

# Equal pay for equal work between men and women

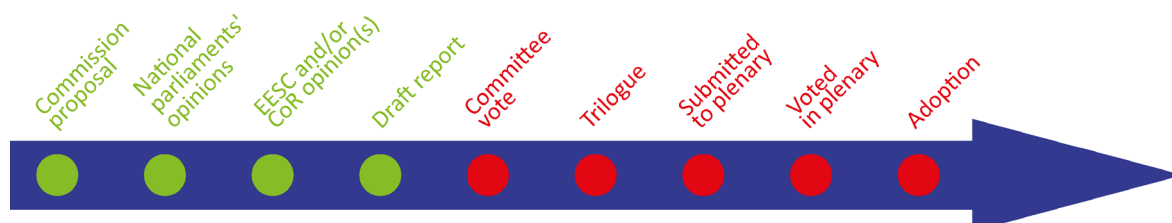
## Pay transparency and enforcement mechanisms

### OVERVIEW

Equal pay for equal work is one of the European Union's founding principles, enshrined in Article 157 of the Treaty on the Functioning of the European Union (TFEU). However, the implementation and enforcement of this principle remain a challenge. Due to a lack of pay transparency, pay discrimination often goes undetected and victims face difficulties in making a claim for redress.

On 4 March 2021, the European Commission adopted a legislative proposal on binding pay transparency measures. The proposed directive 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 focuses on measures to ensure pay transparency, and better access to justice for victims of pay discrimination. The Council agreed its approach on the proposal on 6 December 2021. On 7 September 2021, the co-rapporteurs from the European Parliament's Committee on Women's Rights and Gender Equality (FEMM) and Committee on Employment and Social Affairs (EMPL), jointly responsible for the file, presented their draft report. On 15 November 2021, the joint committee took stock of the 1 090 amendments tabled. A negotiating position will be agreed after the joint committee vote on the draft report, expected in March 2022.

Equal pay for equal work between men and women (pay transparency and enforcement mechanisms)		
<i>Committees responsible:</i>	Women's Rights and Gender Equality (FEMM) and Employment and Social Affairs (EMPL)	COM(2021) 0093 4.3.2021
<i>Co-rapporteurs:</i>	Rafaela Samira (Renew Europe, the Netherlands) Kira Marie Peter-Hansen (Greens/EFA, Denmark)	2021/0050(COD)
<i>Next steps expected:</i>	Vote on the draft report in committee	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')



## Introduction

According to a 2017 [Eurobarometer](#) survey, seven out of ten Europeans – women and men – think that women earn less than men (69 %). Nine out of ten Europeans think that it is unacceptable that women are paid less than men for the same work or work of equal value (90 %). European workers agree with pay transparency: more than two-thirds of them have said they are in favour of the publication of average wages by job type and gender at their company (64 %).

Equal pay for equal work is one of the EU's founding principles, enshrined in [Article 157](#) of the Treaty on the Functioning of the European Union (TFEU). [Article 23](#) of the Charter of Fundamental Rights of the European Union explicitly addresses gender equality in several dimensions, including pay. Since 1999, the European employment strategy (ESS) has included the reduction of wage inequalities in its [guidelines](#). The requirement to ensure equal pay is set out in [Directive 2006/54/EC](#) (the 'Recast Directive'). In 2011, the European Commission initiated the first [European Equal Pay Day](#) to increase awareness about the issue.

The EU also supports Member States in improving the implementation of the equal pay principle. In 2014, the European Commission adopted a non-binding [recommendation on pay transparency](#) with a view to strengthening the existing EU equal pay legislation (i.e. Directive 2006/54/EC). The Commission particularly recommended that each Member State clarify the concept of 'work of equal value' and increase the transparency of wage categories. It suggested four core measures to improve pay transparency and encouraged Member States to implement at least one: (i) the right to request information on pay levels; (ii) gender pay reports; (iii) gender pay audits; and discussion of the issue of equal pay during collective bargaining. In 2017, the [European Pillar of Social Rights](#), proclaimed by the European Parliament, the Council and the Commission at the Gothenburg Summit, sets out 20 key principles and rights essential for fair and well-functioning labour markets and welfare systems in the 21st century, including gender equality and the right to equal pay ([Principle 2](#)). Another important step to reinforce the equal pay principle was the April 2021 proposal to amend the Non-Financial Reporting Directive ([NFRD](#)), which is now referred to as the Corporate Sustainability Reporting Directive ([CSRD](#)).

As regards the indirect determinants of the gender pay gap (institutional, cultural or ideological obstacles), the EU adopted the [Work-life Balance Directive](#) in July 2019, with the aim of rebalancing traditional family arrangements, promoting flexible work for both men and women, and supporting the equal distribution of household and care tasks between partners. In 2012, the European Commission also published a [proposal](#) for a directive that aims to improve gender balance in boardrooms. The 2022 [French Presidency](#) includes this long-pending file in its programme.

## Existing situation

The implementation and enforcement of the equal pay for equal work principle remain a challenge, and the gender pay gap in the EU is still above 14 % ([Eurostat](#), 2019). One concern is that, due to a lack of pay transparency, pay discrimination often goes undetected and victims face difficulties to obtain redress. The ongoing [Covid-19 pandemic](#) will most probably exacerbate the gender pay gap to the disadvantage of women.

In 2017, the [report on the implementation of the 2014 Commission recommendation](#) warned that the recommendation had not achieved the necessary changes. This was confirmed by the 2018 [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. In 2020, a [Commission assessment of the 2017-2019 EU action plan on tackling the gender pay gap](#) also concluded that the non-binding nature of the recommendation had limited its impact. While 10 Member States (AT, BE, DK, DE, ES, FI, FR, IT, PT, SE; plus the UK) had introduced mandatory pay transparency measures and 2 (IE and NL) were considering introducing legislation, 13 Member

States (BG, CY, CZ, EE, EL, HR, HU, LV, MT, PL, RO, SI, SK) had no pay transparency measures, resulting in discrepancies in regulatory standards across the EU.

In her [political guidelines](#), European Commission President, Ursula von der Leyen, announced that she would introduce a proposal on binding pay transparency measures in the first 100 days of her mandate to address the gender pay gap and ensure the application of the principle of equal pay for equal work. It is also one of the key priorities in the 2020-2025 EU [gender equality strategy](#). The Commission's legislative proposal, originally included in the [2020 work programme](#), was adopted on 4 March 2021. The [Commission's work programme for 2022](#) includes the file as a pending priority and the French Presidency states in its programme that it will move negotiations forward through trilogues on the proposed directive.

## Comparative elements

Iceland is generally well known for its culture of equality. For the twelfth time, the World Economic Forum (WEF) ranks Iceland first out of 153 countries in terms of '[wage equality for similar work](#)' and in [overall gender equality](#).

[Article 65](#) of the Icelandic Constitution forbids any sort of gender discrimination, and in 2008, Iceland enacted the Act on Gender Equal Status and Equal Rights of Women and Men ([Equal Rights Law](#)), which requires equal opportunities for both women and men. On 1 June 2017, the Icelandic Parliament passed the [Equal Pay Certification Law](#), requiring all companies and employers with 25 or more employees to provide evidence – which has to be renewed every three years – showing that they have paid equal wages to both women and men.

With this law, Iceland differs from the [mainstream](#) equal pay policies of most EU Member States. Equal Pay Certification means that job applicants can check whether a company is certified before applying for a job, while companies may also be subject to daily fines. With this law, Iceland stands out, as it places the responsibility on the employer rather than the employee and includes medium-sized companies and institutions.

## Parliament's starting position

Parliament has been calling for stronger measures on pay transparency for a number of years. Following the 2014 recommendation on pay transparency, Parliament undertook its own implementation assessment. Its subsequent [resolution of 8 October 2015](#) asked the Commission to draw up a legislative proposal on equal pay, incorporating measures on strengthening pay transparency, together with effective means of enforcement, such as mandatory pay audits for large companies. Parliament's resolution of 30 January 2020 on the [gender pay gap](#) urged the Commission to ensure that the forthcoming pay transparency legislation applies to both the public and private sectors, promotes the role of the social partners and collective bargaining, and includes strong enforcement policies to tackle those failing to comply. Parliament also asked that the proposal contain a number of concrete measures. These include: (i) clear criteria for assessing the value of work; (ii) gender-neutral job evaluation and classification systems; (iii) gender pay audits and reports; (iv) entitlement for workers to request full pay information and a right to redress; and (v) clear targets for companies' equality performance. Parliament's resolution of 21 January 2021 on the [new EU gender equality strategy](#) stresses that binding measures are necessary to close the gender pay gap. In its resolution the following month on the '[challenges ahead for women's rights in Europe: more than 25 years after the Beijing Declaration and Platform for Action](#)', Parliament reiterated that the EU should strengthen efforts to close the gender pay gap and enforce the equal pay for equal work principle by adopting legislation to increase pay transparency, including mandatory measures for all companies.

## Council and European Council starting position

On 13 June 2019, Council [conclusions](#) called for concrete measures to increase pay transparency, stressing that the right to equal pay between women and men for equal work or work of equal value is enshrined in the Treaty of Rome but that, unfortunately, the effective implementation and enforcement of this principle remains an issue in the EU in practice.

On 13 October 2020, EU ministers for employment and social affairs held a [debate on equal participation of women and men in the labour market](#), at which several participants welcomed the announced EU pay transparency initiative.

In the [Porto Declaration](#) adopted on 8 May 2021, EU leaders committed to step up efforts to fight discrimination and work actively to close gender gaps in employment, pay and pensions. They reinforced their commitment to implement the European Pillar of Social Rights. On 4 March 2021, the European Commission published a [European Pillar of Social Rights action plan](#), which calls on Member States to at least halve the gender employment gap.

## Preparation of the proposal

As part of the monitoring of existing legislation ([2013](#), [2017](#) implementation reports) and in the process of the [evaluation of equal pay provisions](#) (2019), the Commission collected information relating to the implementation of measures on pay transparency across the EU and the challenges in enforcement of equal pay law. The Commission has also carried out a [study](#) on related topics (e.g. gender-neutral job classification systems and the costs and benefits of pay transparency measures). Similarly, organisations such as [Eurostat](#), the European Foundation for the Improvement of Living and Working Conditions ([Eurofound](#)) and the International Labour Organization ([ILO](#)) have presented studies on equal pay.

Since 2018, the Commission has organised meetings and workshops with stakeholders, particularly social partners, and Member States' representatives, including a consultation with members of the [High-Level Group for Gender Mainstreaming and the Advisory committee for equal opportunities for women and men](#) in 2019. In addition to the [feedback](#) received on the Inception Impact Assessment (February 2020) for the preparation of the proposal, the Commission launched an eight-week open [public consultation](#) with the public, non-governmental organisations, the Member States, the social partners and others, which ended on 29 May 2020. This initiative followed on from the Commission's [evaluation](#) of the relevant legal provisions and previous Commission work published in March 2020.

After a long process, the European Commission released its compulsory [impact assessment](#) (IA) accompanying the proposal for binding pay transparency measures on 4 March 2021. The Commission Regulatory Scrutiny Board (RSB) had adopted a first [negative opinion](#) on the draft version of the IA report, due to 'significant shortcomings' on 25 September 2020. On 17 November 2020, the RSB adopted a [second negative opinion](#). Finally, on 27 January 2021, the RSB adopted a third, [positive opinion](#). Nevertheless, the RSB still recommended further improvements to several aspects of the IA (e.g. a better explanation of why the preferred combination of measures was considered most proportionate). The European Parliamentary Research Service (EPRS) has published an [initial appraisal of the European Commission impact assessment](#). According to EPRS, 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. It 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'. However, the objectives of the proposal 'could have been defined more precisely' and 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 changes the proposal would bring

The proposed directive 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 first concentrates on the definition of 'same work or work of equal value', and then focuses on two key aspects of equal pay: (1) measures to ensure pay transparency and (2) better access to justice for victims of pay discrimination.

First of all, the proposed directive would require Member States to **establish tools or methodologies to assess and compare the value of work**, in line with a set of objective criteria that include educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved. The availability of clear criteria at national level should 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.

The measures proposed would apply to both public and private-sector employers and would address the transparency of pre- and post-employment pay, as well as the transparency of company policy on pay and career progression:

- 1 Under the **pay transparency measures**, job-seekers would have a right to information about the pay range of posts they apply for, while employers would be prohibited from asking about an applicant's pay history. Employees would have a right to ask their employer for sex-disaggregated information on the average pay of other workers doing the same work or work of equal value. Employers with at least 250 employees would have to report on their gender pay gap and carry out a pay assessment if the gap exceeds 5 % and cannot be justified.
- 2 Under the **access to justice measures**, compensation would be available to victims of pay discrimination, with the burden of proof placed on the employer and sanctions for infringements of the equal pay rule. Workers' representatives would have a role in pay assessments and legal proceedings, including the possibility of leading collective claims on equal pay.

The proposed measures are intended to provide for flexibility for small and medium-sized enterprises.

## Advisory committees

On 9 June 2021, the European Economic and Social Committee (EESC) adopted an [opinion](#) in which it takes the view that pay transparency measures are unavoidable if the gender pay gap is to be closed.

## National parliaments

The [subsidiarity](#) deadline for national parliaments to submit comments on the proposal was 5 May 2021. The national parliaments of five Member States (Denmark, Italy, Portugal, Spain and Sweden) submitted reasoned opinions.

## Stakeholder views<sup>1</sup>

The [European Trade Union Confederation](#) (ETUC) welcomed the proposal. However, the organisation regrets that the directive limits pay audits to organisations with more than 250 employees. It also criticises the reference to 'workers' representatives' rather than trade unions. It fears that this could lead to the mobilisation of 'fake unions' set up by employers, or even employers themselves choosing 'workers' representatives', representatives to whom the Commission confers, inter alia, the possibility of acting on behalf of employees in judicial or administrative proceedings. Finally, the ETUC finds the proposal's suggestion that employers define which jobs can be compared in terms of equal pay for work of equal value themselves to be



problematic. 'The Directive will reduce secrecy on pay and shine a light on pay inequality. But it handcuffs women and unions who want to turn that into equal pay', noted [ETUC Deputy General Secretary Esther Lynch](#), responding to the proposal.

The proposal is also met with scepticism on the part of businesses, which had expressed their reluctance to the Commission on previous occasions, particularly during the [public consultation phases](#). Assuring the European Commission of their willingness to put an end to pay inequalities, many companies' organisations had however pointed to risks in terms of personal data protection and increased administrative burden. In its position paper, [BusinessEurope](#) underlines that the proposal should avoid complicating human resources management with excessive administrative burdens and exposure to abusive litigation. The organisation further considers that the final text should respect national and social partners' competences for wage-setting and allow for pay to be determined according to individual performance and full respect for employees' rights to confidentiality. While [SMEunited](#) agrees on reducing the gender pay gap and promoting the equal pay principle, the organisation considers that binding measures are not an adequate method to tackle the gender pay gap. According to SMEunited, the most appropriate measures to reduce this gap would include tackling horizontal and vertical segregation, fighting gender stereotypes, and providing childcare and long-term care through specific policies, intervention and funding.

## Legislative process

The European Parliament's Committee on Women's Rights and Gender Equality (FEMM) and Committee on Employment and Social Affairs (EMPL) have joint responsibility for this file under [Rule 58 of the Rules of Procedure](#) (rapporteurs: Samira Rafaela, the Netherlands, Renew Europe, and Kira Marie Peter-Hansen, Denmark, Greens/EFA). The committees held a [joint hearing](#) on the proposed directive on 22 April 2021.

On 2 September 2021, the co-rapporteurs presented their [draft report](#) on the proposed directive. The text tackles one of the key measures of the Commission's proposal: the obligation for companies to publish information on pay differentials between their workers. The rapporteurs would like to see this measure extended to all companies with at least 10 employees (the Commission had set the limit at 250 employees). However, the report states that measures should be adapted according to the size of the company, and suggests that information should be published every three years for companies with 10 to 50 employees, every two years for companies with 50 to 250 employees and every year for companies with 250 or more employees. They also call on Member States to support the implementation of these measures for smaller actors. Furthermore, the draft report suggests the publication of a more detailed set of data than that envisaged by the Commission, including the publication of information on the criteria used to determine remuneration. Another major change is that Parliament could demand that workers be given the right to ask how pay levels and wages for each category of worker are determined. Contrary to the original proposal which gave employers the right to require that any worker who had obtained information not use it for any purpose other than to defend his or her right to equal pay, the rapporteurs suggest all information obtained by workers should be usable 'for any purpose, including that of defending their right to equal pay'. In terms of defending this right, the draft report also proposes to call on Member States to make it easier to bring equal pay cases to court by 'reducing procedural barriers'. It also proposes that the limitation periods for legal actions should be set at a minimum of five years, as opposed to the three years required by the Commission. Finally, the rapporteurs argue in general that more rights should also be given to workers' representatives. They suggest, for example, that they should be able to request, on behalf of a worker, information on the level of pay or to check the accuracy of data published by companies.

On 15 November 2021, the European Parliament's committees on Employment and Gender Equality took stock of the 1 090 amendments tabled. On the Parliament's side, a negotiating position is expected to be agreed in March 2022, on the basis of the draft report.

In the Council, the proposal was examined in the [Social Questions Working Party](#) (SQWP), which started work on the file in March 2021. Six compromise texts were presented. The Presidency held eight full days of working party meetings (between 22 March and 17 November 2021) and many bilateral deliberations in order to find suitable solutions that address the national delegations' concerns. The main issues addressed in the Council preparatory bodies were: (i) proportionality and interference with national systems; (ii) increased financial and administrative burdens for employers, especially micro- and small-sized employers; (iii) provisions related to the combined forms of discrimination; (iv) scope of the directive, especially in relation to applicants for employment; and (v) remedies and enforcement of rights and obligations related to the principle of equal pay.

In Coreper on 1 December 2021, a broad majority of delegations supported the Presidency's work and agreed that the compromise text is a solid base for future negotiations with the European Parliament. Amongst others, the main elements introduced, compared to the Commission's proposal, are to include applicants for employment in the scope for the purposes of pay transparency measures prior to employment, and to add definitions regarding 'principle of equal pay', 'control body', 'workers' representatives', 'micro-sized employers', and 'small-sized employers' in Article 2. The Council compromise text also states that the proposal should not entail additional obligations for employers to gather data related to protected grounds other than gender. When evaluating the tasks performed in an organisation, it calls for the inclusion of a set of four criteria – skills, effort, responsibility and working conditions – to be used with a view to applying the concept of work of equal value, and asks that exemptions are introduced for micro- and small-sized enterprises with regard to some of the obligations related to pay transparency. Other key elements introduced, compared to the European Commission's proposal, are amendments allowing flexibility based on national law or practice and taking account of different labour market models and the different national judicial systems.

Some delegations regretted that the text had not been subjected to further discussion at technical level. While some delegations were not yet in a position to lift their general scrutiny reservations, the broad majority of delegations agreed that the text was mature enough to be forwarded to the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council, with a view to reaching a general approach. On 6 December 2021, the Council reached a [general approach](#) on the proposed directive. Following the agreement between the Member States, the Council can enter into negotiations with the European Parliament – once the latter has adopted its own position on the file – in order to agree on a final text.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Reporting obligations regarding gender equality and equal pay: State of play among Member States and avenues for upgrading and implementing legal sanctions towards companies](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2021.

Lecerf M., [International Equal Pay Day](#), September 2021.

Zandersone L., Vettorazzi S., with Ritter T., [Initial Appraisal of a European Commission impact assessment - Application of the equal pay principle through pay transparency measures](#), EPRS, July 2021.

Collovà C., Zandersone L., with Habib E., [European gender equality strategy and binding pay transparency measures - Pre-legislative synthesis of national, regional and local positions on the European Commission's initiatives](#), EPRS, November 2020.

[Equal pay for equal work: Binding pay transparency measures](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, February 2020.

## OTHER SOURCES

[Equal pay for equal work between men and women \(pay transparency and enforcement mechanisms\)](#), Legislative Observatory (OEIL), European Parliament.

## ENDNOTE

- <sup>1</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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