716	0	0	0	0
EE	0	0	0	0	0
EL	752.644	114.939	26.295	3.944	2.483
ES	0	0	0	0	0
FI	0	0	0	0	0
FR	0	0	0	0	0
HR	261.000	64.763	21.715	3.257	2.051
HU	781.085	190.497	59.161	8.874	5.587
IE	925.482	243.481	66.052	9.908	6.238
IT	13.103.574	1.138.534	0	0	0
LT	112.994	0	0	0	0
LU	117.331	0	0	0	0
LV	171.792	46.793	9.469	1.420	894
MT	52.113	14.660	4.046	607	382
NL	2.676.043	841.495	240.392	36.059	22.704
PL	1.241.307	545.034	182.698	27.405	17.255
PT	1.103.284	0	0	0	0
RO	687.758	192.278	59.120	8.868	5.584
SE	1.055.137	0	0	0	0
SI	255.351	73.928	21.860	3.279	2.065
SK	267.180	90.437	31.314	4.697	2.957

Source: own calculations on Eurostat data
Note: costs take into account existing measures in the Member States. Microenterprises are excluded

Sub-option 1A - Right to receive automatically information on pay					
Communication cost per MS and class-size – Maximum cost -first year					
MS	10<50	50≤N<250	250≤N<500	500≤N<1000	N≥1000
AT	4.312.739	402.427	0	0	0
BE	3.822.315	368.119	0	0	0
BG	606.541	137.280	34.992	5.508	3.564
CY	213.408	36.270	10.109	1.591	1.030
CZ	1.874.446	500.290	190.305	29.955	19.383
DE	62.282.794	6.389.309	0	0	0
DK	1.835.431	0	0	0	0
EE	0	0	0	0	0
EL	1.505.287	191.565	47.331	7.450	4.821
ES	0	0	0	0	0
FI	0	0	0	0	0
FR	0	0	0	0	0
HR	522.000	107.938	39.087	6.153	3.981
HU	1.562.169	317.496	106.490	16.762	10.846
IE	1.850.964	405.802	118.894	18.715	12.110
IT	26.207.149	1.897.556	0	0	0
LT	225.988	0	0	0	0
LU	234.661	0	0	0	0
LV	343.584	77.989	17.045	2.683	1.736
MT	104.226	24.433	7.282	1.146	742
NL	5.352.085	1.402.491	432.706	68.111	44.072
PL	2.482.615	908.389	328.856	51.764	33.495
PT	2.206.568	0	0	0	0
RO	1.375.516	320.464	106.415	16.751	10.839
SE	2.110.273	0	0	0	0
SI	510.703	123.214	39.347	6.194	4.008
SK	534.360	150.729	56.364	8.872	5.741

Source: own calculations on Eurostat data
Note: costs take into account existing measures in the Member States. Microenterprises are excluded

Option 2A - Equal pay certification - cost per MS and class-size - Minimum and maximum - Euro

	50≤N<250		250≤N<500		500≤N<1000		N≥1000	
	Min	Max	Min	Max	Min	Max	Min	Max
AT	39.793.374	57.039.658	9.675.280	17.423.880	1.004.060	2.040.698	468.872	874.917
BE	35.040.663	50.227.142	9.190.603	16.551.043	953.763	1.938.470	445.384	831.089
BG	7.317.024	10.488.192	1.347.192	2.426.112	139.806	284.148	65.286	121.824
CY	1.933.191	2.771.028	389.189	700.877	40.388	82.087	18.860	35.194
CZ	27.537.304	39.471.857	7.566.282	13.625.859	785.197	1.595.870	366.668	684.204
DE	769.426.962	1.102.893.432	177.328.481	319.344.796	18.402.414	37.401.895	8.593.480	16.035.476
DK	43.421.347	62.239.979	9.322.622	16.788.791	967.463	1.966.315	451.782	843.027
EE	2.643.429	3.789.080	508.028	914.890	52.721	107.153	24.619	45.940
EL	9.333.586	13.378.723	1.665.757	2.999.805	172.865	351.339	80.724	150.631
ES	94.109.125	134.895.631	23.129.595	41.653.297	2.400.293	4.878.464	1.120.879	2.091.565
FI	21.847.232	31.315.732	5.171.999	9.314.077	536.729	1.090.871	250.639	467.694
FR	172.720.092	247.576.266	48.652.074	87.615.857	5.048.911	10.261.633	2.357.718	4.399.514
HR	5.753.095	8.246.463	1.504.863	2.710.057	156.168	317.404	72.927	136.082
HU	19.458.675	27.891.985	4.714.325	8.489.866	489.233	994.339	228.460	426.307
IE	19.313.859	27.684.406	4.087.400	7.360.859	424.173	862.109	198.079	369.616
IT	239.620.472	343.470.995	45.977.993	82.800.195	4.771.405	9.697.619	2.228.130	4.157.702
LT	5.907.665	8.468.023	1.081.870	1.948.303	112.272	228.187	52.428	97.831
LU	4.889.401	7.008.447	1.306.797	2.353.366	135.614	275.628	63.328	118.171
LV	4.219.848	6.048.713	666.175	1.199.691	69.133	140.509	32.283	60.241
MT	1.302.252	1.866.643	280.353	504.878	29.094	59.132	13.586	25.352
NL	72.601.969	104.067.362	16.179.852	29.137.742	1.679.078	3.412.634	784.089	1.463.113
PL	51.778.145	74.218.579	13.539.829	24.383.416	1.405.107	2.855.803	656.151	1.224.381
PT	24.079.064	34.514.831	4.538.473	8.173.182	470.984	957.249	219.938	410.405
RO	17.080.705	24.483.411	4.096.992	7.378.132	425.169	864.132	198.543	370.483
SE	42.213.258	60.508.309	9.214.390	16.593.880	956.231	1.943.487	446.537	833.240
SI	6.829.483	9.789.353	1.575.342	2.836.979	163.482	332.269	76.342	142.455
SK	7.755.195	11.116.264	2.094.760	3.772.381	217.385	441.824	101.514	189.425

Source: own calculations on Eurostat data

Note: costs take into account existing measures in the Member States. Microenterprises are excluded

Sub-option 2B – Joint Pay assessment - Cost per MS and class-size – Minimum and maximum - Euro								
	50≤N<250		250≤N<500		500≤N<1000		N≥1000	
	Min	Max	Min	Max	Min	Max	Min	Max
AT	14334574	20904587	2848134	4300124	365324	486324	133409	173742
BE	12622528	18407853	0	0	0	0	0	0
BG	2635776	3843840	396576	598752	50868	67716	18576	24192
CY	696384	1015560	114566	172973	14695	19562	5366	6989
CZ	9919629	14466126	2227304	3362792	285692	380316	104329	135870
DE	277166936	404201781	52200592	78812658	0	0	0	0
DK	15641461	22810463	0	0	0	0	0	0
EE	952230	1388668	149549	225790	19182	25536	7005	9123
EL	3362192	4903197	490353	740336	62897	83729	22969	29913
ES	33900473	49438189	0	0	0	0	0	0
FI	0	0	0	0	0	0	0	0
FR	0	0	0	0	0	0	0	0
HR	2072410	3022264	442990	668828	56821	75641	20750	27023
HU	7009504	10222193	1387767	2095255	178006	236963	65004	84657
IE	6957338	10146117	1203217	1816622	154334	205451	56360	73399
IT	86317318	125879422	13534647	20434663	1736062	2311063	633976	825643
LT	2128090	3103464	318473	480831	40850	54380	14918	19428
LU	1761285	2568541	384685	580799	49343	65686	18019	23467
LV	1520095	2216806	196103	296078	25154	33485	9186	11963
MT	469104	684110	82528	124601	10586	14092	3866	5034
NL	26153054	38139871	4762900	7191045	610928	813273	223099	290547
PL	18651790	27200526	3985751	6017702	511244	680573	186696	243139
PT	0	0	0	0	0	0	0	0
RO	6152899	8972978	1206041	1820885	154696	205933	56492	73571
SE	7603138	11087910	0	0	0	0	0	0
SI	2460152	3587721	463737	700152	59483	79184	21722	28289
SK	2793616	4074024	616639	931004	79095	105292	28884	37616

Source: own calculations on Eurostat data

Note: costs take into account existing measures in the Member States. Microenterprises are excluded. The cost for employers with more than 250 employees is the same as for Sub-option 2C, Measure 1.

**Sub-option 2B - Joint pay assessment - Cost per MS and class-size –
Minimum and maximum - Euro**

	50≤N<250		250≤N<500		500≤N<1000		N≥1000	
	Min	Max	Min	Max	Min	Max	Min	Max
AT	7.167.287	10.452.293	2.848.134	4.300.124	365.324	486.324	133.409	173.742
BE	0	0	0	0	0	0	0	0
BG	2.635.776	3.843.840	396.576	598.752	50.868	67.716	18.576	24.192
CY	696.384	1.015.560	114.566	172.973	14.695	19.562	5.366	6.989
CZ	9.919.629	14.466.126	2.227.304	3.362.792	285.692	380.316	104.329	135.870
DE	277.166.936	404.201.781	52.200.592	78.812.658	0	0	0	0
DK	0	0	0	0	0	0	0	0
EE	0	0	149.549	225.790	19.182	25.536	7.005	9.123
EL	3.362.192	4.903.197	490.353	740.336	62.897	83.729	22.969	29.913
ES	0	0	0	0	0	0	0	0
FI	0	0	0	0	0	0	0	0
FR	0	0	0	0	0	0	0	0
HR	2.072.410	3.022.264	442.990	668.828	56.821	75.641	20.750	27.023
HU	7.009.504	10.222.193	1.387.767	2.095.255	178.006	236.963	65.004	84.657
IE	6.957.338	10.146.117	1.203.217	1.816.622	154.334	205.451	56.360	73.399
IT	43.158.659	62.939.711	13.534.647	20.434.663	1.736.062	2.311.063	633.976	825.643
LT	0	0	318.473	480.831	40.850	54.380	14.918	19.428
LU	0	0	384.685	580.799	49.343	65.686	18.019	23.467
LV	1.520.095	2.216.806	196.103	296.078	25.154	33.485	9.186	11.963
MT	469.104	684.110	82.528	124.601	10.586	14.092	3.866	5.034
NL	26.153.054	38.139.871	4.762.900	7.191.045	610.928	813.273	223.099	290.547
PL	18.651.790	27.200.526	3.985.751	6.017.702	511.244	680.573	186.696	243.139
PT	0	0	0	0	0	0	0	0
RO	6.152.899	8.972.978	1.206.041	1.820.885	154.696	205.933	56.492	73.571
SE	0	0	0	0	0	0	0	0
SI	2.460.152	3.587.721	463.737	700.152	59.483	79.184	21.722	28.289
SK	2.793.616	4.074.024	616.639	931.004	79.095	105.292	28.884	37.616

Source: own calculations on Eurostat data

*Note: costs take into account existing measures in the Member States. Microenterprises are excluded –
Costs for the joint pay assessment under option 2C are the same for employers with more than 250 employees*

**Sub-option 2c – Basic Pay reporting - cost per MS and class-size –
Minimum and maximum - Euro**

	50≤N<250		250≤N<500		500≤N<1000		N≥1000	
	Min	Max	Min	Max	Min	Max	Min	Max
AT	2253593	3702331	0	0	0	0	0	0
BE	2061465	3386692	0	0	0	0	0	0
BG	768768	1262976	108864	171072	11988	19764	5184	7776
CY	203112	333684	31450	49421	3463	5710	1498	2246
CZ	2801626	4602672	592059	930379	65197	107487	28193	42290
DE	71560260	117563285	12684606	19932952	0	0	0	0
DK	0	0	0	0	0	0	0	0
EE	0	0	0	0	0	0	0	0
EL	1072761	1762393	147252	231395	16215	26733	7012	10518
ES	0	0	0	0	0	0	0	0
FI	0	0	0	0	0	0	0	0
FR	0	0	0	0	0	0	0	0
HR	604453	993030	121605	191094	13391	22077	5791	8686
HU	1777976	2920961	331304	520620	36483	60147	15776	23665
IE	2272493	3733382	369892	581259	40732	67153	17614	26421
IT	10626313	17457514	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	0
LU	0	0	0	0	0	0	0	0
LV	436736	717495	53028	83330	5839	9627	2525	3788
MT	136822	224779	22655	35600	2495	4113	1079	1618
NL	7853949	12902917	1346196	2115450	148242	244399	64105	96157
PL	5086981	8357183	1023106	1607739	112663	185743	48719	73079
PT	0	0	0	0	0	0	0	0
RO	1794596	2948264	331070	520253	36457	60105	15765	23648
SE	0	0	0	0	0	0	0	0
SI	689999	1133570	122414	192364	13480	22224	5829	8744
SK	844082	1386706	175356	275559	19310	31835	8350	12525

Source: own calculations on Eurostat data

Note: costs take into account existing measures in the Member States. Microenterprises are excluded.

Sub-option 2D - Pay reporting full - cost per MS and class-size – Minimum and maximum - Euro								
	50≤N<250		250≤N<500		500≤N<1000		N≥1000	
	Min	Max	Min	Max	Min	Max	Min	Max
AT	3219419	5955924	0	0	0	0	0	0
BE	2944950	5448157	0	0	0	0	0	0
BG	1098240	2031744	155520	295488	17172	32724	6912	12096
CY	290160	536796	44928	85363	4961	9454	1997	3494
CZ	4002323	7404298	845799	1607018	93390	177970	37591	65784
DE	102228944	189123546	18120866	34429645	0	0	0	0
DK	0	0	0	0	0	0	0	0
EE	0	0	0	0	0	0	0	0
EL	1532516	2835155	210360	399683	23227	44263	9349	16361
ES	0	0	0	0	0	0	0	0
FI	0	0	0	0	0	0	0	0
FR	0	0	0	0	0	0	0	0
HR	863504	1597482	173722	330071	19182	36554	7721	13512
HU	2539966	4698938	473291	899253	52259	99588	21035	36812
IE	3246419	6005876	528417	1003992	58346	111188	23485	41099
IT	15180447	28083827	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	0
LU	0	0	0	0	0	0	0	0
LV	623909	1154231	75754	143933	8365	15940	3367	5892
MT	195460	361601	32364	61492	3574	6810	1438	2517
NL	11219928	20756866	1923137	3653960	212346	404660	85473	149577
PL	7267115	13444163	1461580	2777003	161383	307541	64959	113678
PT	0	0	0	0	0	0	0	0
RO	2563708	4742860	472957	898619	52222	99518	21020	36786
SE	0	0	0	0	0	0	0	0
SI	985713	1823569	174877	332265	19309	36797	7772	13602
SK	1205831	2230788	250508	475966	27660	52711	11134	19484

Source: own calculations on Eurostat data
Note: costs take into account existing measures in the Member States. Microenterprises are excluded.

Issue	Absent	Limited	Moderate	Significant
Issue of legal clarity on concept of equal pay for equal work or work of equal value	BE, IE, LU, NL, PL	CY, DE, ES, HR, PT, SE, UK	FR, LV, MT, SK	AT, BG, CZ, DK, EE, EL, HU, IT, LT, SI, FI
Access to justice and defence of rights		DK, FR, HU, IT, PT	AT, CY, ES, FI, IE, LT, MT, SE	BE, BG, CZ, DE, EE, EL, HR, LU, LV, NL, PL, RO, SI, SK, UK
Compensation or reparation to victims		CY, ES, FR, IE, LU, MT	AT, BE, BG, CZ, DK, FI, PT, RO, SE, UK	DE, EE, EL, HR, HU, IT, LT, LV, NL, PL, SI, SK
Application of the reversed burden of proof		SE	BE, DE, DK, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, PT, RO, UK	AT, BG, CY, CZ, EE, EL, HR, NL, PL, SI, SK
Promotion, development and use of gender-neutral job evaluation and classification systems		BE, ES, IE, IT, LT, LU, NL	CZ, FI, HU, PL, RO, SE, SI, SK, UK	AT, BG, CY, DE, DK, EE, EL, FR, HR, LV, MT, PT
Clear powers and promotion of equality bodies	BE, CZ, FR, HU, LU	DK, FI, HR, LT, NL, RO, SE	CY, DE, ES, IT, LV, MT, SI	AT, BG, EE, EL, IE, LU, PL, PT, SK, UK

12. Mapping of the issues by relevance

Source: ICF country fiches (2019).

13. Qualitative assessment of costs in the 2020 Evaluation

Type of cost	Citizens	Businesses	Member States	Trade unions	Explanation
Enforcement and monitoring of the Recast Directive			0/*		Some Member States (e.g. SE, ES, SK) reallocated resources. In others (e.g. EE, PT, NL), stakeholders consider the allocated resources insufficient to guarantee effective implementation of the legislation.
Promoting the use of gender-neutral job evaluation systems			0/*		In Luxembourg, the government finances training for employers on job classification. Participation in the training is voluntary. An estimated EUR 40,000 was allocated to each employer participating in the programme. In Belgium, the Ministry of Employment reviews all collective agreements to ensure their gender neutrality. However, no additional staff have been allocated, with the task absorbed by the existing staff.
Development and utilisation of tools (e.g. wage calculators)			*		Some Member States (e.g. AT, DE, PL, UK) have developed tools such as wage calculators to promote implementation of the legislation. Information on the costs of developing these tools could not be obtained but are assumed to be minimal.

Type of cost	Citizens	Businesses	Member States	Trade unions	Explanation
Pay information requests (cost per request)	*	*			In Germany, an impact assessment estimates that about 75,602 requests for information on pay would be made per year. Each request would take 70 minutes of time for an employee to compile. To employers, fulfilling a request for information would cost on average 39 EUR per request. ²⁴⁴
Pay discrimination complaints (cost per complaint)	*	*		*	The costs to individuals are (primarily) the stigma, risk of retaliation and the cost of filing pay discrimination complaints (can be assumed to be the same as the costs of filing a pay information request). The costs to employers are similar to those for pay information requests.
Judicial procedures	***	**	*	**	Citizens – the availability of legal aid to offset the impact on individuals is limited. Member States - according to the stakeholders consulted, these costs should amount to no more than a few hundred euro. Businesses - may suffer a loss to their reputation. Trade unions – costs of legal representation of potential pay discrimination victims in some countries.
Substantive compliance costs for pay transparency measures		*/**	**	*	For businesses, see Table 49 (section 3.5.1.2). These costs include adapting the pay database and training staff.
Monitoring costs of pay transparency measures			**	*	Member States – and, to a lesser extent, trade unions - are involved in monitoring the pay transparency measures. The extent of the monitoring varies across Member States, depending on the measures adopted. Equality bodies have monitoring responsibilities in all countries, while in some cases work councils are also involved in monitoring activities.
Administrative burden for pay transparency measures		*/**			These costs are higher for pay audits than for pay reports and are primarily driven by producing and analysing gender pay gap reports.
Limited freedom to negotiate wages		*			The OPC provides some evidence that this is an indirect cost faced by employers. It could also be a cost for employees if equal pay measures limit individual wage-bargaining power.

0 none; * low cost; ** medium cost; *** high cost

14. Useful gender neutral tools for work evaluation²⁴⁵

This section provides information on tools for work evaluation, listed by organisation and/or country. In general, the process of identifying equal work is carried out with the

²⁴⁴ Deutscher Bundestag, *Entwurf eines Gesetzes zur Förderung der Transparenz von Entgeltstrukturen, Gesetzentwurf der Bundesregierung*, 2017. (Drucksache 18/11133).

²⁴⁵ Extracted from [Equinet, Handbook: How to build a case on equal pay](#), 2016.

help of job titles, job codes, job grade systems and the like. There are a number of tools and instruments in the labor market, both in the private and public sector. The various tools are provided both by private actors, for instance consultancies, and public organs. The process of identifying work of equal value is normally carried out with the help of a tool for work evaluation. Four criteria are used when determining work of equal value: skills, effort, responsibility and working conditions.

GENERAL OVERVIEW:

Austria, Wage calculation tool by the Austrian ministry for women's affairs:

A German-language tool designed to indicate average salaries in particular professions based on individualized parameters.

www.gehaltsrechner.gv.at

Belgium, Statistical calculation tool by the Belgian Institute for the Equality of Women and Men:

This website provides a French and Flemish- language tool to calculate wage equality as well as a checklist on gender neutrality in job evaluation and classification.

http://igvm-iefh.belgium.be/fr/domaines_action/emploi/gelijk_loon/berekening/

Belgium, Review of gender-neutral job classifications by the Belgian Federal Public Service of Employment, Labour and Public Dialogue:

This website offers a job evaluation scheme to ensure that sectoral job classification systems are gender-neutral as established by the law.

<http://www.emploi.belgique.be/defaultTab.aspx?id=8486#>

France, Guide on non-discriminatory job evaluation of predominantly feminine professions by the French Defender of Rights:

A French language guide on gender neutral job evaluation for assessing work of equal value

http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_gui_20130301_discrimination_emploi_femme.pdf

Germany, Gender neutral job evaluation 'EG-Check':

This German-language webpage provides a tool to check whether a company is complying with gender equal treatment in relation to pay for the German labour market.

www.eg-check.de

Holland, Loonwijzer, Equal pay test for employers and employees:

This equal pay test tool enables employees to check whether they are being paid in line with the provisions of the Dutch Equal Treatment Act and also offers the possibility to employers to ascertain whether they abide by the act.

www.loonwijzer.nl

Slovakia, Gender income calculator:

This Slovakian-language website offers a wage calculator, which also indicates wage gaps in different professions.

<http://www.kedvyrastiem.sk/vsetko-o-kampani>

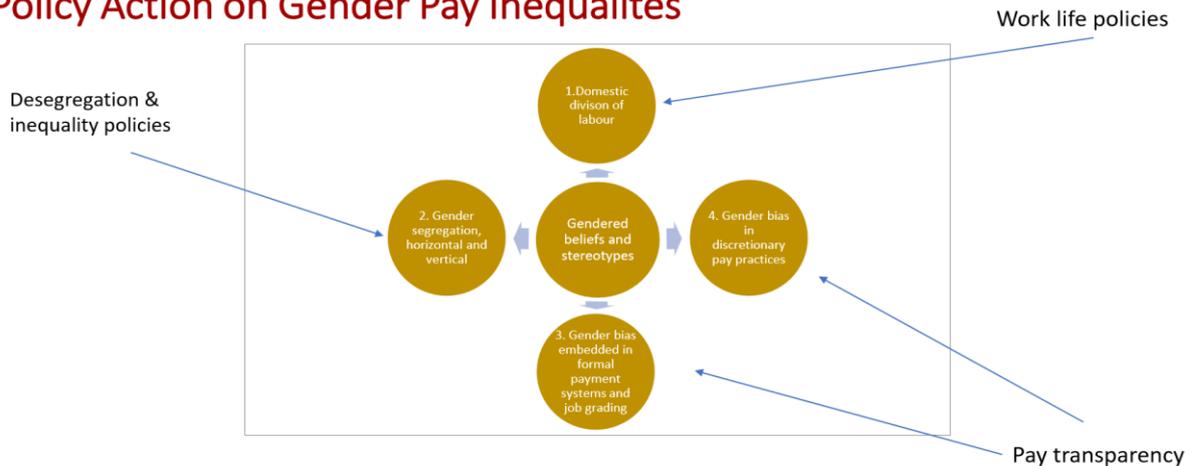
Sweden, BESTA job evaluation scheme by the Swedish Agency for Government Employers

This widely used system allows employees to evaluate whether their job is in compliance with equality guidelines.

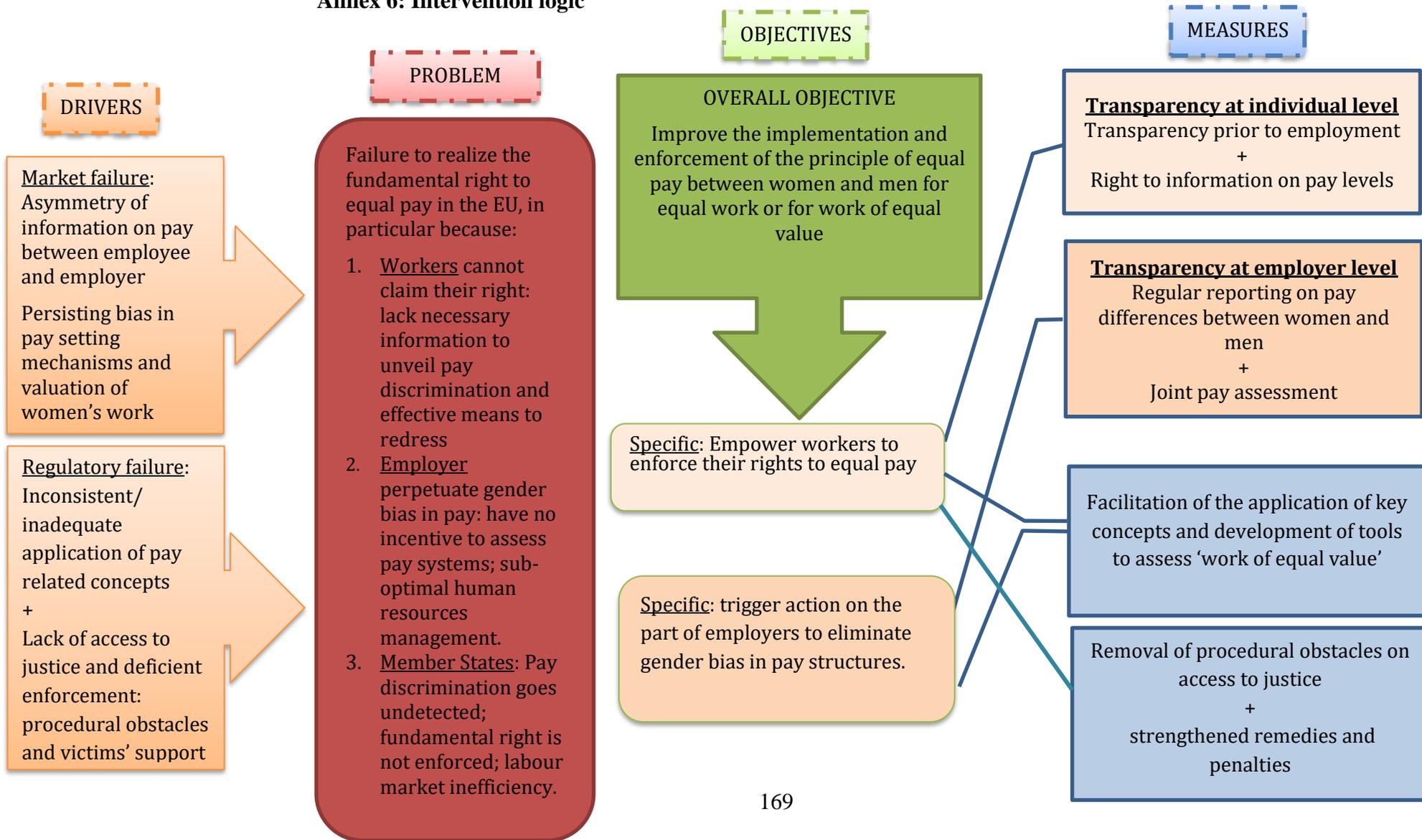
<https://www.arbetsgivarverket.se/globalassets/avtal-skrifter/skrifter/bestawebb.pdf>

15. Pay transparency as a policy action on pay inequalities

Policy Action on Gender Pay Inequalities



Annex 6: Intervention logic



Annex 7: Subsidiarity grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
<p>Article 157(3) TFEU.</p> <p>The EU principle of equal pay for equal work or for work of equal value between women and men was established by the founding Treaties as a fundamental support for the functioning of the internal market. Later on, the CJEU added that the social goal prevails on its economic function and that equal pay is a fundamental right. Articles 2 and 3(3) TEU clearly refer to the right to equality between women and men as one of the essential values and objectives of the EU.</p>
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<p>In the case of gender equality on the area of employment and occupation, the Union's competence is shared.</p>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2²⁴⁶:
<p>- Has there been a wide consultation before proposing the act?</p> <p>Yes, the Commission carried out a number of consultation activities related to the Initiative: a consultation of Member States representatives in the High-Level Group on Gender Mainstreaming, on 29 January 2020 and 15 September 2020; a targeted consultation of Member States through a separate specific questionnaire issued in March 2020; a targeted consultation of social partners organised on the basis of a separate specific questionnaire issued in March 2020 (and a mini-survey for companies) and followed by a dedicated consultation hearing of social partners run in June 2020; a 12-weeks public consultation launched in March 2020 covered general awareness, experience and knowledge of citizens and stakeholders regarding pay discrimination and pay transparency issues as well as views on the possible specific measures. Earlier, another public consultation was carried out for the evaluation of the relevant provisions in Recast Directive implementing the Treaty principle on 'equal pay for equal work or work of equal value' (from 11 January 2019 to 5 April 2019).</p> <p>- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?</p> <p>Limited number of Member States have followed up on the 2014 Commission Recommendation. 22 Member States did not take any action regarding workers' right to pay information, 14 regarding pay reporting, and 19 regarding joint pay assessment (for more information see SWD (2020) 50 final).</p>
<p>The impact assessment (section 3) includes a section on the principle of subsidiarity and refers to question 2.2 below.</p>
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?
<p>The implementation of the EU principle of equal pay has been established at EU level by Founding Treaties (now in Article 157 TFEU) and detailed by Directive 2006/54/EEC. The fact that the founding members of the European Community included the principle of equal pay as a goal in the Treaty of Rome indicates that they regarded it as a fundamental value of the Union. Initially, it had merely an economic function aiming at avoiding distortions to competition. In 1976, however, the CJEU recognised, together with its economic goal, the social objective of Article 119 EEC and its horizontal direct effect. Later on, the CJEU added that the social goal prevails on its economic function and that</p>

²⁴⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>.

<p>equal pay is a fundamental right.</p> <p>As demonstrated in the 2020 evaluation, comparable level of promotion of pay equality between women and men throughout the Union is not likely to happen without a push from the EU-level instrument. There is a need for coordinated approach to the issue, as lack of it jeopardises the attainment at the national level of the pay equality between women and men, enshrined in Article 157(1) TFEU.</p> <p>As national measures regarding pay transparency are very fragmented and scarce, often lack ambition, it becomes ever more significant to establish a coherent and comprehensive European approach aiming to advance and enforce the implementation of the principle of equal pay.</p> <p>Proposed pay transparency and related enforcement measures are justified at EU level insofar as action solely by Member States in response to the lack of implementation of the EU principle and existing provisions would not necessary have the same level of the guaranteeing equal pay for women and men for the same work or work of equal value and would risk increasing divergences between Member States with potential competition on the basis of social standards. Business would therefore continue to compete on an uneven playing field, which would hamper the operation of the internal market.</p> <p>The proposed Directive is based on a minimal degree of harmonisation of Member State systems which respects Member States' competences to set higher standards and provides the possibility for social partners to vary the mix of material rights and obligations by collective agreement. It also duly takes into account a trade-off between stronger protection of workers and easing of the administrative burden on employers, especially SMEs, in particular in the context of the economic difficulties faced by the EU companies during current COVID-19 crisis</p>
<p>2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?</p>
<p>Analysis shows that Member States acting alone are not able to ensure the transparency of pay systems aiming to ensure the right to equal pay for the same work or for work of equal value for women and men across the EU. The 2020 evaluation concluded that there is limited progress on enforcing the right to equal pay and increasing pay transparency by Member States and evidenced, in particular, vastly distinct and largely inefficient systems operating in most Member States – making equal pay an inert legal provision.</p>
<p>(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?</p>
<p>Existing approaches (including any regulation in this area in a number of Member States) significantly different across the EU and would create additional costs and complexity for companies operating across borders and therefore undermine the Single Market.</p>
<p>(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty²⁴⁷ or significantly damage the interests of other Member States?</p>
<p>The absence of the EU level action would limit the progress of enforcing the principle of equal pay enshrined in 157(1) TFEU and the implementation of the core objective of the Treaty related to combat social exclusion and discrimination.</p>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>Member States had shown a relatively low level of response to voluntary measures such as the 2014 EU Recommendation on Pay Transparency, and a range of evaluations suggested that for progress and to move beyond a piecemeal approach action at the EU level is necessary.</p>
<p>(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?</p>
<p>The relevance of the different factors contributing to gender-based pay discrimination can be influenced</p>

²⁴⁷ For more information: https://europa.eu/european-union/about-eu/eu-in-brief_en.

by the distribution of workers by gender and by the socio-economic context (e.g. sector, size of employer, number of workers covered by collective bargaining).
(e) Is the problem widespread across the EU or limited to a few Member States?
No precise estimate of the scale of gender pay discrimination is available; however if we look at the gender pay gap as a broad indicator of gender discrimination on the labour market we see that it is widespread across Europe with a very slow decline in the last 10 years. The absence of clarity on gender disparities in companies' pay structures contribute to this persistence.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
There is a strong evidence of pay discrimination based on gender that needs to be addressed.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
Member State respondents in public consultation and targeted Member States survey conducted in March-May 2020 showed a strong consensus that pay transparency measures would help enforce the right to equal pay (100%), contribute to raising awareness on equal pay issues (90%) and reduce pay discrimination (90%). There is a high degree of consensus among Member State respondents that regular employer reports on pay level and gender pay gaps is an effective option (82.4%). There is also some agreement that employees having the right to access information on pay levels and gender pay gaps of categories of individuals performing the same work or work of equal value would be effective (58.8%). Among the general public, the results from the public consultation show clear consensus on the effectiveness of introducing binding measures on: obligation to include equal pay matters in collective bargaining (80.7%); gender-neutral job evaluation and classification systems (80.2%); employers and employees' representatives analysing pay levels and gender pay gaps in regular pay audits (78.9%); and regular employer reports on pay levels and gender pay gaps (78.4%). The significant outlier group that did not share this consensus were respondents from company/business associations.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
A comparable level of promotion of pay equality throughout the Union is not likely to happen without a push from an EU-level instrument to create equal market conditions for fair competition in the internal market. EU action also responds to an obligation to act in the Treaty, implements a fundamental principle and right to equal treatment confirmed in the Charter of Fundamental Rights.
(a) Are there clear benefits from EU level action?
Homogeneous enforcement of the equal pay right and prevention of unfair competition in the internal market. For workers, pay transparency empowers them to claim their rights and has a positive effect on job satisfaction and worker motivation. Furthermore, pay transparency measures have a significant behavioural change effect for employers and would help to address the issue of the undervaluation of women work. This would have positive impact on companies reputation and workforce participation and retention, including enhanced career progression for women across the EU. For society as a whole, it will benefit from the increased equality and better utilisation of talents.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
Since the measures are applied at employer and individual level there are no clear EU economies of scale for the provisions as such.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The initiative would contribute to achieving the aim of improving the implementation, promotion and enforcement of the equal pay principle by providing legal clarity to improve uniform application across the EU. The clarification of the concepts of ‘pay’, ‘work of equal value’ would be instrumental for more uniform application of the equal pay principle across the EU, ensure that remuneration systems are based on objective criteria such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved. This would help to tackle gender-based pay discrimination and address pay inequalities arising from biased valuation of work of equal value. Consequently, this would have positive impact on workforce participation and retention, including enhanced career progression for women across the EU.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The initiative establishing minimum standards regarding pay transparency and related enforcement measures would set benchmarks to Member States and their relevant authorities in order to ensure that the principle of equal pay is properly implemented and enforced across the EU. Such an approach would leave room of flexibility to them to design concrete implementing measures in accordance with national circumstances, legal system and the level of participation of national social partners in matters relating to remuneration and job evaluation. The initiative also leaves the Member States the option of keeping or setting more favourable standards for workers and taking into account features specific to their national situations, and allows for modifications in the composition of the material rights by means of collective agreements.

(e) Will there be improved legal clarity for those having to implement the legislation?

The lack of clarity, of current EU law, for example, regarding definitions of ‘pay’, ‘work of equal value’ means that employers, and even courts, may tend to exercise a wide margin of discretion in assessing whether differences in pay can be justified by differences in productivity. The lack of information on structural differences in the treatment of employees by gender prevents the identification of pay inequalities and upholds the possible influence of unconscious bias. It also creates a vicious circle challenging equal pay enforcement: to establish a prima facie pay discrimination, one would need to have some indication of whether or not there is a problem based on reliable pay information, which is most often not available. The initiative aims to address these issues and improve legal clarity in the light of the CJEU case law.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

Article 5(4) TEU adds that ‘[u]nder the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’.

The existing non-binding 2014 Recommendation in this framework is not sufficient to achieve the intended objective (more effective implementation of the equal pay principle through pay transparency). The Recast Directive 2006/54/EC needs to be supported by a further directive guaranteeing pay transparency measures since the Recommendation had a limited follow-up by Member States .

In particular, the initiative to adopt a binding legal measure is a proportionate response to the obvious need for operational support of the equal pay principle and does not go beyond what is necessary to achieve this goal. The proposed directive does not impinge on national decision-making, legislation or enforcement activities, which remain the competence of Member States. Moreover, it is left largely to the discretion of Member States how they make use of the possibilities put in place by the initiative and entrust the social partners with the transposition through collective agreements.

Since the objective of the proposed legal measure, namely to improve pay transparency, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at the EU level, the EU may adopt measures, in accordance

with the principles of subsidiarity (set out in Article 5(3) TFEU) and to the extent that they are proportionate (Article 5(4) TFEU).

The proportionality principle is fully respected as the scope of the proposal is tailored to different sizes of companies to maximally limit administrative burden, and to ensure basic rights for workers, the absence of which could limit the possibility to detect gender-based pay discrimination and defend their right to equal pay in case of the alleged sex discrimination. The proposed Directive includes measures through established company size thresholds subject to types of pay transparency measures concerned. As indicated in the Impact Assessment, the costs are reasonable and justified in light of the accrued and longer-term benefits regarding more secure employment, workforce retention, better workers' and firms' productivity. It therefore affects positively business profitability, a better functioning of internal market, and matches the wider social ambitions of the EU as emphasised in the European Pillar of Social Rights, jointly proclaimed by the Commission, the European Parliament and the Council.

The proposal leaves the Member States the option of keeping or setting more favourable standards for workers, and taking into account features specific to their national situations, and, in order to respect the diversity of labour market models across the EU, allows Member States to entrust the social partners with the implementation of the Directive, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action is considered an appropriate and optimal way to achieve the intended objectives concerning proper application of the principle of 'equal opportunities and equal treatment of women and men in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value' (Article 157(3) TFEU). The initiative aims to address only legal issues identified during the evaluation and previous assessments conducted by the Commission. Other root causes of gender pay gap remain beyond the scope of this initiative.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The initiative addresses legal issues and obstacles identified during the 2020 evaluation which relate to the persisting problem of pay discrimination and effective enforcement of the principle of equal pay which cannot be achieved by Member States satisfactorily on their own and in a systematic manner. Additional non-legislative measures addressing root causes other than pay discrimination based on sex, could also support combating the overall gender pay gap – they are tackled in the EU Gender equality strategy 2020-2025.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

As regards the choice of the legal instrument, regulation, amendments to the Recast Directive and new directive were considered. A regulation would impose uniform obligations in all Member States. The use of such an instrument to achieve the objectives set was evaluated as disproportionate, as the measures considered would by their own nature very much depend on the legal and administrative framework of each Member State, which should be respected. A revised Recast Directive was discarded for the reasons of wider scope of that directive and its entire logical structure would have to be revised. On the basis of the conducted evaluation and impact assessment, it seems that a new directive establishing minimum standards regarding pay transparency and related enforcement measures will be an optimal form of the initiative which will complement the Recast Directive which establishes a general framework for gender equality in employment and occupation matters.

A directive, laying down a framework to enhance the application of the equal pay principle through pay transparency and related reinforced enforcement mechanisms, which allows for some flexibility as to the means each Member State considers appropriate to ensure their obligations taking into account the national context, seems to be a more appropriate instrument. It would also be in line with the approach

<p>followed as regards similar obligations in the field of employment (posed workers) and discrimination (free movement of workers). Further development of soft measures could have some impact on the effectiveness of legal provisions in place, but it is unlikely that by itself they will motivate the laggard countries to bring the equality issues on the political agenda and engage in setting the new legal frameworks as advised under the 2014 Commission Recommendation.</p>
<p>(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)</p>
<p>Action at the EU level establishing minimum standards regarding pay transparency and related enforcement measures would ensure that pay equality for the same work and for work of equal value between women and men, enshrined in Article 157(1) TFEU, is effective and that all citizens can claim their rights according to the same minimum standards applicable in all Member States. This is a balanced measure at the EU-level which takes into account existing effective examples of national measures and the positions of Member States, social partners and citizens and helps addressing the problem of pay discrimination ensuring a uniform approach across the Union.</p>
<p>(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?</p>
<p>The costs of the initiative concern mostly employers and are largely offset by the potential benefits of increased gender equality on the labour market. The proposed action takes into account a trade-off between stronger protection of workers and easing of the administrative burden on employers, especially SMEs, in particular in the context of the economic difficulties faced by the EU companies during current COVID-19 crisis</p>
<p>(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?</p>
<p>N/a</p>

Annex 8: Job evaluation systems

The 2020 evaluation found that the issue of promotion, development and use of gender-neutral job evaluation and classification has significant relevance in 12 Member States, moderate significance in 8 and limited significance in 7 Member States.

Actions to promote gender-neutral job classification and evaluation since 2006	Member States
Since 2006, national legislation included the obligation of gender-neutral job evaluation and classification systems ²⁴⁸	BE ²⁴⁹ , CY, DE, EL, ES, FR, IT, LT, MT, PT, SE, SI, SK, UK
Training programmes to assist employers in implementing gender-neutral job classification systems ²⁵⁰	BE, CY, EE, LU, SE
Establishment of guides and checklists for job evaluation and classification that avoid gender bias ²⁵¹	AT, BE, BG, EE, FR, LU, NL, PT, SE, UK
Reported issue of lack of development of gender-neutral job classification system in practice	AT, BG, CZ, DK, EE, EL, IT, LT, LV, MT

Source: ICF, 2019.

²⁴⁸ In the Member States cited, changes in legislation have occurred since 2006 to include the obligation of gender-neutrality in job classification systems.

²⁴⁹ Gender neutral job evaluation are safeguarded by collective agreements in BE.

²⁵⁰ European Commission, *Report on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*, 2013. COM(2013) 861.

²⁵¹ Guides and checklists mostly issued by gender equality bodies or by national authorities.



Brussels, 4.3.2021
SWD(2021) 42 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

{COM(2021) 93 final} - {SEC(2021) 101 final} - {SWD(2021) 41 final}

Executive summary sheet
Impact assessment for a proposal on strengthening the principle of equal pay between men and women through transparency
A. Need for action
What is the problem and why is it a problem at EU level?
<p>The effective implementation of the fundamental right to equal pay between women and men for equal work or work of equal value, as enshrined in Article 157 TFEU, remains a major challenge in the EU. Individual pay discrimination and systemic bias in pay structures are only one of the root causes of the gender pay gap, besides other causes such as horizontal and vertical segregation. The gender pay gap accumulates to and remains at 14% in the European Union overall. This is a problem at the level of both workers and employers.</p> <p>Failure to implement this fundamental right affects women’s economic independence during their working life and thereafter. This is also a problem for the efficient operation of the labour market and for competition in the internal market. Expectations on prospective earnings can distort women’s choice of jobs, decisions on time worked and career patterns, and therefore create a clear risk of loss of productivity in the economy at large due to suboptimal female labour market participation. For employers, this inefficient use of resources means a loss of productivity and hidden costs. Finally, divergences in the treatment of women and men with regard to pay can also have an impact on employers’ competitiveness to the extent that employers non-compliant with the equal pay principle, possibly applying diverging rules across countries, can benefit of an unfair (and unlawful) advantage.</p> <p>Individual pay discrimination and gender bias in pay-setting mechanisms and how women’s work is valued may be enabled by:</p> <ul style="list-style-type: none"> - a lack of pay transparency at individual worker and employer level; - a deficient application of the concepts of ‘pay’ and ‘work of equal value’; and - inadequate access to justice because of procedural obstacles and insufficient remedies for victims. <p>The lack of pay transparency prevents workers from assessing whether their right to equal treatment in relation to pay is being upheld; it also hides the undervaluation of women’s work due to (often unconscious) bias in pay structures. Problems with the proper application of key concepts in assessing equal ‘pay’ for equal work or ‘work of equal value’ complicate the implementation of the right to equal pay for both workers and employers. Insufficient access to justice, coupled with workers’ fear of victimisation, makes the enforcement of their right to equal pay even more difficult.</p>
What should be achieved?
<p>The general objective is to improve the implementation and enforcement of the principle of equal pay for equal work or work of equal value between men and women, as regulated in Article 157 TFEU and Directive 2006/54/EC. The specific objectives of the initiative are to:</p> <p>empower workers to fully enforce their right to equal pay – bringing instances of pay discrimination to light through transparency and giving workers the necessary information and tools to act on it; and</p> <p>address systemic undervaluation of women’s work at employer level through transparency and correcting biases in pay-setting mechanisms that perpetuate the undervaluation of work done by women.</p> <p>Both of these objectives could be supported by addressing the difficulties affecting the application of the key legal concepts relating to equal pay, and access to justice.</p>
What is the added value of action at EU level (subsidiarity)?
<p>Action at EU level would ensure effective pay equality between men and women and enable all citizens to claim their rights on the basis of minimum standards applicable in all Member States. It would not only create harmonised minimum standards protecting workers, but also equal market conditions for employers operating in the internal market, thus preventing unfair competition. Only a coherent and comprehensive EU-wide approach can ensure a level playing field for all Member States and prevent</p>

employers from seeking unfair competitive advantages through pay discrimination. Finally, EU action is required under the Treaty and would uphold a fundamental principle and right to equal treatment that is enshrined in the EU Charter of Fundamental Rights. As demonstrated in the Commission's 2020 evaluation of the relevant EU equal pay legal provisions, comparable efforts to promote pay equality throughout the EU are not likely to come about without a push through an EU-level instrument.

B. Solutions

What are the options for achieving the objectives? Is there a preferred option? If not, why?

The following options have been considered:

option 0 — status quo;

option 1 — legislative action to ensure transparency at workers' level. This includes transparency of salary information prior to and during employment, on the basis of:

the proactive provision of information by employers (sub-option 1A); or

a request by workers, their representatives or equality bodies (sub-option 1B);

option 2 — legislative action to create transparency at employer level. This includes four sub-options with varying degrees of ambition:

sub-option 2A – equal pay certification;

sub-option 2B – joint pay assessment by employers and workers' representatives;

sub-option 2C – pay reporting combined with joint pay assessment; and

sub-option 2D – strengthened pay reporting and joint pay assessment where there are statistically relevant indications of gender pay inequalities; and

option 3 — legislative action to facilitate the implementation and enforcement of the existing legal framework (without pay transparency). This includes clarification of the existing key concepts of 'pay' and 'work of equal value', improved access to justice and improved enforcement mechanisms.

The preferred package is a combination of **sub-option 1B** (empowering workers through salary information prior to employment and a right to request information during employment), **sub-option 2D** (strengthened pay reporting and, in case of statistically relevant indications of pay inequalities, joint pay assessment and **option 3** in a single novel initiative. This is the most proportionate and targeted solution: it achieves the overall and specific objectives balancing effectiveness and efficiency and taking account of the lack of hard data on the scale of the problem and the current economic downturn resulting from the COVID-19 pandemic.

The envisaged set of legislative measures is aimed at creating transparency on pay and pay structures, empowering workers and addressing the systemic undervaluation of women's work. It will secure workers' right to access the information they need to assess whether they may be the victim of pay discrimination based on gender. It will also allow employers to detect and act on discrimination and bias in pay structures. The legislative option entails exemptions so as to balance the right to equal pay with the possible burden and cost of the various measures, and to target the measures where they are needed most. Employers with fewer than 250 employees would not be obliged proactively to provide them with periodical information on pay or to report on pay; nor to carry out joint pay assessments. In such entities, workers' rights would be protected by the right to request the relevant information on pay, combined with a strengthened reversal of the burden of proof and enhanced access to justice. The package also entails better application of the key concepts relating to equal pay.

What are different stakeholders' views? Who supports which option?

Extensive stakeholder consultations were carried out for this impact assessment and the preceding

evaluation of the EU's equal pay legal framework.

Private individuals responding to the consultation expressed overall support. This is consistent with the indications from opinion surveys, e.g. a Eurobarometer carried out in 2017.

Most **employers** would prefer to prioritise measures addressing other root causes of the gender pay gap. They consider this initiative less effective for the purpose of reducing the gender pay gap and therefore unnecessarily costly, particularly for SMEs. They highlighted the difficulties in assessing what constitutes 'work of equal value', and data protection concerns. They also referred to the autonomy of social partners and the need to preserve existing tools for reporting at national level.

Trade unions broadly support the initiative and favour even more ambitious approaches, although some question it on subsidiarity grounds.

Member States have different positions, but most are in favour (particularly those that have already introduced transparency measures).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any; otherwise of main ones)?

Beyond the main purpose of enforcing a fundamental right, pay transparency measures will facilitate a cultural shift on gender equality issues and result in better focused and targeted policy actions in this area. *For workers*, pay transparency improves job satisfaction and engagement. It raises awareness and empowers workers, especially women, to seek redress for unjustified pay differences at individual level and gender bias in pay settings and job evaluation. *For employers*, implementing pay transparency translates into higher employee retention, increased attractiveness and profitability. *Society as a whole* will benefit from a higher level and (also important) a greater perception of equality. More equality in pay improves the allocation and use of resources, reduces inequality and contributes to sustainable development. Overall, pay transparency measures can bring about significant behavioural change. The scale of the benefits will depend on the level of compliance with the legislation and the extent of employers' follow-up measures.

The potential impact of the package of measures has been hypothetically estimated as involving an overall **3 percentage-point reduction in the unexplained part of the gender pay gap**. This would lead to a **decrease in the 'at risk of poverty' rate** in the EU from 16.3% on average to around 14.6%, with significant variation across countries and household types. In turn, this would lead to an overall 6.9% increase in total earnings and an overall reduction of both market and disposable income inequality. The poverty rate is mostly reduced for **single-parent households, of which 85% are women**. There are also **positive impacts on national budgets**: government revenues from direct taxes and social contributions would rise by about 7.5%, while social transfers (cash benefits) would go down, mainly driven by a decline in means-tested benefits, by about 0.4%.

What are the costs of the preferred option (if any; otherwise of main ones)?

Member States' **administrative** costs (for **transposition and enforcement**) are expected to be limited, as are costs linked to monitoring compliance.

The package would involve one-off **compliance** costs for employers (expected to range from low to moderate) and lower recurring costs. The total costs for each employer were estimated on the following basis:

- providing pay information before hiring – €0;
- replying to an individual request for pay information – €20 (indicative - for all sizes of companies);
- obligatory reporting on average gender pay differences by worker category – €379-508 to €721-890 (for companies with 250+ employees); and
- carrying out an additional assessment (if necessary - for companies with 250+ employees, where pay reporting detects a statistically significant pay gap) – €1 180-1 724 to €1 911-2 266 per employer (expected to decrease in any subsequent exercises).

The total cost for the EU would be €26-50 million for pay reporting, plus any additional costs for a

possible joint pay assessment and requests for information on pay, both depending on the scale of pay discrimination.

What are the impacts on SMEs and competitiveness?

Employers with fewer than 250 employees are exempted from proactively providing workers with information on pay, from reporting on pay gaps and carrying out a conditional joint pay assessment. The pay reporting and assessment measures would apply to 0.2% of EU companies (accounting for 33% of the EU workforce). However, all workers would have the right to ask for specific pay information and all employers would be obliged to provide it.

This initiative primarily concerns the implementation of an EU fundamental right (the right to equal pay). Together with the EU's social objectives, such goals take precedence over the economic dimension of the right to equal pay¹. Only a coherent and comprehensive EU-wide approach can ensure a level playing field for all Member States and prevent employers from seeking unfair competitive advantages through pay discrimination.

Will there be significant impacts on national budgets and administrations?

The preferred option is expected to have limited implementation costs, overall and in particular for national administrations. The costs may vary, depending on the support Member States choose to make available, on a voluntary basis, for employers (e.g. dedicated IT infrastructures, replacing pay reporting with reporting based on administrative data, guidance and training on gender-neutral job evaluation and classification systems).

At the same time, positive impacts are to be expected though it is not possible to provide a reliable overall estimate. Higher wages for women (which would depend on the amount of pay discrimination corrected as a result of this proposal) could lead to a rise in government revenues (higher collection of income taxes and social insurance contributions). On the other hand, gains in average wages for women might be compensated by slower growth of men's salaries with an undetermined overall effect. To the extent that these changes would apply more to lower paid workers, there could also be a decline in social (cash) transfers, mainly explained by a reduction of means-tested cash benefits (see section above on benefits).

Will there be other significant impacts?

No potential **environmental impacts** were detected.

Proportionality?

The proportionality principle is fully respected, as the scope of the measures varies according to the size of the employer, thus avoiding excessive costs and burdens while upholding basic rights for workers. The proposal takes account of the lack of hard data on pay discrimination and the economic downturn caused by the COVID-19 pandemic. The intended intervention is the minimum necessary to enforce the equal pay principle effectively across Member States.

D. Follow up

When will the policy be reviewed?

The Commission intends to review the implementation of the initiative to assess the extent to which the policy objectives have been achieved. This **evaluation** should take place **8 years** after the deadline for implementing the legislation, possibly in coordination with the release of the gender pay gap data (SES²), in order to facilitate a meaningful assessment of practices and impacts across all Member States.

¹ Case 50/96, *Deutsche Telekom AG v Lilli Schröder*, ECLI:EU:C:2000:72, p. 57.

² EU Structure of Earnings Survey.