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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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 - Progress Report

I. INTRODUCTION

On 4 March 2021, the Commission issued the proposal for a "Directive on strengthening 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". The proposal responds to the Council's call of June 2019 to the Commission to develop concrete measures to increase pay transparency[1].

[1] ST 10349/19 - Council conclusion on Closing the Gender Pay Gap: Key Policies and Measures, (EPSCO - 13 June 2019)

The aim of the proposal is to:

- empower workers to enforce their right to equal pay through a set of binding measures on pay transparency;

- strengthen the transparency of pay systems;

- improve public understanding of the relevant legal concepts;

- enhance enforcement of the rights and obligations relating to equal pay.

Most delegations have welcomed the proposal in principle and the broad majority of them have affirmed the importance of combating gender pay gap in the world of work, as a shared social value within the EU.

While emphasising the importance of the fight against the gender pay gap, a number of delegations have questioned the detailed level of the Commission's proposal, which they have seen as conflicting with national competences for certain issues, especially regarding the role of social partners and social dialogue in setting and enforcing wages, and which might not respect the principles of subsidiarity and proportionality. On the other hand, some delegations stressed the importance of maintaining the level of ambition of the proposal.

A number of delegations have requested clarifications both on the right to equal pay generally and on the provisions of the proposed Directive. They also expressed concerns relating, in particular, to the lack of legal certainty, the division of competences, and the practical, financial and administrative impact of the proposal, especially on small and medium enterprises (SMEs).

All delegations have maintained a general reservation on the proposal as such.

The national parliaments of three Member States (DK, PT, ES) have sent reasoned opinions on the proposal. They were all received within the eight week period for consultation of national parliaments according to Article 6 of the Protocol No 2[2] annexed to the Treaties.

The European Economic and Social Committee is expected to adopt its opinion at its plenary session on 10 June 2021[3].

The European Parliament has not yet delivered its position at the first reading.

II. THE COUNCIL'S WORK UNDER THE PORTUGUESE PRESIDENCY

The Working Party on Social Questions (SQWP) commenced its examination of the proposal on 22 March, less than three weeks after the publication of the proposal. At that occasion, the Commission presented the proposal for a "Directive on strengthening 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" and delegations had the opportunity to make preliminary general remarks. In April and May, the Presidency held four additional SQWP meetings allowing adequate time for a detailed discussion on all the articles of the first two chapters and their respective recitals. During these meetings the Commission provided detailed answers to the delegations' questions and requests for clarifications.

The morning session of the SQWP on 13 April was devoted to the examination of the Impact Assessment. Prior to the meeting, the Presidency circulated a check-list which offered guidance for the Impact Assessment's analysis. Many delegations provided their contributions in writing.

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[2] Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJ C 326, 26.10.2010, p. 206-209.

[3] OJ C , , p. .

The discussion on the Articles of Chapter I and II (Articles 1 to 11) focused on the following elements:

– Delegations asked, in particular, for clarification on the content of the ‘complementary or variable components’ of pay (Article 1(a)) and on the necessity to use both terms ‘pay gap’(Article 1(c)) and ‘median pay gap’ (Article 1(e)).

– The Commission replied to a number of questions regarding the principles of equal work and work of equal value (Article 4) and on the kind of obligations this article entails, namely for small and medium enterprises. The Commission also elaborated on the way that social dialogue, collective agreements and existing legislation fulfil these new obligations. A number of delegations still asked for further clarification on the national implementation of this provision.

– Delegations commented on the employers' annual obligation to remind the employees of their right to request information on their pay (Article 7(2)). They also requested further clarification as regards the possibility for workers to request information on their individual pay level and the average pay levels through their representatives or an equality body (Article 7(4)).

– Another point of discussion was the threshold of 250 employees which triggers the obligation of the employers to provide information concerning their organisation (Article 8). A number of delegations inquired further clarification on the method of calculation of the various gender gaps, while others wondered how the collected data could contribute to uncover the underlying reasons of the structural pay inequalities.

– The Commission was asked to elaborate on the obligation of the employer to prepare a joint pay assessment when a pay gap of at least 5% for equal work or work of equal value cannot be justified by objective criteria (Article 9(1)(a) and(b)). In the framework of the Joint Pay Assessment, delegations requested further clarification on the role of the labour inspectorates and the equality bodies (Article 9(3)), and on the dispute resolution mechanism in case there is no agreement between the employer and the workers' representatives (Article 9(4)). Member States also commented on the 5% threshold.

– Many delegations required more information as regards the link between the data protection provisions of this proposal and the General Data Protection Regulation (Article 10). They also asked about the safeguards to protect personal data.

III. CONCLUSION

Tangible progress has been made on the technical examination of the proposal and of the Impact Assessment. The first reading of Chapters I and II as well as of the relevant recitals has been completed. The Portuguese Presidency devoted adequate time on discussing the respective articles offering to the delegations the opportunity to better comprehend the provisions of the proposal. Further technical work and discussions are needed before commencing deliberations for a general approach.