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#### 'I/A' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft 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 <b>(first reading)</b> - Adoption of the legislative act = Statements

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#### Statement by Austria and Germany

Austria and Germany consider the use of the wording '*Frauen unterschiedlicher Rasse*' in recital 25 of the German language version of the Pay Transparency Directive to be deeply problematic.

Austria and Germany assume that the clarification on the use of the term '*Rasse*' ('race'/'racial origin') in recital 6 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which is referred to in recital 25 of the Pay Transparency Directive, also applies to the Pay Transparency Directive: '*The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term "racial origin" in this Directive does not imply an acceptance of such theories.*'

### **Statement by Bulgaria**

The effective implementation of the principle of equal pay for men and women for equal work or work of equal value is an essential condition for eliminating inequalities, promoting equality between women and men, and achieving upward social convergence in the Union. In this respect, the Republic of Bulgaria supports the objectives of the 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.

At the same time, however, during the negotiations on the proposal for a Directive, changes were made to the text that are unacceptable to the Republic of Bulgaria.

The scope of employers for whom new obligations are being created has been significantly extended, without taking into account the specific situation of small and medium-sized enterprises. It is important for the Republic of Bulgaria that obligations laid down in the European Commission's original proposal to report on the pay gap between women and men and to carry out joint pay assessments are applicable only to relatively large companies, which will have the financial and human resources to implement them.

Furthermore, the inclusion of intersectional discrimination in the operative part of the Directive creates legal uncertainty in view of the legal basis for the adoption of the Directive (Article 157(3) TFEU), which covers only protection on the grounds of 'sex' (equality between men and women), but not protection on other grounds or on a combination of such grounds.

Last but not least, in 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') promotes legal concepts related to the notion of 'gender' that are incompatible with the basic principles of the Constitution of the Republic of Bulgaria. In 2021, the Constitutional Court further clarified that the term 'sex' used in the Constitution, should, in the context of the national legal order, be understood in its biological sense only (men and women).

In line with these decisions, the Republic of Bulgaria declares that it cannot accept concepts that aim to distinguish ‘sex’ as a biological category (men and women) from ‘gender’ as a social construct and that it will interpret the use of the term ‘gender’ in the Directive only in its biological sense. Recital 6 is therefore irrelevant to the Republic of Bulgaria in light of its national constitutional order.

For these reasons, the Republic of Bulgaria does not support the text of the 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.

### **Statement by Hungary**

Hungary recognizes and promotes equality between men and women in accordance with the Fundamental Law of Hungary, and the primary law, principles and values of the European Union, as well as commitments and principles stemming from the international law. Furthermore, equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as reference to ‘providing equal rights, chances and opportunities for women and men’ in the 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.

### **Statement by Latvia**

Latvia supports the aim of addressing the gender pay gap and the objectives of the 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. Nonetheless, Latvia has concerns about the envisaged enforcement mechanism and regrets that the final compromise agreement on the Directive to be adopted in the Council on 24 April 2023 might impose an excessive and disproportionate administrative burden on private and public sectors.

### **Statement by Poland**

Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the framework of the Polish national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union. For these reasons, the expression ‘gender equality’ will be interpreted by Poland as equality between women and men, in accordance with Articles 2 and 3 of the Treaty on European Union and Articles 8 and 157(3) of the Treaty on the Functioning of the European Union, while expressing ‘gender pay gap’ as the ‘pay gap between women and men’. In view of the above, Poland will interpret other expressions containing the term ‘gender’ as referring to ‘sex’, in accordance with Article 10, Article 19(1) and Article 157(2) and (4) of the Treaty on the Functioning of the European Union. At the same time, Poland does not recognise categories of sex other than ‘female’ and ‘male’; recitals 5 and 6 therefore do not apply to the situation in Poland.

### **Statement by the Commission**

The Commission takes note of the compromise reached between the co-legislators on a transposition period of three years for the entry into application of the new rules on pay transparency. The Commission would like to point out that this deviation from the standard two-year transposition period should not be seen as a precedent. It only aims at ensuring that employers will have non-discriminatory pay structures in place so as to ensure full application of the new rules at the time of transposition.

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