

# Reporting Obligations Regarding Gender Equality and Equal Pay

## State of play among Member States and avenues for upgrading and implementing legal sanctions towards companies<sup>1</sup>

### Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, provides an in-depth analysis of the policy and legal state-of-the-art concerning gender pay discrimination in the European Union. To this end, it builds on a comprehensive comparative study covering European countries (i.e., Italy, France, Germany, Denmark, Iceland, and Spain), in order to conclusively design and develop specific policy recommendations to move towards a shared and well-informed solution to wage discrimination in the EU, especially in light of the European Commission's recently adopted proposal for a Corporate Sustainability Reporting Directive (CSRD).

### Background

Currently, working women in the European Union (EU) are paid on average 14.1% less per hour than their male counterparts<sup>1</sup>. In addition to being a form of injustice on a personal level, the gender pay gap, a key dimension of the overall gender gap, has substantial socio-economic implications, as gender equality is intrinsically linked to economic growth and sustainable development<sup>2</sup>. Not surprisingly, after publishing an in-depth study in 2013<sup>3</sup>, the European Commission's 2020-2025 Gender Equality Strategy makes equal access to the economy for both women and men one of its priorities, and respectively, in 2021 the European Parliament adopted "a resolution on the EU Strategy for Gender Equality, calling on the Commission to draw up an ambitious new gender pay gap action plan, which should set clear targets for EU countries to reduce the gender pay gap over the next five years."<sup>4</sup> With the aim to tackle the determinants of the gender pay gap, the Members of the European Parliament also advocated for increased accessibility for women and girls to study and work in male-dominated sectors, for more flexible work arrangements, and also for the improvement of wages and working conditions in female-dominated sectors.<sup>5</sup>

<sup>1</sup> Full study in English :  
[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/698641/IPOL\\_STU\(2021\)698641\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/698641/IPOL_STU(2021)698641_EN.pdf)



Fostering gender equality is also listed as part of the United Nations (UN) Sustainable Development Goals (SDGs), precisely target number 5.<sup>6</sup> However, there is still a lack of attention on the issue at the corporate governance level, and investors do not yet pay adequate attention to sustainability-related risks in their investment decisions, despite research showing that companies meeting sustainability requirements (which include gender equality in the case of the EU) enjoy better returns.<sup>7</sup>

Pay discrimination on the basis of gender constitute one of such gaps. The EU has implemented a variety of soft and hard policy tools to enhance equal pay for women and men. This policy approach stems from the fact that the pay gap is cut across two main dimensions; on the one hand, the issue of 'equal pay for equal work of equal value' and, on the other hand, the structural and institutional factors that keep women at a significant economic disadvantage vis-à-vis their male counterparts.<sup>8</sup> These factors, which include outdated stereotypes about women's and men's roles in society, mean that women, on average, are highly concentrated in the lowest-paying sectors of the economy and also disproportionately involved in childcare and unpaid household tasks compared to their male counterparts.

Policymakers have implemented policies to address gender pay discrimination at both European and Member State levels<sup>9</sup>. One of the main policy instruments employed at a regional level by the EU is the Non-Financial Reporting Directive (NFRD), which requires large companies with more than 500 employees to disclose diversity information. While diversity disclosures help hold companies accountable for gender equality in the workplace, there is an urgent need to increase corporate involvement in working cooperatively with policymakers to narrow the gender gap, including when it comes to equal pay. In this way, the Commission recently adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), with the objective of amending the NFRD and broadening the scope and breath of reporting obligations. On the one hand, the CSRD will include more companies as it extends the obligations to all listed companies in the EU; on the other hand, the CSRD will be substantially different in the way it incorporates sustainability issues, requiring companies to provide a detailed account of how they are incorporating sustainability issues into their business and the impact of their business on society and the environment.<sup>10</sup> The proposal also allows small- and medium- sized enterprises (SMEs) to voluntarily report on their sustainability obligations. In addition, it seeks to simplify the reporting process by reducing disincentives for non-compliance. The implementation of legal sanctions towards large non-compliant companies is also under discussion.

### Key findings

With the objective of understanding the policy solutions to move forward in eliminating pay inequalities, we conducted a comparative analysis on the current situation in the EU and in six selected case studies, namely Denmark, France, Germany, Iceland, Italy, and Spain. The country selection was carefully made to represent the equal pay situation in the region, and was thus based on geography, gender gap indicators, each country's legal framework, and their recent developments in the legal and policy dimensions. Our comparative analysis suggests that although general conditions apply, Member State contexts and specificities remain relevant. This is largely due to the fact that the gender pay gap is intrinsically linked to other forms of systemic exclusion in the economy and society, as reflected in other gender imbalances in employment, education, skills, care, and pensions. Cultural, structural and institutional factors keep women concentrated in the lowest-paid sectors of the economy, and largely excluded from decision-making positions. At the same time, women in the EU represent the main providers of unpaid work in household and childcare, which means that many women face a trade-off between being a mother or entering the workforce.

On the one hand, significant progress has been made in tackling gender inequalities in Europe in recent decades – gender stereotypes are increasingly challenged socially, women enjoy greater inclusion in the economy than in the past, and policymakers increasingly recognize the importance of gender mainstreaming in public policy. On the other hand, however, no European country has achieved gender parity in wages yet, and progress in reducing the gender pay gap has stalled over the past years.

The EU guarantees the principle of 'equal pay for work of equal value' and, in fact, European employees count with the possibility to take legal action in cases of discrimination without retaliation from their employer. The principle of 'equal pay for equal work' is included in Article 157 TFEU. Article 23 of the Charter of Fundamental Rights of the European Union explicitly addresses gender equality in various dimensions, including remuneration. Narrowing the gender pay gap has also been part of the European Employment Strategy (ESS) since 1999. And, moreover, the EU has set a date (10 November) as European Equal Pay Day, in an effort to increase awareness about the topic with the slogan #MakeHerCount. The EU also supports Member States in improving their application of the equal pay principle, as in the example of the 2014 recommendations made by the European Commission to Member States regarding pay discrimination on the basis of gender. The 2014 Commission Resolution placed emphasis on definitional differences, which presents a crucial point of heterogeneity in the legal frameworks of Member States, and thus the Commission recommended individual countries to clarify the concept of 'work of equal value.'

With regard to the structural, institutional, and cultural determinants of the gender pay gap, the EU has been working on implementing strategies such as the Work-life Balance Directive, with the aim of altering traditional family arrangements, promoting flexible work for both men and women, and supporting the equal distribution of household and care tasks between partners. The EU also enacted the Women-On-Board Directive, which aims to improve gender balance in the boardrooms.

One of the most decisive steps in consolidating a culture of equal pay in the EU was Directive 2006/54/EC, which also helped to confirm the effectiveness of directives as the main tool for achieving important goals through soft law mechanisms. Another decisive step was the proposal to amend the NCRD, which is now referred to as the CSRD.

Similarly, Member States show heterogeneity in the factors leading to their respective gender gaps. A comparative analysis of the legal framework at both EU and country level suggests that national laws differ in their legal sources for enforcing equal pay, and in their definability of the principle. Although most countries have been successful in addressing the issue of 'equal pay for work of equal value,' and pay discrimination for equal work is illegal and socially condemned in virtually all countries, defining equal pay is important to address the disincentives for women to remain out of the labour force and the obstacles they face in escalating the professional ladder.

The case of Italy, which has a below-the-average gender pay gap of 5% helps to depict how a low female employment rate can hide positive selection into the labour market, helping to artificially reduce the gender pay gap. Positive selection implies that only highly skilled women are employed, and less skilled women are kept out of the labour force, mainly to partake childcare and household responsibilities. In light of this, Italy's most recent legislative development, the forthcoming National Plan for Recovery and Resilience (PNRR), includes incentives for companies to value women's work and provisions to discourage women from choosing between work or care duties, which could potentially present a decisive step towards targeting indirect pay discrimination.

The cases of France, Denmark, and Spain portray moderate gender pay gaps, largely explained by women's concentration in the lower paying sectors of the economy and, additionally, their disproportionate involvement in unpaid care work. The female employment rate in these countries, however, is relatively higher than in Italy. France has recently established the 2019 Professional Future Act, which set up indicators to measure the equal pay situation in companies with at least 50 employees. The Professional Future Act also outlines potential sanctions for companies of this size. Although the Act is relatively recent for evaluation, it has contributed to bringing salience to gender-sensitive policies, proving particularly important during the COVID-19 pandemic. In the case of Denmark, unlike other Member States, the principle of gender equality is not explicitly included in the Constitution, and Denmark has instead based its legislation on gender equality on EU directives. Denmark's most recent development is the 2019 Equal Pay Act which includes basic non-discrimination provisions. Unlike other Member States, however, Denmark's legislation provides for some cases of indirect discrimination. Spain's latest developments, Royal Decree

6/2019 and Royal Decrees 901 and 902/2020, require companies with 50 or more employees to draft equality plans, provide tools to help companies be compliant, and also outline sanctions in cases of discrimination.

Germany and Iceland represent exceptionally different cases from the average.

Germany, on the one hand, reportedly has one of the highest gender pay gaps in the EU, which is partly explained by its prevalence of women's involvement in part-time and temporary employment. Germany's most recent legislation, the Pay Transparency Act of 2017, allows employees of companies with more than 200 employees to request information on the criteria and procedure for determining wages. At the same time, it requires companies with more than 500 employees to publish regular reports on gender equality. German legislation is nevertheless lacking in enforcement mechanisms, and in addressing some of the structural factors contributing to the gender pay gap.

Iceland, on the other hand, represents an exemplar case in how it targets and prohibits (in)direct gender-based pay discrimination. Under its Equal Pay Certification Law, Icelandic legislation outlines clear parameters to evaluate injustices and specifically appoints authorities in charge of evaluating claims of discrimination in the workplace.

### Recommendations

Even if the latest steps taken at both the European and Member State level show a growing awareness of the principle of pay equity, the measures taken so far are still lacking. Much attention has been placed on diversity, leaving ample room for improvements in sustainability issues, including the impact of business activities on vulnerable social actors – in this case, women. This is why the current CSRD proposal to amend the NFRD represent a decisive step in considering equality for women in addition to the other components of sustainability, even if women's well-being is still added as a sub-category and does not yet count with a directive. In the current socio-political context, as Member States and the Union recover from the COVID-19 pandemic, the implementation of gender equality practices in company cultures cannot be overlooked.

Sharing best practices among European partners is the proper step to addressing equal pay and bridging the gap between equal pay policies and non-compliance sanctions. We recommend a cooperative solution at the policymaking and corporate levels, and at the national and supranational levels. We advocate for the development of a specific directive addressing equal pay for men and women, rather than one treating the gender pay gap as merely an add-on.

At the national level, we advocate for the transposition of the principle at stake adapted to the peculiarities of each Member States' geographical and socio-economic context, and the identification of the most appropriate authority to undertake enforcement and control functions with respect to compliance with equal pay, and which also monitors cases of discrimination. We suggest the emulation of the Icelandic model for the construction of a certification scheme and the development of proper indicators to assess cases of discrimination and make different actors (employees, investors, supervisory authorities, inter alia) aware of the state of the art. Both these European and Member States authorities should utilise appropriate technology to process personal data, making it possible to generate information on the status of each worker, and thus classify the company's remuneration schemes.

At both the regional and Member State levels we encourage the increased understanding of the concept of equal pay in the realm of soft law which, to date, has made a relevant contribution to the growth of corporate cultures, increasing salience of issues such as gender balance in the boardroom and disclosure on remuneration. Similarly, we also recommend joint action to support the path taken by Europe on the part of trade unions, which could contribute significantly to the spread and affirmation of this work culture.

In order to support these efforts, it is also crucial for policymakers to develop welfare policies in relation to parenting, work-life balance, and care leave (as also recommended in the ESS) to empower women to devote themselves to work effectively and efficiently.

<sup>1</sup> European Commission, "Factsheet on the Equal Pay Gap" (2020).

<sup>2</sup> In fact, the United Nations Sustainable Development Goals dedicate goal number 5 to achieving gender equality on several fronts, including advancing equality laws.

<sup>3</sup> European Commission, "Tackling the gender pay gap in the European Union" (2013), <https://op.europa.eu/en/publication-detail/-/publication/d339a089-b1ec-4f16-88a9-a96a57af8d0f>.

<sup>4</sup> Euromonitor, "Understanding the gender pay gap: definition and causes" (8 April 2021).

<sup>5</sup> European Parliament, "Women in science: how to achieve equality in academia" (2 February 2017); European Parliament, "Understanding Covid-19's impact on women (infographics)" (1 March 2021).

<sup>6</sup> United Nations Development Programme (UNDP), "The SDGS in Action" (2021); while the resolution is available at [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html)

<sup>7</sup> Jennifer Howard-Grenville, Gerald F. Davis, Thomas Dyllick C. Chet Miller, Stefan Thay, and Anne S. Tsui, "Sustainable Development for a Better World: Contributions of Leadership, Management, and Organizations," *Academy of Management Discoveries* 5, 4 (2019): 355-366.

<sup>8</sup> For an in-depth and updated overview of the topic, see European Parliament, "Equal Pay for Equal Work Legislation. Legislative train 08.2021," as well as its related references and readings; see also Joanna Hofman, Madeline Nightingale, Michaela Buckmayer, and Pedro Sanjurjo, "Equal Pay for Equal Work: Binding pay-transparency measures," Study requested by the European Parliament's Committee on Employment and Social Affairs (2020): 5-43.

<sup>9</sup> Hofman *et al.* (2020), 11-12.

<sup>10</sup> Howard-Grenville *et al.* (2019).

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External Authors: Paola PROFETA, Full Professor of Public Economics, Bocconi University  
 Maria Lucia PASSADOR, John M. Olin Fellow in Empirical Law and Finance at Harvard Law School, Post-doctoral Researcher in Financial Law, University of Luxembourg, and Academic Fellow, Bocconi University  
 Ximena CALÓ, Researcher, Bocconi University) ..  
 Administrator responsible: Giorgio MUSSA Editorial assistant: Christina KATSARA

Contact: [Poldep-Economy-Science@ep.europa.eu](mailto:Poldep-Economy-Science@ep.europa.eu)

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