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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: 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
- Preparation for the trilogue

I. INTRODUCTION

Negotiations with the European Parliament on the proposal for a directive on binding pay transparency measures are well under way. The Presidency has reported to Coreper and the Social Questions Working Party on the outcome of the trilogue which took place on 6 October. On that first Trilogue under the Czech Presidency the co-legislators have exchanged on their respective positions, but no compromise has been reached on important elements of the proposal. The purpose of this note is to inform Coreper of the Presidency's intentions ahead of the next trilogue, which will take place on 27 October.

II. STATE OF THE NEGOTIATIONS AND PRESIDENCY'S APPROACH

The last trilogue covered Articles 1 to 3 and touched upon the main elements of Article 4. The discussion at Political level have enabled the co-legislators to better understand the point of view of each party on the definitions as well as on the issues of intersectional discrimination and the inclusion of non-binary people in the scope of this directive.

With a view to the trilogue on 27 October, the Presidency would like to inform delegations of its intentions and ask for their comments on the following issues:

1) Definitions:

A limited number of definitions are still under discussion. For the European Parliament it is important to:

- ensure that the "categories of workers" will be done in a non-arbitrary manner, by the employer together with representatives of the workers
- include a definition of a work of equal value
- maintain the definition of "labour inspectorate".

The Presidency could:

- show openness so that "categories of workers" shall be grouped by the employer together with representatives of the workers but only if the latter is applicable
- show openness to include a definition of a work of equal value
- defend the general approach as regards the definition of "control body" instead of the one of "labour inspectorate".

Question 1 of the Presidency:

Can delegations share the Presidency's suggested approach on the definitions as regards the points of the general approach to be preserved and the possible flexibilities?

2) Intersectional Discrimination:

The European Parliament seeks to enhance the visibility of intersectional discrimination and mainstream the language through the Directive. In concrete terms, the EP argues for the inclusion of a definition as well as an additional Article on Intersectional Discrimination.

The Presidency has reiterated the need to remain within the legal base of this Directive, namely Article 157(3) TFEU, which aims to address a very specific phenomenon affecting women and female pay discrimination.

The Presidency could:

- reject the inclusion of a definition on intersectional discrimination in the directive
- be flexible on recognising that intersectional discrimination can have a negative effect on gender pay gap with relevant wording in the recitals
- show openness to list "intersectional discrimination" as one of the discriminations mentioned under Article 3(2). This could be done with maintaining the wording of Article 3(2)e as in the general approach but with the addition of the word "intersectional" in front of "discrimination"
- reject the inclusion of any obligation relevant to intersectional discrimination.

Question 2 of the Presidency:

Do delegations share the Presidency's approach as regards the points of the general approach to be preserved and the possible flexibilities on the issue of intersectional discrimination?

3) Inclusion of non-binary people in the scope of this definition

According to the European Parliament the Directive should cover also non-binary people who might be victims of pay discrimination. The Parliament would like to give the possibility to the employers in those Member States where the third gender is legally recognised, to take into account a third division of workers and compare the pay of non-binary people with the pay of men.

The Presidency holds that the inclusion of non-binary people in the Directive would be a major departure from the initial aim of this legislative proposal, aiming to address the pay gap between female and male workers.

The Presidency could:

- show openness to include a recital mentioning non-binary people with reference to national law
- reject the inclusion of any obligation relevant to non-binary people.

Question 3 of the Presidency:

Can delegations share the Presidency's suggested approach on the issue of the inclusion of non-binary people in the Directive as regards the points of the general approach to be preserved and the possible flexibilities?

4) Threshold of Article 8 and staircase system

As regards reporting, the European Parliament proposes a staircase system where employers with more than 250 employees shall provide pay related information concerning their organisation in an annual base. Employers with 50 to 250 employees shall provide this information biannually while employers with less than 50 employees can provide the information on a voluntary base.

The Presidency will defend the general approach but is willing to deepen the negotiations in this subject and explore the possibility of a staircase approach in conjunction with the general approach's exemptions for the micro and small employers, introduced in Articles 6 and 7.

Question 4 of the Presidency:

Can delegations accept the principle of the staircase system linking the number of the employees with the frequency of reporting under Article 8?