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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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

Delegations will find attached document SWD(2021) 42 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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} - {SEC(2021) 101 final} - {SWD(2021) 41 final}

Executive summary sheet
Impact assessment for a proposal on strengthening the principle of equal pay between men and women through transparency
A. Need for action
What is the problem and why is it a problem at EU level?
<p>The effective implementation of the fundamental right to equal pay between women and men for equal work or work of equal value, as enshrined in Article 157 TFEU, remains a major challenge in the EU. Individual pay discrimination and systemic bias in pay structures are only one of the root causes of the gender pay gap, besides other causes such as horizontal and vertical segregation. The gender pay gap accumulates to and remains at 14% in the European Union overall. This is a problem at the level of both workers and employers.</p> <p>Failure to implement this fundamental right affects women's economic independence during their working life and thereafter. This is also a problem for the efficient operation of the labour market and for competition in the internal market. Expectations on prospective earnings can distort women's choice of jobs, decisions on time worked and career patterns, and therefore create a clear risk of loss of productivity in the economy at large due to suboptimal female labour market participation. For employers, this inefficient use of resources means a loss of productivity and hidden costs. Finally, divergences in the treatment of women and men with regard to pay can also have an impact on employers' competitiveness to the extent that employers non-compliant with the equal pay principle, possibly applying diverging rules across countries, can benefit of an unfair (and unlawful) advantage.</p> <p>Individual pay discrimination and gender bias in pay-setting mechanisms and how women's work is valued may be enabled by:</p> <ul style="list-style-type: none"> - a lack of pay transparency at individual worker and employer level; - a deficient application of the concepts of 'pay' and 'work of equal value'; and - inadequate access to justice because of procedural obstacles and insufficient remedies for victims. <p>The lack of pay transparency prevents workers from assessing whether their right to equal treatment in relation to pay is being upheld; it also hides the undervaluation of women's work due to (often unconscious) bias in pay structures. Problems with the proper application of key concepts in assessing equal 'pay' for equal work or 'work of equal value' complicate the implementation of the right to equal pay for both workers and employers. Insufficient access to justice, coupled with workers' fear of victimisation, makes the enforcement of their right to equal pay even more difficult.</p>
What should be achieved?
<p>The general objective is to improve the implementation and enforcement of the principle of equal pay for equal work or work of equal value between men and women, as regulated in Article 157 TFEU and Directive 2006/54/EC. The specific objectives of the initiative are to:</p> <p>empower workers to fully enforce their right to equal pay – bringing instances of pay discrimination to light through transparency and giving workers the necessary information and tools to act on it; and</p> <p>address systemic undervaluation of women's work at employer level through transparency and correcting biases in pay-setting mechanisms that perpetuate the undervaluation of work done by women.</p> <p>Both of these objectives could be supported by addressing the difficulties affecting the application of the key legal concepts relating to equal pay, and access to justice.</p>
What is the added value of action at EU level (subsidiarity)?
<p>Action at EU level would ensure effective pay equality between men and women and enable all citizens to claim their rights on the basis of minimum standards applicable in all Member States. It would not only create harmonised minimum standards protecting workers, but also equal market conditions for employers operating in the internal market, thus preventing unfair competition. Only a coherent and comprehensive EU-wide approach can ensure a level playing field for all Member States and prevent</p>

employers from seeking unfair competitive advantages through pay discrimination. Finally, EU action is required under the Treaty and would uphold a fundamental principle and right to equal treatment that is enshrined in the EU Charter of Fundamental Rights. As demonstrated in the Commission's 2020 evaluation of the relevant EU equal pay legal provisions, comparable efforts to promote pay equality throughout the EU are not likely to come about without a push through an EU-level instrument.

B. Solutions

What are the options for achieving the objectives? Is there a preferred option? If not, why?

The following options have been considered:

option 0 — status quo;

option 1 — legislative action to ensure transparency at workers' level. This includes transparency of salary information prior to and during employment, on the basis of:

the proactive provision of information by employers (sub-option 1A); or

a request by workers, their representatives or equality bodies (sub-option 1B);

option 2 — legislative action to create transparency at employer level. This includes four sub-options with varying degrees of ambition:

sub-option 2A – equal pay certification;

sub-option 2B – joint pay assessment by employers and workers' representatives;

sub-option 2C – pay reporting combined with joint pay assessment; and

sub-option 2D – strengthened pay reporting and joint pay assessment where there are statistically relevant indications of gender pay inequalities; and

option 3 — legislative action to facilitate the implementation and enforcement of the existing legal framework (without pay transparency). This includes clarification of the existing key concepts of 'pay' and 'work of equal value', improved access to justice and improved enforcement mechanisms.

The preferred package is a combination of **sub-option 1B** (empowering workers through salary information prior to employment and a right to request information during employment), **sub-option 2D** (strengthened pay reporting and, in case of statistically relevant indications of pay inequalities, joint pay assessment and **option 3** in a single novel initiative. This is the most proportionate and targeted solution: it achieves the overall and specific objectives balancing effectiveness and efficiency and taking account of the lack of hard data on the scale of the problem and the current economic downturn resulting from the COVID-19 pandemic.

The envisaged set of legislative measures is aimed at creating transparency on pay and pay structures, empowering workers and addressing the systemic undervaluation of women's work. It will secure workers' right to access the information they need to assess whether they may be the victim of pay discrimination based on gender. It will also allow employers to detect and act on discrimination and bias in pay structures. The legislative option entails exemptions so as to balance the right to equal pay with the possible burden and cost of the various measures, and to target the measures where they are needed most. Employers with fewer than 250 employees would not be obliged proactively to provide them with periodical information on pay or to report on pay; nor to carry out joint pay assessments. In such entities, workers' rights would be protected by the right to request the relevant information on pay, combined with a strengthened reversal of the burden of proof and enhanced access to justice. The package also entails better application of the key concepts relating to equal pay.

What are different stakeholders' views? Who supports which option?

Extensive stakeholder consultations were carried out for this impact assessment and the preceding

evaluation of the EU's equal pay legal framework.

Private individuals responding to the consultation expressed overall support. This is consistent with the indications from opinion surveys, e.g. a Eurobarometer carried out in 2017.

Most **employers** would prefer to prioritise measures addressing other root causes of the gender pay gap. They consider this initiative less effective for the purpose of reducing the gender pay gap and therefore unnecessarily costly, particularly for SMEs. They highlighted the difficulties in assessing what constitutes 'work of equal value', and data protection concerns. They also referred to the autonomy of social partners and the need to preserve existing tools for reporting at national level.

Trade unions broadly support the initiative and favour even more ambitious approaches, although some question it on subsidiarity grounds.

Member States have different positions, but most are in favour (particularly those that have already introduced transparency measures).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any; otherwise of main ones)?

Beyond the main purpose of enforcing a fundamental right, pay transparency measures will facilitate a cultural shift on gender equality issues and result in better focused and targeted policy actions in this area. *For workers*, pay transparency improves job satisfaction and engagement. It raises awareness and empowers workers, especially women, to seek redress for unjustified pay differences at individual level and gender bias in pay settings and job evaluation. *For employers*, implementing pay transparency translates into higher employee retention, increased attractiveness and profitability. *Society as a whole* will benefit from a higher level and (also important) a greater perception of equality. More equality in pay improves the allocation and use of resources, reduces inequality and contributes to sustainable development. Overall, pay transparency measures can bring about significant behavioural change. The scale of the benefits will depend on the level of compliance with the legislation and the extent of employers' follow-up measures.

The potential impact of the package of measures has been hypothetically estimated as involving an overall **3 percentage-point reduction in the unexplained part of the gender pay gap**. This would lead to a **decrease in the 'at risk of poverty' rate** in the EU from 16.3% on average to around 14.6%, with significant variation across countries and household types. In turn, this would lead to an overall 6.9% increase in total earnings and an overall reduction of both market and disposable income inequality. The poverty rate is mostly reduced for **single-parent households, of which 85% are women**. There are also **positive impacts on national budgets**: government revenues from direct taxes and social contributions would rise by about 7.5%, while social transfers (cash benefits) would go down, mainly driven by a decline in means-tested benefits, by about 0.4%.

What are the costs of the preferred option (if any; otherwise of main ones)?

Member States' **administrative** costs (for **transposition and enforcement**) are expected to be limited, as are costs linked to monitoring compliance.

The package would involve one-off **compliance** costs for employers (expected to range from low to moderate) and lower recurring costs. The total costs for each employer were estimated on the following basis:

- providing pay information before hiring – €0;
- replying to an individual request for pay information – €20 (indicative - for all sizes of companies);
- obligatory reporting on average gender pay differences by worker category – €379-508 to €721-890 (for companies with 250+ employees); and
- carrying out an additional assessment (if necessary - for companies with 250+ employees, where pay reporting detects a statistically significant pay gap) – €1 180-1 724 to €1 911-2 266 per employer (expected to decrease in any subsequent exercises).

The total cost for the EU would be €26-50 million for pay reporting, plus any additional costs for a

possible joint pay assessment and requests for information on pay, both depending on the scale of pay discrimination.

What are the impacts on SMEs and competitiveness?

Employers with fewer than 250 employees are exempted from proactively providing workers with information on pay, from reporting on pay gaps and carrying out a conditional joint pay assessment. The pay reporting and assessment measures would apply to 0.2% of EU companies (accounting for 33% of the EU workforce). However, all workers would have the right to ask for specific pay information and all employers would be obliged to provide it.

This initiative primarily concerns the implementation of an EU fundamental right (the right to equal pay). Together with the EU's social objectives, such goals take precedence over the economic dimension of the right to equal pay¹. Only a coherent and comprehensive EU-wide approach can ensure a level playing field for all Member States and prevent employers from seeking unfair competitive advantages through pay discrimination.

Will there be significant impacts on national budgets and administrations?

The preferred option is expected to have limited implementation costs, overall and in particular for national administrations. The costs may vary, depending on the support Member States choose to make available, on a voluntary basis, for employers (e.g. dedicated IT infrastructures, replacing pay reporting with reporting based on administrative data, guidance and training on gender-neutral job evaluation and classification systems).

At the same time, positive impacts are to be expected though it is not possible to provide a reliable overall estimate. Higher wages for women (which would depend on the amount of pay discrimination corrected as a result of this proposal) could lead to a rise in government revenues (higher collection of income taxes and social insurance contributions). On the other hand, gains in average wages for women might be compensated by slower growth of men's salaries with an undetermined overall effect. To the extent that these changes would apply more to lower paid workers, there could also be a decline in social (cash) transfers, mainly explained by a reduction of means-tested cash benefits (see section above on benefits).

Will there be other significant impacts?

No potential **environmental impacts** were detected.

Proportionality?

The proportionality principle is fully respected, as the scope of the measures varies according to the size of the employer, thus avoiding excessive costs and burdens while upholding basic rights for workers. The proposal takes account of the lack of hard data on pay discrimination and the economic downturn caused by the COVID-19 pandemic. The intended intervention is the minimum necessary to enforce the equal pay principle effectively across Member States.

D. Follow up

When will the policy be reviewed?

The Commission intends to review the implementation of the initiative to assess the extent to which the policy objectives have been achieved. This **evaluation** should take place **8 years** after the deadline for implementing the legislation, possibly in coordination with the release of the gender pay gap data (SES²), in order to facilitate a meaningful assessment of practices and impacts across all Member States.

¹ Case 50/96, *Deutsche Telekom AG v Lilli Schröder*, ECLI:EU:C:2000:72, p. 57.

² EU Structure of Earnings Survey.