



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Women's Rights and Gender Equality

2011/2285(INI)

7.2.2012

DRAFT REPORT

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))

Committee on Women's Rights and Gender Equality

Rapporteur: Edit Bauer

(Initiative – Rule 42 of the Rules of Procedure)

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MOTION FOR A 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

(2011/2285(INI))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 8 and 157 TFEU,
- having regard to the Directive 2006/54/EC 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),
- having regard to the Commission's communication of 21 September 2010 entitled Strategy for Equality between Women and Men 2010-2015 (COM(2010)0491),
- having regard to the Commission's communication of 5 March 2010 entitled A Strengthened Commitment to Equality between Women and Men, A Women's Charter (COM(2010)0078),
- having regard to the Commission's report of May 2010 entitled The Gender Pay Gap in Europe from a Legal Perspective,
- having regard to the Commission's report of February 2009 by the European network of legal experts in the field of gender equality entitled The Transposition of Recast Directive 2006/54/EC,
- having regard to the Commission's communication of 18 July 2007 entitled Tackling the pay gap between women and men (COM(2007)0424),
- having regard to the Commission's report of February 2007 by the Commission's network of legal experts in the fields of employment, social affairs and equality between men and women entitled Legal Aspects of the Gender Pay Gap,
- having regard to the European Pact for gender equality (2011 - 2020) adopted by the Council on 7 March 2011,
- having regard to the case law of the Court of Justice of the European Communities based on Article 157 of the Treaty on the Functioning of the European Union,
- having regard to the report of the European Foundation for the Improvement of Living and Working Conditions of 5 March 2010, entitled Addressing the gender pay gap: Government and social partner actions,
- having regard to the European Social Partners' Framework of Actions on Gender

Equality of 1 March 2005, its follow-up reports of 2006, 2007 and 2008 and the final evaluation report of 2009,

- having regard to the provisions of the International Labour Organisation’s (ILO) 1994 Part-Time Work Convention¹, which requires countries to incorporate into their public procurement contracts a labour clause including the issue of equal pay,
- having regard to Article 11(1)(d) of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly by Resolution 34/180 of 18 December 1979,
- having regard to its resolution of 18 November 2008 on Application of the principle of equal pay for men and women²,
- having regard to the Commission’s follow-up of 3 February 2009 to the resolution of 18 November 2008,
- having regard to the initiative of 8 March 2010 by 10 of its Members to draw up a legislative initiative report on ‘Equal Pay for Equal Work’ pursuant to Rule 42 of the Rules of Procedure,
- having regard to Rules 42 and 48 of its Rules of Procedure,
- having regard to the report of the Committee on Women’s Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A7-0000/2012),

A. whereas women earn on average 17.1% less than men in the European Union and the gender pay gap varies between 3.2% and 30.9% in Member States, and whereas – despite the significant body of legislation in force for almost 40 years and the actions taken and resources spent on trying to reduce the gap³ – progress is extremely slow (the disparity at EU level was 17.7% in 2006, 18% in 2008 and 17.1% in 2009),

B. whereas the causes of the gender pay gap are complex, multiple and often interrelated and go far beyond the single issue of equal pay for equal work or work of equal value; whereas these causes include direct and indirect discrimination, as well as social and economic factors such as occupational and sectoral segregation in the labour market, undervaluing of women’s work, inequality in the balancing of work and private life, and traditions and stereotyping, including in the choice of educational paths and employment patterns; whereas, according to expert analysis, discrimination, direct and indirect, is responsible for approximately half the difference;

C. whereas on average women needed to work until 2 March 2012 in order to earn as

¹ <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=178&chapter=1&query=%23status%3D01&highlight=on&querytype=bool&context=0>.

² OJ C 16 E, 22.1.2010, p. 21.

³ Sustainable development in the European Union: 2011 monitoring report of the EU sustainable development strategy, Eurostat, 2011.

much as men had earned on average in the year up to 31 December 2011;

D. whereas implementation of the principle of equal pay for the same work and for work of equal value is crucial to achieving gender equality;

E. whereas the recast Directive 2006/54/EC has contributed to the improvement of women's situation in the labour market but has not profoundly changed the legislation on closing the gender pay gap; whereas preliminary studies by experts show that little or no change has been made in Member States' legislation and no sanctions have been taken against employers; whereas the complexity of the issue requires not only improvement of the legislation but also a Europe-wide strategy to address the gender pay gap, which, in turn, requires strong EU leadership in coordinating policies, promoting good practices and involving various actors;

F. whereas trends show that salaries are more frequently individually negotiated, resulting in a lack of information and transparency on the individualised pay system which leads to increased pay disparities among employees at similar levels, and can result in widening the gender pay gap; whereas a more decentralised and individualised system of wage setting should therefore be assessed as a rather worrying development, while data protection cannot be taken as a legitimate excuse for not publishing statistical information on salaries;

G. whereas, in all Member States, female students achieve a higher pass rate at school than their male counterparts and represent as many as 59% of all university graduates; whereas women's skills and competences are often undervalued – especially in those occupations where women predominate – without, necessarily, any justification on the basis of objective criteria;

H. whereas, according to expert analysis, the gender pay gap starts to be visible after a woman's return to the labour market from her first maternity leave; whereas women's slower, shorter and/or interrupted careers also create a gender differential in contributions to personal pension accounts, thus increasing women's risk of poverty in old age;

I. whereas women are more often employed in part-time work, and whereas the gender pay gap is almost twice as wide among part-time workers as among full-time workers;

J. whereas women work in lower-paid industries or in low-paid sectors with less collective representation and bargaining power;

K. whereas, according to legislation and European case law, employers must apply the same evaluation criteria to all staff, remuneration arrangements must be understandable and transparent, and the criteria applied must take into account the nature and type of work and must be free from discriminatory elements;

L. whereas only a few claims concerning discrimination in the form of a gender pay gap make their way to the competent courts¹; whereas there are many explanations for this

¹ Background document accompanying the Commission communication entitled Strategy for Equality between Women and Men 2010-2015 SEC(2010)1080, p. 36.

scarcity, including a lack of information on pay, the problematic scope of comparison and the claimants' lack of personal resources;

M. whereas the European Institute for Gender Equality can play a fundamental role in monitoring the development of the gender pay gap, analysing its causes and assessing the impact of legislation;

1. Requests the Commission to review Directive 2006/54/EC by 15 February 2013 at the latest, in accordance with Article 32 thereof, and to propose amendments to it on the basis of Article 157 TFEU, following the detailed recommendations set out in the annex to this Resolution, at least in relation to the following aspects of the gender pay gap issue:
 - definitions,
 - analysis of the situation and transparency of results,
 - work evaluation and job classification,
 - equality bodies and legal remedy,
 - social dialogue,
 - prevention of discrimination,
 - gender mainstreaming,
 - sanctions,
 - streamlining of EU regulation and EU policy;
2. Recognises that a multi-level, multifaceted approach requires strong leadership from the European Union in coordinating policies, promoting good practices and involving various actors as European social partners, with the aim of creating a Europe-wide strategy to address the gender pay gap;
3. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
4. Considers that the proposal requested will have no financial implications;
5. Calls on the Member States to implement and enforce the recast Directive 2006/54/EC consistently and to encourage the private sector to play a more active role in closing the gender pay gap;
6. Points out that collective negotiation and bargaining have an important role to play in combating discrimination against women, not least as regards access to employment, pay, working conditions, career advancement and vocational training;
7. Welcomes the Commission's Equal Pay Day initiative which was first established on 5 March 2011;

8. Welcomes the Council's initiative, under the Belgian Presidency in 2010, on evaluating and updating the set of quantitative and qualitative indicators;
9. Encourages the Commission to foster closer coordination among Member States in relation to research, analysis and taking full advantage of best-practice sharing;
10. Call on the Commission to revise the Council Directive concerning the Framework Agreement on part-time work, with the aim of closing the gender pay gap;
11. Encourages the social partners to shoulder their responsibility for creating a more gender-equal wage structure;
12. Calls on workers' and employers' organisations jointly to develop objective job-evaluation instruments in order to reduce the pay gap between men and women;
13. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council and the governments and parliaments of the Member States.

ANNEX TO THE MOTION FOR A RESOLUTION: DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

Recommendation 1: DEFINITIONS

Directive 2006/54/EC contains a definition of equal pay, by copying the provisions of Directive 75/117/EEC. To have more precise categories as tools for dealing with the gender pay gap (GPG) it is important to define the different concepts more precisely, such as:

- GPG, the definition of which must not cover gross hourly pay alone, while there needs to be a distinction between unadjusted and “net” gender pay gap;
- Direct and indirect pay discrimination;
- Remuneration, the definition of which should cover any net wages and salaries as well as any work-related financial entitlements and in-kind benefits;

Recommendation 2: ANALYSIS OF THE SITUATION AND TRANSPARENCY OF RESULTS

2.1. The lack of information and awareness among employers and employees about existing of possible pay gaps within their company as well as their ignorance weakens the implementation of the principle enshrined in the Treaty and in existing legislation.

2.2. Acknowledging the lack of accurate, comparable and coherent statistical data, including on part-time gender pay gap and the existing lower pay rates for women especially across professions traditionally dominated by women, Member States should take full account of the gender pay gap in their social policies and treat it as a serious problem.

2.3. It is therefore essential that regular pay audits, as well as accessible information on their results, are made compulsory within companies (e.g. in companies with at least 100 employees and where at least 10% of employees are women). The same requirement must also apply to information on remuneration in addition to pay. This information should be accessible to employees, trade unions and adequate authorities (e.g. labour inspections, equality bodies).

2.4. Employers should provide employees and their representatives with results in the form of wage statistics, broken down by gender. This data should be compiled at sectoral and national level in each Member State.

2.5 There should be a requirement on employers to adopt transparency policy in relation to wage composition and structures, including extra pay, bonuses and other advantages forming part of remuneration.

Recommendation 3: WORK EVALUATION AND JOB CLASSIFICATION

3.1. The concept of the value of work must be based on qualification, skills or responsibility emphasising quality of work, with the aim of promoting equal opportunities between women and men and should not be marked by a stereotyped approach unfavourable to women, for example putting the emphasis on physical strength rather than on interpersonal skills or responsibility. Women must therefore be provided with information, assistance and/or training in wage negotiations, job classification and pay-scaling. It must be possible for

sectors and companies to be asked to examine whether their job classification systems reflect the gender dimension in the required manner, and to make the necessary corrections.

3.2. The Commission's initiative should invite Member States to introduce job classification complying with the principle of equality between women and men, enabling both employers and workers to identify possible pay discrimination based on a biased pay-scale definition. Respecting national laws and traditions concerning industrial relations system remains important. Such elements of work evaluation and classification should also be transparent and be made available to all stakeholders and to labour inspectorates and equality bodies.

3.3. Member States should carry out a thorough assessment centred on professions dominated by women.

3.4. A gender-neutral job evaluation should be based on systems for classifying and organising staff and work and on professional experience and productivity assessed above all in qualitative terms, for use as a source of data and assessment grids for determining pay, with due regard to the principle of transparency and comparability.

Recommendation 4: EQUALITY BODIES AND LEGAL REMEDY

Equality promotion and monitoring bodies should play a greater role in diminishing GPG. The bodies should be empowered to monitor, report, and, where possible, enforce gender equality legislation more effectively and more independently while they should be adequately funded. Article 20 of Directive 2006/54/EC should be revised so as to enhance the bodies' mandate by:

- supporting and advising victims of pay discrimination;
- providing independent surveys concerning the pay gap;
- publishing independent reports and making recommendations on any issue relating to pay discrimination;
- legal powers to initiate their own investigation;
- legal powers to impose sanctions in cases of breaching the principle of equal pay for equal work and/or to bring wage discrimination cases to court;
- providing special training for the social partners and for lawyers, judges and ombudsmen based on a toolbox of analytical instruments and targeted measures to be used either when drawing up contracts or when checking whether rules and policies to address the pay gap are being implemented, as well as providing training courses and training materials on non-discriminatory job evaluation for employers.

Recommendation 5: SOCIAL DIALOGUE

Further scrutiny of collective agreements and applicable pay scales and job classification schemes are necessary, mainly concerning the treatment of part-time workers and workers with other atypical work arrangements or extra payments/bonuses including payments in kind. Such scrutiny should cover not only primary but also secondary working conditions and occupational social security schemes (rules on leave, pension schemes, company cars, childcare arrangements, flexible working time, bonuses etc.). Member States, while respecting national law, collective agreements or practice, should encourage social partners to introduce

gender-neutral job classifications, enabling both employers and employees to identify possible pay discrimination based on a biased pay-scale definition.

The responsibility of trade unions should be strengthened, while management could also play an important role not only with regard to pay equity, but also in terms of creating a climate to support the equal sharing of care responsibilities and careers advancement for both male and female workers.

The social partners should be empowered to put equal pay issues on the agenda, not only within their own sectors, but also to opt for an intersectoral balance.¹

Recommendation 6: PREVENTION OF DISCRIMINATION

Specific reference should be made to pay discrimination in Article 26 (on prevention of discrimination) of Directive 2006/54/EC, with a view to ensuring that Member States, with the involvement of the social partners and equal opportunity organisations, adopt:

- specific measures relating to training and job classification, aimed at the vocational-training system and designed to remove and prevent discrimination in training and classification and in the economical valuation of skills,
- specific policies to make it possible to reconcile work with family and personal life, covering childcare and other care services, flexible work organisation and hours, and maternity, paternity, parental and family leave, ,
- concrete affirmative actions (under Article 157(4) of the Treaty on the Functioning of the European Union) to redress the pay gap and gender segregation, to be given effect by the social partners and equal opportunity organisations at various levels, both contractual and sectoral, such as: promoting pay agreements to combat GPG, investigations in relation to equal pay, setting of qualitative and quantitative targets and benchmarking and supporting the exchange of best practice.
- a clause in public contracts requiring respect for gender equality and equal pay.

Recommendation 7: GENDER MAINSTREAMING

Gender mainstreaming should be enhanced by including in Article 29 of Directive 2006/54/EC precise guidelines for the Member States concerning the principle of equal pay and closing the gender pay gap. The Commission should gear itself to providing assistance to the Member States and to stakeholders as regards practical measures to bridge the gender pay gap by means of the following:

- devising reporting schemes for the purposes of assessing pay gaps between men and women,
- creating a data bank containing information concerning changes to the systems for the classification and the organisation of workers,
- collating and disseminating the results of experiments relating to the reform of work organisation,
- distributing information and guidelines on practical means, particularly for SMEs (e.g. on IT

¹ European Foundation for the Improvement of Living and Working Conditions: Addressing the gender pay gap: Government and social partner actions, 5 March 2010, page 30.

based tool LOGIB-D) of redressing the pay gap, including national or sectoral collective agreements.

Recommendation 8: SANCTIONS

8.1. The legislation in this field is for different reasons evidently less effective and, bearing in mind that the whole problem cannot be solved by legislation alone, the Commission and Member States should reinforce the existing legislation with appropriate types of effective, proportionate and dissuasive sanctions.

8.2. It is important that Member States take the necessary measures to ensure that infringement of the principle of equal pay for work of equal value is subject to appropriate sanctions according to the legal provisions in force.

8.3. It is recalled that under Directive 2006/54/EC, Member States are already obliged to provide compensation or reparation (Article 18), as well as penalties (Article 25). However, these provisions are not sufficient to avoid infringement of the equal pay principle. For this reason, it is proposed to conduct a study on the feasibility, effectiveness and impact of launching possible sanctions such as:

- penalties, which must include the payment of compensation to the victim;
- administrative fines (for example in the event of failure of notification or of compulsory communication or unavailability of analysis and evaluation of wage statistics disaggregated by gender (according to Recommendation 2)) requested by labour inspectorates or the competent equality bodies;
- disqualification from public benefits, subsidies (including EU funding managed by Member States) and public procurement procedures, as already provided for by Directives 2004/17/EC¹ and 2004/18/EC² concerning the procurement procedure.

Recommendation 9: STREAMLINING OF EU REGULATION AND EU POLICY

9.1. One area for urgent action concerns the fact that a wage penalty appears to be linked to working part-time. This requires an evaluation and possible revision of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work³, which prescribes equal treatment between full-time and part-time workers as well as more targeted and effective actions in collective agreements.

9.2. A concrete target for reducing the pay gap should be introduced urgently in the Employment Guidelines, inter alia regarding access to vocational training and recognition of women's qualifications and skills.

¹ OJ L 134, 30.4.2004, p.1

² OJ L 134, 30.4.2004, p.114.

³ OJ L 14, 20.1.1998, p. 9.