

## Application of the equal pay principle through pay transparency measures

Impact assessment (SWD(2021) 41 final, SWD(2021) 42 (summary)) accompanying a Commission 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)

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 4 March 2021 and referred to the European Parliament's Committees on Women's Rights and Gender Equality (FEMM) and Employment and Social Affairs (EMPL). The proposal intends to tackle 'the persisting inadequate implementation and enforcement of the fundamental right [for men and women] to equal pay [for equal work]' that is enshrined in Article 119 in the Treaty of Rome and ensure the respect of this right across the EU by establishing transparency on pay (IA, p. 5). The [2017 report](#) on the implementation of the [2014 Commission recommendation](#) on strengthening the principle of equal pay between men and women through transparency warned that the recommendation had not achieved the necessary change; this was confirmed by the [evaluation](#) of Directive 2006/54/EC regarding the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, IA, p. 23). The [implementation report](#) on the Juncker Commission's 2017-2019 [action plan](#) to tackle the gender pay gap also concluded that 'areas remain, where further actions would be necessary to address the gender pay gap in a meaningful way' (p. 11). Under Ursula von der Leyen, the Commission has reaffirmed its commitment to present binding measures in the 2020-2025 [gender equality strategy](#) with a view to achieving equal pay, including through pay transparency measures. Parliament meanwhile called for binding measures on the gender pay gap and pay transparency in its [resolution on the gender pay gap](#) of 30 January 2020 and reiterated this in its [resolution](#) of 21 January 2021 on the gender perspective in the Covid-19 crisis and post-crisis period.

### Problem definition

According to the IA, the main problem is 'the failure to realise in the European Union the fundamental right to equal pay for the same work or work of equal value'. This failure means that women and men can still suffer discrimination based on sex. This discrimination can be direct and deliberate but often it is indirect, based on underlying pay structures that do not value the work of women and men equally according to objective and gender-neutral criteria. The IA acknowledges the difficulty in quantifying the scale of the problem (as discriminatory behaviour is rarely openly stated) and is careful not to make too strong claims but rather refers to the 2020 evaluation, and some legal cases and empirical evidence from Member States.<sup>1</sup> According to the IA, both workers and employers may fail to grasp what 'equal pay for work of equal value' means in practice and a lack of transparency 'hinders uncovering pay discrimination and allows discriminatory pay structures to remain in place' (p. 7). The IA indicates (pp. 18-19) that uncovered and unaddressed gender pay discrimination has consequences for both workers and employers:

1. **For workers, gender-based pay discrimination infringes on their individual rights.** Equality between women and men is a **fundamental right** according to Article 2 TEU and

Article 21 and 23 of the Charter of Fundamental Rights of the EU. The **social right** to equal pay for equal work is enshrined in Article 153 and 157 TFEU as well as Article 23 of the Charter. Beyond that, this discrimination also affects individuals' earnings expectations and careers by **distorting decisions relating to employment and occupation**, in the long run resulting in a **gender pension gap**.

2. **For employers these distortions lead to potential losses in productivity** as female labour market participation is below the optimal level. This productivity loss is set to grow as the ratio of female to male university graduates increases. Furthermore, if the principle of equal pay for equal work is not upheld consistently across all Member States, it might obstruct worker mobility and hinder fair competition among employers across the EU.

The IA identifies **two key problem drivers**: the existence of a **market failure**, caused by information asymmetry, and a **regulatory failure**.

1. The IA states that pay discrimination can be seen as a **market failure** because individual workers do not have access to the information necessary to understand how their and their colleagues' work is valued due to a lack of transparency in wage and wage setting. This **information asymmetry** may lead to workers not being able to detect and challenge sex-based discrimination (IA, pp. 14-15).
2. According to the IA (p. 16), **regulatory failure** stems from a '**lack of legal clarity of the 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'. In fact, based on the aforementioned evaluation (p. 65), 'the effectiveness of the legal framework is hampered by the lack of clarity and awareness of the concept of equal pay for equal work and work of equal value'.

The IA states that, as long as the problem of gender pay discrimination remains hard to identify owing to a lack of data and information, and workers do not have the tools to enforce their rights, there is no incentive for employers to analyse their pay structures. Similarly, governments and policy makers lack the information to grasp the extent of the problem and address it (IA, p. 19). In fact, the pandemic has already impacted gender equality negatively, as many of the jobs most affected are those where women are overrepresented, such as hospitality and retail (see [Eurofound 2020 policy brief](#)).<sup>2</sup> The IA helpfully provides a table summarising trends pre- and post-pandemic in its Annex 5 (IA, pp. 151-152) with further analyses of the gender pay gap, the behavioural effects of pay transparency, a summary of costs among others and the intervention logic in Annex 6 (IA, pp. 158-169). The IA provides a clear, well-evidenced outline of the problems at stake, considering that one of the inherent problems of gender pay discrimination is the lack of data and the difficulty proving its existence. The IA identifies the problem drivers coherently and makes a compelling case for the consequences if the situation stays unchanged, including the likely impact of the pandemic.

## Subsidiarity / proportionality

The IA addresses subsidiarity in a dedicated chapter (IA, pp. 21-24) and provides a subsidiarity grid<sup>3</sup> in Annex 7 (IA, pp. 170-173). The IA justifies EU action from both a Treaty and an added value perspective. It explains the legal basis for the initiative as Article 157(3) TFEU, which gives the Union the specific right to act on matters of gender equality in employment and occupation (IA, p. 21). As concerns subsidiarity, the IA sees a need for EU-level action, as previous attempts to introduce gender equality have not brought about the necessary change, with only 17 Member States introducing measures of varying effectiveness (IA, p. 147). These fragmented national measures lead the IA to find added value in EU action establishing pay transparency and related enforcement mechanisms. This would involve a harmonised minimum standard to protect workers' right to equal pay and prevent an uneven playing field for employers, therefore allowing them to operate across Member States with less uncertainty. The subsidiarity grid of Annex 7 (IA, pp. 170-173) argues these points coherently and backs them up with the aforementioned evaluations' findings. Proportionality is not mentioned within the main text of the IA, neither are options compared against the proportionality principle as required by the Better Regulation Guidelines (BRG, pp. 28-

29). However, proportionality is illustrated in the proposal's explanatory memorandum (pp. 4-5) as well as in the proportionality grid of Annex 7 (IA, pp. 173-175).<sup>4</sup> No national parliament submitted a reasoned opinion by the deadline of 5 May 2021 under the [subsidiarity control mechanism](#).

### Objectives of the initiative

The general objective of the proposal 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 a 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' (IA, p. 24). The IA identifies **two specific objectives** (IA, p. 24): **empowering workers to enforce their right to equal pay**, by making instances of pay discrimination visible through transparency, and providing workers – especially female workers – with the information necessary to follow them up; and **addressing the systemic undervaluation of women's work at employer level**, by correcting biases in pay setting mechanisms that perpetuate the undervaluation of work done by women through transparency. The specific objectives appear mainly to address the first identified problem driver, but they do match the intervention logic presented in Annex 6 (IA, p. 169). However, the IA does not define any operational objectives, which would illustrate what the deliverables of specific policy actions are, and this choice is not substantiated. Such operational objectives would have contributed to the specific objectives being more 'S.M.A.R.T.', i.e. specific, measurable, achievable, relevant and time-bound, as required by the Better Regulation Guidelines (BRG, p. 20), but there is neither a time frame nor a way to measure success. The objectives could have been defined more precisely.

### Range of options considered

The IA discusses a range of options and sub-options deriving logically from the general and specific objectives. In addition to the baseline, it selects legislative actions aimed at: creating transparency at the level of individual workers and empowering workers (**Option 1**); achieving transparency at employer level and addressing the structural undervaluation of women's work (**Option 2**); and facilitating the implementation and enforcement of the existing legal framework (**Option 3**). These options are not in fact options to choose from, rather the IA finds that only a combination of measures from all three options, which constitutes the preferred package, would address the two specific and one overall goal.

Table 1 – Range of options considered (preferred options are highlighted in light blue)

OPTIONS	SUB-OPTIONS	MEASURES
<b>Option 0:</b> status quo		
<b>Option 1:</b> legislative action to create pay transparency for individual workers	<b>1A:</b> Empower workers by granting a right to pay information (obligation for employers to provide information)	<b>Measure 1:</b> transparency of salary information prior to employment (exemption: none) <b>Measure 2:</b> 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)
	<b>1B:</b> Empower workers by granting right to request pay information (right for employees to request pay information)	<b>Measure 1:</b> transparency of salary information prior to employment (exemption: none) <b>Measure 2:</b> 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)
<b>Option 2:</b> legislative action to create pay	<b>2A:</b> equal pay certification	<b>Measure:</b> obligation for employers to receive the Standard Equal Pay Standard accreditation from an accredited certification body (exemption: < 50 workers)

OPTIONS	SUB-OPTIONS	MEASURES
transparency at employer level	2B: joint pay assessment	<b>Measure:</b> obligation for employers to carry out an annual pay assessment in cooperation with workers' representatives or by an external audit firm (exemption: < 50 workers)
	2C: basic pay reporting combined with joint pay assessment	<b>Measure 1:</b> employers' obligation to carry out a joint pay assessment (exemption: <250 workers) <b>Measure 2:</b> employers' obligation to report on average differences in pay between female and male workers (exemption: <50 workers)
	2D: strengthened pay reporting and joint pay assessment if pay report shows pay differences which cannot be justified by objective, gender-neutral factors	<b>Measure 1:</b> 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) <b>Measure 2:</b> employers' obligation to carry out a joint pay assessment if pay report shows pay differences that cannot be justified by objective, gender-neutral factors
<b>Option 3:</b> legislative action to facilitate the application and enforcement of the existing legal framework	no sub-options provided	<b>Measure 1:</b> facilitate the application of the existing key concepts of 'pay' and 'work of equal value' by enshrining the main guidelines and objective criteria set by the Court of Justice of the European Union <b>Measure 2:</b> improved access to justice for potential victims of pay discrimination by granting legal standing to equality bodies and workers representatives' organisations, and new rules regarding compensation, limitations and legal costs that would remove obstacles victims face <b>Measure 3:</b> other measures to enhance enforcement and implementation, such as penalties and involvement of social partners

Source: Authors, based on the IA (pp. 38-39).

**Option 0 (status quo):** the IA states that, in the absence of action at EU level, Commission Recommendation 2014/124/EU would remain the main action taken at EU level. The IA argues that without any further action, gender pay discrimination may continue to decrease on its own but not at a fast enough rate for 'equal pay for equal work' to be upheld. (IA, pp. 25-26). **Options 1 and 2** are legislative actions made up of several sub-options with measures of differing effectiveness, efficiency and coherence. The **preferred measures for option 1, sub-option 1B**, grant workers the right to request pay information as well as obliging the employer to inform prospective workers about the initial salary offer or a reasonable range expected to apply to the position. It scores lower than sub-option 1A on achieving the first specific objective of empowering workers, but it can be applied without exemptions and presents less of an administrative burden for employers. **For option 2, the preferred measures are sub-option 2D**; although scoring lower than the other three sub-options, the IA states that it would gain in effectiveness if combined with sub-option 1A or 1B. It also has the advantage of targeting more precisely large employers where such action is needed rather than penalising them all. **All the measures of option 3 are included in the preferred package** so as to improve access to justice when gender pay discrimination is uncovered with the tools identified in options 1 and 2. The IA concludes that the two specific objectives cannot be reached by one of the options alone and that, rather, a combination of them needs to be employed. **By employing sub-options 1B and 2D as well as option 3 the specific objectives as well as the general objective can be achieved** in a proportionate manner according to the IA without any duplicate obligations and limiting costs as much as possible. The IA further argues that especially with the uncertainty around the longer-term economic impact of the Covid-19 crisis it is important not to put employers under undue strain (IA, pp. 74-76). Aside from the options presented here, a Council recommendation was also briefly considered but discarded at an early stage as it was not likely to be effective enough (IA, pp. 29-30). The content of the measures in option 1 and 2 is presented concisely, albeit without much detail, and some already contain a judgment of their effectiveness (IA, p. 31). For option 3, various legislative actions are suggested but it is not made

sufficiently clear which of these actions the option would contain. The measures within the options are analysed in terms of effectiveness, efficiency, and coherence. The IA also outlines the proportionality considerations that influenced the choice of preferred options. However, it is debatable whether the minimum requirement of selecting at least two options in addition to the baseline (Better Regulation Guidelines and [Tool #17](#)) has been respected. Technically there are three options presented next to the baseline, but options 1 and 2 clearly are aimed at addressing one of the two specific objectives each and therefore do not constitute standalone options. While there are sub-options presented, sub-options 1A and 1B differ only in one of their measures and 2B, 2C and 2D are all centred on joint pay assessments. Option 3 contains no sub-option at all. To conclude, the range of options seems to be built around a pre-selected preferred option package with only a limited range of alternatives considered.

## Assessment of impacts

The IA considers economic and social impacts, while environmental impacts are not taken into account, in light of the problem definition and the objectives of the legislative proposal. The IA transparently acknowledges that given the uncertainty concerning the calculation of costs and benefits of the different policy options (IA, p. 124), detailed calculations were performed regarding the direct costs to firms, based on disaggregated information and costs by firm-size (IA, pp. 124-126), whose results are presented in Annex 5 of the IA (pp. 158-164). As regards the benefits for work and costs for employers, these are assessed mostly qualitatively when discussing the retained options, for the measures envisaged under each of them. An overview of costs and benefits for the preferred option is provided in Annex 2 of the IA (Tables 1 and 2, pp. 115-116). The IA also transparently acknowledges that 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. However, since an appropriate metric regarding gender pay discrimination is not available, the IA tries to estimate what would be the distributional effects of a 'modest' reduction in the gender pay gap from implementing the envisaged pay transparency measures (IA, pp. 76-77). However, the aforementioned measures refer to those envisaged under preferred options 1B and 2D; as such, it is unclear what the impact of the three measures envisaged under preferred option 3 would be. Based on a simulation carried out using the EUROMOD model (IA, p. 78 and Annex 4, pp. 127-138), the IA also provides some estimates of the impacts on household income distribution, on the [at-risk-of-poverty rate](#), and on public budgets resulting from an external increase in women's gross hourly wages, driven by a reduction in the 'unexplained part' of the gender pay gap of 3 percentage points (IA, pp. 78-79). Considering the impact on poverty, for example, the at-risk-of-poverty rate would drop from the initial EU27 average of 16.3 % to 14.6 %, with the risk of poverty being reduced predominantly for single parent households, which are mostly women (85 %) (IA, p. 79). As regards the potential impact of a reduced gender pay gap on economic growth, the IA quotes the results of a Parliament [EU added value assessment](#), which estimated that each percentage point reduction in the gender pay gap would translate into an increase in EU gross domestic product (GDP) of 0.1 percentage point (IA, pp. 79-80). However, the IA provides no indication, qualitative or quantitative, of the contribution that would result from the three measures identified under Option 3, which is part of the preferred package. In addition, in comparing the options, the IA does not appear to have succeeded in providing an overall, even qualitative, assessment of how the different options could contribute to achieving substantive gender equality, although some information is provided on specific angles.

### SMEs / competitiveness

Based on the text included under the SME test section of the IA (pp. 26-27) and the information provided in Annex 2 (pp. 119-120) and Annex 5 (pp. 158-164), the analysis regarding the impact on SMEs appears to be sufficient, although partially incomplete, as described below. The IA acknowledges that a large number of SMEs would be affected. A summary of costs, disaggregated by company size and measures envisaged is provided. For some retained sub-options, the

distribution of costs with respect to business size (differentiating between micro, small, medium and large enterprises) is quantified but among the preferred sub-options, only sub-option 2D is reported, while sub-option 1B appears to be missing. On the other hand, the IA considers the thresholds of 50 and 250 workers indicated for some of the sub-options/measures, illustrating the coverage of enterprises and workforce by employer thresholds applied (IA, pp. 119-120). The analysis on competitiveness is missing, which is surprising given that, illustrating the problem, the IA states that 'pay discrimination has negative economic consequences as it entails inefficiencies in how the labour market operates and lowers competitiveness in the internal market' (IA, p. 18). When discussing the added value of EU action, the IA states that EU action establishing pay transparency and related enforcement mechanisms would also prevent businesses from competing on an uneven playing field and therefore improve the operation and competitiveness of the internal market (IA, p. 23). It is worth noting here that in its third (positive) opinion, the Regulatory Scrutiny Board observed that the impact analysis should have drawn 'coherent conclusions as regards the effects of pay discrimination on companies' competitiveness' (IA, Annex 1, p. 96).

### Simplification and other regulatory implications

The IA does not appear to devote a lot of space to illustrating the regulatory implications or simplification potential of the preferred options and measures. The preferred option 3 is clearly aimed at facilitating the application and enforcement of the existing legal framework that should, in principle, bring a reduction of the regulatory burden, although this is not openly stated in the IA. The IA states that the envisaged measure 1 of Option 3 ('facilitate the application of the existing key concepts of 'pay' and 'work of equal value') 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 (IA, p. 34), and that sub-option 2D is considered as entailing the least costs and burden for employers (IA, p. 72).

### Monitoring and evaluation

The IA states that the Commission would monitor the transposition of the initiative into national legislation at the end of the transposition period and thereafter, by monitoring the legislative or non-legislative initiatives adopted by Member States 'beyond what is strictly required by the initiative', and their effect (IA, p. 81), although this statement is not detailed further. The initiative would be evaluated eight years after the implementation deadline, and would require data to be gathered at Member State level, as indicated by article 26 of the proposal. In this regard, the IA suggests synchronising the evaluation with the release of data provided by the [EU structure of earnings survey](#) (IA, p. 82). The evaluation could be based on two different 'conceptual options': a counterfactual analysis or the use of indicators on transparency in wage setting, although these options are illustrated in an unsatisfactory way (IA, pp. 82-83). As regards the quantitative monitoring of impacts, the IA states (p. 81) that, ideally, progress towards achieving the objectives of the initiative should be monitored based on a quantitative indicator of gender pay discrimination but 'the lack of data and methodological difficulties make developing such indicator a challenging exercise', based on the findings of the evaluation completed in 2020 (Annex 8, pp. 83-87). In the absence of a pay discrimination indicator, the IA states that refinement of the gender pay gap indicator at EU level could already support in-depth quantitative analysis, although the explanations provided regarding how this should be done in practice are not very clear (IA, p. 81). The IA suggests a list of qualitative indicators for the monitoring of impacts, which appears to be more feasible and implementable in cooperation with different stakeholders (IA, pp. 81-82). However, it is worth remembering that the IA does not identify operational objectives, and the monitoring provisions referred to in article 26 of the legislative proposal mention just a few data to be collected by the monitoring bodies designated by each Member State.

### Stakeholder consultation

The Commission performed wide consultation (IA, pp. 102-103), which included several targeted consultations and surveys, detailed in Annex 2 of the IA (pp. 105-113), in addition to the standard 12-

week open public consultation – OPC (5 March-29 May 2020). According to the IA (IA, pp. 107-108), about 70 % of respondents to the OPC viewed the gender pay gap as being a particular issue in the private sector, regarding micro-, small and medium-sized enterprises, while 61 % viewed it as an issue in larger enterprises. However, based on the replies, 39 % of respondents viewed it as being an issue also in the public sector. The IA states that the pay transparency measures presented in the questionnaire were considered by a significant majority of respondents as being effective. Furthermore, the enforcement measures focused on strengthening victim rights were viewed as being effective by a significant majority of respondents. Based on the information provided, it would appear that the IA has described the outcomes of the different consultation activities comprehensively, reporting on the contributions of the different categories of stakeholders in satisfactory detail.

## Supporting data and analytical methods used

In addition to the [evaluation](#) of the relevant provisions contained in Directive 2006/54/EC, the analysis performed in the IA is based on a 'dedicated support study', which was unfortunately neither referenced nor available at the time of writing. In addition, the analysis carried out in the IA was supported by books, papers, reports, studies and the case law of the European Court of Justice listed in the bibliography included in the IA (pp. 84-93). Finally, the analysis benefited from a simulation carried out by the Joint Research Centre (JRC) with the EUROMOD model, regarding the impacts of reducing the adjusted gender pay gap (AGPG) on household income distribution, inequality, poverty risk and on government budgets, whose features and findings are described in the IA (Annex 4, pp. 127-138).<sup>5</sup> A statistical analysis of the gender pay gap is provided in Annex 5 (IA, pp. 142-147). The IA acknowledges the lack of data on the extent of pay discrimination (IA, p. 14), but this is considered inherent to the issue at stake (e.g. the reasons for differential treatment are hidden in pay structures that have not been evaluated for many years).

## Follow-up to the opinion of the Commission Regulatory Scrutiny Board

On 25 September 2020 the Commission Regulatory Scrutiny Board (RSB) adopted a [negative opinion](#) on a draft version of the IA report submitted on 2 September, due to 'significant shortcomings'. On 17 November 2020, the RSB adopted a [second negative opinion](#) on a draft version of the IA report submitted on 23 October. Finally, on 27 January 2021, the RSB exceptionally adopted a [third positive opinion](#) on a draft version of the IA report submitted on 8 January, but still recommending further improvements in several respects, for instance giving a better explanation of why the preferred combination of measures was considered most proportionate. The IA explains fully in its Annex 1 (pp. 95-104) how the comments included in the three RSB's opinions were addressed. For the recommendations in the third opinion, the Commission did not follow up the RSB recommendation to clarify the structure of the options by combining the different options to address all objectives into alternative packages, as the IA states that a full description of all other feasible combinations was not carried out in order 'to avoid unnecessary lengthy discussions' (IA, Annex 1, p. 96). In addition, the second specific objective is still vague and missing measurable goals despite the RSB's call for a better definition of the objectives. On the other hand, it appears that the proportionality analysis has been improved, and the IA seems to have acknowledged more clearly how difficult the statistical analysis of pay discrimination is, precisely due to the lack of transparency (IA, pp. 6-21). Overall, the IA appears to have partially addressed the RSB's comments.

## Coherence between the Commission's legislative proposal and IA

The proposal seems to be aligned with the analysis carried out in the IA and reflects all the measures from the preferred package. In its article 16 it includes a shift of burden of proof and in its article 22 protection against less favourable treatment for those who exercise their rights relating to equal pay, which the IA suggested including to enhance sub-option 1B's effectiveness (IA, p. 47).

Following two negative opinions from the Regulatory Scrutiny Board and an exceptional third positive one, the IA provides a good problem definition, acknowledging the difficulties in measuring the gender pay gap. The IA identifies the problem drivers coherently and makes a compelling case for the consequences if the

situation stays unchanged, including the likely impact of the Covid-19 crisis. While the specific objectives appear to be largely consistent with the problems identified and the intervention logic, the IA would have benefitted from outlining them more clearly by defining the corresponding operational objectives. The options retained for assessment seem built around a pre-selected preferred option package and a wider range of alternatives would have been welcome. The IA seems to have succeeded in providing some quantitative indication of the economic and social impact of the measures envisaged under preferred options 1B (right for employees to request pay information) and 2D (strengthened pay reporting and joint pay assessment if pay report shows pay differences that cannot be justified by objective, gender-neutral factors), but the impact of option 3's legislative action to facilitate the application and enforcement of the existing legal framework is not clear. The analysis regarding the impact on SMEs appears to be insufficiently developed while the analysis on competitiveness is missing, despite the fact that one of the problems identified by the IAs is that gender pay discrimination leads to distorted competition in the EU. The data and evidence supporting the IA appear to be convincing overall, although the IA's transparency would have increased had the IA supporting study been referenced or made publicly available. The IA appears to have addressed the RSB's comments included in its third opinion partially. The proposal includes all the measures presented in the IA's preferred package as well as two extra measures that were suggested, but not included explicitly in the preferred package, namely shifting the burden of proof and protecting against victimisation to increase its effectiveness.

## ENDNOTES

- <sup>1</sup> While Europe's gender pay gap has been estimated at 14 %, Annex 5 of the IA (pp. 141 168) acknowledges that figure to be unreliable as it depends on other factors, such as general labour force participation. The IA illustrates other indicators such as pay penalties in hourly pay for part-time jobs or monetary fringe benefits (for example, bonuses), where the gender gaps are much higher than for the regular wages.
- <sup>2</sup> The IA also notes that in the aftermath of the crisis it might falsely seem as if gender pay discrimination has decreased as many women in those jobs may not return to the labour market (IA, p. 20).
- <sup>3</sup> The inclusion of such a subsidiarity grid was recommended in the 2018 [Report](#) of the Commission task force on subsidiarity, proportionality and 'doing less more efficiently'.
- <sup>4</sup> In the grid, the IA states that the proportionality principle is upheld as the current framework has proven insufficient to achieve the objective of more effective implementation of the equal pay principle through pay transparency. Furthermore, it explains that the measures envisioned in the proposal are tailored to companies' different sizes so as to keep the administrative burden as low as possible. Lastly, the choice of a directive as the appropriate instrument leaves the Member States room to keep or set more favourable standards as well as the option to entrust the social partners with the directive's implementation.
- <sup>5</sup> Of note, the EUROMOD model is featured in the modelling inventory and knowledge management system of the European Commission, MIDAS ([EUROMOD factsheet](#), [online database](#)).

This briefing, prepared for the FEMM and EMPL committees, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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