

Dear Chair and dear honourable members of the Committee on Women's Rights and Gender Equality, dear members of the FEMM Secretariat, translators all round us and guests,

Thank you very much for the invitation to join the hearing today!

Dear ladies and Gentlemen,

My name is Katharina Miller and I am speaking to you on behalf of the European Women Lawyers Association - EWLA. (EWLA) is registered in Belgium as an international non-governmental, non-profit, association (Association Internationale Sans But Lucratif). It is a federation of national women lawyers associations from amongst

the European Union countries and those of EFTA countries. Members of EWLA are also individual women lawyers and academics from these countries. EWLA pursues the co-operation of European women lawyers, in order to combine their specific expertise in monitoring law and politics seen from the angle of fundamental rights, and in particular gender equality.

Across the globe, women are encountering invisible barriers in their professional careers (**glass ceiling or glass walls**), they get stuck (**sticky floorsand**) or are lost on the way (**leaky pipeline**).

It's more than welcome that the European Commission and European Parliament focus a lot of attention to this burning issue which

is a also a very complexe one as also explained by European Commission EU Action Plan 2017-2019.

Since 2017, the Equal Pay International Coalition, EPIC, has been promoting the international best-practice exchange on equal pay. Behind the global initiative, alongside the ILO, are UN Women and the OECD. The merger of the three big organizations is an important signal of how seriously the world community is taking the international goal: Equal Pay by 2030.

We have looked at the Action Plan of European Commission and there are certainly many important and maybe also less important actions. I would like to focus

here on **three main aspects**, which are relevant for gender pay gap. First

I. Equal Pay is a business case:

Equal Pay has **innovation potential** which is still underestimated. Equality and diversity strategies are not only important within a company. Also in terms of products and costumers equal pay is the core of smart future strategies for companies. Women make 80 percent of consumer purchases, control \$5 trillion of investable assets (at least in US) and, given their longer lives, women stand to inherit some \$29 trillion in the coming decades. McKinsey (2015)¹ estimates that fully engaging women worldwide in the economy can add \$12 trillion in economic growth. Women have an economical power and they make sure that

¹ McKinsey: How Advancing Women's Equality Can Add \$12 Trillion to Global Growth.
<https://www.mckinsey.com/global-themes/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth> (2015). Accessed 25 Feb 2018

they buy products which respect the core principals of fairness and justice which includes the principal of equal pay.

That's why consumption is political!

What is the pivotal element?! Breaking up encrusted structures.

We need new structures and a better system.
We do not need self-optimizing women!
Stop fixing the Women!

It is good that gender equality and equal opportunities have moved up the agenda in politics and in business.

However, even those who are not at the control of power and money have **influence**.

They can,

firstly, engage in **civil society**,

secondly, **consume more consciously:**

Every single purchase decision has influence.

II. Equal Pay is a legal case:

In principle, we already have enough international and national regulations, to which all stakeholders agreed in order to implement equal pay - especially the ILO Convention no. 100 from 1951, which was ratified by 173 states.

Let's talk about Art. 157 of the Treaty on the Functioning of the European Union: When the European Economic Community Treaty (EECT) entered into force in 1958, it had only one provision² of direct relevance to gender equality, namely **equal pay for men and women**.³ Article 119 had been included in the EECT because France wanted to prevent distortions in competition between

² Article 119 EECT

³ The Treaty of Amsterdam, which entered into force in 1999, renumbered the original article, which became Article 141 ECT. This is now Article 157 TFEU.

companies established in different Member States not required to pay women equally, which could have put France at a competitive disadvantage.

However, in 1976 the Court of Justice ruled that Article 119 EECT⁴ not only had an economic, but also a **social aim**. As such, it contributed to **social progress and the improvement of living and working conditions**.

Later on, the CJEU even ruled that the **economic aim is secondary to the social aim**. It also held that the principle of equal pay is an expression of a **fundamental human right**.

⁴ now Article 157 TFEU

There are many legislative attempts all over our Member States, some are more ambitious, some seem to lack any interest in order to close the gender pay gap.

Let's have a look at the French legislation where legal obligations on equal pay have been transposed into national law since 1972.

9 laws have been adopted since then, the last one in 2014, which can be considered as a role model.

However, all over the 28-EU member states the gender pay gap persists varying from one country to the other.

III. Equal pay is a digital case

In times of fast future (Rohit Talwar at all 2017)⁵ and the dark side of Big Data (Cathy O’Neil, 2016)⁶, the needs and rights of many people could easily be forgotten. For example, black people cannot use facial recognition because most applications don’t recognise black faces (Joy Boulamwini 2018)⁷. Or let’s think of women that own a car which opens by voice recognition. Then these women might have a problem because carmakers “acknowledge that women have a tougher time using speech-recognition technology than men” because the systems

⁵ Talwar R, Wells S, Whittington A, Koury A, Romero M. Beyond Genuine Stupidity. Ensuring AI Serves Humanity. 1st ed.UK: Fast Future Publishing; 2017.

⁶ O’Neil C, Weapons of Math Destruction: How big data increases equality and threatens democracy. 1st ed. New York: Crown Publishers; 2016.

⁷ Buolamwini J, Gebru T. Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification. Proceedings of Machine Learning Research 2018;81, p. 1.

have a hard time deciphering what was actually said (Graeme McMillan 2011)⁸. Again, it seems that women don't participate at the 4th Revolution, whether actively nor passively which leads, once again to less or no income. According to research by the World Economic Forum released in January 2018, women living in US are more at risk of losing their jobs because of tech⁹. Women whose jobs are at risk of being lost have fewer opportunities to transition to more high-skilled occupations, the report highlighted. Even with reskilling — which WEF defines as "giving workers the skills and capabilities needed for the future

⁸ McMillan G. It's Not You, It's It: Voice Recognition Doesn't Recognize Women. <http://techland.time.com/2011/06/01/its-not-you-its-it-voice-recognition-doesnt-recognize-women/> (2011). Accessed 25 Feb 2018.

⁹ Browne R. Women are more at risk of losing their jobs thanks to tech, WEF says <https://www.cnbc.com/2018/01/22/women-more-at-risk-of-losing-jobs-thanks-to-tech-automation-wef.html> (2018). Accessed 25 Feb 2018.

workplace" — women still have fewer options than men to find alternative careers.

Now I come to our recommendations:

- EWLA recommends a very thorough and narrow assessment of the implementation of its action plan in 2019. If the result of the assessment is not satisfactory the Commission should propose harmonised legislation in order to close the gender pay gap.

Independently, EWLA would welcome the commitment of the **governments of the 28 EU Member States** to strengthen the national laws and to enforce **financial sanctions in case of non-compliance**.

The next three provisions could be supportive for such national legislative commitment :

- We would be in favor of “blame and shame” mechanism laid down in law, by which the names of European non-compliant companies would be published on the website of the national Governments or any other official website.
- We propose to introduce an individual right to access to salary accounting of at least 2 male and 1 female colleagues being in the same or a similar situation in order to constitute an individual legal claim before the Courts.

- We would welcome the introduction of class action in discrimination cases in companies within EU28. It would enlarge the competences of Trade Unions to file a claim on behalf of the underpaid sex.
- Now I want to refer to point Number 7 of the Action Plan : When the Commission publishes the results of the projects funded under the EU's PROGRESS programmes we would strongly recommend our **European Women Shareholders Demand Gender Equality** project (EWSDGE), realized in 2014 until 2016 to tackle the issue Women on Boards and conducted by a consortium which included the German Women Lawyers Association (djB) as the project

coordinator and the following co-beneficiary partners. These are the non-governmental organisations EWLA, EWLA Bulgaria, the French Women Lawyers Association (A.F.F.J.) and the Hungarian Women (Advocate) Lawyers Association as well as the Finland Chamber of Commerce and the University of West of England, Bristol, for coordination purposes. The Ministry for Justice and Gender Equality of Saxony-Anhalt is hosting the closure event and the Magdeburg-Stendal University of Applied Sciences is responsible for evaluation and dissemination.

- And finally, EWLA wishes to underline the great importance of the Work-Life-

Balance Directive and we want to congratulate your joint effort for this initiative.

On the other hand we want to express our great disappointment by the outcome of the Council on 21 June 2018 on the Work-Life-Balance Directive.

We think that the General Approach considerably **waters down** the original draft of the Commission.

We understand that the General Approach shows that Member States are **willing to progress**, however in a less ambitious manner.

Now it is for the **European Parliament** to rescue the ambitious approach of the Commission proposal of April 2017.

Member States need to be persuaded that the full potential of the proposal has not yet been realised – **EWLA is willing to support you in this process!**

We have to understand: **There will never be sustainability without equal pay, without gender equality!**

We need each other in order to find the future of humanity within this disruptive world, within the 4th Revolution!

It's now that we have the opportunity to determine and to choose what we want to be

our future. If we were able to implement GDPR, with a huge lobby against it, **we should be able to reach Equal Pay !**

Thank you very much!