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European network of legal experts in
gender equality and non-discrimination

Pay transparency in the EU



A legal analysis of the situation
in the EU Member States, Iceland,
Liechtenstein and Norway

Including summaries in English,
French and German

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and Consumers*

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Pay transparency in the EU

A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway

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Executive summary

Introduction and research outline

An inventory and assessment was made in the **EU Member States + Iceland, Liechtenstein and Norway** (31 countries) of national pay transparency measures implementing the core measures recommended in this area by the Commission in view of strengthening the principle of equal pay between men and women (Recommendation C(2014) 1405 final). These core measures entail:

- an employee's right to request information on gender pay levels for the same work or work of equal value;
- an employer's duty to report on average gender pay levels by category of employee or position;
- an employer's duty to conduct an audit on pay and pay differentials on grounds of gender; and
- measures to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate collective bargaining level.

At the national level, a rich diversity of practices can be found with respect to generic information rights of employees and employees' representatives. Accordingly, general concepts such as 'transparency', 'remuneration' or 'information' can relate to various aspects of employment. Therefore, transparency measures may serve different objectives than the strengthening of equal pay between men and women and, hence, do not necessarily cover the issue of pay equity or that of gender.

For these reasons, the present inventory is based on a further assessment of whether a general transparency measure qualifies as a recommended core pay transparency measure. Generally, a qualifying pay transparency measure must stipulate one or more of the recommended requirements in respect of the subject of pay and provide for gender-segregated information.¹ By further assessment double counting could also be avoided. Without such an assessment, it proved that one and the same measure could be reported, for instance, as an employee's right to obtain pay information and again as an employer's obligation to report this information. The same held true for a pay audit duty, which could in some cases again be inventoried as a pay reporting duty.

Where relevant, noteworthy national transparency measures that fall outside of the four recommended pay transparency measures are nevertheless discussed throughout the report.

Implementation of national pay transparency measures

Based on the above-mentioned analysis, which is further elaborated in the report, 10 out of 31 countries (32 %) have implemented at least one core pay transparency measure as recommended in this area in the past.² Among these 10 countries:

- 3 have implemented an employee's right to obtain pay information as recommended (9.7 % of the 31 countries);³
- 5 have implemented a pay reporting duty as recommended (16.1 % of the 31 countries);⁴

1 The assessments are elaborated for each of the four recommended measures separately (see sections 2.2 to 2.5).

2 Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Norway, and Sweden.

3 Finland, Ireland, Norway.

4 Austria, Belgium, Denmark, France, and Italy.

- 3 have implemented a pay auditing duty as recommended (9.7 % of the 31 countries);⁵ and
- 5 have implemented collective bargaining measures as recommended (16.1 % of the 31 countries).⁶

As can be derived from the above, several countries have implemented more than one core pay transparency measure (**Belgium**: reporting duty and collective bargaining duty; **Finland**: information right and auditing duty; **France**: reporting/auditing duty as well as collective bargaining duty; **Sweden**: auditing duty and collective bargaining incentive). In **Germany, Ireland, Italy, Lithuania, the Netherlands** and **the United Kingdom**, mature plans or drafts by the government or Parliament are reported on introducing pay transparency measures in view of strengthening the gender equal pay principle.

Results on pay information rights, reporting duties, pay auditing and collective bargaining on equal pay

Pay information rights

Only 3 countries have introduced a right for individual employees to request information on pay levels, broken down by gender, for the same work or work of equal value. It appears that this low number can be explained by the sensitivity and privacy aspects of revealing the wages of co-workers. **Finland, Ireland** and **Norway** have all introduced an employee's information right that fits the recommendation as part of the legal procedure for making equal pay claims on grounds of gender. However, in two out of the three countries, this right depends on consent being given by the comparator. **Norway** has overcome these problems and can be considered to represent best practice.

Pay reporting duties

Out of the 5 countries that introduced specific reporting duties on gender pay differentials at company level, 3 countries actually specify in their legal requirements that these reports must set out average or median pay levels by category of employee or position broken down by gender. Best practice in this respect is found in **Austria, Belgium** and **France**. It must be noted, however, that in **Austria** the reporting duty applies to companies with 150-plus employees whereas, in the other 2 countries, this applies to companies with 50-plus employees. Furthermore, the **Austrian** and **Belgian** gender pay reports have a confidential status.

Besides improvements to be made to the specificity of the pay information to be provided, compliance with pay reporting duties might sometimes raise concerns (**Denmark, France**) as well as a need to prevent the duty from becoming a mere formality wherein a genuine discussion of reports with employees' representatives is not stimulated (**Belgium**). Compliance by employers is successfully furthered in **Sweden** by also allowing equality bodies, upon request, to have access to reports. Moreover, a genuine discussion of pay reports could be encouraged if the confidential status of (already anonymised) reports were to be lifted.

Pay auditing duties

In particular, **Finland** and **Sweden** with measures on pay auditing, as was recommended, can provide clear pay information at company level that is very capable of encouraging follow-up action by institutional actors. The legislation in place prescribes analytical methods to be used, including drawing specified comparisons between male and female workers performing work of equal value. A possible drawback is that national law on pay audits does not explicitly demand the use of gender-neutral job evaluation or an analysis of the practice of job evaluation being applied. The explicit requirement to use gender-neutral job evaluation in the realm of pay transparency measures themselves, on condition that a job evaluation system is present, is only found in **Belgium** in respect of gender pay reporting.

⁵ Finland, France and Sweden.

⁶ Belgium, Finland, France, Germany and Sweden.

Collective bargaining on equal pay

Stipulating obligatory negotiating duties for social partners is in most of the surveyed countries considered to be an infringement of the fundamental freedom of collective bargaining. Therefore, the inventory of core measures in this area also includes non-binding, though specific, incentives to make equal pay a separate issue of collective bargaining. Such specific incentives are found in 3 out of the 5 countries that implemented the recommended core measure on collective bargaining (**Finland, Germany and Sweden**). Equal pay bargaining is either made part of the tripartite social dialogue or is included as a soft law incentive for collective bargaining in equal pay law.

Belgium and **France** have implemented obligatory negotiating duties for the social partners on (the separate issue of) equal pay. In **France**, this also includes taking account of (the results of) company pay audits.

Despite being legally binding, the measures in **Belgium** and **France** appear to have little impact in practice. Meanwhile, the soft law incentive in **Sweden** seems to be the most successful. One may conclude that successful measures, especially in this field, seem to be highly dependent on the specific national bargaining culture and the national awareness of gender pay disparities among the social partners.

Obstacles to having pay transparency measures

So far, two-thirds of all countries surveyed have not adopted any transparency measure that can be qualified as a recommended core measure on pay transparency in view of strengthening the principle of equal pay between men and women.

Among these countries, several have implemented transparency measures on pay or on terms of employment. However, these do not provide gender-segregated information because they were introduced for purposes other than the strengthening of the principle of equal pay between men and women (at least in **the Czech Republic, Estonia, Iceland, the Netherlands, Portugal, Poland, Slovenia** and **Slovakia**). Other countries have introduced reporting duties on gender equality in general but without specific requirements in respect of gender pay transparency (**Luxembourg, the Netherlands, Spain** and **the United Kingdom**). **Cyprus** has adopted a non-obligatory measure to encourage employers to provide, upon request, information on equal pay to employees or employees' representatives.

The primary reasons given for not having (core) gender pay transparency measures according to Recommendation C(2014) 1405 were: sensitivity and confidentiality issues around revealing wages; administrative and financial burdens; a lack of collective bargaining structures; no problem awareness or priority of equal pay among the trade unions; and the fear of levelling down.

Conclusions

Pay transparency is important in order to promote gender-neutral wage-setting structures. Such pay transparency is lacking in a number of European countries. Nonetheless, it is important to realise that the introduction of pay transparency targeted at alerting stakeholders to possible gender pay discrimination is a complex matter due to the fact that gender pay discrimination might flow from subtle and hidden mechanisms. Pay transparency, therefore, places high demands on the information to be provided in order to detect these mechanisms.

Pay reporting and pay audits are suitable instruments for doing this. Yet both types of instruments require that a developed pay system is in place, that the necessary knowledge is present and that appropriate human resources administrations have been developed to collect the necessary data. In countries with weak collective bargaining structures and/or where wage setting primarily depends on individual

negotiations only, it may sometimes be a more appropriate step to first try to introduce and formalise wage-setting procedures and pay schemes, including job evaluation, in the private sector generally.

Even in countries with more developed pay structures in place there are obstacles. Among the different recommended measures, it can be noted that employees' information rights on gender pay levels for the same work or work of equal value meet with most difficulties due to privacy issues. Moreover, these kinds of information rights are helpful but do not appear to remove all the hurdles so that individual employees can take action. Institutional actors are therefore perhaps best addressed by pay transparency measures, but success will nevertheless also depend on problem awareness and priority being given to securing equal pay. One of the challenges seems to be to break the vicious circle in this respect: a desire for pay transparency is diminished because there is no awareness of gender pay differences at company level, and yet the latter can only be changed by introducing pay transparency.

The report shows that introducing pay reports relatively meets the least resistance among the core measures, but they must not become a mere formality between employers and works councils. This could possibly be furthered by also allowing individual employees and/or equality bodies to have access to pay reports and by giving more guidance to employers and employees' representatives on how to proceed once gender pay differentials are found. First and foremost there is a need to explain how to analyse pay data for signs of possible gender pay discrimination.

Résumé

Introduction et grandes lignes de l'analyse

Un inventaire et une évaluation des mesures nationales en matière de transparence salariale mettant en œuvre les mesures fondamentales recommandées dans ce domaine par la Commission européenne en vue du renforcement du principe de l'égalité des rémunérations des femmes et des hommes (recommandation C(2014) 1405 final) ont été effectués dans **les États membres de l'UE + l'Islande**, le **Liechtenstein** et la **Norvège** (31 pays). Ces mesures fondamentales prévoient:

- le droit du salarié de demander des informations concernant les niveaux de rémunération des femmes et des hommes pour un même travail ou un travail auquel est attribuée une valeur égale;
- l'obligation pour l'employeur de communiquer des informations concernant les niveaux moyens de rémunération des femmes et des hommes par catégorie de salariés ou par fonction;
- l'obligation pour l'employeur de procéder à un audit en matière de rémunération et d'écarts de rémunération fondés sur le sexe; et
- des mesures veillant à ce que la question de l'égalité des rémunérations, y compris les audits relatifs à celles-ci, soit examinée au niveau approprié des négociations collectives.

Il existe au niveau national une très grande diversité de pratiques en ce qui concerne les droits des salariés et de leurs représentants à des informations génériques, de sorte que des concepts généraux tels que «la transparence», «la rémunération» ou «l'information» peuvent porter sur différents aspects de l'emploi. Il en résulte que les mesures en matière de transparence peuvent poursuivre d'autres objectifs que le renforcement de l'égalité des rémunérations entre les femmes et les hommes et qu'elles ne couvrent pas nécessairement, dès lors, la question de l'équité salariale ou celle du genre.

Il a été décidé pour ces diverses raisons de baser le présent inventaire sur une appréciation plus poussée visant à établir si une mesure générale de transparence peut être ou non considérée comme une mesure fondamentale recommandée en matière de transparence des salaires. Une mesure considérée comme telle doit normalement inclure une ou plusieurs exigences recommandées en rapport avec la rémunération et prévoir des informations ventilées par sexe.¹ Cette évaluation plus approfondie permet également d'éviter la double comptabilisation. Il est apparu en effet que, faute d'une évaluation de ce type, une seule et même mesure pouvait, par exemple, être signalée à la fois en tant que droit du salarié d'obtenir des informations sur les rémunérations et en tant qu'obligation de l'employeur de fournir ces informations. Il en va de même de l'obligation d'audit en matière de rémunération, laquelle est parfois répertoriée aussi en tant qu'obligation de rapport concernant les rémunérations.

Certaines mesures nationales qui ne relèvent pas des quatre mesures relatives à la transparence des salaires mais qui présentent néanmoins un intérêt particulier en matière de transparence sont également examinées tout au long du rapport.

1 Des évaluations distinctes sont effectuées pour chacune des quatre mesures recommandées (voir les points 2.2 à 2.5 du rapport).

Mise en œuvre des mesures nationales en matière de transparence des salaires

Il ressort de l'analyse évoquée ci-dessus et développée dans le rapport que 10 des 31 pays (soit 32 %) ont mis en œuvre par le passé une mesure fondamentale au moins parmi celles recommandées en matière de transparence.² Parmi ces dix pays:

- trois ont institué un droit des salariés à une information au sujet des rémunérations tel que recommandé (9,7 % de l'ensemble des 31 pays);³
- cinq ont institué une obligation de rapport telle que recommandée concernant les rémunérations (16,1 % de l'ensemble des 31 pays);⁴
- trois ont institué un audit obligatoire tel que recommandé en matière de rémunération (9,7 % de l'ensemble des 31 pays);⁵ et
- cinq ont institué des mesures telles que recommandées en matière de négociation collective (16,1 % de l'ensemble des 31 pays).⁶

Il ressort clairement de ce qui précède que plusieurs pays ont mis en œuvre plus d'une mesure fondamentale en matière de transparence salariale (**Belgique**: obligation de rapport et obligation de négociation collective; **Finlande**: droit à l'information et obligation d'audit; **France**: obligation de rapport/d'audit ainsi qu'obligation de négociation collective; **Suède**: obligation d'audit et incitation à la négociation collective). Des plans avancés ou des projets gouvernementaux ou parlementaires introduisant des mesures en matière de transparence des salaires en vue de renforcer le principe de l'égalité des rémunérations des femmes et des hommes sont signalés en **Allemagne**, en **Irlande**, en **Italie**, en **Lituanie**, aux **Pays-Bas** et au **Royaume-Uni**.

Résultats obtenus en termes de droits à l'information au sujet des rémunérations, d'obligations de rapport, d'audits en matière de rémunération et de négociations collectives prévoyant l'égalité des rémunérations

Droits à l'information au sujet des rémunérations

Seuls trois pays ont instauré le droit de salariés individuels de demander des informations relatives aux niveaux de rémunération, ventilées par sexe, pour un même travail ou un travail auquel est attribuée une valeur égale. Il semble que ce nombre peu élevé s'explique par les aspects sensibles et privés qu'implique la divulgation de la rémunération de collègues. La **Finlande**, l'**Irlande** et la **Norvège** ont toutes introduit un droit du salarié à l'information conforme à la recommandation en tant que partie intégrante de la procédure juridique de recours en matière d'égalité des rémunérations fondés sur le genre. Dans deux de ces trois pays, toutefois, ce droit est tributaire du consentement donné par le comparateur. La **Norvège** a résolu ces problèmes et peut être considérée comme un exemple de bonne pratique.

Obligations de rapport concernant les rémunérations

Parmi les cinq pays qui ont instauré des rapports obligatoires portant spécifiquement sur les écarts de rémunérations entre hommes et femmes au niveau de l'entreprise, trois précisent effectivement dans leurs exigences légales que ces rapports doivent présenter les niveaux moyens ou médians des rémunérations par catégorie de salariés ou par fonction avec ventilation par sexe. On trouve de bonnes pratiques à

2 Allemagne, Autriche, Belgique, Danemark, Finlande, France, Irlande, Italie, Norvège et Suède.

3 Finlande, Irlande et Norvège.

4 Autriche, Belgique, Danemark, France et Italie.

5 Finlande, France et Suède.

6 Allemagne, Belgique, Finlande, France et Suède.

cet égard en **Autriche**, en **Belgique** et en **France**. Il convient de préciser cependant que l'obligation de rapport s'applique en **Autriche** aux entreprises occupant 150 personnes au moins alors qu'elle s'applique dans les deux autres pays aux entreprises occupant 50 personnes au moins. Les rapports **autrichiens** et **belges** au sujet des rémunérations selon le sexe ont, en outre, un statut confidentiel.

Outre les améliorations à apporter à la spécificité des informations salariales à fournir, le respect de l'obligation de rapport concernant les rémunérations peut susciter certaines préoccupations (**Danemark**, **France**) et le besoin de veiller à ce que l'obligation ne se transforme pas en une simple formalité sans que les rapports soient réellement discutés avec les représentants des salariés (**Belgique**). Le respect de l'obligation par les employeurs est encouragé avec succès en **Suède** en permettant également aux organismes pour la promotion de l'égalité d'avoir accès aux rapports sur demande. Un véritable débat sur les rapports en matière de rémunération pourrait par ailleurs être favorisé si la confidentialité de ces rapports (déjà rendus anonymes) était levée.

Obligations d'audit en matière de rémunération

S'étant dotées de mesures telles que recommandées concernant les audits en matière de rémunération, la **Finlande** et la **Suède** notamment peuvent fournir au niveau de l'entreprise des informations précises susceptibles de pousser les acteurs institutionnels à une action de suivi. La législation en place stipule les méthodes analytiques à utiliser, y compris pour l'établissement de comparaisons déterminées entre travailleurs masculins et féminins effectuant un travail de même valeur. Un inconvénient éventuel pourrait être le fait que la législation nationale relative aux audits en matière de rémunération n'exige pas expressément le recours à un système d'évaluation des fonctions qui soit neutre en termes d'égalité hommes-femmes ni l'analyse de la pratique appliquée à ladite évaluation. Cette obligation explicite de procéder à une évaluation des fonctions qui soit neutre en termes de genre dans le cadre des mesures relatives à la transparence salariale elles-mêmes, lorsqu'un tel système d'évaluation est en place, existe uniquement en **Belgique** pour ce qui concerne les rapports sur les rémunérations par sexe.

Négociations collectives prévoyant l'égalité de rémunération

Les obligations légales imposées aux partenaires sociaux en matière de négociation sont considérées, dans la plupart des pays couverts par l'étude, comme une atteinte à la liberté fondamentale de négociation collective. Aussi l'inventaire des mesures fondamentales comporte-t-il également dans ce domaine des incitations spécifiques mais non contraignantes visant à faire de l'égalité des rémunérations un élément distinct dans le cadre des négociations collectives. On trouve ce type d'incitations spécifiques dans trois des cinq pays ayant mis en œuvre la mesure fondamentale recommandée en rapport avec les négociations collectives (**Allemagne**, **Finlande** et **Suède**). L'égalité des rémunérations fait partie du dialogue social tripartite ou est incluse dans la loi sur l'égalité des rémunérations en tant qu'incitation législative non contraignante en matière de négociation collective.

La **Belgique** et la **France** ont conféré aux partenaires sociaux l'obligation légale de négocier sur l'égalité des rémunérations (en tant que problématique distincte) – une obligation qui prévoit en outre en **France** la prise en compte des (résultats) des audits effectués au niveau de l'entreprise en matière de rémunération.

Les mesures appliquées en **Belgique** et en **France**, bien qu'elles soient juridiquement contraignantes, semblent avoir peu d'effet dans la pratique et c'est l'incitation non contraignante instaurée en **Suède** qui semble donner les meilleurs résultats. On pourrait en conclure que les mesures qui réussissent le mieux, dans ce domaine en particulier, sont étroitement liées à la culture nationale en matière de négociation et au degré de sensibilisation des partenaires sociaux à l'égard des disparités de rémunération entre les hommes et les femmes.

Obstacles à l'adoption de mesures en matière de transparence salariale

À ce jour, les deux-tiers des pays étudiés n'ont adopté aucune mesure en faveur d'une transparence des salaires pouvant être considérée comme constitutive d'une mesure fondamentale recommandée en la matière en vue du renforcement du principe de l'égalité des rémunérations des femmes et des hommes.

Plusieurs de ces pays ont mis en œuvre des mesures de transparence en matière de rémunération ou de conditions d'emploi, mais elles ne prévoient pas d'informations ventilées par sexe car elles ont une autre finalité que le renforcement du principe de l'égalité de rémunération entre hommes et femmes (du moins en **Estonie**, en **Islande**, aux **Pays-Bas**, au **Portugal**, en **Pologne**, en **République tchèque**, en **Slovaquie** et en **Slovénie**). D'autres pays ont instauré des obligations de rapport concernant l'égalité hommes-femmes en général mais ne comportent aucune exigence spécifiquement axée sur la transparence en matière de rémunération selon le sexe (**Espagne**, **Luxembourg**, **Pays-Bas** et **Royaume-Uni**). **Chypre** a adopté une mesure non obligatoire destinée à encourager les employeurs à fournir sur demande aux salariés ou à leurs représentants des informations relatives à l'égalité salariale.

Les principales raisons invoquées pour ne pas avoir adopté de mesures (fondamentales) en matière de transparence des rémunérations selon le sexe conformément à la recommandation C(2014) 1405 ont été les suivantes: les questions de sensibilité et de confidentialité qui entourent la divulgation des salaires; les charges administratives et financières; l'absence de structures de négociation collective; la méconnaissance de la problématique ou l'absence de priorité conférée à l'égalité des rémunérations de la part des syndicats; et la crainte d'un nivellement par le bas.

Conclusions

La transparence salariale est importante pour la promotion de structures de fixation des rémunérations qui soient neutres en termes de genre. Or cette transparence fait défaut dans plusieurs pays européens. Ceci dit, il faut bien se rendre compte que l'introduction d'une transparence des salaires visant à alerter les parties prenantes d'une éventuelle discrimination salariale fondée sur le sexe est une démarche complexe, étant donné que ce type de discrimination peut découler de mécanismes subtils et occultes. La transparence des salaires impose dès lors des exigences extrêmement rigoureuses quant aux informations à fournir pour détecter les mécanismes en question.

Si les rapports concernant les rémunérations et les audits en matière de rémunération constituent des instruments adéquats à cette fin, ils exigent dans les deux cas qu'un système avancé de rémunération soit en place, que les connaissances nécessaires aient été acquises, et qu'une administration adéquate des ressources humaines permette de récolter les données requises. Dans les pays où les structures de négociation collective sont peu développées et/ou dans lesquels la fixation des salaires se fonde principalement sur les seules négociations individuelles, il peut s'avérer plus efficace d'essayer d'abord d'introduire et de formaliser des procédures de fixation des salaires et des barèmes salariaux, y compris une évaluation des fonctions, dans l'ensemble du secteur privé.

Des obstacles subsistent même dans les pays où les structures salariales sont davantage développées. On observe que, dans l'éventail des différentes mesures recommandées, ce sont celles relatives aux droits des salariés aux informations concernant les niveaux de rémunération des hommes et des femmes pour un même travail ou un travail de même valeur qui se heurtent aux plus grandes difficultés en raison de questions de protection de la vie privée. De surcroît, même si ces types de droits à l'information sont utiles, ils ne semblent pas lever tous les obstacles ni permettre par conséquent à des salariés individuels d'engager une action. Sans doute vaut-il mieux dès lors que les mesures en matière de transparence salariale s'adressent à des acteurs institutionnels, étant entendu que le succès dépendra encore de la sensibilisation au problème et de la priorité conférée à l'instauration de l'égalité des rémunérations. L'un des défis semble consister à briser un cercle vicieux par lequel l'absence, au niveau de l'entreprise,

de sensibilisation à l'égard des écarts salariaux hommes-femmes se traduit par une moindre quête de transparence des salaires, alors que seule cette transparence permettrait de combler les écarts en question.

L'analyse ci-après montre que l'introduction de rapports concernant les rémunérations est, parmi les mesures fondamentales, celle qui se heurte à la moindre résistance relative, mais que lesdits rapports ne doivent pas devenir une simple formalité entre employeurs et comités d'entreprise. Cet écueil pourrait éventuellement être évité en permettant également aux salariés individuels et/ou aux organismes de promotion de l'égalité d'accéder aux rapports relatifs aux rémunérations, et en donnant aux employeurs et aux représentants des travailleurs davantage d'indications quant à la manière de procéder lorsque des écarts de rémunération entre hommes et femmes sont constatés. Il convient en tout premier lieu d'expliquer de quelle manière analyser les données concernant les salaires afin d'y détecter le signe d'une éventuelle discrimination fondée sur genre.

Zusammenfassung

Einleitung und Kurzdarstellung der Untersuchung

In den **EU-Mitgliedstaaten + Island, Liechtenstein** und **Norwegen** (31 Länder) wurde eine Bestandsaufnahme und Bewertung der nationalen Maßnahmen zur Förderung der Lohntransparenz durchgeführt, mit denen die von der Kommission in diesem Bereich empfohlenen Kernmaßnahmen zur Stärkung des Grundsatzes des gleichen Entgelts für Frauen und Männer (Empfehlung C(2014) 1405 final) umgesetzt wurden. Diese Kernmaßnahmen beinhalten:

- ein Recht der Arbeitnehmer/innen, nach Geschlecht aufgeschlüsselte Informationen über die Höhe der Löhne und Gehälter für gleiche oder gleichwertige Arbeit anzufordern,
- eine Pflicht der Arbeitgeber/innen, über die nach Geschlecht und Beschäftigtengruppen oder Positionen aufgeschlüsselte Durchschnittsvergütung zu informieren,
- eine Pflicht der Arbeitgeber/innen, Audits zum Entgelt und zu geschlechtsspezifischen Entgeltunterschieden durchzuführen, und
- Maßnahmen, die sicherstellen, dass der Aspekt der Entgeltgleichheit, einschließlich Entgelt-Audits, auf der entsprechenden Ebene der Tarifverhandlungen erörtert wird.

Auf nationaler Ebene existiert eine Vielfalt von Verfahren, die allgemeine Informationsrechte der Arbeitnehmer/innen und ihrer Vertretungen betreffen. Allgemeine Konzepte wie „Transparenz“, „Vergütung“ und „Information“ können sich daher auf verschiedene Aspekte von Beschäftigung beziehen. Transparenzmaßnahmen können dementsprechend auch anderen Zielen als der Förderung der Entgeltgleichheit von Männern und Frauen dienen und beziehen den Aspekt der Lohngleichheit oder den des Geschlechts somit nicht zwangsläufig mit ein.

Aus diesem Grund wurde bei den Bewertungen, die dieser Bestandsaufnahme zugrundeliegen, außerdem berücksichtigt, ob eine allgemeine Transparenzmaßnahme eine empfohlene Kernmaßnahme zur Förderung der Lohntransparenz darstellt. Um als solche zu gelten, muss eine Lohntransparenzmaßnahme üblicherweise eine oder mehrere der empfohlenen Anforderungen in Bezug auf das Thema Entgelt enthalten und nach Geschlechtern aufgeschlüsselte Informationen vorsehen.¹ Mithilfe dieser weitergehenden Bewertung konnten auch Doppelzählungen vermieden werden. Es zeigte sich, dass ohne diese Bewertung ein und dieselbe Maßnahme zum Beispiel sowohl als Recht der Arbeitnehmer/innen, Lohn- und Gehaltsinformationen anzufordern, als auch als Pflicht der Arbeitgeber/innen, diese Informationen vorzulegen, erfasst werden konnte. Dasselbe galt für die Pflicht zur Durchführung von Entgelt-Audits, die in manchen Fällen auch als eine Pflicht zur Berichterstattung über das Entgelt erfasst werden konnte.

Soweit relevant werden besondere nationale Transparenzmaßnahmen, die nicht unter die vier empfohlenen Lohntransparenzmaßnahmen fallen, in dem Bericht ebenfalls behandelt.

1 Die Bewertungen wurden für jede der vier empfohlenen Maßnahmen getrennt durchgeführt (vgl. Abschnitte 2.2 bis 2.5).

Umsetzung nationaler Maßnahmen zur Förderung der Lohntransparenz

Ausgehend von der oben erwähnten Analyse, die in dem Bericht vertieft wird, haben zehn von 31 Ländern (32 %) in der Vergangenheit mindestens eine der empfohlenen Kernmaßnahmen zur Förderung der Lohntransparenz in diesem Bereich umgesetzt.² Von diesen zehn Ländern haben:

- drei wie empfohlen ein Recht der Arbeitnehmer/innen auf Auskunft über Löhne und Gehälter eingeführt (9,7 % der insgesamt 31 Länder),³
- fünf wie empfohlen eine Pflicht zur Berichterstattung über das Entgelt eingeführt (16,1 % der insgesamt 31 Länder),⁴
- drei wie empfohlen eine Pflicht zur Durchführung von Entgelt-Audits eingeführt (9,7 % der insgesamt 31 Länder)⁵ und
- fünf wie empfohlen Tarifverhandlungsmaßnahmen eingeführt (16,1 % der insgesamt 31 Länder).⁶

Wie daraus ersichtlich, haben mehrere Länder mehr als eine Kernmaßnahme zur Förderung der Lohntransparenz eingeführt (**Belgien**: Berichterstattungspflicht und Tarifverhandlungspflicht; **Finnland**: Informationsrecht und Audit-Pflicht; **Frankreich**: Berichterstattungs-/Audit-Pflicht und Tarifverhandlungspflicht; **Schweden**: Audit-Pflicht und Tarifverhandlungsanreiz). Aus **Deutschland**, **Irland**, **Italien**, **Litauen**, den **Niederlanden** und dem **Vereinigten Königreich** wird über ausgereifte Pläne oder Entwürfe der Regierung bzw. des Parlaments zur Einführung von Lohntransparenzmaßnahmen zur Stärkung des Grundsatzes des gleichen Entgelts für Frauen und Männer berichtet.

Ergebnisse in Bezug auf Auskunftsansprüche, Berichterstattungspflichten, Entgelt-Audits und die Berücksichtigung von Entgeltgleichheit in Tarifverhandlungen

Ansprüche auf Auskunft über Löhne und Gehälter

Nur drei Länder haben für Arbeitnehmer/innen ein Recht eingeführt, nach Geschlecht aufgeschlüsselte Informationen zur Höhe der Löhne und Gehälter für gleiche oder gleichwertige Arbeit anzufordern. Diese geringe Zahl ist wohl mit der Sensibilität der Offenlegung von Gehältern in Unternehmen und den entsprechenden datenschutzrechtlichen Bedenken zu erklären. **Finnland**, **Irland** und **Norwegen** haben allesamt als Teil des Rechtsverfahrens für die Geltendmachung von Ansprüchen auf Gleichbezahlung wegen des Geschlechts ein Auskunftsrecht der Arbeitnehmer/innen eingeführt, das den Empfehlungen entspricht. In zwei dieser drei Länder ist dieses Recht jedoch von der Zustimmung der Vergleichsperson abhängig. **Norwegen** hat diese Probleme gelöst und kann als „Best Practice“ gelten.

Pflichten zur Berichterstattung über das Entgelt

Von den fünf Ländern, die spezielle Pflichten zur Berichterstattung über geschlechtsspezifische Entgeltunterschiede auf Unternehmensebene eingeführt haben, legen drei in ihren gesetzlichen Vorschriften fest, dass in den entsprechenden Berichten die durchschnittlichen oder mittleren Lohn- und Gehaltsniveaus, aufgeschlüsselt nach Geschlecht, Arbeitnehmergruppen oder Positionen, angegeben werden müssen. Beispielhafte Lösungen sind diesbezüglich in **Belgien**, **Frankreich** und **Österreich** zu finden. Es ist allerdings darauf hinzuweisen, dass die Berichterstattungspflicht in **Österreich** für Unternehmen mit mindestens 150 Beschäftigten, in den anderen beiden Ländern hingegen für Unternehmen mit mindestens

2 Belgien, Dänemark, Deutschland, Finnland, Frankreich, Irland, Italien, Norwegen, Österreich und Schweden.

3 Finnland, Irland, Norwegen.

4 Belgien, Dänemark, Frankreich, Italien und Österreich.

5 Finnland, Frankreich und Schweden.

6 Belgien, Deutschland, Finnland, Frankreich und Schweden.

50 Beschäftigten gilt. In **Belgien** und **Österreich** gelten geschlechterbezogene Entgeltberichte außerdem als vertraulich.

Abgesehen von der Notwendigkeit, die Genauigkeit der bereitzustellenden Lohn- und Gehaltsinformationen zu verbessern, können zuweilen Bedenken bezüglich der Einhaltung der Berichterstattungspflicht aufkommen (**Dänemark, Frankreich**) und ist es notwendig, zu verhindern, dass die Berichterstattung zu einer reinen Formsache wird, die eine echte Diskussion über die Berichte mit den Belegschaftsvertreter/innen nicht fördert (**Belgien**). In **Schweden** wird die Einhaltung der Berichterstattungspflicht seitens der Arbeitgeber/innen dadurch erfolgreich gefördert, dass auch Gleichbehandlungsstellen auf Antrag Zugang zu den Berichten erhalten. Eine echte Diskussion über Entgeltberichte könnte außerdem dadurch unterstützt werden, dass der Vertraulichkeitsstatus der (ohnehin anonymisierten) Berichte aufgehoben würde.

Pflichten zur Durchführung von Entgelt-Audits

Insbesondere **Finnland** und **Schweden**, die wie empfohlen Maßnahmen zur Durchführung von Entgelt-Audits eingeführt haben, können auf Unternehmensebene klare Informationen zu Löhnen und Gehältern bereitstellen, die gut geeignet sind, Folgemaßnahmen institutioneller Akteure und Akteurinnen zu unterstützen. Die entsprechenden Regelungen geben die zu verwendenden Analyseverfahren vor, darunter auch spezifische Vergleiche von männlichen und weiblichen Beschäftigten, die gleichwertige Arbeit verrichten. Ein möglicher Schwachpunkt liegt darin, dass die nationalen Vorschriften über Entgelt-Audits die Anwendung geschlechtsneutraler Arbeitsbewertungen bzw. eine Analyse der Praxis der Arbeitsbewertungen nicht ausdrücklich fordern. Eine ausdrückliche Vorgabe, geschlechtsneutrale Arbeitsbewertungen im Zusammenhang mit Lohntransparenzmaßnahmen anzuwenden – vorausgesetzt, ein Arbeitsbewertungssystem ist vorhanden –, existiert nur in **Belgien** in Bezug auf geschlechterbezogene Entgeltberichterstattung.

Tarifverhandlungen über Entgeltgleichheit

Den Sozialpartner/innen bestimmte Verhandlungspflichten aufzuerlegen, wird in den meisten untersuchten Ländern als Verstoß gegen die Tarifautonomie angesehen. Die Liste der Kernmaßnahmen in diesem Bereich enthält daher auch unverbindliche, wenngleich konkrete Anreize, Entgeltgleichheit zu einem gesonderten Punkt der Tarifverhandlungen zu machen. Solche konkreten Anreize finden sich in drei von fünf Ländern, die die empfohlene Kernmaßnahme zu Tarifverhandlungen umgesetzt haben (**Deutschland, Finnland** und **Schweden**). Die Berücksichtigung der Entgeltgleichheit in Tarifverhandlungen wurde entweder zu einem Bestandteil des trilateralen sozialen Dialogs gemacht oder als „weicher“ gesetzlicher Anreiz für Tarifverhandlungen in das Entgeltgleichheitsrecht aufgenommen.

Belgien und **Frankreich** haben eine Pflicht der Sozialpartner/innen eingeführt, über Entgeltgleichheit (gesondert) zu verhandeln. In **Frankreich** werden dabei auch die (Ergebnisse der) Entgelt-Audits der Unternehmen berücksichtigt.

Obwohl sie rechtlich bindend sind, zeigen die Maßnahmen in **Belgien** und **Frankreich** in der Praxis offensichtlich nur geringe Wirkung. Der „weiche“ gesetzliche Anreiz in **Schweden** scheint mittlerweile am erfolgreichsten zu sein. Daraus lässt sich schließen, dass erfolgreiche Maßnahmen – speziell in diesem Bereich – in hohem Maße von der spezifischen nationalen Tarifverhandlungskultur und vom Bewusstsein der Sozialpartner/innen des jeweiligen Landes für geschlechtsspezifische Entgeltunterschiede abhängen.

Hindernisse bei der Einführung von Maßnahmen zur Förderung der Lohntransparenz

Zwei Drittel der untersuchten Länder haben bislang keine Transparenzmaßnahme beschlossen, die als empfohlene Kernmaßnahme für Lohntransparenz zwecks Stärkung des Grundsatzes des gleichen Entgelts für Frauen und Männer gelten kann.

Mehrere dieser Länder haben Transparenzmaßnahmen zum Entgelt bzw. zu den Arbeitsbedingungen beschlossen. Diese liefern jedoch keine nach Geschlechtern aufgeschlüsselten Informationen, da sie für andere Zwecke als die Stärkung des Grundsatzes des gleichen Entgelts für Frauen und Männer eingeführt wurden (zumindest **Estland, Island, die Niederlande, Polen, Portugal, die Slowakei, Slowenien** und die **Tschechische Republik**). Andere Länder haben Pflichten zur Berichterstattung über die allgemeine Gleichstellung von Männern und Frauen, jedoch ohne spezifische Anforderungen bezüglich geschlechterbezogener Lohntransparenz eingeführt (**Luxemburg, die Niederlande, Spanien** und das **Vereinigte Königreich**). **Zypern** hat eine nicht obligatorische Maßnahme beschlossen, die Arbeitgeber/innen ermutigen soll, den Beschäftigten bzw. deren Vertreter/innen auf Anfrage Informationen über die Gleichstellung bei der Vergütung zur Verfügung zu stellen.

Als Hauptgründe dafür, keine (Kern-)Maßnahmen für geschlechterbezogene Lohntransparenz im Sinne der Empfehlung C(2014) 1405 zu haben, wurden folgende genannt: Fragen der Sensibilität und Vertraulichkeit im Zusammenhang mit der Offenlegung von Gehältern, administrative und finanzielle Belastungen, mangelnde Tarifverhandlungsstrukturen, fehlendes Problembewusstsein bzw. fehlende Priorität für Entgeltgleichheit bei den Gewerkschaften sowie Angst vor einer Angleichung nach unten.

Schlussfolgerungen

Lohntransparenz ist wichtig, um geschlechtsneutrale Lohnfindungsstrukturen zu fördern. In einer Reihe europäischer Länder fehlt eine solche Lohntransparenz. Es ist jedoch wichtig zu erkennen, dass die Einführung von Lohntransparenz mit dem Ziel, die Beteiligten auf mögliche geschlechtsbezogene Entgeltdiskriminierung hinzuweisen, eine komplexe Angelegenheit ist, weil geschlechtsbezogener Entgeltdiskriminierung subtile, verborgene Mechanismen zugrunde liegen können. Lohntransparenz stellt daher hohe Anforderungen an die Informationen, die bereitgestellt werden müssen, um diese Mechanismen aufzuspüren.

Berichterstattung über das Entgelt und Entgelt-Audits sind geeignete Instrumente, um dies zu bewerkstelligen. Beide Instrumente setzen jedoch voraus, dass ein entwickeltes Entgeltsystem existiert, dass die notwendigen Kenntnisse vorhanden sind und dass entsprechende Personalverwaltungen existieren, um die erforderlichen Daten zu erheben. In Ländern, in denen die Tarifverhandlungsstrukturen schwach sind und/oder die Lohnfindung im Wesentlichen nur von individuellen Verhandlungen abhängt, kann es bisweilen sinnvoller sein, zunächst zu versuchen, im Privatsektor generell Lohnfindungsverfahren und Lohnsysteme, einschließlich Arbeitsbewertung, einzuführen und zu formalisieren.

Auch in Ländern mit stärker entwickelten Lohnstrukturen gibt es Hindernisse. Unter den verschiedenen empfohlenen Maßnahmen stoßen Rechte der Arbeitnehmer/innen, nach Geschlecht aufgeschlüsselte Informationen zur Höhe der Löhne und Gehälter für eine gleiche oder gleichwertige Arbeit anzufordern, aus Datenschutzgründen auf die größten Schwierigkeiten. Hinzu kommt, dass solche Auskunftsrechte zwar hilfreich sind, offenbar jedoch nicht alle Hürden beseitigen, damit Arbeitnehmer/innen aktiv werden können. Institutionelle Akteure und Akteurinnen sind daher vielleicht die besten Adressaten von Lohntransparenzmaßnahmen; nichtsdestotrotz wird der Erfolg aber auch vom Problembewusstsein und von der Priorität abhängen, die der Herstellung von Entgeltgleichheit eingeräumt wird. Eine der Herausforderungen scheint darin zu liegen, den diesbezüglichen Teufelskreis zu durchbrechen: Der Wunsch nach Lohntransparenz wird dadurch geschwächt, dass auf Unternehmensebene kein Bewusstsein für geschlechtsspezifische Entgeltunterschiede existiert, und Letzteres kann wiederum nur durch Schaffung von Lohntransparenz verändert werden.

Der Bericht zeigt, dass die Einführung von Entgeltberichten unter allen Kernmaßnahmen auf den relativ geringsten Widerstand stößt, diese Berichte aber nicht zu einer reinen Formsache zwischen Arbeitgeber/innen und Betriebsräten werden dürfen. Gefördert werden könnte dies möglicherweise dadurch, dass Arbeitnehmern und Arbeitnehmerinnen und/oder Gleichstellungseinrichtungen ebenfalls Zugang zu den

Entgeltberichten gewährt wird und dass Arbeitgeber/innen und Belegschaftsvertreter/innen mehr Anleitung erhalten, wie vorzugehen ist, wenn Entgeltunterschiede zwischen Frauen und Männern festgestellt werden. In erster Linie ist es aber notwendig zu erklären, wie Entgeltdaten auf Anzeichen einer möglichen geschlechtsbezogenen Entgeltdiskriminierung hin zu analysieren sind.

1 Introduction

1.1 Subject matter and scope

Securing the right to equal pay for men and women can meet with difficulties in practice. The relevant EU law (Article 157 TFEU and Article 4 of Directive 2006/54/EC)¹ forbids direct and indirect discrimination on grounds of sex in respect of remuneration. However, the enforcement of the obligations that arise for Member States, employers and the social partners, is in part based on a so-called “individual rights strategy”, meaning it is first and foremost the employee who should claim his or her right if gender pay discrimination occurs. EU secondary law and case law does assist the employee in claiming equal pay rights by shifting the burden of proof to the employer,² if the employee can show that he or she receives lower wages compared with another employee of the other sex, performing equal work or work of equal value in the same establishment or service.³ Still, in order to find such a comparator one should have access to the actual wages paid to colleagues at work and to information about the comparability of the work performed by the particular colleague. In the everyday reality of working life this kind of information can be hard to come by.

The same applies to employers, employees’ representatives, the social partners or (supervisory) equality bodies or governmental bodies in the course of an investigation into pay practices. To establish whether a company’s pay practice is in conformity with the right to equal pay for men and women, first of all it would be necessary to have some indication of whether there is a problem or not. This would require, at the very least, reliable information on the average pay levels for gender and for the job group in the company, which is not often available. Although sex is often registered as a characteristic of individual employees, not many personnel administrations gather pay information on an aggregated level and broken down by gender.

Were this kind of information to be made available to stakeholders, knowledge could be gained of possible gender pay gaps at company level. Taking it a step further, more relevant information would require an additional analysis of the possible gender pay gaps found. Do they flow from objective grounds or could gender bias be involved? This would require comparisons to be drawn between comparable (groups of) employees and research for possible gender bias in pay structures, including any applicable job evaluation systems. In other words, to upgrade gender pay information, it might be necessary that raw gender pay gap data are consequently refined.

The conclusion that can be drawn from the above is that pay transparency is essential for the effective application of the equal pay principle. Increased transparency could reveal possible gender bias in the pay structures of an undertaking or organisation and, thereby, enable employees, employers and social partners to take appropriate action to ensure the implementation of the equal pay principle.

To increase pay transparency, the Commission adopted Recommendation C(2014) 1405 final, encouraging the Member States to implement, at the very least, one of the core measures enhancing pay transparency (see Annex IV). The core measures mentioned entail:

- 1) an employee’s right to request information on gender pay levels for the same work or work of equal value;
- 2) an employer’s duty to report on average gender pay levels by category of employee or position;

1 ‘For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated’ (Article 4, Directive 2006/54, OJ L 204, 26.7.2006, p. 23); ‘Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied’ (Article 157 TFEU).

2 Directive 2006/54/EC, Article 19.

3 See, amongst others, Case 43/75 *Defrenne II*, ECLI:EU:C:1976:56; Case 129/79 *Macarthy*, ECLI:EU:C:1980:103; Case 96/80 *Jenkins*, ECLI:EU:C:1981:80; Case C-381/99 *Brunnhöfer*, ECLI:EU:C:2001:358; Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

- 3) an employer's duty to conduct an audit on pay and pay differentials on grounds of gender; and
- 4) measures to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate collective bargaining level.

Other measures provided in the Recommendation that also contribute to increased wage transparency include a clear definition of 'work of equal value' and the promotion of gender-neutral job evaluation and classification systems. Of course, general measures such as improved statistics at national level, strengthening the role of gender equality bodies, consistent monitoring and enforcement by Member States, and awareness-raising activities will also contribute.

The information on pay differentials between men and women flowing from increased pay transparency should in the end help to:

- improve the chances of *individuals* to take (legal) action in case of presumed gender pay discrimination by presenting their case to the employer or supervisory or judicial authorities, and
- stimulate *systemic* action by institutional actors like employers, trade unions, employers' organisations, national equality bodies or governmental agencies to further, to install or to improve gender-neutral wage structures, including job evaluation, and wage-setting procedures in order to narrow the existing gender pay gap.

This however presupposes that the type of information provided by any transparency measure taken at national level is indeed appropriate and helpful for either individual employees to claim equal pay rights or for employers and/or social partners to improve the structures and processes of gender-neutral wage setting. In order to establish whether pay differentials, pay structures, pay policies or job evaluations are in conformity with the right to equal pay for men and women ('Is there a problem?'), the information obtained by pay transparency measures must, therefore, take account of the legal requirements that will make it possible to assess whether actual pay differentials show signs of possible gender discrimination.

From the foregoing the following questions arise, which will consequently be the subject of this report.

- (i) *Which of the four recommended pay transparency measures are put in place or which measures on pay transparency comparable to the ones provided in the Recommendation are already in place at the national level in the Member States + 3 EFTA countries?*
- (ii) *What is their nature and what kind of information on equal pay do they provide?*
- (iii) *Is the kind of information targeted by the specific pay transparency measure implemented at national level capable of furthering individual actions and/or systemic actions?*

Besides the four core recommended transparency measures previously mentioned, this report will also take stock of any national actions related to the promotion of gender-neutral job evaluation and classification systems, the clarification of the concept of 'work of equal value' and compiling statistics on gender pay transparency and the gender pay gap at national level. Moreover, if present at national level, other types of possible pay transparency measures will be outlined, as well as projected national transparency measures. In particular, in respect of the core recommended measures, details will be provided about their precise nature and general impact so far. The main reasons for and obstacles to non-compliance with existing pay transparency measures or for not introducing these kinds of measures will be analysed, and national best practices in pay transparency will be highlighted, i.e. attention will be drawn to countries that already have in place or have introduced progressive legislation on the matter.

In order to answer question iii on the capability of existing national pay transparency measures to effectively promote follow-up actions, the national context needs to be taken into account. This will relate especially to the national legal information needed to explain and clarify general pay differentials,

where applicable, in terms of gender pay discrimination or (accepted) modes for suspecting gender pay discrimination (thereby providing a ‘diagnosis’ enabling relevant actions). As this national legal information will depend on the national law implementing EU equal pay law, more specifically the law in respect of the facts required to make a prima facie case of gender pay discrimination, these data will also be queried where relevant. Moreover, additional information may be obtained from existing gender equality reports by the European network of legal experts in gender equality and non-discrimination (EELN).⁴

1.2 Methodology and outline

This report focuses on EU pay transparency and covers the **28 EU Member States** and, additionally, **Iceland, Liechtenstein** and **Norway**. Research data have been gathered by sending questionnaires to the legal gender experts of the EELN (see for the questionnaire, Annex II). All 31 questionnaires were returned. Where questions arose in respect of the clear qualification of national measures in view of Recommendation C(2014) 1405, additional information and confirmation were requested.⁵ In respect of research question iii, the questionnaire (part II) was filled out only by those countries in which transparency measures have been developed and more detailed information on these instruments was available. As the research period was concluded on 1 September 2016, all data gathered reflect the available national information on (projected) pay transparency measures that correspond with the Commission’s recommendation in this area, up to this date.

The results of the questionnaires are compiled and categorised according to theme and country. A comprehensive overview of all the results is annexed to the report (Annex I).

Additional analysis of the inventory made is provided in the following chapters. Chapter 2 addresses the four core types of measures mentioned, while Chapter 3 considers other transparency measures such as the promotion of gender-neutral job evaluation and classification, the clarification of the concept of ‘work of equal value’ and a compilation of the statistics at national level.

Chapter 4 provides, for those countries where developments and information at national level so allow, an analysis of the capability of the pay data targeted by the specific transparency measures taken to promote actions on equal pay.

Finally, Chapter 5 presents the conclusions that can be drawn from the common obstacles to, and best practices of pay transparency, as well as from the capability of the different transparency measures to trigger actions.

4 Including EELN (2015), *A comparative analysis of gender equality law in Europe 2015*. See: <http://www.equalitylaw.eu/downloads/3823-a-comparative-analysis-of-gender-equality-law-in-europe-2015-pdf-1-03-mb> and European Network of Legal Experts in the Field of Gender Equality, Foubert, P., Burri, S., Numhauser-Henning, A. (2010), *The Gender Pay Gap in Europe from a Legal Perspective* (including 33 country reports). See http://ec.europa.eu/justice/gender-equality/files/gpg_legal_perspective_2010_en.pdf.

5 This involved: **Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Hungary, Luxembourg, the Netherlands, Portugal, Slovakia, Spain, Sweden** and **the United Kingdom**.

2 Inventory of core pay transparency measures at national level

2.1 Introduction

This chapter addresses the national implementation of the core recommended pay transparency measures in the countries surveyed.⁶ For convenience, these core measures are repeated here.

- 1) an employee's right to request information on gender pay levels for the same work or work of equal value;
- 2) an employer's duty to report on average gender pay levels by category of employee or position;
- 3) an employer's duty to conduct an audit on pay and pay differentials on grounds of gender; and
- 4) measures to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate collective bargaining level.

In discussing the implementation of each of these core measures, this chapter will, moreover, take account of other types of possible pay transparency measures, if present, as well as projected national transparency measures.

In respect of the core recommended measures, details will be provided about their precise nature and general impact so far. The main obstacles to complying with existing pay transparency measures, or for not introducing these kinds of measures, will be analysed, as will national best practice in pay transparency. To draw attention to what might be considered best practice, the description of such practice will, throughout this report, be indicated using framed and shaded text blocks.

2.2 Employee's right to obtain pay information

The first recommended pay transparency measure entails an employee's right to obtain pay information, or to be more precise:

'Member States should put in place appropriate and proportionate measures to ensure that employees can request information on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value. This information should include complementary or variable components beyond the fixed basic salary, such as payments in kind and bonuses.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Paragraph II(3))⁷

In order to assess gender pay gaps, information is needed on comparable pay levels of men and women at company level. Due to difficulties in obtaining information and specifications of the actual wages paid, especially of other employees, an information right might help to raise awareness and provide 'tools' for employees to take (legal) action.

To distinguish general pay differentials from gendered pay differentials, the pay data to be received must be broken down by gender, look at comparable individuals or groups performing the same work or work of equal value and give an insight into the diverse pay components. In addition, access to the applicable general pay scheme and its parameters will help to diagnose any differences in the pay level information received. Except for access to the applicable pay scheme itself, the elements mentioned are part of the Commission's recommendations and will be taken into account in the following analysis.

6 Commission Recommendation C(2014) 1405, see Chapter 1.

7 Section 9 of the Recommendation stipulates: 'To the extent that any information provided pursuant to measures taken under points 3 to 8 involves the disclosure of personal data, it should be provided in accordance with national data protection laws, in particular those implementing Directive 95/46/EC of the European Parliament and of the Council.'

2.2.1 Implementation rate

Only three countries have introduced a right for individual employees to request information on pay levels, broken down by gender, for the same work or work of equal value (**Finland, Ireland and Norway**), see Table 1 and, for a full overview, Annex I. Details of these national measures are provided in section 2.2.2.

Table 1 Implementation rate of a recommended employee pay information right by number of countries (n=31)

	Individual right	Access through specialised body
Implementation following recommendation	-	-
Already in place	3	2
Existing information right abolished	2	-
Future measures expected	1	-

National employees' information rights that oblige the employer to inform the employees about the main terms of their employment contract, including the amount of payment (**Estonia, Portugal**),⁸ were not qualified as a recommended core pay transparency measure in view of equal pay for men and women. The pay information to be obtained is limited to one's own remuneration and, in the case of **Estonia**, the applicable pay conditions.

In **Austria**, employees in companies with at least 150 employees may have access to anonymised pay reports subject to the condition that there is no works council present. This measure must primarily be understood as a pay reporting duty and is therefore discussed in section 2.3.

The Netherlands and **Sweden** do not have a recommended employee information right but have implemented special mechanisms for providing easy access to the necessary facts for a potential pay discrimination claim by allowing equality bodies (**the Netherlands, Sweden**) or trade unions (**Sweden**) to retrieve this information from the employer following an equal pay complaint by the employee.

Cyprus has adopted a non-obligatory measure that encourages employers to, upon request, provide employees or employees' representatives with information on equal pay and on the average number of men and women per job position.⁹

Great Britain and **Iceland** do not provide employees with the right to obtain information on pay levels for the same work or work of equal value. However, they explicitly allow employees by law to (voluntarily) disclose their wages to others. In **Great Britain**, this includes legal victimisation provisions protecting employees who seek or disclose pay information and a ban on contractual 'gagging' clauses (Equality Act 2010).

Abolished employee information rights

In two countries employee information rights have been abolished. In **the United Kingdom**, the statutory questionnaire procedure by which employees could obtain information from their employer in order to establish facts for a potential discrimination claim was abolished in 2013. According to the Government, this decision was due to the failure of the procedure to reduce the number of claims reaching tribunals and to the burden it placed on employers. The UK Parliamentary Women and Equalities Committee noted

8 As this right flows from Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, it can be expected to have been implemented in all EU Member States.

9 Article 6A(2) of Law No. 177(I) as amended by Law No. 38(I)/2009.

in 2016, however, that equal pay questionnaires are a simple and cost-effective way for employees to gather pay information.¹⁰ This has not resulted in a proposal to reintroduce the right.

In **France**, the employee was entitled to request direct access to the comparable reports on gender equality to be presented to the works council (see 2.3 on pay reports). This right was however abolished as a side-effect of the recent general amendments to the law on information and consultation rights of workers' representatives. There seems to be no intention to remedy this side-effect, according to the French expert.

Projected employee information rights

From the surveyed countries, only **Germany** contemplates the introduction of measures on an employee information right concerning gender-segregated pay levels for equal work or work of equal value in the near future. It appears to involve an employee information right concerning comparable wages that addresses either the works council or the employer in companies with more than 200 employees.¹¹ No drafts have been published as yet.

2.2.2 Specifics of employee's information right

Best practice

Of the countries supporting an employee's information right concerning gender pay levels for the same work or work of equal value, **Norway** has the most elaborate right. On the basis of the Gender Equality Act employees have the right to request the pay data of individual comparators at company level. The received data must be kept confidential and the comparators must be informed; however, they do not have to consent to disclosure. Trade union representatives may seek information in support of the individual according to the specifics laid down in the applicable collective agreement.

Besides Norway, **Finland** and **Ireland** also provide individual information rights but the employer needs the consent of the individual(s) whose pay data are disclosed. If that consent is not given, the employee has to apply to the Equality Ombudsman in Finland.¹² In Ireland a statutory questionnaire form¹³ is used to seek necessary data but the employer is not required to respond to these questions, although this might be held against the employer in supervisory or court proceedings.

All information rights discussed refer to public and private companies irrespective of their size and to all types of pay information specified in the Commission's recommendation, as well as to the applicable pay scheme.

2.2.3 Obstacles for implementation and effectiveness

In **Belgium**, an employee's right to information was not envisaged due to resistance among employers and a suggested taboo about disclosing individual wages. **Finland** and **Ireland**, from the countries that did implement an information right, report that the main obstacle to the functioning of their transparency measures is the consent needed from the individual(s) whose pay data are to be disclosed.

10 House of Commons, Parliamentary Women and Equalities Committee (2016), *Gender Pay Gap: Second Report of Session 2015-6* (House of Commons, HC584) at p. 311, available at <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/584/58402.htm>.

11 See <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/gesetz-fuer-mehr-lohngerechtigkeit-/111732>.

12 The Equality Ombudsman is to request the information, provided there are reasonable grounds to suspect pay discrimination (section 17 (3) of the Act on Equality).

13 See the Employment Equality Act 1998 (Section 76 – right to information) Regulations 1999.

Table 2 Type of obstacles found for information rights by number of countries (n=31)

Type of obstacle	n	Relevant countries
Data protection law	6	HR PT RO SK SL EE PL
Standard contractual non-disclosure clauses	9	HR HU EE LV PT SK MT LI PL
Cultural sensitivity of pay data among all stakeholders	10	BE FI LT RO MT SL MT LU DE EE PL
Poor HR administration at company level	2	HR EE
Economic (avoiding administrative burdens and costs)	5	UK CY ES HU DE
No problem awareness	7	CZ EL HU EE LT BG LI
No priority for trade unions; the fear of levelling down	2	ES PL
General preference for other types of transparency measures	2	IT NL

In addition, among the countries that did not implement an employee information right on gender-segregated pay levels for the same work or work of equal value, the formal confidentiality of salaries on the basis of the law or contractual non-disclosure clauses, as well as informal confidentiality flowing from 'secrecy cultures' in respect of personal income, are most frequently reported as barriers to having an employee's information right (Table 2).

There is some legal uncertainty as to whether national data protection law would indeed exclude an employee's information right concerning the pay levels of co-workers.¹⁴ In some countries the disclosure of this kind of information is clearly not possible without the consent of the individual(s) involved (**Croatia, Finland, Ireland, Portugal, Romania, Slovenia, Slovakia**). In a few countries, however, it does not pose a problem (**Greece, the Netherlands**), while in the majority of countries it cannot be determined whether it poses an obvious obstacle or not.

Most dominant, however, are the obstacles posed by the cultural sensitivity of wages earned and/or the common use of contractual confidentiality clauses. The latter does not involve data protection law but (the law on) confidential business information and company or commercial secrets. Employers conceal the pay data of employees for economic competition reasons and sometimes also to prevent the poaching of employees (see Annex II).

The standard use of contractual non-disclosure clauses is especially strong in those countries where wages are set by individual negotiations only. This partly coincides with countries which have weak national collective bargaining structures (explicitly reported by **Croatia, Estonia, Hungary, Liechtenstein, Latvia, Poland**), due to the fact that collective agreements would, in most cases, already have revealed the results of wage negotiations.

2.3 Pay reports

The second recommended pay transparency measure entails a pay reporting duty at company level:

'Member States should put in place measures that ensure that employers in undertakings and organisations with at least 50 employees regularly inform employees, workers' representatives and social partners of the average remuneration by category of employee or position, broken down by gender.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Paragraph. II(4))

Transparency could be improved by regular reporting on gender pay gaps at company level. The measure mentioned aims particularly at raising problem awareness among the different stakeholders. As there is no requirement to show gender-segregated pay levels for equal work or work of equal value but only

14 See on this issue Case C-104/10 *Kelly*, ECLI:EU:C:2011:506 and Case C-415/10 *Galina Meister*, ECLI:EU:C:2012:217.

average remuneration per job category or position, one might assume that the pay data to be reported could be retrieved from the company's general pay administration already in place without the need for additional analysis. Nonetheless, this presumes that an orderly administration is kept and that the sex of employees is registered. Reporting mean wages for groups of employees implies, furthermore, the reporting of anonymised data only, on condition that each job group represents enough individuals. The reporting of anonymised data could perhaps prevent difficulties with regard to privacy legislation.

The Commission Recommendation on gender pay reporting refers to companies with at least 50 employees. This number of employees coincides with the minimum size of companies that have to introduce obligatory bodies or procedures for information and consultation of workers' representatives under Directive 2002/14/EC.¹⁵ This would suggest that some form of employee representation should be present in companies to which a pay reporting duty might apply.

The stocktaking of the national implementation of a reporting duty focussed on the specifics of the pay data to be reported, disclosure to employees, works councils and social partners, the frequency and enforceability of pay reporting and the size of the company to which it applies.

2.3.1 Implementation rate

Some sort of generic reporting duty on gender equality can be found in a number of surveyed countries (**Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom**). This duty may be part of the general law on information rights of employees' representatives (**the Netherlands**). It may also be part of more elaborate reporting duties on gender equality as part of, or leading up to, equality plans adopted at national level (**Spain**).

Such generic reporting duties in practice might include reporting on the remuneration of men and women. However, reporting duties on the application of the principle of gender equality in general are not classified as a recommended core pay transparency measure if they do not stipulate specific requirements in respect of reporting on gender pay levels or pay differentials by category of employee or position. Reporting duties in **Luxembourg, the Netherlands, Spain, and the United Kingdom** do not meet the recommended requirements of pay transparency.¹⁶

Portugal obliges employers to report on a substantial number of details about individual employees, including their sex and their wages, to the Labour Inspectorate and (in an anonymised form) to the works council but not in a gender-segregated format. This measure cannot therefore be credited as a core pay transparency measure within the ambit of this report.

More generally, workforce and labour costs surveys, including in some cases legal duties for companies to report on such payroll data to competent authorities, are common in a substantial number of the countries surveyed. They add to (pay) transparency, but without any gender-segregated format they cannot serve the strengthening of equal pay between men and women (see further on this type of national measure section 2.3.6).

In **Sweden** and **Finland**, the gathering of information on average pay differentials can be part of a pay audit report. Given that both countries lack a distinct legal duty on the reporting of average pay levels, and the national measures adopted in these countries are classified as a pay auditing duty, they are discussed in section 2.4.

15 OJ L 80, 23.3.2002, p. 29-34. See also Commission Recommendation C(2003) 1422 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36-41.

16 In the case of the UK an exception applies to Scotland, where general equality information includes two-year data on the average hourly earnings of men and women (but new regulations are expected, see 2.3.3).

Taking the above parameters into account, 5 of the 31 countries have implemented a recommended pay reporting duty on gender-segregated pay levels by category of employee or position (**Austria, Belgium, Denmark, France, Italy**).

In 6 countries specific pay reporting measures are being contemplated (**Germany, Ireland, Italy, Lithuania, the Netherlands and the United Kingdom**). Out of these countries, **Germany, Ireland and Lithuania** do not already have general reporting duties on gender equality information.

The national measures on pay reporting duties that are already in place, as well as the projected ones, will be discussed in more detail in the following sections.

2.3.2 Recommended pay reporting duties in place

Best practice

In **Austria** the two-year duty applies to private companies with at least 150 employees and requires income reports to show gender-segregated mean or median pay in full-time equivalents per job category and qualification level indicated in the collective agreement, as well as the number of male and female employees per job category.

In **Belgium** the two-year pay reporting duty, introduced by the Gender Pay Gap Act 2012, is also limited to the private sector but addresses companies with at least 50 employees. The data to be reported entail gender-segregated mean basic pay and allowances per employee category, job level, job evaluation class (if applied), seniority and education level.

France requires companies with 50 or more employees (and, in a more detailed form, companies with at least 300 employees) to annually draw up so-called 'comparative equality reports' concerning the situation of men and women employed, in terms of qualification, recruitment, training, pay, working conditions and work-family balance. Pay refers to the average monthly wage per job category.

Denmark has a pay reporting duty concerning wage statistics¹⁷ for companies with 35-plus employees. By an amendment to the Equal Pay Act in 2016 the scope of this reporting duty was changed from companies with 10-plus employees (with at least 3 men and 3 women) to companies with 35-plus employees (with at least 10 men and 10 women). The law does not specify additional requirements for the pay report other than that it has to be sufficient for dialogue with the employees' representatives.

Italy has a two-year reporting duty concerning gender-related equality information, including an explicit reference to pay levels, for companies with more than 100 employees. As in Denmark, the measure does not provide further specifications in respect of pay reporting.

2.3.3 Draft regulation on gender-segregated pay reporting

From the 6 countries expecting new measures, **Great Britain** has adopted the Equality Act (Gender Pay Gap Information) Regulations, expected to come into force in April 2017, which require companies with 250-plus employees in the private sector to publish, on an annual basis, mean and median gender pay gaps (including mean bonuses). For **Northern Ireland**, the Regulations will enter into force by 30 June 2017, requiring employers (not yet specified) to publish gender pay differences and action plans (probably between every one to three years).

¹⁷ The frequency of this duty was not reported.

In addition, **Lithuania** has adopted in its Labour Code 2016 an obligation for companies with 20-plus employees to inform works councils and trade unions of pay levels broken down by gender (this is still under a Presidential veto review). **Italy** proposed a bill (in March 2015) on pay transparency regulations (pay reporting and audits), which is still being studied by a Parliamentary commission. No further specifics have been reported.

In **Germany** and **Ireland**, the Government has announced pay transparency measures. There are no published drafts as yet but in Ireland it would entail requiring companies with 50-plus employees to undertake a wage survey. In Germany there is a heated public political discussion about the need for pay transparency measures, as well as about the minimum size of companies to which they must apply if such measures are taken.¹⁸ An online petition on fair pay has been launched.¹⁹

2.3.4 Disclosure and enforcement of pay reports

Within the countries with pay reporting duties (see 2.3.2), reports must be presented to the employees' representatives at company level. In **Austria** and **Belgium** they must explicitly be kept confidential. In **Italy** and **France** the reports must also be disclosed to the social partners. In none of the countries are employers also obliged to give employees access to information on the average remuneration of men and women reported to the employees' representatives.²⁰ In **Austria** and **Belgium** the handing of reports to individual employees by employees' representatives would be barred because of confidentiality. However, in **Austria** an exception applies to this secrecy obligation if the report is to be used for an equal pay claim before a court or the equality body.

Finally, in respect of the enforceability of duties, if reporting duties are not carried out, they are commonly sanctioned by law by way of (moderate) administrative or penal fines (see Annex I for more details), except for **Denmark**, which has no enforcing mechanism in place.

2.3.5 Obstacles to implementation and effectiveness

Of the countries that have not implemented a pay reporting duty and do not expect to do so in the near future, all report obstacles similar to those encountered in respect of the non-implementation of employee information rights (see 2.2.3). Although reporting on average pay levels per job category would imply that the data are anonymised, it turns out that the necessary disclosure of individual wages paid in order to aggregate these data still poses confidentiality issues.

Of the countries which have implemented a specific pay reporting duty concerning gender wage gaps (see 2.3.2), **Belgium** reports that, because of its confidentiality, the pay report remains a formality without incentives to discuss it.²¹ The Belgian Equality Body regrets that reports cannot contribute to general statistics or national policy plans.

18 After the conclusion of the research, it was made public in Germany that political agreement had been reached on some key points of a draft pay equity act. These key points involve an information right concerning comparable pay for employees in companies with more than 200 employees, as well as a five-year pay audit duty in companies with more than 500 employees. Furthermore, so-called *Kapitalgesellschaften* with more than 500 employees would have to report regularly on measures taken in respect of equal treatment and equal pay. See <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/gesetz-fuer-mehr-lohngerechtigkeit-/111732>.

19 See <http://www.fairpay-heute.de/>.

20 In **Austria**, however, if no works council is present the report has to be made accessible to employees on the company premises. Employees are mandated to keep the contents of the reports confidential and can be fined for an infraction (paragraph 11a, Equal Treatment Act for the Private Sector).

21 According to the Annual Report 2015 of the Institute for Equality of Women and Men ("equality body" as envisaged by Directive 2006/54/EC) there is no formal encouragement to discuss wage reports within the works council, see <http://igvm-iefh.belgium.be/nl>.

In **Austria** it is noted that income reports are not regularly used in court proceedings, where individual evidence is relied upon. The income reports are anonymised, thus precluding individuals from identifying comparators.²²

In **France** incentives have been put in place to facilitate the comparative reports in the form of state funding possibilities of up to 70 % for companies with 300 or fewer employees.

Italy reports low effectiveness because the gender pay gap has a low profile in public debate. On **Denmark** no further information has been reported other than that the reporting duty is ineffective.

Among the countries with a mere general reporting duty on equal treatment (see 2.3.1), **Luxembourg** and **the Netherlands** report low effectiveness because gender pay gaps have no priority among employees or trade unions, firms and works councils have other priorities and establishing pay discrimination is complicated (HR staff and works councils may lack expertise in this field).

In respect of expected transparency measures, **the United Kingdom's** draft regulations are restricted to companies with 250-plus employees because it is believed that smaller companies cannot bear the administrative burdens and costs and would have difficulty in complying with data protection obligations. A comparable discussion is taking place in **Germany**.

2.3.6 Pay reporting duties for non gender equality-related purposes

Several generic national pay reporting duties have been reported that are either linked to public access to remuneration and bonuses paid to public officials or to compiling labour costs data for statistical reasons (e.g. **the Czech Republic, Estonia, Iceland, the Netherlands, Poland, Slovenia** and **Slovakia**). For the reasons outlined below, these duties cannot be regarded as a pay transparency measure in view of strengthening the principle of equal pay between men and women.

Attempts have been made in several EU Member States to regulate public access to remuneration levels and bonuses in the (semi-)public sector, as well as sometimes in the private sector, in order to prevent, for instance, corruption, fraud or excessive income disparities. **Iceland, the Netherlands, Poland** and **Slovenia** reported the implementation of such national pay transparency measures.

In **the Czech Republic** the transparency measure consists of public access to an official website that contains a statistical database on average remuneration by profession in the public and the private sector, supported by the Ministry of Labour and Social Affairs.²³

The **Estonian** Civil Service Act (CSA) stipulates the disclosure of the remuneration of state officials in the public sector. Data concerning the basic salary, variable pay and other income must be published on the official website. According to the CSA, this should include a salary guide on the applicable pay conditions. However, regulations to this effect have not yet been drafted.

The **Slovakian** Ministry of Labour, Social Affairs and Family conducts regular labour cost surveys in the private sector in cooperation with the Statistical Office. Data are gathered concerning earnings by job type and employees' characteristics, including age, sex, education and weekly working time. Companies included in the sample must report such payroll data.

Although all national measures mentioned in this section can add to pay transparency generally, in none of the cases was the instrument implemented also linked to gender equality purposes; therefore any pay

22 Such individual comparators would be required in case of a claim of direct pay discrimination due to the wording of national law and according to national case law (ECLI:AT:OGH0002:2013:RS0128532).

23 [Http://www.mpsv.cz/ISPV.php](http://www.mpsv.cz/ISPV.php).

information that is compiled or can be publicly accessed within the realm of these measures is not broken down by gender.

2.4 Pay audits

The third recommended core pay transparency measure entails pay auditing at company level:

'Member States should take appropriate measures to ensure that pay audits are conducted in undertakings and organisations with at least 250 employees. These audits should include an analysis of the proportion of women and men in each category of employee or position, an analysis of the job evaluation and classification system used and detailed information on pay and pay differentials on grounds of gender. These audits should be made available to workers' representatives and social partners on request.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Paragraph II(5))

Company pay audits on gender pay gaps are to be distinguished from pay reports on the average pay levels of male and female workers, in that they will make an effort to analyse any gender pay gaps found. By providing clarification and reasons for pay differentials in terms of either possible gender pay discrimination or suspected gender pay discrimination, pay audits could provide not only information but also a diagnosis. If necessary, this diagnosis could help in the development of targeted actions on equal pay.

In order to analyse any pay differentials found for possible gender discrimination it may be necessary to analyse the gender neutrality of any job evaluation and classification systems used, as well as of pay regulations and practices applied for initial salary setting, pay increases and additional allowances.

Preferably, the influence of male-dominated and female-dominated work on job evaluation and setting pay levels must also be checked, as horizontal occupational segregation may account for a part of the gender pay gap.

It goes without saying that a pay audit can be time-consuming and may require specialised knowledge of pay systems generally as well as (indirect) gender discrimination concepts.

To sum up, pay audits should include an analysis of the proportion of women and men in each category of employee or position, an analysis of the job evaluation and classification system used and detailed information on pay and pay differentials on grounds of gender. The following inventory of company duties on pay audits at national level will take these elements into account.

2.4.1 Implementation and best practice at national level

For the sake of classifying national measures that fit the recommendation on pay auditing (see 2.4), emphasis can be put on the elements of providing an analysis and detailed information on pay and pay differentials on grounds of gender. It appears that the element of analysis distinguishes the auditing duty from the mere reporting duty.

From this perspective, **Belgium** does not stipulate pay audits. Through its Company Code, it obliges employers to annually produce a so-called 'social balance sheet', next to a financial balance sheet. The social balance sheet should show data on the number of employees, the hours worked, personnel costs and the total amount of bonuses paid. Due to the 2012 Gender Pay Gap Act, the social data indicated must now be broken down by gender. However, an analysis is not required.

Although not a proper pay audit as recommended because it does not provide detailed information on pay differentials, a separate set of rules in Belgium do relate to one of the elements mentioned in the recommendation, namely that of an analysis of the job evaluation system used. The national Collective Agreement n°25, as amended in 2008, provides that joint sector committees and individual enterprises must check and, when necessary, amend their job evaluation systems in order to guarantee gender equality. There is, however, no obligation to have a job evaluation system at all.

In the case of **Spain**, the national Act on Effective Equality Between Men and Women obliges companies with more than 250 employees to draw up 'equality plans'. Such plans could ask for a prior diagnosis but the law neither expressly refers to nor requires pay audits to be conducted.²⁴

The **Austrian Rechnungshof** (Court of Auditors) compiles and issues biennial reports on national income and pay developments, including the gender pay gap. The reports primarily compile national statistics. No gender-specific audit or analysis of pay differentials is conducted.

Employment tribunals in **the United Kingdom**, interestingly, can order the employer to conduct a pay audit when an individual brings a successful tribunal claim concerning a breach of the equal pay laws. Although a positive measure on enhancing equal pay, it is not a general measure to ensure that pay audits are conducted in companies with at least 250 employees.

Voluntary instruments involving pay audits have also not been classified as a recommended core pay transparency measure. Such instruments are found, for instance, in **Denmark** and **Iceland**.

In **Denmark**, this entails a voluntary pay equity analysis and a plan that can be set by employers as an alternative to reporting on wage statistics (see 2.3). In **Iceland**, a certification standard (IST 85:2012) on equal pay management systems was introduced in 2012, which requires a one-off pay audit and maintenance thereafter. Companies may opt for certification on a voluntary basis. There has been no formal research with regard to the implementation of the voluntary instruments mentioned. However, according to the respective national experts, application is not widespread.

Taking the above into account, pay audit duties are implemented in the laws of **Finland**, **France** and **Sweden** (3 out of the 31 countries). **Finland** and **Sweden** can be considered to represent best practice.

²⁴ Law 3/2007, of 22 of March 2007, see http://noticias.juridicas.com/base_datos/Admin/lo3-2007.html.

Table 3 Implementation and specifics of pay auditing at national level

	Finland	Sweden	France
Responsibility of	Employer but employees' representatives are to cooperate	Employer in cooperation with workers' organisations	Employer
Limitation to size of company	> 30	> 25 (wage action plan); 2017: >10 (pay audits)	>50; >300 more elaborate report
Frequency of audits	Every 2-3 years	Every 3 years; 2017: every year	Yearly
Enforceability	No data provided	Yes	Yes
Analysis of gender segregation required	No	Yes	No
Analysis of job evaluation required	No	No	No
Detailed information on gender pay gap required	On aggregated level comparable groups must be composed on the basis of the job requirements, if necessary across collective agreements	Assessments must compare gender pay difference for 1) equal work; 2) female-dominated and other work of equal value. As of 2017: 3) female-dominated work and other work better paid but with working requirements being deemed lower	No
Conducted by experts	Not necessarily	Not necessarily	Not necessarily
Available on request to works councils and social partners	Employees' representatives involved; Equality Ombudsman may monitor pay audit documents	Trade union bound by the applicable collective agreement and Equality Ombudsman	Part of reporting duty to works council. Social partners have access
Obstacles	Measures are not very effective because they are premised on the formal pay conditions; employers are unwilling to reveal the actual wages paid	-	Despite modest progress, implementation is not satisfactory in respect of data collection by firms and a lack of diagnosis of the data reported

Best practice

In **Sweden**, a mandatory gender pay survey and analysis had to be performed by employers, leading up to a gender wage action plan. The Swedish Discrimination Act, however, has been amended. Amendments will enter into force as of January 2017. The law no longer requires a wage action plan but instead written pay audits. The scope of analysis is broadened, as is the frequency of audits. Moreover, the duty will apply to more companies (see Table 3).

In **Finland**, mandatory 'pay mapping' at company level was introduced by the Equality Act 2005, as amended. This obligation was strengthened by an amendment in 2014. The employer must justify profound gender pay differences found between comparable groups of employees or take action to remedy the pay gap (see Table 3).

In **France** there is no specific gender pay auditing duty but the law on mandatory comparable equality reports (see section 2.3) includes the explicit requirement to provide an analysis and statistically-based indicators of the employment position, including remuneration, of male and female employees. However, no specific requirements are set for the method, way or level of analysis. In **Finland** and **Sweden** the law does prescribe specific comparisons which should be drawn for analysis, including wages paid for work of equal value. **France** and **Finland** both report compliance problems in respect of pay auditing in practice (see Table 3).

2.4.2 Projected national measures on pay auditing

Measures on pay auditing are expected in **Germany** and **Italy**. In **Italy** a Bill of March 2015 proposes transparency regulations on pay audits to be set according to Commission Recommendation 2014/124. The draft regulation is still being studied by a Parliamentary commission. No details have been reported.

Draft regulations (not yet published) in **Germany**, as mentioned earlier (see 2.3.3), appear to refer to the introduction of pay audits in companies with more than 500 employees. Some of the German political parties and some German employers have expressed their concern because these pay transparency measures would give rise to administrative burdens and provoke envy among employees when salaries are disclosed; moreover, women's decisions to take parental leave or poorly paid jobs would be 'private decisions', not to be influenced by the state.²⁵

2.4.3 Obstacles to implementation

Impact of existing measures

In respect of existing instruments on pay auditing, some obstacles to implementation in practice have already been mentioned. Because of the confidentiality culture in respect of personal wages, measures in **Finland** seem to be premised on auditing mostly formal pay requirements laid down in collective agreements because the auditing of differences in the actual wages paid is difficult due to the obligation not to reveal individual wages. **France** encounters compliance problems because comparative equality reports do not provide a genuine analysis and diagnosis. A lack of analysis may also result from the fact that establishing possible gender pay discrimination is highly complicated and often requires specialised expertise in the field, as was also reported by the **Dutch** expert.

Reasons for not implementing pay audits

Administrative burdens and the business costs of audits are often mentioned as reasons for not opting for mandatory pay audits at company level (see Annex I for details per country).

Despite being recommended by the Equality and Human Rights Commission in **Great Britain**, pay audits were considered by the Parliamentary Women and Equalities Committee to be too time-consuming and costly to make them mandatory.

The employers' organisations in **Austria** expressed strong opposition to pay audits because of this in the tripartite social dialogue on labour legislation.

In **Croatia** and **Latvia** similar concerns were also raised. Pay audits would increase the costs for businesses and have a negative impact on competitiveness.

25 E.g. <http://www.svz.de/deutschland-welt/politik/gleicher-lohn-fuer-mann-und-frau-id14124671.html>.

For some countries (**Croatia, Estonia, Hungary, Latvia, Lithuania, Poland**) it can, moreover, be stated that wage setting in the private sector depends first and foremost on individual negotiations. Pay audits presuppose that some kind of rudimentary pay system or scheme is in place that can be analysed. A more appropriate step to take, first of all, for these countries might possibly be to attempt to formalise pay schemes and regulations in the private sector generally, which could be done for instance by way of promoting collective bargaining on wages and wage structures.

In **the Netherlands**, although having strongly developed pay systems laid down in collective agreements, pay audits are generally not considered to be the solution. It is thought that there are enough instruments in place, but the problem is rather the application thereof. The Dutch equality body nevertheless conducts, on an irregular basis and on its own initiative, pay audits in companies in sectors which have raised concern (education, for instance). The equality body deploys specialised experts in pay systems, job evaluation systems and gender pay discrimination. Such pay audit reports are published (in an anonymised form) on the website of the Dutch Human Rights Commission and include recommendations.²⁶

2.5 Making equal pay and pay audits part of collective bargaining

The final recommended core pay transparency measure aims at ensuring that equal pay and pay audits are considered as a separate issue by the social partners in collective bargaining procedures.

'Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States should ensure that the issue of equal pay, including pay audits, is discussed at the appropriate level of collective bargaining.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Paragraph II(6))

Pay transparency can help companies and social partners to develop targeted actions for closing gender pay gaps. In countries with well-developed collective bargaining structures (a minimum level of) wages are negotiated at company or industry level, including salary scales which could be set by using job evaluation or classification systems. By setting out and taking account of gender pay reviews, social partners could therefore contribute to actions which close the gender pay gap.²⁷

Below, an inventory is made of Government initiatives to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate level of collective bargaining. Of course, it has to be taken into account that social partners enjoy autonomy in their actions. The diverse legal arrangements for collective bargaining within the EU will therefore be of influence on the precise incentives possible. Moreover, in a case where collective bargaining is not common or is in a developing state at the national level, one might assume that it is less likely that collective bargaining is specifically targeted as an instrument for national pay transparency measures.

2.5.1 Implementation rate and best practice at national level

With regard to the classification of reported national measures on collective bargaining, generic legal obligations that stipulate that social partners must respect the principle of equality between men and women when concluding collective agreements, obligations which already emanate from EU equal pay law, were not qualified as core pay transparency measures.

26 <https://mensenrechten.nl/berichten/onderzoek-college-voor-de-rechten-van-de-mens-beloningsonderscheid-op-hogescholen>.

27 This is also encouraged by the European Trade Union Confederation; see its recommendation in this respect, <https://www.etuc.org/documents/collective-bargaining-our-powerful-tool-close-gender-pay-gap#.V-6oyqJNJjM>.

In addition, the **Spanish** generic provision that requires social partners to promote equal treatment and equal opportunities between men and women in their negotiations²⁸ was not qualified as a recommended pay transparency measure. This is because it neither specifies nor requires that equal pay, including pay audits, be considered as a separate issue in the collective bargaining process.

The inventory of core transparency measures in the area of collective bargaining does, however, include non-binding, though specific, incentives to make equal pay a separate issue of collective bargaining. This is because national collective bargaining law in the majority of EU Member States often rules out stipulating any obligatory negotiating duties for social partners.

Within these parameters, 5 out of the 31 countries surveyed have implemented a duty or incentive for equal pay bargaining (**Belgium, Germany, Finland, France, Sweden**). The measures will be discussed in section 2.5.2. In 3 additional countries there are no explicit Government incentives but, nonetheless, awareness among social partners is present or actual action with regard to pay transparency has been taken by the social partners in the past (**the Netherlands, Norway, Portugal**); see further section 2.5.3.

Table 4 Incentives for gender pay equality bargaining

	Strong incentive	Soft incentive
High impact	-	Sweden
Low impact	Belgium	-
Intermediate impact	-	Finland, Germany
Impact unknown	France	-

Belgium and **France** are familiar with stipulating legal negotiating duties for social partners, whereas in **Finland, Germany** and **Sweden** this is not the case.

The measures taken by Belgium, Finland, France, Germany and Sweden can therefore be divided into strong incentives and soft incentives. Which form they have adopted depends first and foremost on the national possibilities for Governments to intervene in the collective bargaining process.

However, whether one of these five countries has adopted a strong, more binding incentive for equal pay collective bargaining or a soft law incentive does not necessarily correspond with the effectiveness of the transparency measure in practice (see Table 4 and section 2.5.2). Best practice, that could possibly work for other countries too, is therefore difficult to discern because successful measures, especially in this field, seem highly dependent on the specific national bargaining cultures and the national awareness of gender pay disparities among the social partners. On paper, however, **Belgium** and **France** appear to have implemented the most detailed legislative measures.

28 Article 85 of the Workers' Statute.

2.5.2 Measures taken for making equal pay part of collective bargaining

BELGIUM

Best practice

The **Belgian** Act of 26 July 1996 concerning the promotion of employment and the preventive safeguarding of competitiveness, as amended, obliges the Central Economic Council to produce an analysis of the national gender pay gap every two years. On the basis of this, the biennial national (intersectoral) agreement must include equal pay measures, especially on gender-neutral job classification, to be discussed at sectoral and company level.

As a result of the Gender Act 2007, as amended by the Gender Pay Gap Act 2012, the works council may, moreover, suggest appointing a 'works mediator' to assist employers in this respect and hear individual complaints on pay discrimination.

As to the results of these incentives, however, no actions have been taken by the social partners so far. This is also due to the current austerity policy in **Belgium** that restricts the means for the administration to assist social partners. Moreover, the use of job evaluation systems is not very common. To date, no 'works mediator' has been appointed.

FRANCE

Best practice

In **France** a negotiating duty has also been set for social partners. Companies with 50-plus employees must negotiate annually (or less frequently if an agreement has been reached) on pay and gender equality. At industry (sector) level this duty applies every three years. Within the framework of the annual negotiations the employer must provide the trade unions with a report on the comparable situation of men and women at company level (see 2.2 and 2.3). There are no data on the impact of these duties.

SWEDEN

The Swedish Discrimination Act provides that social partners must cooperate to equalise and prevent differences in terms of employment conditions between men and women performing equal work or work of equal value. Despite the soft law character of this provision, sector agreements usually contain rules on gender pay auditing.

FINLAND

In Finland tripartite pay equality programmes encourage education on pay systems, the dissemination of best practices and gender impact assessments of collective agreements by the social partners. Recent evaluations of tripartite pay equality plans have demonstrated little decrease in gender pay differentials. However, the collective bargaining process and pay audits are seen as a potential way forward in Finland, but not in times of economic recession.

GERMANY

Making equal pay part of the tripartite social dialogue, as in **Finland**, can also be observed in **Germany**. Here, tripartite social dialogue is sometimes used to tackle patterns of pay discrimination in collective

agreements. It mainly focuses on job evaluation or classification systems. Incentives did lead to actions in the past, although with limited success, which seems to have discouraged future actions by trade unions.

In 2009 a specific public sector trade union action on re-evaluating female-dominated work in the public sector met with difficulties because the traditional job classification and evaluation systems in place were confusingly complex. Moreover, the public employers' side would only accept cost-neutral adjustments. This implies the levelling down of wages, which is not popular among trade union members. The fear of the levelling down of wages in the case of bargaining on equal pay for men and women also seems more generally to be one of the obstacles to trade unions for engaging in such actions (see also **Spain**, Annex I).

In the above-mentioned 5 countries, the different incentives discussed all trigger collective bargaining at several relevant levels, except for **Finland** where it is limited to the intersectoral level.

2.5.3 Other equal pay actions by social partners

Although not characterised as an incentive by the Government, **Norway** reports that the practice of including equal pay in collective bargaining is already in place. Most collective agreements contain general clauses on the need for equal pay and to include this in tariff negotiations.

In **the Netherlands** the social partner organisations together developed a check list in the past for companies to voluntarily scan their pay structure, including job evaluation, and gender pay levels.

To conclude, what may be described as an 'indirect' incentive for finding solutions by way of collective bargaining can be found in **Portugal**. A tripartite Agency for Gender Equality has been established that can conduct audits on possible discriminatory clauses in collective agreements, issue recommendations or start legal proceedings to remedy any discriminatory results found.

2.5.4 Obstacles to implementation

In none of the surveyed countries are clear incentives for gender pay equality bargaining projected for the near future (see Annex I). In October 2016, the **Hungarian** government stated that it will consult the social partners on Recommendation C(2014) 1405. According to the government, as far as the private sector is concerned, the matter falls within their competence.²⁹

Obstacles which were often mentioned are the lack of any legal framework on collective bargaining (**the United Kingdom**), an insignificant role for collective bargaining, the developing state of bargaining structures or low coverage by collective agreements (**the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland**). In **Lithuania** the chief priority of unions in the first place is to enter into an agreement and introduce pay schemes.

In countries with more developed bargaining structures, a lack of priority concerning equal pay among trade unions is mentioned as the main explanation for a lack of initiatives in this field (**Denmark, Malta, Portugal, Slovenia**). **Italy** is planning to introduce pay transparency measures (Bill of 2015) but it does not propose incentives for collective bargaining due to the autonomy of social partners. In **Bulgaria, Portugal** and **Slovakia** the autonomy of social partners is also mentioned as well as a lack of problem awareness (see on the obstacles per country Annex I).

²⁹ <http://www.parlament.hu/irom40/12649/12649-0001.pdf>.

3 Using (gender-neutral) job evaluation and other transparency actions

3.1 Introduction

Other types of national transparency measures reported in response to the questionnaire sent out to the surveyed countries are succinctly described per country in Annex I. In Chapter 2 most of these other types of measures have already been discussed under the respective headings of information rights, pay reports, pay audits or equal pay collective bargaining. At the end of this chapter national measures or initiatives, which have not yet been discussed, will be briefly mentioned. However, no transparency measures were brought forward that differ profoundly from the core measures. This chapter will therefore mainly focus on additional matters that may further or support pay transparency, namely the clarification of the concept of work of equal value, the encouraging of gender-neutral job evaluation and classification and the national compilation of transparency and pay gap statistics and/or impact assessments of transparency measures.

3.2 Clarification of the concept of work of equal value

A legal clarification of the concept of equal work and work of equal value might contribute to pay transparency because it would help all stakeholders involved to assess whether general gender pay disparities found would account for possible gender pay discrimination. It could trigger (legal) actions by employees because it helps to establish presumed unequal pay for equal work or work of equal value in individual cases. It also helps employers, social partners and governmental and equality bodies to assess whether actions are called for in the field of equal pay for men and women. Moreover, most of the core recommended transparency measures discussed in Chapter 2 also presuppose the disclosing of information and the reporting and auditing of gender-segregated pay levels between comparable groups of employees performing equal work or work of equal value.

In accordance with the established case law of the European Court of Justice (hereafter: CJEU), in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.³⁰ This seems to imply that equal work or work of equal value must be assessed by using a factor-based method for evaluating work in respect of its nature, requirements and working conditions (see for a more detailed explanation section 3.3 on job evaluation).

Table 5 (below) provides an update on the extent to which the surveyed countries have implemented in their national law the EU legal requirement to assess and compare the same work and work of equal value based on objective criteria or factors, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.

Table 5 Number of countries that legally define objective criteria for assessing work of equal value (n=31)

	Yes	No
By way of statutory law	23	7
By way of settled case law	1	

30 Case C-400/93 *Royal Copenhagen*, ECLI:EU:C:1995:155; Case C-309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse*, ECLI:EU:C:1999:241; Case C-381/99 *Brunnhöfer*, ECLI:EU:C:2001:358.

Spain does not define objective criteria for assessing work of equal value in its equal pay legislation but its national case law takes objective criteria into account. The countries that do not explicitly clarify the concept of work of equal value in their national law are **Belgium, Estonia, Greece, Latvia, Luxembourg, Romania** and **Slovenia**.

With the exception of **Hungary**, no new legal developments are observed in the countries surveyed in respect of clarifying the meaning of the concept of work of equal value. In Hungary, by a Labour Code amendment in 2012 the factor 'labour market conditions' has been added to the definition of work of equal value. The rationale for this amendment was to allow for pay differences for the same job within the different (regional) establishments of companies, according to the rate of labour supply on the local market. The amendment has been criticised by the national expert because the new factor for assessing the comparable worth of jobs does not look at the demands or conditions of the work performed, and could possibly lead to indirect gender discrimination. Different rates of general labour supply might perhaps be an objective clarification or justification for pay differences but should still not be taken into account, as is made clear from the established case law of the CJEU mentioned above,³¹ at the first stage of establishing whether employees are performing equal work with regard to a prima facie case of pay discrimination.

3.3 Use of gender-neutral job evaluation systems

3.3.1 What is job evaluation?

Job evaluation might be described as a systematic way of determining the value/worth of a job in relation to other jobs in an organisation. It attempts to make a systematic comparison between jobs to assess their relative worth for the purpose of establishing a rational pay structure. Job evaluation needs to be differentiated from job analysis. Job analysis is a systematic way of gathering information about a job. Every job evaluation method requires at least some basic job analysis in order to provide factual information about the jobs concerned. Thus, job evaluation begins with job analysis and ends at that point where the worth of a job is ascertained for achieving pay equity between jobs.

Job evaluation or classification systems are often developed by the social partners themselves and/or commercial management consultancy companies. The systems have in common that the determination of the worth of a job is assessed irrespective of the qualities of the specific job holder. The relative worth of jobs corresponds to a ranking, which in turn corresponds to (ascending) basic pay brackets or scales (wage grid). It is often possible to reward the personal qualities of the job holder (like personal seniority, personal education level, work effort made) separately, by an entitlement to higher steps within the applicable pay bracket and/or to additional allowances.

There are several methods for job evaluation. For convenience, two methods only are distinguished here that are at opposite ends of the continuum of possibilities.

The first entails that jobs are graded taking the whole job description at once into account (job classification). The second is a more analytical one, where job descriptions are graded for every factor found relevant for the value of jobs, such as the skills needed, the amount of responsibility involved, the necessary education level, working conditions that apply, the degree of leadership called for, the accuracy required, and so on. The job can earn points for every factor and in the end the points will be added up and the job will be ranked on a grid on the basis of the total points earned (factor-based or analytical job evaluation).

It might appear that the legal method indicated by the CJEU for assessing whether workers are performing work of equal value, as part of a legal equal pay claim, most closely resembles the analytical method. The

31 Namely, Case C-400/93 *Royal Copenhagen*, ECLI:EU:C:1995:155; Case C-309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse*, ECLI:EU:C:1999:241; Case C-381/99 *Brunnhöfer*, ECLI:EU:C:2001:358.

case law indicates that in order to assess whether work is of equal value, the comparability of situations must be determined having regard 'to a range of factors' including the nature of the work and training and working conditions.³²

Using job evaluation is the choice of management and/or social partners. The general use of (gender-neutral) job evaluation systems at company or sector level could, however, further the assessment of equal work or work of equal value by an objective method for all employees, making it not only applicable in the legal context of gender equal pay claims, but also encouraging its use among employers and social partners when setting wages generally, thereby adding to pay rationality and transparency and, therefore, possibly also to gender pay equity.

3.3.2 Gender-neutral job evaluation

Of course job evaluation can be beneficial for pay equity if the factors, criteria and grading system applied in this context are gender-neutral.³³ As part of this research the national experts were asked whether there are any (legislative) developments as regards the introduction of the requirement for companies to establish (gender-neutral) job evaluation and classification systems.

There are no developments on requiring companies to make use of (gender-neutral) job evaluation systems as such. However, the **Italian** Equal Opportunities Code as well as the **Portuguese** Labour Code explicitly require job evaluation or classification systems, if applied, to be gender-neutral.³⁴ Applying gender-neutral job evaluation in the course of pay transparency measures is explicitly mentioned in the **Belgian** Gender Pay Gap Act 2012 in respect of the mandatory reporting duty concerning the gender pay gap at company level. This only applies if a job evaluation system is used in the company. Likewise, the Belgian negotiation duty of the social partners on equal treatment measures (see 2.5.2) points to the necessity of gender-neutral job classification if applicable.³⁵

Although **Finland** has adopted legislation on mandatory pay mapping that also targets gender-segregated pay levels for work of equal value, the law is unclear on how that work is to be assessed. In **Sweden** the strengthened legal requirements for pay auditing also do not explicitly demand the use of gender-neutral job evaluation.

In **the Netherlands** and **Sweden** tools to be applied on a voluntary basis have been developed in the past by equality bodies and/or social partners in order to scan applied job evaluation systems for gender bias. No recent, noteworthy developments or actions in respect of furthering gender-neutral job evaluation have been observed in these countries.

3.3.3 Use of job evaluation systems generally

Using gender-neutral job evaluation, if such a system is applied, is important for assessing and securing equal pay for men and women. However, in addition, as was already discussed above, furthering the application of job evaluation systems generally by companies and social partners could contribute to pay transparency. If the use of these systems were to be made part of the general wage-setting structures, it would formalise and systemise wage determination and allow for more transparency when the ranking of job classes is linked to salary scales (wage grids) and both the job ranking and the corresponding salary

32 Namely, Case C-400/93 *Royal Copenhagen*, ECLI:EU:C:1995:155; C-309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse*, ECLI:EU:C:1999:241; Case C-381/99 *Brunnhöfer*, ECLI:EU:C:2001:358.

33 See Directive 2006/54/EC, Article 4.

34 The question as such was not part of the survey, see Annex II.

35 Comparable provisions are found in national Collective Agreement n°25, as amended in 2008, which provides that joint sector committees and individual enterprises must check and, when necessary, amend job evaluation systems, if applied, in order to guarantee gender equality (see 2.4.1).

scales are accessible to employees. The common use of job evaluation systems at national level might therefore add to pay transparency.

If the general use of job evaluation systems in the surveyed countries is taken as an indicator of national pay transparency, improvements could be made especially in the private sector. The common use of job evaluation as a part of wage determination is limited in the private sector in 6 out of 28 countries (that is in **Finland, France, Germany, Italy, the Netherlands** and **Luxembourg**, see Table 6). **Belgium** and **the United Kingdom** report an intermediate use of job evaluation systems in the private sector. In **Hungary** and **Portugal** the use of wage grids in the private sector is limited to big companies or where a collective agreement applies.

In the public sector it is far more common to use, at least, job classification systems (see Table 6). A total of 22 out of 29 countries apply job classification systems in the public sector (see Annex I). The experts from **Belgium, Denmark, Greece, Ireland, Luxembourg, Norway** and **Spain** report that the use of job evaluation or classification systems is uncommon in the public sector. In **Iceland** the use is limited to local government.

Table 6 Use of job evaluation or classification systems in the EU + 3

	Private sector (n=28) ³⁶	Public sector (n=29) ³⁷
Common	6 (FI IT NL LU DE FR)	22
Uncommon	22	7 (BE ES EL NO IE DK LU)

Although classification systems, contrary to evaluation systems, do not rank job titles by factor-based evaluation (see 3.3.1), they do contribute to pay transparency generally. Systematically ranked job titles and corresponding salary scales applied in the public sector can often be found in public pay statutes or collective agreements (see Annex I).

Of course, these wage grids only provide (minimum) basic wages. For more transparency access to public regulations on other wage components would also be necessary. In **the Czech Republic**, for instance, a job classification system including salary scales is applied by public law; however, special premiums can also be awarded. These components are not published. The public law of **Hungary** provides for wage scales, according to job class, which are accessible to public servants. However, pay transparency is reduced by the fact that public authorities have legal competence to increase wages by 50 % or reduce them by 20 % in individual cases, while the determining factors for such a wage adjustment are not published.

3.4 Other transparency measures

To conclude, an inventory has been made of the compilation and availability of national statistics on pay transparency and the gender pay gap at national level. Information or data on pay transparency itself is not available at national level, but 24 out of 28 countries do compile statistics on the gender pay gap. However, 3 country reports do not provide information on this item (**Bulgaria, Iceland** and **Liechtenstein**).

Although information on the frequency or the ways of gathering statistics is not systematically reported, the data provided in Annex I per country show that practices can be very different, including the interval of gender pay gap monitoring. References to national statistics on the gender pay gap per country, if reported, may be found in Annex III.

³⁶ Austria, Slovakia and Sweden reported no data on this item.

³⁷ Portugal and Slovakia reported no data on this item.

No impact assessments of (proposed) pay transparency measures have been conducted at national level so far, except by **Great Britain**, where an assessment was made in respect of the draft Equality Act (Gender Pay Gap Information) Regulations.³⁸

Besides the non-gender-related pay transparency measures already discussed in section 2.3.6, **Spain** reports a duty for companies with 250-plus employees to draw up equality plans, but pay issues are not specifically addressed. **Cyprus** has adopted a non-obligatory incentive to encourage employers to provide, upon request, information on equal pay to employees or employees' representatives. **Great Britain** and **Iceland** do not grant information rights but explicitly allow employees by law to disclose their wages to others (see 2.2.1). **Croatia** stipulates by law that parameters for wage determination must be set in company rules or contracts; if this is not done, a right to an 'adequate salary' applies and this is to be determined by the court. In **Poland** a self-evaluation tool for wage comparison has been developed that will be promoted among employers and social partners. In **Italy** a legal competence has been introduced for the exchange of information between the Labour Inspectorate and regional equality advisors. The Italian expert reports that this competence is not applied in practice.

Finally, a private initiative, started in **the Netherlands** in 2001, can be pointed out. By asking women (and men) to report their jobs and actual wages to the internet-based 'women wage indicator', an online information databank was created which can serve as an indicator of what wages are paid for certain jobs in certain sectors according to gender. The wage indicator has now expanded to the male wage indicator, the youth wage indicator, the 55-plus wage indicator and so on, in more than 90 countries.³⁹

38 Government Equalities Office (2015, December), *Mandatory Gender Pay Gap Reporting Consultation: Impact Assessment*, available at <https://www.gov.uk/government/consultations/mandatory-gender-pay-gap-reporting>.

39 www.loonwijzer.nl; www.wageindicator.org.

4 The capability of national pay transparency measures to further follow up actions

4.1 Introduction

This chapter provides, for those countries where developments and information at national level so allow, an analysis of the capability of the pay data targeted by the specific transparency measures implemented at national level to actually further follow up actions on equal pay.

This capability will depend on whether the information targeted by transparency measures can contribute to:

- improving the chances of *individual* action to claim equal pay, and/or
- encouraging *systemic* action by employers, trade unions, works councils, employers' organisations, national equality bodies or governmental agencies to further, to install or to improve gender-neutral wage structures, including job evaluation, and wage-setting procedures in order to narrow the gender pay gap.

For pay information to be capable of triggering follow-up actions, the information must, preferably, be suitable for explaining general pay differentials in terms of, if applicable, possible gender pay discrimination. This means that the national context also needs to be taken into account, because the facts required to make a *prima facie* case of gender pay discrimination will also depend on the national law implementing EU equal pay law and its national application.

Only when the pay information to be obtained can show indicators of presumed gender pay discrimination will individual employees be alerted and enabled to discuss equal pay rights with their employer. If legal action by the employee would be required, and the information obtained satisfied the facts of a *prima facie* case of unequal pay, the employer would have to explain that there had been no breach of the principle of equal treatment (Article 19, Directive 2006/54/EC).

In order to further systemic actions by employers, trade unions, works councils, employers' organisations, national equality bodies or governmental agencies, pay information obtained should, preferably, allow for analysis. Do average gender pay differences found indicate possible pay discrimination or can they be explained by objective reasons such as unequal work or differences in seniority or educational levels? Information on pay differences according to gender must therefore show differences between comparable (groups of) employees or, if larger groups are targeted, must be statistically corrected for objective differences between the male and female group that are part of the sample. To summarize, this again means that the information targeted by transparency measures is capable of showing indicators of presumed gender pay discrimination.

As was set out in section 1.2, this part of the research was limited to those countries in which some transparency measures have been developed and more detailed information on these instruments was available. From the 31 countries this was the case in **Austria, Belgium, Finland, France, Ireland, Italy, the Netherlands, Norway, Portugal** and **Sweden**. The following analysis, therefore, comprises 10 countries in total.

It must be noted that in **Germany, Ireland, Italy, Lithuania, the Netherlands** and **the United Kingdom** plans or drafts for introducing pay transparency measures are currently contemplated. These projected plans are not included in this part of the research.

Below, we will discuss the capability of the information targeted by the several national transparency measures in the 10 countries indicated, to further, respectively, individual action (section 4.2) and/or systemic action (section 4.3).

4.2 Stimulating individual action

4.2.1 Layout of the research

To improve the possibilities for individual employees to claim equal pay, the individual would need to have access to facts from which it could be presumed that there had been direct or indirect pay discrimination (Article 19 Directive 2006/54/EC). Such facts could be established if the employee could compare herself or himself to another employee of the other sex in the same establishment or service, showing that unequal wages are paid for equal work or work of equal value.⁴⁰ In order to find suitable comparators, the Commission's recommendation on pay transparency recommends a right for employees to request information on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value. This information should include complementary or variable components beyond the fixed basic salary (see 2.2).

Besides using an individual comparator, in the past the CJEU has also accepted, in certain circumstances, a presumption of gender pay discrimination emanating from statistics. Such a presumption could be established when reliable statistics show:

- that there is a difference in average pay between different job groups which present, respectively, female-dominated work and male-dominated work of equal value,⁴¹ or
- that a specific, seemingly neutral, pay criterion or practice being applied has a disparate impact (indirect discriminatory effect) on average pay levels among comparable groups of male and female employees,⁴² or
- that, in relation to a relatively large number of employees, the average pay for women is less than that for men, when the pay system is totally lacking in transparency.⁴³

Firstly, the national experts were asked to indicate whether, according to national law and practice, a prima facie case could be made by presenting an individual comparator doing the same work or work of equal value in the same company and earning more wages. They were also asked if a prima facie case could also be made, according to national law and practice, by presenting statistics on the average pay levels of men and women, if all requirements or circumstances set out in the case law of the CJEU, as presented above, were fulfilled. This will look at either job groups that present, respectively, female-dominated work and male-dominated work of equal value, or at a disparate impact of a specific pay criterion, or at a pay system that is totally lacking in transparency.

The answers to the first question whether national law would allow for making a prima facie case by the different methods distinguished are shown per country in Table 7 below, under the heading 'national law'. The first two columns of Table 7 encompass the method of using individual comparators, the last three columns the method of using statistics.

Secondly, the experts were asked to indicate whether the national pay transparency measure(s) implemented in their country contribute(s) to the information necessary for an individual employee,

40 Case 43/75 *Defrenne II*, ECLI:EU:C:1976:56; Case 129/79 *Macarthy's*, ECLI:EU:C:1980:103; Case 96/80 *Jenkins*, ECLI:EU:C:1981:80; Case C-381/99 *Brunnhöfer*, ECLI:EU:C:2001:358; Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

41 Case C-127/92 *Enderby*, ECLI:EU:C:1993:859.

42 Case 96/80 *Jenkins*, ECLI:EU:C:1981:80; Article 4 and Article 2(1)(b) Directive 2006/54/EC.

43 Case 109/88 *Danfoss*, ECLI:EU:C:1989:383.

according to national law, to find an actual comparator or have access to statistics from which a presumption of gender pay discrimination could be derived.

The results of the second question are also presented in Table 7 under the heading ‘pay transparency’.

4.2.2 Capability of national pay transparency measures to provide an individual with the necessary information

AUSTRIA

To start with **Austria**, all types of prima facie cases could in theory be made on the basis of the law, except in the case of a pay system that is totally lacking in transparency (see Table 7). Such a pay system would prevent the fulfilment of the national law requirement that an individual has to show how he or she is wronged by a specific unequal pay measure. Group or class actions are not possible according to national law.

Table 7 Capability of national pay transparency measures to provide an individual with the pay information required at national level in order to presume gender pay discrimination⁴⁴

		Comparator doing like work	Comparator doing work of equal value	Male/female job classes	Disparate impact statistics	Opaque pay system
Austria	National law	√	√	√	√	-
	Pay transparency	-	-	+-	-	-
Belgium	National law	√	√	√	√	√
	Pay transparency	-	-	-	-	-
Ireland	National law	√	√	√	√	√
	Pay transparency	+-	+-	+-	+-	+-
Italy	National law	√	√	√	√	√
	Pay transparency	-	-	-	-	-
Finland	National law	√	√	√	√	?
	Pay transparency	+	+-	-	-	-
France	National law	√	√	?	√	?
	Pay transparency	-	-	-	-	-
Portugal	National law	√	√	-	-	-
	Pay transparency	-	-	-	-	-
Netherlands	National law	√	√	√	√	√
	Pay transparency	+-	+-	-	+-	-
Norway	National law	ND	ND	ND	ND	ND
	Pay transparency	+	+	-	-	-
Sweden	National law	√	√	-	√	?
	Pay transparency	+-	+-	-	-	-

The pay transparency measure implemented in **Austria** entails a reporting duty for companies with 150-plus employees on mean or median pay levels, as well as on the number of males and females employed per job category (income reports, see 2.3). These reports, however, do not contribute to finding actual comparators because they contain anonymised, cumulative data. Moreover, they do not show pay

44 √ indicates ‘yes’; - indicates ‘no’; + indicates ‘yes’; +- indicates ‘partly’; ND indicates no data reported.

information for categories of employees doing the same work or work of equal value. The reports also do not provide the statistics needed for indicating possible indirect pay discrimination.

In principle the income report could help in establishing female-dominated or male-dominated work because it provides the number of employees according to gender per job category. Nevertheless, the report does not set out information on the (equal) value of the job classes distinguished.

The **Austrian** expert concludes that the income reports are primarily aimed at the employer and the competent works council. They may draw conclusions from it, although this is not obligatory. The information provided is, however, not suitable for individuals to investigate the need for or the possibility of equal pay claims.

BELGIUM

According to **Belgian** equal pay law, all types of prima facie cases distinguished are in theory possible, but relevant case law is very scarce.

The pay reporting duty (see 2.3) cannot contribute to information assisting the individual to decide on equal pay claims because of its confidentiality. The works mediator provided for by the Gender Act (see 2.5.2) might perhaps be instrumental in investigating the pay claims of individuals, but to date none has been appointed. The pay transparency measures adopted do not aim at stimulating individual actions, but focus primarily, according to the **Belgian** expert, on the formal collective bargaining structures by which wages are determined (see 2.5).

IRELAND

In **Ireland**, making a prima facie case on the basis of an individual comparison, as well as group comparisons using statistics, is possible, according to national law.

The national pay transparency measure in force, namely the right of an individual employee to question the employer so as to obtain material information necessary to assist the employee to decide whether to bring a claim or present a claim in the most effective manner (see 2.2), might be helpful in actually doing so. The main drawbacks are that individual pay information requested cannot be released without the consent of the individual concerned, thereby hindering the employee, who deems himself or herself to be wronged, from finding actual comparators. Furthermore, the employer does not have to answer the questions put to him or her, although the adjudicating officer may draw 'appropriate' inferences from such a failure.

ITALY

In principle individuals can make a prima facie case by using either individual comparators or statistics according to national law, but there is no case law on the issue.

Italy has implemented a general reporting duty on gender equality for companies with 100-plus employees. Individual comparators cannot be traced because the report does not look at personal data. It is not possible to assess whether the gender equality report provides specific wage statistics that fulfil all the requirements of the different prima facie cases that an individual could possibly make. According to the national expert, the legislation in place leaves employers quite free in respect of the specificity of the pay information to be provided. An individual employee, however, has no access to the gender equality report, as this is addressed to the regional equality advisors and trade unions which can take action (see below 4.3).

FINLAND

The different **Finnish** courts (public and private law, lower or higher) do not agree on making a prima facie case on the basis of one comparator only. It is, however, accepted by the labour courts and their verdict is final if it concerns collective agreements. In the case of work of equal value there is no relevant case law. The **Finnish** employee information right might contribute to finding actual comparators doing like work, but the comparators will have to consent to revealing their wages. However, if the comparators withhold their consent the Equality Ombudsman can be addressed. Disparate impact statistics are accepted by the courts but there is no case law on different average pay levels in the case of opaque pay systems. The national pay mapping duty for companies (see 2.4) aims at follow-up actions by employers, not at providing individuals with pay information.

FRANCE

In **France**, a general equal pay principle, thus irrespective of gender, has been established by case law. Showing different pay for the same work or work of equal value is accepted in respect of making a prima facie case, as are disparate impact statistics in principle. There is no case law to clarify what facts have to be established for a prima facie case in respect of lower pay for female-dominated job classes or in respect of opaque pay systems.

Like **Italy**, **France** has implemented a general reporting duty on gender equality. In respect of pay it shows anonymised aggregated data and there is no access right for employees. The reporting duty as well as the national collective bargaining duty on equal pay aim at social partners and works councils, not individuals, taking action (see below 4.3).

PORTUGAL

Using individual comparator(s) is accepted by national law, but the national general reporting duty on employment contracts and working conditions ('ECT report') excludes identifying actual comparators. Furthermore, the report does not provide information on the (equal) value of jobs. Using statistics without an actual comparator makes it difficult for an individual to build a prima facie case, according to the national expert.

THE NETHERLANDS

Establishing a presumption of (pay) discrimination using actual comparators or statistics is accepted in **Dutch** case law. The national information right of works councils concerning the specifics of groups of personnel including 'equal treatment' is, however, too general to provide individual employees with the necessary pay information and they have, moreover, no access right.

However, the mechanism by which individual employees can be assisted by the **Dutch** equality body does contribute to obtaining relevant information. Although not a transparency measure as such, there is a low threshold for turning to the equality body with an equal pay complaint. That body can and does actively investigate and obtain necessary pay data from the employer. This helps in finding suitable comparators. In more exceptional cases statistical calculations are also made by the equality body to check for disparate impact effects of policies or practices, when an individual complains of possible discrimination.

NORWAY

The **Norwegian** expert did not report on the national law in respect of accepted methods for considering pay discrimination. However, it is made clear that the employee's right to demand information from the employer on the actual wages paid, and the way that that is determined, to a person with whom the employee wants to compare herself or himself, contributes to pay transparency thus allowing for

individual action. The actual comparator does not have to consent but must be informed. The employee receiving the information should keep the information confidential. Moreover, trade union representatives can request pay information assisting the employee, according to the rules laid down in the collective agreement. In this way, Norwegian legislation offers the necessary tools to the individual to secure the right to equal pay, but does not provide pay transparency measures aimed at developing structural equal pay actions.

SWEDEN

According to national law a prima facie case can be built by using actual comparators or disparate impact statistics. There is no case law to confirm the use of statistics in the case of an opaque pay system, while using only statistics in the case of female and male-dominated job classes of equal value appears to run counter to the requirement that the facts to be established also have to relate to individual wage setting.

Sweden has no employee information right in place but, comparable to **the Netherlands**, there is a low threshold for obtaining information on actual comparators because, in the case of Sweden, the Equality Ombudsman or trade unions – in their capacity as the legal representative of the employee – are entitled to obtain such information. Swedish pay transparency measures (a pay auditing duty for employers and a cooperation duty for social partners on equal pay), however, do not do much to encourage individual action but rather structural action by employers and social partners.

4.2.3 Summary

In half of the surveyed countries (n=10), the actual measure taken is not capable of stimulating equal pay claims by employees. The measures simply do not provide relevant pay information to employees and, in most cases, also do not aim to do so (**Austria, Belgium, France, Italy, Portugal**).

In the 3 countries that do have employee information rights (**Finland, Ireland, Norway**), the information to be obtained might indeed be helpful in finding comparators. In 2 of these countries (**Finland, Ireland**) the comparator has, however, to consent to revealing his or her wage. Furthermore, in Ireland there is no employer's duty to respond to a request for information.

More generally, finding comparators performing (different) work of equal value on the basis of pay information provided by employers can sometimes be difficult because whether certain jobs represent work of equal value cannot be discovered beforehand (**Austria, Finland**). This is due to the fact that the 'equal value' of work is to be established by a court, or sometimes expert witnesses, in a particular case.

In 2 countries with no information rights but with an alternative (**the Netherlands, Sweden**), the possibilities for finding comparators seem to equal the ones in the countries with information rights. The alternative entails that information on suitable comparators can be obtained by equality bodies or trade unions. This also applies in **Finland** in the case where employers cannot give information because the actual comparator declines to give his or her consent. Nevertheless, for employees to approach these bodies in the first place, they would still need to have some indication that their wages were lower because of gender. In countries where there is a pay reporting duty in place for employers, these reports do not provide this information to individual employees.

In all 10 countries, except for **Ireland**, individuals have no access right to statistics for making a prima facie case of gender pay discrimination, if these statistics would be available. In **Ireland** an individual can request any 'material information necessary to assist the employee to decide whether to bring a claim,' which might include available statistics, but the employer is not obliged to respond. Moreover, Ireland has no pay reporting or pay auditing duties that could possibly generate relevant statistics.

Whether in countries with information rights this indeed improves the chances of individuals to claim equal pay falls outside the scope of this research. However, it appears there has been no clear incentive to take more *legal* action, as the reported gender equal pay case law is still (very) scarce. In this respect it must also be remarked, as the Portuguese expert has done, that the psychological hurdle for employees to take action against their employer, whatever the issue, is generally quite high in the field of labour. Taken together with the expertise necessary to request the appropriate information from employers, it appears to be quite difficult to encourage individuals to discuss or claim their equal pay rights by means of individual information rights.

4.3 Stimulating systemic action

4.3.1 *Layout of the research*

For this part of the research the national experts were asked to indicate if, and how, the information provided by the transparency measure in place is capable of stimulating systemic action on equal pay by institutional actors, namely employers, trade unions, employees' representatives, employers' organisations, national equality bodies or other governmental agencies.

4.3.2 *Capability of national pay transparency to trigger follow-up action by institutional actors*

At the outset, it should be noted that for actors directly involved in the wage-setting process, such as employers and social partners, gender-segregated pay information does not necessarily have to satisfy all the legal requirements for establishing a presumption of gender pay discrimination, in order for action to be taken. For an individual employee to convince an employer that the wage actually paid could be in conflict with equal pay legislation requires the pay information to be of a strong convincing quality. Employers or social partners, however, might deem it sensible to scrutinise pay structures and practices for gender bias on the basis of information on gender pay gaps at company level alone.

Nevertheless, the more that pay transparency measures are capable of providing more sophisticated pay data that could, for instance, indicate whether any general gender pay differentials found might suggest that gender bias could be involved, the more they stress an urgency for action. This coincides with the observations made at national level.

No pay transparency measure aiming for systemic action

Ireland and **Norway** opted in the past for tools to assist individual employees to request additional pay information from their employer if this was necessary for making an equal pay claim. No transparency measures have been adopted which aim for structural equal pay actions to be developed. So, there is no company pay information that would be capable of triggering actions by employers, social partners, trade unions, works councils, national equality bodies or other governmental agencies.

Low capability of pay information to trigger follow-up action

Italy, the Netherlands and **Portugal** have a general reporting duty on gender equality or, in the case of Portugal, on employment contracts and working conditions generally, without specifying the pay information to be provided (**Italy, the Netherlands**) or without being in a fully gender-segregated format (**Portugal**). **The Netherlands** has the most unspecific duty with regard to pay information being part of the general information right of works councils. Whether this might trigger action by works councils is highly uncertain.

In **Italy** the reporting duty on gender equality for companies with 100-plus employees looks specifically at the situation of men and women employed, but leaves employers quite free in respect of the specificity

of pay information to be provided. In principle the pay information might be capable of triggering actions by regional equality advisors and trade unions, to which it must be reported. However, its usefulness in practice could be hindered by the fact that a template for the gender equality report, which should have been developed by the Ministry of Labour, has so far not been issued. Companies' pay information reported can therefore take any number of different forms.

In **Portugal** the information that the employer has to provide yearly to the labour inspectorate and works council (or trade union) on the characteristics of all individual employment contracts is very detailed. It could be capable of showing gender pay differentials; however, because of its format, extensive additional analysis would be needed. Follow-up actions have not been taken so far because of a lack of problem awareness, according to the national expert.

Intermediate capability of pay information to trigger follow-up action

Austria, Belgium and **France** all have a pay reporting duty at company level that specifies that gender-segregated average pay levels have to be reported per job category. Therefore, these pay transparency measures, as opposed to the measures of the countries discussed above, do fit the requirements set out in Commission Recommendation C(2014) 1405 final on the elements of pay reports.

The pay information is capable of showing general pay differentials for men and women (company gender pay gaps) and could draw attention to possible problems. Whether it indeed may trigger action greatly depends on problem awareness and priorities among the works council addressed. However, in both **Austria** and **Belgium** the report has a confidential status. In **France**, on the other hand, the report must also be presented to relevant trade unions in respect of the collective bargaining duty on equal pay.

The pay information obtained could show a greater need for action if the information is collected and presented in forms that allow for indications of possible gender pay discrimination. This possibility will increase when the job categories for which average gender pay levels are calculated resemble more closely the same work or work of equal value.

In **Austria** this is not the case, while in **Belgium** average pay levels have to be presented according to job classification class if such a system is applied. The general use of job evaluation is, however, intermediate in the private sector in this country. In **France** the reports should show the comparative situation of men and women in terms of qualification, recruitment, training, pay, working conditions, work-family balance and include statistically-based indicators. However, specific comparisons that have to be drawn are not specified, nor is any method specified for comparing average pay levels of men and women. So, the usefulness of the information obtained by pay transparency measures in these countries is limited to alerting stakeholders by way of showing general pay differentials according to gender, without actual indicators of whether possible gender discrimination might be involved.

As previously stated, whether actions have indeed been triggered falls outside the scope of this research. Nonetheless, in **Belgium** it is reported that, because of their confidentiality, the pay reports remain a formality without incentives to discuss them. In **France** it is reported that, despite modest progress, the implementation of the comparative report duty is clearly lacking in respect of data collection and diagnoses of data reported. This negatively affects, of course, the capability of pay information to show possible indicators of gender pay discrimination and, therefore, the need for action. This may also influence the effectiveness of the French annual collective bargaining duty on equal pay, as the comparative reports have to be provided to the trade unions (see Annex I). For **Austria** no facts on effectiveness were reported.

High capability of pay information to trigger follow-up action

Finland and **Sweden**, with national transparency measures on pay auditing, can clearly provide pay information at company level that is, in principle, highly capable of encouraging follow-up action by institutional actors, due to the analysis that is required of the causes of gender pay differentials found.

In **Sweden**, a mandatory gender pay survey and analysis has to be performed by employers. The statutory duty specifies that assessments must compare gender pay differences for equal work, for female-dominated work and other work of equal value and, as of 2017, for female-dominated work and other work which is better paid but with working requirements being deemed lower.

In **Finland**, mandatory 'pay mapping' at company level has been introduced. The employer must explain any profound gender pay differences found between comparable groups of employees or take action to remedy the pay gap. Comparable groups must be composed on the basis of the job requirements including work of equal value, if necessary across collective agreements applying at company level. A possible drawback is that the law on pay audits in both countries does not explicitly demand the use of gender-neutral job evaluation systems for assessing work of equal value.

The **Finnish** expert reports that in practice the audits are not always effective because they are premised on not revealing individual pay information. The formal pay conditions and the level of minimum wages set in agreements can therefore be the subject of audits, but employers are unwilling to reveal the actual wages paid.

Compliance with pay auditing duties, once in place, therefore appears to be a matter of concern. Encouraging employers and employees' representatives, who are involved in pay auditing or reporting, by external supervision might help pay audits to be properly conducted and to be followed up by action if necessary.

Addressees of pay reports or pay audits

In the 8 countries with mandatory reporting duties (all but **Ireland** and **Norway**) these reports are the responsibility of the employer, sometimes in cooperation with the works councils (see Annex I). The reports address the employees' representatives at company level or, in **Italy**, the trade unions. In **France**, besides the employees' representatives at company level, the social partners at collective bargaining level have access. In **Finland** and **Italy** equality bodies are also explicitly addressed. In **Sweden** the equality body has access upon request.

In **Finland** and **Sweden** pay auditing documents can be monitored by an Equality Ombudsman. In Italy pay reports have to be sent to the regional equality advisor. There are no data on actions taken by these bodies in **Finland** or **Italy**, but in **Sweden** the expert refers to action taken in the past by the (former) Equality Ombudsman in its biggest monitoring project ever, 'Miljongranskningen', 2006-2008.

This project aimed to scrutinise compliance with mandatory equal pay analysis and (the then) wage plans of 1 245 private and public employers (covering a total of 1 million employees). The action started out with an informative campaign and the presentation of web-based tools to assist the employers in their obligations. As to the results, close on 50 % of the employers did have an action plan for equal pay, while in 44.2 % of cases unjustified pay differences were identified. Remedying this amounted to approximately EUR 7.2 million (SEK 72 million) or approximately EUR 112 (SEK 1 120) per employee per month.⁴⁵

45 There was no specific reference provided for this action in the national report.

4.4 Conclusions

To sum up, information rights, pay reports and pay audits can provide information that is in theory capable of triggering follow-up actions. Of course, the more specialised the pay data collected is, the more it can indicate possible signs of gender pay discrimination. From this perspective, pay audits including analysis are preferable to pay reports and information rights if one could choose.

In respect of the individual information rights for employees, the potential of the information to act upon it, if necessary, can be improved by dropping the need for the consent of the comparator whose pay information is requested (**Ireland**). An alternative is that equality bodies may retrieve the information following a complaint by an employee who considers herself or himself to have been wronged (**Finland, the Netherlands**).

Nevertheless, individual information rights are met in many countries with obstacles relating to the sensitivity of personal income or contractual confidentiality clauses (see 2.2). Even if such information rights are in place, it is difficult to encourage employees to discuss wages with their employer.

Another option might be that anonymised pay reports, flowing from pay reporting duties, are made public to employees. This will probably not help to trigger individual equal pay claims because the general information on gender-segregated pay levels is not capable of that. However, it may alert employees and possibly encourage them to confront their representatives on the matter, thereby preventing pay reports from becoming a mere formality.

In respect of pay reports, the potential of information to trigger actions, if necessary, can be improved by specifying the duty to report on not merely remuneration but on gender-segregated pay levels per job title and, if job classification or evaluation is applied, by the same job class category (**Italy, the Netherlands and Portugal**). The number of employees according to gender per job title or category should also be included. Average pay levels would have to be based on accumulated, actual wages paid per hour, not on the formal wage levels indicated in the collective agreement or other applicable wage grid. To conclude, a genuine discussion of pay reports would benefit from dropping their confidentiality status (**Austria, Belgium**).

Also pay audit duties can still be improved. It is commendable that such duties in **Finland** and **Sweden** already provide for specific comparisons to be drawn. All the same, because of gender job segregation, it is especially important to compare different jobs of equal value. It appears that employers and employees' representatives would need assistance, however, as to how this might be assessed. This may require guidance on whether the same job evaluation class or pay bracket will suffice or, if such a system is not applied at company level, whether it is necessary to apply such a system nonetheless in the realm of pay auditing. Additionally, this may also require guidance on how to assess the gender neutrality of traditional job evaluation systems in place.

The research on the capability of pay information to trigger action made it clear that capability does not equal actual follow-up action or even that the pay information is indeed available. The latter involves compliance problems. Fines do not seem to encourage compliance because it is likely that non-compliance will often not be observed. In most cases pay reports are only addressed to works councils or trade unions which do not necessarily give the matter priority. Involving equality bodies and giving them the necessary competence in this respect might help compliance with pay transparency measures (**Sweden**).

It must be remarked that, in the end, the most defining factors for follow-up actions by employers, employees' representatives, trade unions or even equality bodies are, of course, the extent of problem awareness, motivation, priority setting and positive attitudes towards reducing gender pay gaps.

5 General summary and conclusions

5.1 The core pay transparency measures taken

An inventory and assessment was made in the **EU Member States + Iceland, Liechtenstein and Norway** (31 countries) of national pay transparency measures implementing the core measures recommended in this area by the Commission in view of strengthening the principle of equal pay between men and women (Recommendation C(2014) 1405 final). These core measures entail:

- an employee’s right to request information on gender pay levels for the same work or work of equal value;
- an employer’s duty to report on average gender pay levels by category of employee or position;
- an employer’s duty to conduct an audit on pay and pay differentials on grounds of gender; and
- measures to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate collective bargaining level.

At the national level a rich diversity of practices exists with respect to the generic information rights of employees and employees’ representatives. Accordingly, general concepts such as ‘transparency’, ‘remuneration’ or ‘information’ can relate to various aspects of employment. Therefore, transparency measures may serve objectives other than the strengthening of equal pay between men and women. In other words, transparency measures are not necessarily designed to ensure equal pay between men and women.

For these reasons, the inventory is based on a further assessment of whether a general transparency measure qualifies as a recommended core pay transparency measure with regard to strengthening the principle of equal pay between men and women. As such, double counting could also be avoided. Without a further assessment, it proved that one and the same measure could be reported, for instance, as an employee’s right to obtain pay information and again as an employer’s obligation to report this information.

Where relevant, noteworthy national transparency measures that fall outside of the four recommended pay transparency measures are nevertheless discussed throughout the report.

Implementation of national pay transparency measures

Based on the qualification process referred to, 10 out of 31 countries (32 %) have implemented at least one core pay transparency measure as recommended in this area in the past.⁴⁶ Among these 10 countries:

- 3 have implemented an employee pay information right as recommended (9.7 % of all 31 countries);⁴⁷
- 5 have implemented a pay reporting duty as recommended (16.1 % of all 31 countries);⁴⁸
- 3 have implemented a pay auditing duty as recommended (9.7 % of all 31 countries);⁴⁹ and
- 5 have implemented collective bargaining measures as recommended (16.1 % of all 31 countries).⁵⁰

As can be derived from the above, several countries have implemented more than one core pay transparency measure (**Belgium**: reporting duty and collective bargaining duty; **Finland**: information right and auditing duty; **France**: reporting/auditing duty as well as collective bargaining duty; **Sweden**: auditing duty and collective bargaining incentive).

46 Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Norway, and Sweden.

47 Finland, Ireland and Norway.

48 Austria, Belgium, Denmark, France, and Italy.

49 Finland, France and Sweden.

50 Belgium, Finland, France, Germany and Sweden.

In **Germany, Ireland, Italy, Lithuania, the Netherlands** and **the United Kingdom** mature plans or government or parliamentary drafts are reported on introducing pay transparency measures in view of strengthening the gender equal pay principle.

Information rights

Just 3 countries have introduced a right for individual employees to request information on pay levels, broken down by gender, for the same work or work of equal value. It appears that this low number can be explained by the sensitivity and privacy aspects of revealing the wages of co-workers. **Finland, Ireland** and **Norway** have all introduced an employee's information right that fits the recommendation, as part of the legal procedure for making equal pay claims on grounds of gender. However, in 2 out of the 3 countries, this right depends on consent being given by the comparator. Finding comparators performing different work of equal value can also be difficult because it could be up to a court and sometimes expert witnesses to establish equal value.

Norway has overcome the problems mentioned and can be considered to represent best practice.

Best practice

Out of the 3 countries supporting an employee's information right, **Norway** has the most progressive right. On the basis of the Gender Equality Act employees have the right to request pay data of individual comparators at company level. The data received must be kept confidential and the comparators must be informed, but do not have to consent to disclosure. Trade unions' representatives may seek information in support of the individual according to the specifics laid down in the applicable collective agreement.

The Commission Recommendation of 7 March 2014, 2014/124/EU, Paragraph II(3), does not recommend information rights on the wages paid to an individual co-worker, such as the information rights in place in the 3 countries, but to *categories* of employees doing the same work or work of equal value. This might solve privacy problems if the category covers enough individuals. The information, however, can be difficult to obtain by the employer when it must concern work of equal value, as was recommended, and no job evaluation or classification system is applied.

An alternative to information rights with regard to personal pay data might be that individual employees can be informed on gender pay levels by allowing them to have access to the (anonymised) pay reports flowing from pay reporting duties already in place. This also flows from Commission Recommendation 2014/124/EU, Paragraph II(4) on pay reporting duties, but this is not the case at the moment in those countries that do have a gender pay reporting duty. As an exception, **Austria** allows access to wage reports in companies with 150-plus employees subject to the condition that there is no works council present.

Pay reports

Out of the 5 countries that have introduced specific reporting duties on gender pay differentials at company level that comply with the recommendation made, 3 countries actually specify in their legal requirements that these reports must set out average or median pay levels by category of employee or position broken down by gender. Best practices in this respect are found in **Austria, Belgium** and **France**. It must be noted, however, that in **Austria** the reporting duty applies to companies with 150-plus employees whereas, in the other 2 countries, this applies to companies with 50-plus employees. Furthermore, the **Austrian** and **Belgian** gender pay reports have a confidential status.

Besides improvements to be made to the specificity of the pay information to be provided, compliance with pay reporting duties might sometimes raise concerns (**Denmark, France**) as well as a need to prevent the duty from becoming a mere formality wherein a genuine discussion of reports with employees' representatives is not stimulated (**Belgium**). One way to encourage a genuine discussion of pay reports is to lift the confidential status of the (already anonymised) reports.

Best practice

In **Austria** the two-year duty applies to private companies with at least 150 employees and requires income reports to show gender-segregated mean or median pay in full-time equivalents per job category and qualification level indicated in the collective agreement, as well as the number of male and female employees per job category.

In **Belgium** the two-year pay reporting duty, introduced by the Gender Pay Gap Act 2012, is also limited to the private sector but addresses companies with at least 50 employees. The data to be reported include gender-segregated mean basic pay and allowances per employee category, job level, job evaluation class (if applied), seniority and education level.

France requires companies with 50-plus employees (and 300-plus employees in a more detailed form) to annually draw up so-called 'comparative equality reports' of the situation of men and women employed, in terms of qualification, recruitment, training, pay, working conditions and work-family balance. 'Pay' looks at the average monthly wage per job category.

Pay audits

As with information rights, duties for employers to conduct gender-specific pay audits that comply with the recommendation of the Commission are not implemented on a large scale, concerning only 3 of the surveyed countries. The fact that pay audits can be costly and time consuming is often mentioned as a reason for not having these duties. Nonetheless, **Finland** and **Sweden**, with measures on pay auditing, as was recommended, can provide clear pay information at company level that is very capable of encouraging follow-up action by institutional actors. The legislation in place prescribes the analytical methods to be used, including drawing specified comparisons between male and female workers performing work of equal value.

Best practice

In **Sweden**, a mandatory gender pay survey and analysis has to be performed by employers. The statutory duty specifies that assessments must compare gender pay differences for equal work, for female-dominated work and other work of equal value and, as of 2017, for female-dominated work and other work better paid but with working requirements being deemed lower.

In **Finland**, mandatory 'pay mapping' at company level has been introduced. The employer must justify any profound gender pay differences found between comparable groups of employees or take action to remedy the pay gap. Comparable groups must be composed on the basis of the job requirements including work of equal value, if necessary across collective agreements applying at company level.

A possible drawback is that the law on pay audits in both countries does not explicitly demand the use of gender-neutral job evaluation for assessing work of equal value or an analysis of the practice of job evaluation actually applied. The explicit requirement to use gender-neutral job evaluation in the realm of pay transparency measures themselves, on condition that a job evaluation system is present, is only found in **Belgium** in respect of mandatory gender pay reporting.

Although not a proper gender pay audit as recommended, **Belgium** also provides more generally that joint sector committees (social partners) and individual enterprises must check and, when necessary, amend job evaluation systems, if applied, in view of gender equality.

Not only the lack of gender-neutral job evaluation but also the lack of job evaluation at company level at all, might pose problems for any information right on pay levels for work of equal value, as well as for pay audits that should draw comparisons between jobs (or groups of jobs) of equal value.

In addition, compliance with pay auditing duties, once in place, can be a matter for concern. Encouraging employers and employees' representatives, who are involved in pay auditing or reporting, by external supervision might help pay audits to be properly conducted and to be followed up by action if necessary. In **Sweden** the Equality Ombudsman can obtain pay audit reports upon request, and did indeed scrutinise wage plans in the past.

Making equal pay, including pay audits, part of collective bargaining

Stipulating obligatory negotiating duties for social partners is in most of the surveyed countries considered to be an infringement of the fundamental freedom of collective bargaining. Therefore, the inventory of core measures in this area also includes non-binding, though specific, incentives to make equal pay a separate issue of collective bargaining.

Such specific incentives are found in 3 out of the 5 countries that have implemented the recommended core measure on collective bargaining (**Finland, Germany and Sweden**). Equal pay bargaining is either made part of the tripartite social dialogue or is included as a soft law incentive for collective bargaining in equal pay law.

Belgium and **France** have implemented obligatory negotiating duties for social partners on (the separate issue of) equal pay. In **France** this also includes taking account of (the results of) company pay audits.

Despite being legally binding, the measures in **Belgium** and **France** appear to have little impact in practice. Meanwhile, the soft law incentive in **Sweden** seems to be the most successful. Successful measures, especially in this field, seem to be highly dependent on the specific national bargaining culture and the national awareness of gender pay disparities among the social partners.

5.2 Obstacles to introducing national pay transparency measures

So far, two-thirds of all countries surveyed have not adopted any transparency measure that can be qualified as a recommended core measure on pay transparency in view of strengthening the principle of equal pay between men and women.

Among these countries, several have implemented transparency measures on pay or on terms of employment. However, these do not provide gender-segregated information because they were introduced for purposes other than the strengthening of the principle of equal pay between men and women (at least in **the Czech Republic, Estonia, Iceland, the Netherlands, Portugal, Poland, Slovenia** and **Slovakia**). Other countries have introduced reporting duties on gender equality (plans) in general, but without specific requirements in respect of gender pay transparency (**Luxembourg, the Netherlands, Spain** and **the United Kingdom**). **Cyprus** has adopted a non-obligatory measure to encourage employers to provide, upon request, information on equal pay to employees or employees' representatives.

The main obstacles to having an employee information right are the formal confidentiality of salaries on the basis of the law or contractual non-disclosure clauses, as well as informal confidentiality flowing from 'secrecy cultures' in respect of personal income. There is some legal uncertainty as to whether national data protection law would indeed exclude an employee's right to obtain information concerning the pay levels of co-workers. Most dominant, however, are the obstacles posed by the cultural sensitivity of

wages earned and/or the common use of contractual confidentiality clauses. The latter does not involve data protection law but law on confidential business information and company or commercial secrets. Employers conceal the pay data of employees for economic competition reasons and sometimes also to prevent the poaching of employees.

The standard use of contractual non-disclosure clauses is especially strong in countries in which wages are set by individual negotiations only. In part, this coincides with countries having weak national collective bargaining structures, due to the fact that collective agreements would, in most cases, already reveal the results of wage negotiations.

Administrative burdens and the business costs of pay reports and pay audit reports are often mentioned as reasons for not opting for such measures.

Obstacles to equal pay collective bargaining which are often mentioned are the lack of any legal framework on collective bargaining, the developing state of bargaining structures or low coverage by collective agreements (**the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and the United Kingdom**).

In countries with developed bargaining structures, a lack of priority concerning equal pay among the trade unions is mentioned as the main explanation for a lack of initiatives in this field. A problem in this respect could be that in some countries there is a fear, and sometimes also experience, of levelling down in the case of collective bargaining on equal pay, due to employers accepting only cost-neutral adjustments.

5.3 The way ahead

Pay transparency is important in order to promote gender-neutral wage-setting structures and to reduce gender pay gaps at company level. This report indicates that pay transparency is lacking in a number of European countries because of sensitivity and confidentiality issues surrounding personal income, but also sometimes because formal pay structures are generally lacking or are at an early stage of development. This applies especially to the private sector.

On the other hand, it is important to realise that the introduction of pay transparency targeted at alerting stakeholders to possible gender pay discrimination is a very sophisticated and complex issue. Due to the successful elimination of direct sex discrimination in most of the formal labour regulations that apply, gender pay discrimination, if present, flows from very subtle mechanisms. Either it relates to possible indirect discriminatory pay criteria or it relates to possible gender bias where management has the discretion to apply wage regulations or to set (certain elements of) wages. Pay transparency, therefore, sets high demands on the information to be provided in order to detect these subtle mechanisms. Reporting on average company gender pay gaps and pay audits analysing gender pay differentials are instruments capable of doing so. Nonetheless, both kinds of instruments seem to presuppose that some kind of rudimentary pay system or scheme is in place that can be analysed if needed, that the necessary knowledge and expertise is present and that appropriate human resources administrations are in place to collect the necessary data.

In countries with very weak collective bargaining structures or where wage setting primarily depends on individual negotiations only, it may be a more appropriate step to first try to formalise wage-setting procedures and pay schemes in the private sector generally. Ranking jobs according to relative worth and relating them to pay brackets, as well as developing formal procedures for rewarding personal characteristics (seniority, personal education level, work effort and so on), may reduce arbitrariness, and therefore also gender bias, in wage-setting decisions. It, moreover, adds to pay transparency generally if employees have access to the formalised pay scheme and procedures because they are laid down in company regulations and/or collective agreements.

In respect of countries with developed pay structures already in place, specific pay transparency measures might further the chances of scrutinising existing pay structures and practices for gender bias. As discussed above, a number of European countries show best practice in respect of employee information rights, pay reports, pay audits or duties or incentives for equal pay collective bargaining that comply with the main features of the recommendations made in these respective fields.

Among the different core transparency measures, it can be noted, nonetheless, that employees' information rights on gender-segregated wage information for the same work or work of equal value meet relatively more resistance and difficulties due to privacy issues. Although not the prime subject of this research, one could, moreover, tentatively say that these kinds of information rights are helpful but do not appear to remove all hurdles for individual employees to take action if needed.

Incentives for collective bargaining on equal pay can be effective, but their success does not seem to depend so much on the form they take, but whether social partners are motivated to take the matter seriously or give it priority. With regard to the latter, it is of course obvious that pay transparency cannot by itself lead to follow-up actions but depends on the priority given to it by employers, employees' representatives and social partners.

One of the challenges seems to be to break the vicious circle that exists in this respect. The research carried out feeds the impression that problem awareness, and therefore the priority and the motivation to develop actions in the field of equal pay by institutional actors involved in wage setting, is reduced by the fact that because of the subtle causes of gender pay discrimination, any problems, if present, are not obvious. This, of course, is what pay transparency aims to remedy, but, depending on the specific national circumstances, the most effective way to do so may require pay audits that can reveal possible pay discrimination. This is at the same time the most time-consuming and costly option of the instruments available and will therefore only be adopted if the urgency of the problem is genuinely felt which, due to the initial lack of problem awareness, might not be the case.

Introducing mandatory pay reports on average gender pay levels seems to be a slightly easier step to take and could raise initial awareness of the need for equal pay for men and women. To prevent it from becoming a mere formality, some recommendations have been made (see 4.4). Here, it can be stressed again that allowing employees and equality bodies to have access to these reports might promote actions of additional analysis if warranted.

An analysis of general gender pay differentials in the realm of pay reports or audits needs to provide, furthermore, guidance for employers and employees' representatives, especially in respect of the concept of work of equal value. Although the concept is in most countries clarified in the context of legal proceedings on equal pay, its structural application to all jobs within a company is not. Basically, it does not seem feasible for employers to apply such a concept without applying some sort of job evaluation or classification system generally. As the latter is the choice of management or social partners, it can be recommended that the use of such systems is promoted more generally. The common use of job evaluation as a part of wage determination is still limited in the private sector in the European countries surveyed. Nevertheless, any objective system or method applied will help to formalise and systemise wage setting and reduce arbitrariness. To conclude, in the public sector it is already far more common to use, at the very least, job classification systems. The focus could be turned here to scrutinising the systems applied for possible gender bias and to pay transparency in respect of regulations and practices that allow for a reduction or increase of the basic wage made public by wage scales.

Annex I Summary of results on pay transparency measures in the EU

Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy	
Questions																	
Pay information right for employees? (On gender-segregated pay levels for same work/work of equal value)	No	No	No	No	No	No	No	No. Section 7(3) of the Gender Equality Act provides an employee the right to demand that the employer explains the bases for the calculation of one's (own) salary.	Yes, employee representative has a right to obtain pay data for possible discrimination claim but only with the consent of the individual(s) concerned. If not, the Equality Ombudsman must be contacted.	No longer. Employees had direct access to pay reports presented to works council. Provisions are skipped as side effect of general Labour Code amendments on information & consultation rights.	No	No	No	No	Yes, a statutory questionnaire form is used to seek necessary (pay) data in the realm of a potential discrimination claim	No	
Specifics?	NR	NR	NR	NR	NR	NR	NR	NR	Type of gender pay data to be provided depends on the collective agreement; information right applies to public and private companies, irrespectively of size.	NR	NR	NR	NR	The Information Act allows public access to i.a. personnel information of public entities (not broken down by gender)	Pay data of co-workers need individual consent; there is no obligation for the employer to answer questions but this can be held against him in court.	NR	
Measures expected?	No	No	No	No	No	No	No	No	No	No	Yes, Pay Equity bill (not published yet) includes individual pay information right in companies with >200 employees.	No	No	No	No	No	No
Obstacles?	ND	Not envisaged because of employers' resistance; suggested taboo about disclosing individual wages.	No problem awareness.	Plans (2015) have failed to introduce general equal pay for equal work principle; contractual non-disclosure clauses are common and backed up by the Data Protection Authority; no administration capacity of employers.	Too costly for employers; gender equality has no priority among social partners, since Cyprus is dealing with recession.	No problem awareness	ND	Employer cannot disclose pay of others without consent; contractual non-disclosure clauses; poor HR management at company level; low political awareness.	Sensitive issue; procedure is complicated if comparators decline consent.	ND	No culture of pay transparency; avoiding administrative burdens; strong resistance by employers' associations.	No awareness; data protection law provides no obstacle	No problem awareness; contractual non-disclosure clauses on pay are standard; avoiding economic and administrative burdens.	No problem awareness or political priority. Avoiding economic constraints.	The exclusion of individual data (unless consent) while a wage survey (see below) may provide sparse information.	Other types of transparency measures are foreseen, see below.	

Legenda: Green = best practice; Red = negative result; Yellow = step forward. NR = not relevant; ND = no national data provided

Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Gender pay gap reporting duty for employers?	Yes, in full force since 2014 limited to private sector companies (Equal Treatment Act).	Yes, limited to private sector (Gender Pay Gap Act 2012)	No	No	No	No	Reporting duty on gender-segregated wage statistics.	No	No, but see audits.	General reporting duty comparing the situation of men and women at company level.	No	No	No	No reporting duty; > 25 companies must provide gender equality program to equality body (low compliance)	No	Art 46 Equal Opp Code provides for general gender reporting duty on employment situation of m/f at company level
Disclosed to employees, works councils and social partners?	To the works council; a secrecy obligation applies except when the report is used for an equal-play claim before a court or equality body	Works council or (in its absence) union delegation. Reports are confidential.	NR	NR	NR	NR	Employees' representatives	NR	NR	Works council and social partners, no longer to employees.	NR	NR	NR	NR	NR	National and regional Equality Advisors and trade unions
Specifics of report?	Income reports must show mean or median pay m/f in fulltime equivalent per job category and qualification level (according to the collective agreement); number of m/f employed per job category.	Gender-segregated data on mean basic pay and allowances, broken down by employee category, job level, job-evaluation class (if applied), seniority and education level.	NR	NR	NR	NR	No specific requirements ('sufficient for dialogue').	NR	NR	Comparative situation of men and women in terms of qualification, recruitment, training, pay, working conditions, work-family balance. Pay pertains to average monthly wage per job category.	NR	NR	NR	NR	NR	Relates to all aspects of employment (recruitment, promotion, dismissal, pay levels). Measure does not specify type of pay information to be reported.
Frequency?	Every two years.	Every two years.	NR	NR	NR	NR	ND	NR	NR	Yearly.	NR	NR	NR	NR	NR	Every two years.
Limitation to size of company (number of employees)?	> 150	> 50	NR	NR	NR	NR	>35	NR	NR	>50; >300 more elaborate report	NR	NR	NR	NR	NR	>100
Enforceable?	Administrative fine up to EUR 360.	Penal fine EUR 300-3000 or administrative fine EUR 150-1500.	NR	NR	NR	NR	No sanction	NR	NR	Yes	NR	NR	NR	NR	NR	Administrative fine; not applied so far.

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Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Measures expected?	NR	NR	No	No	No	No. Intention to introduce gender pay reporting (Government Resolution no. 930 on 12 November 2014) was not followed up.	Amendment Equal Pay Act 2016: reporting duty scope changed from >10 companies (with at least 3 men and 3 women) to >35 companies (with at least 10 men and 10 women).	No	No	NR	The federal government announced in 2016 draft regulations on pay equity and pay transparency. Reporting duty restricted to >500 companies (stock corporations).	No	No	No	Yes, the government announces pay transparency by requiring >50 companies to complete a wage survey. No draft yet.	Yes, Bill (March 2015) proposes transparency regulations on pay reporting and audits to be set, following Recommendation 2014/124.
Obstacles?	Income reports are not regularly used in court proceedings, in which individual evidence is relied upon.	Because of its confidentiality, the pay report remains a formality without incentives to discuss it. The Belgian Equality Body regrets that reports cannot contribute to general statistics or national policy plans.	No problem awareness.	See above.	Compare obstacles for information right; Cyprus predominantly has small businesses (98% <250 employees).	See above.	ND	High valued privacy and weak position of unions supports culture of 'pay secrecy'.	Preferred solution is pay audits.	Pay reports are stimulated by State, funding possibilities up to 70% for <300 companies.	NR	General non-awareness; equal pay no priority in context of deregulation of labour market.	See above.	See above.	Privacy and data protection law.	Gender pay gap has low profile in public debate.
Mandatory pay audits?	No	No, but yearly duty on social reporting (Company Code). Because of the 2012 Gender Pay Gap Act social data to be provided (number of employees, hours worked, personnel costs and total amount of bonuses paid) now have to be broken down by gender.	No	No	No	No	Pay equality analysis and plan as alternative to reporting duty (voluntary).	No	Yes, mandatory 'pay mapping' at company level (Equality Act as amended in 2014). Employer must clarify clear pay differences found between comparable groups of employees; if not, take action to remedy.	Reporting duty (see above) includes providing an analysis and statistically-based indicators on the situation of m/f. No specific requirements are set for the method or level of (pay) analysis.	No	No	No	Certification standard (IST 85:2012) on equal pay system requires a pay audit (voluntary instrument).	No	No
Responsibility of?	NR	Employer.	NR	NR	NR	NR	ND	NR	Employer. Employees' representatives (union or elected) are to cooperate in assessment, proposed action and follow-up.	See reporting duty.	NR	NR	NR	NR	NR	NR
Limitation to size of company? Frequency?	NR	No (<50 simplified format) / yearly.	NR	NR	NR	NR	ND	NR	> 30 / every 2-3 years.	See reporting duty.	NR	NR	NR	NR	NR	NR
Enforceability?	NR	Penal fine EUR 300-3000 or administrative fine EUR 150-1500	NR	NR	NR	NR	ND	NR	ND	Yes	NR	NR	NR	NR	NR	NR
Analysis gender segregation?	NR	No	NR	NR	NR	NR	ND	NR	No	Not specifically required.	NR	NR	NR	NR	NR	NR

Legenda: Green = best practice; Red = negative result; Yellow = step forward. NR = not relevant; ND = no national data provided

Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Analysis job evaluation?	NR	No	NR	NR	NR	NR	ND	NR	No	Not specifically required.	NR	NR	NR	NR	NR	NR
Detailed information on gender pay gap?	NR	No	NR	NR	NR	NR	ND	NR	On aggregated level, not revealing individual pay. Comparable groups must be composed on the basis of the requirements of the job, if necessary across collective agreements.	No	NR	NR	NR	NR	NR	NR
Conducted by experts?	NR	Discretion of employer.	NR	NR	NR	NR	ND	NR	No	Not necessarily.	NR	NR	NR	NR	NR	NR
Available on request to works councils and social partners?	NR	Works council or (in the absence of) union delegation.	NR	NR	NR	NR	ND	NR	Employee representatives involved; Equality Ombudsman may access.	Part of reporting duty to works council. Social partners have access.	NR	NR	NR	NR	NR	NR
Measures expected?	No	No	No	No	No	No	No	No	NR	No	Yes, the federal government announced Pay Equity bill, pertaining to pay audits in companies with >500 employees. Some political parties and employers have expressed concerns (administrative burdens; stimulating envy when salaries are disclosed).	No	No	No	Unclear.	Yes, Bill of March 2015 proposes transparency regulations on pay audits to be set. Bill is still studied by Parliamentary Commission.
Which ones or what obstacles?	Employers' organisations (as part of the tripartite social dialogue on labour legislation) are opposed to pay auditing.	Tends to be a formality without follow-up.	See above.	Would raise costs of business and have negative impact on competitiveness.	See above.	See above.	ND	See above.	Measures are not very effective because they are premised on not revealing individual pay information. The formal pay conditions and level of minimum wages set in agreements are available but employers are unwilling to reveal the actual wages paid.	Despite timid progress implementation of the comparative report duty is not satisfactory in respect of data collection by firms and lacking diagnoses of data reported.		See above.	See above.	See above.		
Making equal pay, including pay audits, part of the collective bargaining process.	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No

Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Which incentives?	NR	Statutory obligation for Central Economic Council to produce every two years an analysis of the national gender pay gap; biennial intersectoral agreement must include measures, especially on gender-neutral job classification, to be discussed at sectoral and company level. Works council may suggest appointing a 'works mediator' to assist employers and hear individual complaints on pay discrimination (Employment Act 1996 amended; Gender Act 2007 amended by Gender Pay Gap Act 2012).	NR	NR	NR	NR	NR	NR	Education on pay systems, dissemination of best practices and gender-impact assessments of collective agreements by the social partners is stimulated by tripartite pay equality programmes.	>50 companies must negotiate annually (or less if an agreement has been reached) on pay and gender equality; at industry (sector) level every three years. In the framework of the annual negotiations the employer must provide the trade unions with the report on the comparable situation of men and women at company level allowing for a diagnostic analysis.	Tripartite social dialogue to tackle patterns of pay discrimination in collective agreements mainly focussed on job-evaluation or classification systems.	NR	NR	NR	NR	NR
At what level of collective bargaining?	NR	All levels.	NR	NR	NR	NR	NR	NR	Intersectoral/national level only.	Sector and company.	All levels.	NR	NR	NR	NR	NR
Measures expected?	No	NR	No	No	No	No	No	No	NR	NR	No	No	No	No	Unclear	No
Obstacles?	ND	So far no actions have been taken by social partners: current austerity policy restricts the means for the administration to assist social partners; use of job-evaluation systems is not very common; to date no 'works mediator' has been appointed.	Autonomy of social partners and lack of awareness of problem.	Collective bargaining is stronger in the public sector, but the gender pay gap is larger (16.4%, against 11.2% in the private sector), probably due to stronger vertical and horizontal gender segregation.	See above.	See above; role of collective bargaining moreover not very significant; bargaining concentrates on wage raise.	Autonomy of social partners; no priority in the last few years.	Collective bargaining structures are being developed.	Recent evaluation of tripartite pay equality plans showed little decrease in pay differentials. Collective bargaining process and pay audits are seen as potential means but not in times of economic recession.	NR	Trade union action in 2009 to re-evaluate female-dominated work in the public sector had limited success. Only cost-neutral adjustments were accepted (levelling down).	See above .	Lack of multi-employer bargaining; lack of pay gap data; no priority among the social partners.	ND	See above.	Bill of 2015 does not propose incentives on collective bargaining due to autonomy of social partners.
Other pay transparency measures?	No	No	No	Yes; not gender-segregated.	Yes	Yes	No	Yes; not gender-segregated.	No	No	No	No	No	Yes	No	Yes

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Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Specifics?	NR	NR	NR	By statutory law, parameters for wage determination must be stipulated in rules or contracts, if not the right to an 'adequate salary' applies.	A non-obligatory incentive was adopted to encourage employers to provide, upon request, information on equal pay to employees or their representatives.	Employer must inform employee on equality measures taken. Provision not applied in practice so far.	NR	Basic remuneration of public officials must be published once a year. Discussion on the required specifics of the pay information is still ongoing.	NR	NR	NR	NR	NR	Gender Equality Act (amendment 2010) allows workers to disclose their wages. Introduction of certification standard (IST 85:2012) on equal pay system (see above).	NR	Legal competence for exchange of information between Labour Inspectorate and regional Equality Advisors. Not applied in practice.
Gender pay transparency and pay gap statistics available on national level?	The Austrian Rechnungshof (Court of Auditors) compiles and issues biennial reports on national income and pay developments, including the gender pay gap.	Yes, on the gender pay gap.	ND	Yes, employers are bound by law to deliver yearly gender-segregated statistics on employment and earnings to national bureau of statistics.	Yes, on the gender pay gap.	Yes, but limited.	Yes, on the gender pay gap.	Yes on the gender pay gap, but statistics need improvement. Gender equality monitor every four years.	No	Yes, on the gender pay gap.	Yes, on the gender pay gap.	No	Yes, on the gender pay gap.	ND	Yes, on the gender pay gap.	Yes, but not systematically (latest report 2010).
Any impact assessment of (proposed) pay transparency measures?	ND	The Gender Pay Gap Act was an initiative of Parliament, partly based on an academic study on the Belgian pay gap.	No	No	No	No	No	No	No	No	No	No	No	ND	No	No
Legally defined objective criteria for assessing work of equal value?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes.	Yes	Yes	No	Yes, but Labour Code amendment 2012 added 'labour market conditions' to the definition, allowing for pay differences according to rate of labour supply.	Yes	Yes	Yes
Introduction of the requirement for companies to establish (gender-neutral) job evaluation and classification systems?	No	Collective Agreement n°25 provides that joint sector committees and enterprises must check job evaluation systems (if one is applied) in order to guarantee gender equality.	No	No	No	No	No	No	No, although pay mapping targets work of equal value, but the law is unclear how this must be assessed.	No	No	No	No	No	No	Job classification systems, if applied, must be gender-neutral (Equal Opportunities Code).

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Country	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Iceland	Ireland	Italy
Is it common to set wages by using job-evaluation systems (private sector)?	ND	Intermediate.	No	No	No	No	No	No	Yes	Yes	Yes	No	Wage grids are used by bigger companies or where a collective agreement applies.	No, although the Confederation of Icelandic Employers have agreed on initiating a job-evaluation system.	No	Yes
Is it common to set wages by using job-evaluation systems (public sector)?	A transparent job-classification system including salary scales is applied by law.	No	Yes	Formal salary determination and job classes are laid down by law.	There is a classification system, but not based on analytical job evaluation.	A job-classification system including salary scales is applied by law; special premiums, however, can be rewarded which escape transparency.	No	Yes	Yes	Yes	Yes	No	The law provides wage scales according to job class with the competence for public authorities to increase wage by 50% or reduce by 20% in individual cases.	Yes, at local public level.	No	Yes

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Country	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	UK
Questions															
Pay information right for employees? (On gender-segregated pay levels for same work/work of equal value)	No	No	No	No	No	No individual right	Yes, employee right to pay data of individual comparators (Gender Equality Act). Received info must be kept confidential; comparators must be informed. Trade union may seek information in support of individual according to collective agreement.	No	No	No	No	No	No	No individual right.	No longer. Questionnaire procedure to establish facts for potential discrimination claim was abolished (2013).
Specifics?	NR	NR	NR	NR	NR	If pay discrimination is suspected a worker can turn to the Dutch Equality body. This body can actively investigate and obtain necessary pay data from the employer.	Applies to all public and private employers; data includes pay structure/ scheme, (average) pay levels for equal work or work of equal value, number of m/f in job class. Pay comprises all relevant components.	NR	NR	NR	NR	Salaries of individual public officials must be submitted to the Minister who publishes a yearly summary (not broken down by gender)	NR	Trade unions can request (pay) information in the realm of (pay) equality monitoring; Equality Ombudsman may request pay information.	NR
Measures expected?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Obstacles?	Contractual non-disclosure clauses on pay are standard practice (protecting commercial secrets).	Non-disclosure contract clauses; lack of awareness and political priority.	Low awareness of equal pay issues among employees; non-disclosure of remuneration data related to other employees is widely accepted by all stakeholders.	Non-disclosure of remuneration data of co-workers is part of the culture.	Non-disclosure contract clauses; wages are mainly negotiated individually in private sector and not discussed among workers.	More regulations are not seen as the solution; it's rather about applying existing rules. Data protection law poses no problem.	No obstacles	No priority of government or social partners; non-disclosure clauses are common; pay levels of some public officials and managers are already published (not gender-segregated)	Non-disclosure contract clauses; data protection law	Salaries are confidential (Labour Code). Only an employee representative may access pay information when it is in the employee's interest.	Privacy and data protection law; pay conditions and pay levels are individually negotiated and considered confidential information by employers.	Data on salaries of workers in the private sector are personal data and not available to co-workers or the public.	Extra burdens on employers are avoided to stimulate employment.	NR	Disclosing information puts too great a burden on employers

Country	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	UK
Gender pay gap reporting duty for employers?	No	No	No	General reporting duty on recruitments, promotions, training, remuneration of employees, broken down by gender.	No	General reporting duty on equal treatment of men and women in the company generally.	No	No	General reporting duty of public and private companies on the specifics of individual employment contracts including pay (not gender-segregated).	No	No	No	Art. 45 Gender Equality Act provides that >250 companies adopt an equality plan. See below.	No, but see audits.	Yes, limited to (specified) public authorities.
Disclosed to employees, works councils and social partners?	NR	NR	NR	Employee representatives if present	NR	Works council if present	NR	NR	Labour Inspection and (in anonymized form) works council or (in absence) trade union	NR	NR	NR	NR	NR	General publication duty under the Equality Act 2010 Public Sector Equality Duty
Specifics of report?	NR	NR	NR	No requirements in respect of pay data.	NR	No requirements set on data on equal treatment. Remuneration (not broken down by gender) of groups of personnel including bonuses has to be reported in >100 companies.	NR	NR	Number of workers, their sex, education level, job category, contract type, working time, remuneration. The general reporting duty does not specify gender-segregated pay data.	NR	NR	NR	NR	NR	Scotland: every two years average hourly pay m/f; every four years occupational segregation; equal-pay policies. England: general equality information but no specific equal pay requirements. Wales: equal pay objectives/plans and number of employees broken down by pay and gender
Frequency?	NR	NR	NR	Every two years.	NR	Yearly.	NR	NR	Yearly.	NR	NR	NR	NR	NR	Annual to every four years.
Limitation to size of company (number of employees)?	NR	NR	NR	>15	NR	>50	NR	NR	No	NR	NR	NR	NR	NR	Scotland: > 20; England: > 150.
Enforceable?	NR	NR	NR	No	NR	Yes	NR	NR	Administrative fine.	NR	NR	NR	NR	NR	ND
Measures expected?	No	No	Yes, Labour Code 2016 (adopted but still under presidential veto review) obliges > 20 companies to inform works council and trade unions of pay levels broken down by gender.	No	No	A Bill proposed by a Member of Parliament requires >50 companies to report average pay levels broken down by gender per job category in their annual reports and provide this information to the works council yearly. In parliamentary discussions so far the added value of the Bill has been criticized.	No	No	No	No	No	No	No	NR	Yes, Great Britain: 'Equality Act (Gender Pay Gap Information) Regulations' expected to come into force April 2017, requiring >250 employers in the private sector to annually publish mean and median gender pay gaps (incl mean bonus). No sanctions as yet. N-Ireland: Regulations by 30 June 2017, requiring employers (not specified yet) to publish gender pay differences and action plans (probably every 1 to 3 years).

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Country	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	UK
Obstacles?	See above.	See above.	See above.	No priority for either employees or trade unions.	Importance employers attribute to non-disclosure of contract clauses (competition aspect; preventing poaching).	Other priorities among firms and work councils. Establishing pay discrimination is complicated. HR staff and works council may lack expertise in the field.	ND	See above.	NR	No problem awareness.	Avoiding bureaucracy; pay monitoring duties apply only to projects financed by EU structural funds.	No political priority.	See above.	Preferred solution is pay audits; see below.	Likely lack of penalties for proposed measure; <250 companies not included because of administrative burden and difficulties for smaller companies to comply with data protection obligations.
Mandatory pay audits?	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes, a mandatory survey and analysis has to be performed leading to a gender wage action plan (Discrimination Act). After amendments made (effective 1 January 2017) the wage action plans will be replaced by written pay audits.	No
Responsibility of?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Employer in cooperation with workers' organisations.	NR
Limitation to size of company? Frequency?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	> 25 employees; 2017: >10 employees. Frequency: every 3 years; 2017: every year.	NR
Enforceability?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Yes	NR
Analysis gender segregation?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Yes	NR
Analysis job evaluation?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Not specifically required.	NR
Detailed information on gender pay gap?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	The law specifies that assessments in particular must compare gender pay difference for 1) equal work; 2) female-dominated and other work of equal value. As of 2017: 3) female-dominated work and other work better paid but with working requirements being deemed lower.	NR

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Country	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	UK	
Conducted by experts?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Not necessarily.	NR
Available on request to works councils and social partners?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	Trade union bound to applicable collective agreement and Equality Ombudsman.	NR
Measures expected?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	NR	No
Which ones or what obstacles?	Wages are mainly freely set in the private sector; lack of schemes. Bigger companies oppose administrative burdens.	See above.	See above.	See above.	See above .	See above.	ND	See above.	See above.	See above.	See above.	See above.	See above.	See above.	NR	Pay audits are recommended by the Equality and Human Rights Commission. Still, the Parliamentary Women and Equalities Committee considered them too time consuming and costly to make them mandatory.
Making equal pay, including pay audits, part of the collective bargaining process.	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No
Which incentives?	NR	NR	NR	NR	NR	Social partner organisations developed a checklist for companies to voluntary scan their pay structure including job evaluation for gender bias. There has been no follow-up.	No specific incentives but most collective agreements include general clause on the need for equal pay and to include this in rate negotiations.	NR	The tripartite Agency for Gender Equality can conduct audits on possible discriminatory clauses in collective agreements. They may issue recommendations or start legal proceedings to remedy discriminatory results found.	NR	NR		Art. 85 of the Workers' Statute provides a generic duty for social partners to promote gender equality, but does not refer to negotiating measures related to equal pay.	Discrimination Act provides that social partners must cooperate to equalize and prevent differences between men and women performing equal work or work of equal value in terms of employment conditions. Despite the soft-law character of this provision, sector-level agreements usually carry rules on gender pay auditing.	NR	
At what level of collective bargaining?	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	All levels.	All levels.	NR
Measures expected?	No	No	No	No	No	No	No	No	ND	No	No	No	No	NR	NR	No
Obstacles?	Coverage by collective agreements is low.	ND	Collective bargaining plays a minor role; priority of unions is to enter into an agreement and introduce pay schemes in the first place.	See above.	Trade unions are strong but male dominated. Employment rate of women is low.	See above.	ND	Minor role of collective bargaining and lack of awareness among trade unions' officials and members.	No significant issue for social partners; lack of problem awareness; strong autonomy.	ND	Autonomy of social partners and lack of awareness of problem.	Collective bargaining is in place but since the gender pay gap is very low it is no priority among trade unions.	Fear that equal pay bargaining may possibly lead to the levelling down of wages.	NR	Lack of any legal framework on collective bargaining makes it unlikely to target collective bargaining as an instrument for national pay transparency measures.	

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Country	Latvia	Liechtenstein	Lithuania	Luxembourg	Malta	Netherlands	Norway	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	UK
Other pay transparency measures?	No	No	No	No	No	No	No	Yes	No	No	Yes, not gender-segregated	No	Yes	No	Yes
Specifics?	NR	NR	NR		NR	NR	NR	A self-evaluation tool for wage comparison is being developed that will be promoted among employers and social partners.	NR	NR	Ministry of Labour conducts labour cost surveys. Pay data is gathered by job type and employees' characteristics (no gender-segregated format)	NR	Duty for >250 companies to draw up equality plans, but pay issues are not specifically addressed.	NR	(Except for N-Ireland) legal victimisation provisions protecting employees who seek or disclose pay information; ban on contractual 'gagging' clauses (Equality Act 2010).
Gender pay transparency and pay gap statistics available on national level?	Yes, general information on gender pay gap.	ND	Yes, on the gender pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap. By private initiative a 'gender wage indicator' is published based on individual salary data submitted.	Yes, on the pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap.	No	Yes, on the gender pay gap.	Yes, on the gender pay gap.	Yes, on the gender pay gap.
Any impact assessment of (proposed) pay transparency measures?	No	ND	No	No	No	No	No	No	ND	No	No	No	No	No	Yes, in respect of draft Equality Act (Gender Pay Gap Information) Regulations.
Legally defined objective criteria for assessing work of equal value?	No	Yes	Yes, but no law practice as yet.	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No, but case law takes objective criteria into account.	Yes.	Yes
Introduction of the requirement for companies to establish (gender-neutral) job evaluation and classification systems?	No	No	No	No	No	No	No	No	Job evaluation systems if applied must be gender-neutral (Labour Code).	No	No	No	No	No. Tool for gender-neutral job evaluation is available to be applied on a voluntary basis.	No
Is it common to set wages by using job-evaluation systems (private sector)?	No	No	No	Yes	No	Yes	No	No, less than 10% of companies (data 2010).	Wage grids are used by bigger companies or where a collective agreement applies.	No	ND	No	No	ND	36.9% of private-sector employers (sample 2013).
Is it common to set wages by using job-evaluation systems (public sector)?	Yes	Yes	Yes	No	Yes	Yes	No	Yes	ND	Yes, the Unified Payment Act includes a detailed job-classification system.	ND	Yes	No	Yes	25 out 26 public-sector employers (sample 2013).

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Annex II Questionnaire form

Part 1 Inventory of (recommended) pay transparency measures that have been implemented

Measure A Right of employees to obtain information on pay levels upon request

“Member States should put in place appropriate and proportionate measures to ensure that employees can request information on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value. This information should include complementary or variable components beyond the fixed basic salary, such as payments in kind and bonuses.” (Commission Recommendation of 7 March 2014, 2014/124/EU, Para. II, point 3)

1. Is a right to obtain information on pay levels implemented *following* Commission Recommendation 2014/12/EU?
YES / NO
2. Is any right to obtain information on pay levels comparable to the one provided in Measure A already in place?
YES / NO

In case q. 1 or 2 is answered with YES, proceed to q. 3

In case q. 1 and 2 is answered with NO, proceed to q. 7

3. Is the right to information laid down in law, collective agreements or otherwise?
4. What is its personal scope? Is it a right of individual employees? Does the right apply in the public and private sector? Does it depend on the size of the company?
5. Are there any prior requirements set for making a request? Is the right enforceable? If not, are there alternative ways to have access to information on pay levels?
5. Can other actors obtain information on behalf of the employees? If so, who (trade unions, works councils, equality bodies, other special (state) bodies, etc)? Does this other actor have to be a representative of an individual employee or not?
6. What information can be obtained?
 - a. pay level information at sector, company, establishment level?
 - b. pay level information at individual level (i.e. concerning a co-worker)?
 - c. information on average pay levels among male and female employees at the company generally?
 - d. information on average pay levels among male and female employees performing the same work? Or also performing work of equal value (including different but comparable jobs)?
 - e. information on the number of female and male employees in a certain job category to establish whether it is male or female dominated work?
 - f. information on average pay levels in different job categories/classes representing work of equal value, not broken down by gender? (to assess whether there is an average pay differential between comparable male dominated and female dominated jobs/job categories)?
 - g. other information on pay levels not mentioned above?
 - h. what constitutes ‘pay’ when information can be obtained either on an individual or a collective basis?

(average) gross salary per month (or other period?); net salary, basic fixed salary, including or excluding complementary or variable components?

Can separate information be obtained on fixed (basic) pay level(s) and the level(s) of complementary or variable pay?
 - i. Is there a right to obtain, or is there in any other way access to, additional information on *the general wage structure* applied by the employer?
 - salary scales indicating basic fixed salary per month per job class;

- procedures for ranking specific jobs into this wage structure;
 - job evaluation systems applied
 - general guidelines, procedures and/or requirements for entitlement to variable or complementary pay components (f.i. allowances for overtime, irregular hours, heavy work, qualifications, seniority, (regional) labour market shortages, bonuses for outstanding work, productivity etc)?
7. (make a choice)
In case there is no right to information, are measures to be expected in the near future? YES /NO
In case there is a right to information, do you deem this right effective?
YES / NO
8. What are (possible) obstacles for not having a right to information on pay levels or for the functioning of this right in practise?
e.g. non-disclosure contract clauses, privacy and data protection legislation, problem awareness, political priorities, administrative/economic constraints?
Please elaborate on the main reasons why there is no right to information on pay levels or, if there is, if there are any problems for the effective functioning of this right in practise.

Measure B Regular reporting of companies on pay levels

'Member States should put in place measures that ensure that employers in undertakings and organisations with at least 50 employees regularly inform employees, workers' representatives and social partners of the average remuneration by category of employee or position, broken down by gender.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Para. II, point 4)

9. Is there a legal obligation or any other measure in place to ensure that employers regularly inform employees, workers' representatives or social partners of the average remuneration of men and women at company level implemented *following* Commission Recommendation 2014/12/EU?
YES / NO
10. Is there any measure or incentive on regular reporting by companies comparable to the one provided in Measure B already in place?
YES / NO

In case q. 9 or 10 is answered with YES, proceed to q. 11

In case q. 9 and 10 is answered with NO, proceed to q. 17

11. Who has to be informed? (individual employees, works councils or other workers' representatives at company level, social partners, equality and/or state bodies?) Is the reporting duty laid down in law, collective agreements or otherwise?
12. How specified does the reporting concerning the average remuneration of male and female employees has to be?
e.g. Are averages according to gender reported for the whole company, per establishment, per type of employee, per job position, per more general job categories and/or per salary class applied?
13. Is the reporting duty limited to companies of a certain size? To certain sectors?
14. What is the interval of the duty to report? (yearly, other?)
15. Is the duty to report enforceable? How and by whom?
16. Are company pay reports published or recorded for later access (if so, by whom)?
17. (make a choice)
In case there is no reporting duty or incentive, are measures to be expected in the near future?
YES / NO
In case there is a duty or incentive to report, do you deem this effective?
YES / NO

18. What are (possible) obstacles for having this duty in place or for its proper functioning? (e.g. non-disclosure contract clauses, privacy and data protection legislation, problem awareness, political priorities, administrative/economic constraints)?

Please elaborate on the main reasons why there is no reporting duty or, if there is, if there are any problems for the effective functioning of this duty in practise.

Measure C Pay audits

'Member States should take appropriate measures to ensure that pay audits are conducted in undertakings and organisations with at least 250 employees. These audits should include an analysis of the proportion of women and men in each category of employee or position, an analysis of the job evaluation and classification system used and detailed information on pay and pay differentials on grounds of gender. These audits should be made available to workers' representatives and social partners on request.'
(Commission Recommendation of 7 March 2014, 2014/124/EU, Para. II, point 5)

19. Is there a legal obligation or any other measure or incentive to conduct pay audits *following* Commission Recommendation 2014/12/EU?
YES / NO
20. Is any such obligation or incentive to conduct pay audits comparable to the one provided in Measure C already in place?
YES / NO

In case q. 19 or 20 is answered with YES, proceed to q. 21

In case q. 19 and 20 is answered with NO, proceed to q. 29

21. Are pay audits conducted in undertakings and organisations obligatory by law? Are pay audits enforceable? If pay audits are merely encouraged rather than obligatory, which measures encourage pay audits?
22. Who bears the responsibility for conducting pay audits? (e.g. employer, social partners, external bodies)
23. Who has access or can request access to pay audit reports conducted? (for instance individual employees, workers' representatives, social partners, governmental bodies?)
24. Are pay audits limited to companies of a certain size, or to certain sectors? Do audits have to be conducted regularly (and if so, what is the interval?)?
25. How are the pay audits precisely conducted?
- What kind of information is gathered?
 - pay differentials, wage structure, job evaluation plans, the applicable company pay regulations on basic pay, additional allowances, bonuses, occupational pension etc.
 - Is a genuine analysis of the pay information gathered provided for?
 - in respect of average pay gaps according to gender? Also in respect of gender pay gaps concerning work of equal value?
 - in respect of gender neutral job evaluation and/or classification systems applied?
 - in respect of possible (in)direct discriminatory criteria applied in the general wage structure/ wage regulations that apply?
 - is a method of statistical analysis applied (whether pay differentials found are 'significant' on the basis of statistical science?)?
26. Is the analysis required in pay audits done by (internal or external) pay and/or gender experts or general staff of the employer?
27. Are audits always followed up by recommendations to the employer and/or social partners?
28. Are audits part of more comprehensive equality action plans?

29. (make a choice)
 In case there is no duty or incentive for conducting pay audits, are measures to be expected in the near future?
 YES /NO
 In case there is a duty or incentive for conducting pay audits, do you deem this right or incentive to be effective in practise?
 YES / NO
30. What are (possible) obstacles for not having a duty or incentive for conducting pay audits, or for the functioning of this right/incentive in practise? (e.g. non-disclosure contract clauses, privacy and data protection legislation, problem awareness, political priorities, administrative/economic constraints?)
Please elaborate on the main reasons why there is no duty or incentive for conducting pay audits or, if there is, if there are any problems for the effective functioning of this duty/incentive in practise.

Measure D Consideration of equal pay as a separate issue by social partners in collective bargaining

'Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States should ensure that the issue of equal pay, including pay audits, is discussed at the appropriate level of collective bargaining.' (Commission Recommendation of 7 March 2014, 2014/124/EU, Para. II, point 6)

31. Are there legal obligations or other measures introduced to ensure that the issue of equal pay, including pay audits, is part of the collective bargaining process at the appropriate level *following* Commission Recommendation 2014/12/EU? ?
 YES / NO
32. Are measures or incentives comparable to the one provided in Measure D in place?
 YES / NO

In case q. 31 or 32 is answered with YES, proceed to q. 33

In case q. 31 and 32 is answered with NO, proceed to q. 39

33. What measures are taken to ensure that the issue of equal pay, including pay audits, is part of the collective bargaining process at the appropriate level?
34. At what level of collective bargaining? (company, sector, intersectoral)?
35. Do measures focus on including special aspects of equal pay in the collective bargaining process?
 – introduction of gender neutral wage structures in collective agreements
 – introduction of gender neutral job evaluation systems in collective agreements
 – conducting pay audits or taking account of pay audits conducted
 – otherwise furthering transparency of wage systems
36. Did one or more social partners in fact initiate any action in respect of furthering pay transparency and equal pay? If so, as part of an collective agreement or otherwise? Can you name some examples?
37. How elaborate are collective labour agreements in your country generally in respect of wage setting (do they contain for instance fixed salary scales for all job positions or job categories in the company or sector that are adjusted with each bargaining process?). How much room to manoeuvre is left for individual employers, bound to collective agreements, to set individual wages?
38. Is job evaluation generally used to set fixed basic salary(scales) for comparable job positions or categories as part of the collective bargaining process?
39. (make a choice)
 In case there are no measures taken to ensure that the issue of equal pay, including pay audits, is part of the collective bargaining process at the appropriate level, are measures to be expected in the near future?
 YES /NO

In case there are measures taken to ensure that the issue of equal pay, including pay audits, is part of the collective bargaining process, do you deem these measures to be effective in practise?

YES / NO

40. What are (possible) obstacles for not having any measures, or for the effectiveness of these measures in practise?

- the structure or (minor) role of collective bargaining in your country?
- avoiding economic/administrative burdens?
- the autonomy of the social partners?
- lack of awareness of the problem?

Please elaborate on the main reasons why there are no measures taken, or, if there are, on whether there are any problems as regards their effectiveness in practise.

Other transparency measures

41. Has any other legislative or non-legislative pay transparency measure been taken at national level that cannot be subsumed under the above measures of A-D?

YES/NO

42. If q. 41 is answered affirmative, please provide details as to the nature of the measure, how it is regulated and an evaluation of its (possible) effects so far.

43. Are statistics and administrative data concerning pay transparency and the gender pay gap available at national level? If so, please provide a reference.

44. Has a national impact assessment been carried out in the preparatory stage of proposing pay transparency legislation? If so, please provide a reference. Please also provide a reference to other research assessing impacts of national measures already in place, if available.

Update on (use of) job evaluation systems and the concept of work of equal value

45. Following national law and/or case law should “work of equal value”, as part of an equal pay-claim, be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved?

YES/NO

46. Are there any recent noteworthy developments in the national law or case law as regards (a more) explicit definition of “work of equal value”?

47. Generally speaking, is the use of formal job evaluation and classification systems in order to set wages for particular job positions or categories common in your country in the private sector?

YES/NO

48. Generally speaking, is the use of formal job evaluation and classification systems in order to set wages for particular job positions or categories common in your country in the public sector?

YES/NO

49. Are there recent (legislative) developments as regards the introduction of the requirement for companies to establish (gender-neutral) job evaluation and classification systems?

50. Even if not required by law, do companies generally establish them on a voluntary basis?

51. Concluding question: please add any important information on pay transparency in your country that could not be provided clearly under the former questions. We are interested in main obstacles but also best practices as regards national initiatives to further pay transparency!

Part II Analysis of the capability of pay transparency measures to further individual and systemic (legal and other) actions on combating gender pay discrimination

Introduction to relevancy

This second part of the research focuses on the capability of national pay transparency measures (as recommended by the Commission or otherwise) to provide ‘relevant information’ in order to:

- Make legal (individual or collective) equal pay claims before a court of law possible or more likely
- To assess possible unlawful gender pay discrimination in wage structures or policies by employers, works councils and/or social partners in order to remedy this.

Therefore, the following questions only have to be answered when indeed one or more pay transparency measures, regulations or mechanisms are present in national legislation, case law or on a voluntary basis. This may involve measures, recordings, duties, rights, legal concepts etc. that are *in principle* capable of generating (more) information on either:

- Individual or average pay levels or pay differentials according to gender;
- wage structures generally;
- ‘work of equal value’, or
- evaluation, classification or ranking of jobs.

Please answer in any case:

52. Is there any pay transparency measure/mechanism as described above present at national level?

YES/NO

If q. 52 is answered negatively, thank you for your efforts! You have reached the end of the questionnaire. If q. 52 is answered affirmative, please proceed to Part II below.

Questions Part II:

A Furthering equal pay claims before a court of law by transparency measures

Nb. The following questions seek to answer which information is necessary or helpful from a legal point of view to start or establish a prima facie case of possible gender pay discrimination under national law. So, what facts, and therefore what information, can make the burden of proof shift to the employer? The questions do therefore not see to whether the case could be won, whether there would be definite proof or whether there would be an objective justification for pay differentials. Even if a shift in the burden of proof is not common in your legal system, try to establish what facts on pay differentials must be established in the least, to make ‘the first move’ in starting legal procedures.

53a. Is it possible under national law (interpreted broadly: any binding regulation, case law, national practice) to make a prima facie case by showing a pay difference between the plaintiff (individual employee) and a colleague of the other sex performing **the same work in the same company**?

53b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?

54a. Is it possible under national law to make a prima facie case by showing a pay difference between the plaintiff (individual employee) and a colleague of the other sex performing **different jobs but work of equal value in the same company**?

54b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?

- 55a. Is it possible under national law to make a prima facie case by showing a pay difference between the plaintiff (individual employee) and a colleague of the other sex performing **the same work or work of equal value at a different company, if the wages are set by the same (multi-employer) collective agreement**?
- 55b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?
- 56a. Is it possible under national law to make a prima facie case by showing that **a specific seemingly neutral pay criterion or specific pay practise applied, either at company level or under a multi-level collective agreement, has a disparate impact** (indirect discriminatory effect) on average pay levels among comparable groups of male and female employees?
- 56b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?
- 57a. Is it possible under national law to make a prima facie case by **showing that, in relation to a relatively large number of employees, the average pay for women is less than that for men, when the pay system is totally lacking in transparency** (ECJ *Danfoss*, Case 109/88)?
- 57b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?
- 58a. Is it possible under national law to make a prima facie case by showing **a difference in average pay between different job groups which present, respectively, female-dominated work and male-dominated work of equal value?** (ECJ *Enderby*, Case C-127/92)?
- 58b. What facts must at a minimum be established in such a case and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?
- 59a. Are there **any other ways or methods**, not mentioned above, to make a prima facie case of possible gender pay discrimination under national law? Please elaborate which ones.
- 59b. What facts must at a minimum be established in any of these cases and (how) may any of the national pay transparency measures/mechanisms present in your country contribute to obtaining this information?

B Furthering actions outside the law by transparency measures in order to evaluate or criticise existing wage regulations, systems or practices, including job evaluation, for possible gender bias

60. Is the information on pay that can be obtained in your country by means of national pay transparency measures:
- a) Capable of stimulating action by individual employees and, if so, how?
Please elaborate on the adequacy of the information that can be obtained or that is stimulated. To give some examples:
- Is the information for instance capable of identifying comparators?
 - Is the information for instance capable of identifying which wage regulations and requirements explain the individual gross basic wage per month received and additional allowances received?
 - Is the information capable of identifying how the individual job performed is evaluated or ranked against other jobs in the company?
- b) Capable of stimulating action by social partners, works councils or employers and, if so, how?
Please elaborate on the adequacy of the information that can be obtained or that is stimulated. To give some examples:
- Does it provide or stimulate insight in the gender pay gap in the company or sector?
 - Does it analyse what could be explanations for any gender pay gap?

- Does it stimulate to evaluate wage structures applied for gender bias?
- Does it stimulate to evaluate job classifications systems for gender bias?
- Does it stimulate to make wage structures or job evaluation generally more transparent?

c) Capable of stimulating action by equality bodies or governmental bodies and, if so, how?

Please elaborate on the adequacy of information for especially equality bodies or governmental bodies to stimulate or enable them to take further action in narrowing the gender pay gap.

Annex III References of national statistics on gender pay gap EU + 3

Country	Office	Title	Reference
Austria	1) Statistik Austria / competent Ministry 2) Rechnungshof	1) Annual Gender Index 2) bi-annual income reports	1) https://www.bmb.gv.at/frauen/gender/gender_index_2015.pdf?5i844w 2) http://www.rechnungshof.gv.at/fileadmin/downloads/2015/berichte/einkommensberichte/Kurzfassung_Einkommensbericht_2015_1.pdf
Belgium	The Institute for Equality of Women and Men	L'écart salarial entre femmes et hommes, latest edition 2015, available in French and Dutch	http://www.igvm-iefh.belgium.be
Bulgaria	Not reported	Not reported	Not reported
Croatia	Croatian Bureau of Statistics	Women and Men in Croatia	http://www.dzs.hr/Hrv_Eng/menandwomen/men_and_women_2015.pdf
Cyprus	Cystat	Not reported	http://www.cystat.gov.cy/mof/cystat/statistics.nsf/labour_34main_gr/labour_34main_gr?OpenForm&sub=4&sel=2
Czech Republic	Not reported	Not reported	https://www.czso.cz/documents/10180/25705258/3000024437.pdf/821e3ddb-3cf2-49e7-8c0f-e7efacf754c7?version=1.1
Denmark	Ministry for Employment	Report on Women and Men in the Labour Market	http://ligelon.dk/graphics/Dokumenter/Udgivelser/2008/0828_Loenforskelle.pdf
Estonia	Statistics Estonia	Indicators of Gender Equality	http://pub.stat.ee/px-web.2001/l_Databas/Social_life/databasetree.asp
Finland	Not reported	Not reported	Not reported
France	Not reported	Not reported	http://www.inegalites.fr/spip.php?article972
Germany	Ministry for Family, Senior Citizens, Women and Youth	1) Entgeltungleichheit zwischen Frauen und Männern in Deutschland 2) Entgeltungleichheit – gemeinsam überwinden. Repräsentativbefragung 3) Anonymisierte Ergebnisse der Beispielsanalyse ausgewählter Tarifverträge	1) http://www.bmfsfj.de/BMFSFJ/Service/publikationen,did=126800.html 2) http://www.bmfsfj.de/BMFSFJ/Service/publikationen,did=126208.html 3) http://www.bmfsfj.de/BMFSFJ/Service/publikationen,did=208736.html
Greece	Not reported	Not reported	Not reported
Hungary	The Central Statistical Office	Women and Men in Hungary, 2014	http://www.ksh.hu/apps/shop/kiadvany?p_kiadvany_id=96924&p_temakor_kod=KSH&p_session_id=884599905006552&p_lang=HU
Iceland	Not reported	Not reported	Not reported
Ireland	Central Statistics Office	Women and Men in Ireland 2013	http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/socialcohesionlifestyleslist/socialcohesionlifestyles/
Italy	Istat	Women's participation in economic and social life	http://www.istat.it/it/files/2011/01/allegato.pdf?title=Partecipazione+donne+a+vita+economica+e+sociale+-+26%2Fgen%2F2010+-+Allegato+statistico.pdf
Latvia	Latvian Central Statistics Bureau	General information	http://www.csb.gov.lv/

Country	Office	Title	Reference
Liechtenstein	Not reported	Not reported	Not reported
Lithuania	Department of Statistics	Not reported	http://osp.stat.gov.lt/en/statistiniu-rodikliu-analize?portletFormName=visualization&hash=e25aa773-4c67-4471-99d9-f70f46cbbc35
Luxembourg	Monitoring Centre for Employment	Not reported	http://www.statistiques.public.lu/fr/actualites/conditions-sociales/conditions-vie/2013/07/20130702/index.html?highlight=femmes%22salaire
Malta	The National Statistics Office	1) Labour Force Survey 2) Structure of Earnings Survey 3) Gender pay gap statistics	1) https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C2/Labour_Market_Statistics/Documents/2016/News2016_101.pdf 2) https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_C2/Labour_Market_Statistics/Pages/Structure-of-Earnings-Survey.aspx 3) https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_C2/Labour_Market_Statistics/Pages/Gender-Pay-Gap.aspx
Netherlands	Not reported	Not reported	https://www.loonwijzer.nl/home/vrouwenloonwijzer/belonningsverschillen-m-v/belonningsverschillen-m-v/#waarom-verdienevrouwen-gemiddeld-minder-dan-mannen-
Norway	Statistics Norway	Not reported	http://www.ssb.no/en/
Poland	1) Central Statistical Office (GUS) 2) National Pay Survey by Sedlak & Sedlak	Not reported	1) https://www.stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5821/1/5/1/pw_kobiety_i_mezczyzni_na_ryнку_pracy.pdf 2) http://finanse.wp.pl/gid.18234886.kat.1033781.title.Wynagrodzenia-kobiet-i-mezczyzn-w-2015-roku-Dysproporcje-nadal-duze.galeria.html?ticaid=119076
Portugal	1) Instituto Nacional de Estatística 2) CITE 3) Trade unions	Not reported	1) www.ine.pt 2) www.cite.gov.pt 3) www.ugt.pt www.cgtp.pt
Romania	The National Institute of Statistics	Not reported	http://statistici.insse.ro/shop/?page=tempo2&lang=ro&context=15
Slovakia	The Statistical Office of the Slovak Republic	Development of structure and differentiation of wages in the years 1997-2006. It also issued an annual report, Gender Equality	https://slovak.statistics.sk/wps/portal/!ut/p/b1/hZHNkqJAEISfZR7AoZvf5tglI43Qyk8PwoVAVAR
Slovenia	Not reported	Not reported	Not reported
Spain	Not reported	Not reported	Not reported
Sweden	Swedish National Mediation Office	Not reported	www.medlingsinstitutet.se
United Kingdom	Office for National Statistics	Annual Survey of Hours and Earnings	http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/previousReleases

Annex IV Commission recommendation C(2014) 1405 final

COMMISSION RECOMMENDATION

of 7.3.2014

on strengthening the principle of equal pay between men and women through transparency

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Articles 2 and 3(3) of the Treaty on European Union enshrine the right to equality between women and men as one of the essential values and tasks of the Union.
- (2) Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU) provide that the Union shall aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based on sex in all its activities.
- (3) Article 157(1) of the TFEU obliges each Member State to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
- (4) Article 23 of the Charter of Fundamental Rights of the European Union provides that equality between women and men must be ensured in all areas, including employment, work and pay.
- (5) Equal pay for equal work and work of equal value is one of the five priorities established in the Women's Charter, which reaffirms the Commission's commitment to a forceful mobilisation of all instruments, both legislative and non-legislative, to close the gender pay gap. The Strategy for equality between women and men 2010-2015 builds on the priorities of the Women's Charter. The Strategy sets out that the Commission will explore possible ways to improve the transparency of pay.
- (6) Directive 2006/54/EC of the European Parliament and of the Council¹ provides that for the same work or for work of equal value, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it should be based on the same criteria for both men and women and should be drawn up so as to exclude any discrimination on grounds of sex.
- (7) Women in the Union still earn an average of 16.2% less than men for each hour worked (Eurostat 2011), in spite of their significant progress in terms of educational achievements and work experience. This indicates a persistent gender pay gap that has up to now only been reduced at a very slow pace.
- (8) The Commission Communication COM(2007) 424 final² concluded that women continue to be affected by gender pay discrimination and inequalities in the labour market which prevents them from realising their full potential. Conspicuous direct pay discrimination for the exact same work has become a rather rare occurrence. However, the existing legal framework has been less effective in

1 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 18 July 2007 "Tackling the pay gap between women and men".

ensuring implementation of the principle of equal pay for work of equal value. Such discrimination is less likely to be the subject of a court case not only because potential victims are probably not aware of it, but also because it is more difficult for victims of pay discrimination to effectively enforce the principle of equal pay. Victims have to establish the facts that give rise to a presumption of discrimination in order to shift the burden of proof to the employer. Obscure pay structures and a lack of available information about pay levels of employees performing the same work or work of equal value are major contributing factors to these difficulties.

- (9) The Commission Communication COM(2010) 543 final³ listed further improvements in transposing, implementing and enforcing Union legislation among its priorities in the field of smart regulation.
- (10) The European Parliament adopted on 18 November 2008⁴ and 24 May 2012⁵ resolutions on equal pay between men and women with recommendations on how to better implement the principle of equal pay. Those recommendations include the introduction of wage transparency measures and gender-neutral job evaluation and classification systems.
- (11) In its Conclusions of 6 December 2010 on strengthening the commitment and stepping up action to close the gender pay gap, and on the review of the implementation of the Beijing Platform for Action,⁶ the Council invited Member States to put in place measures that tackle the causes of the gender pay gap, particularly ones that promote pay transparency and gender-neutral job evaluation and classification.
- (12) The Commission Communication COM(2013) 83 final⁷ calls on Member States to take efforts to close the gender pay gap, to address other barriers to women's participation in the labour market and to encourage employers to address workplace discrimination as part of efforts to pursue a strategy of active inclusion.
- (13) The Commission's Report to the European Parliament and the Council COM(2013) 861 final⁸ indicates that implementation of the equal pay principle is hindered by a lack of transparency in pay systems, a lack of legal certainty on the concept of work of equal value, and by procedural obstacles. These obstacles include employees lacking the information they need to make a successful equal pay claim and in particular information about the pay levels for categories of employees who perform the same work or work of equal value.
- (14) Union level action to facilitate implementation of the equal pay principle would help national authorities and relevant stakeholders to step up their efforts in tackling the gender pay gap and pay discrimination through better implementation of current legal requirements. While fully respecting the principle of subsidiarity, it is a necessary to enhance effective application of the principle of equal pay in Member States.
- (15) This Recommendation should focus on transparency of wage categories, which is essential for the effective application of the equal pay principle. Increased transparency can reveal a gender bias and discrimination in the pay structures of an undertaking or organisation. It enables employees, employers and social partners to take appropriate action to ensure implementation of the equal pay principle. This Recommendation should present a tool box of measures designed to assist Member States in taking a tailor-made approach to improving wage transparency. Member States

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 8 October 2010 "Smart Regulation in the European Union".

4 OJ C 16 E, 22.1.2010, p. 21.

5 P7_TA(2012)0225.

6 OJ C 345, 18.12.2010.

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 February 2013 "Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014- 2020" (page 11).

8 Report from the Commission to the European Parliament and the Council on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

should be encouraged to implement the most appropriate measures for their specific circumstances and to implement at least one of the core measures enhancing transparency set out in this Recommendation (entitlement to request pay information, company reporting, pay audits, equal pay collective bargaining).

- (16) Enabling employees to request information on pay levels, including complementary or variable components such as payments in kind and bonuses, for other categories of employees performing the same work or work of equal value, broken down by gender, would make the wage policy of an undertaking or organisation more transparent. It would also improve the chances of individual legal action in discrimination cases succeeding before national courts and would consequently have a dissuasive effect.
- (17) Employers' regular reporting of wages by category of employee or position, broken down by gender would also improve wage transparency and constitute a reliable basis for discussions on measures to implement the equal pay principle. Such collective disclosure of wages should not be required for undertakings and organisations with fewer than 50 employees which meet the workforce-related criteria for small undertakings in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises,⁹ as it could place a disproportionate burden on them.
- (18) Pay audits should make it easier to analyse the gender equality aspects of pay and to reach conclusions on the application of the principle of equal pay. Pay audits could be the basis for discussion between employers and workers' representatives aiming to eliminate gender discrimination in pay. The measures relating to pay audits should not be required for undertakings and organisations with fewer than 250 employees which meet the workforce-related criteria for medium-sized undertakings in Commission Recommendation 2003/361/EC, as they could place a disproportionate burden on them.
- (19) Encouraging or obliging social partners to discuss and give particular attention to matters of equal pay in collective bargaining is another way of increasing wage transparency and addressing the gender pay gap.
- (20) Compiling wage statistics broken down by gender and providing Eurostat with accurate and complete statistics is essential for analysing and monitoring changes in the gender pay gap at European level. Council Regulation (EC) No 530/1999¹⁰ requires Member States to compile four-yearly structural earnings statistics that facilitate calculation of the gender pay gap. For 2006 and 2010, the gender pay gap was calculated from the data collected by the Structure of Earnings survey. For 2007 to 2009, gender pay gap data were transmitted on a voluntary basis, often with delays and in draft form subject to later revision. Annual high-quality statistics could increase transparency and further enhance awareness of the gender inequality problem as regards pay. The availability and comparability of such data is instrumental for assessing developments throughout the Union.
- (21) The lack of a definition of work of equal value, including a clear indication of the assessment criteria for comparing different jobs, is a major obstacle for victims of pay discrimination bringing claims before the courts. To assess whether employees are performing work of equal value, a range of factors including the nature of the work, training and working conditions, must be considered. Including such a definition and job evaluation and classification criteria in national laws would help victims of pay discrimination to bring claims before national courts.
- (22) Gender-neutral job evaluation and classification systems are effective in establishing a transparent pay system. They detect indirect pay discrimination related to the undervaluation of jobs typically done by women since they measure and compare jobs whose content is different but of equal value and so support the principle of work of equal value. Member States, social partners and

⁹ OJ L 124, 20.5.2003, p. 36.

¹⁰ Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs (OJ L 63, 12.3.1999, p. 6).

employers are encouraged to promote the development and use of gender-neutral job evaluation and classification systems, drawing inspiration from Annex 1 of the Commission Staff Working Document accompanying the Report on the application of Directive 2006/54/EC.¹¹

- (23) Involving equality bodies is instrumental in effectively applying the principle of equal pay. The powers and mandates of the national gender equality bodies should therefore be adequate to cover gender pay discrimination, including any transparency obligations. Procedural and cost-related obstacles that victims of pay discrimination face should be alleviated by enabling equality bodies to represent individuals. This would reduce the litigation risk for individual employees and could be a possible remedy for the current significant scarcity of equal pay cases that are brought to court.
- (24) Awareness-raising activities inform stakeholders about the existence and importance of the equal pay principle. Member States should be encouraged to raise awareness among undertakings and organisations, social partners and the general public in order to effectively promote the equal pay principle, use job evaluation and classification methods free from gender bias and tackle the gender pay gap more generally. Actions at the level of undertakings and organisations are also necessary,

11 Commission Staff Working Document accompanying the Report from the Commission to the Council and the European Parliament on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, SWD(2013) 512 final.

HAS ADOPTED THIS RECOMMENDATION:

I. SUBJECT MATTER

1. This Recommendation provides guidance to Member States to assist them in a better and more effective implementation of the equal pay principle in order to combat pay discrimination and to contribute to tackling the persistent gender pay gap.

II. WAGE TRANSPARENCY

2. Member States should encourage public and private employers and social partners to adopt transparency policies on wage composition and structures. They should put in place specific measures to promote wage transparency. In particular, these measures should include one or more of the actions referred to in points 3 to 6 in an approach tailor made to the specific domestic situation.

Right of employees to obtain information on pay levels

3. Member States should put in place appropriate and proportionate measures to ensure that employees can request information on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value. This information should include complementary or variable components beyond the fixed basic salary, such as payments in kind and bonuses.

Reporting on pay

4. Member States should put in place measures that ensure that employers in undertakings and organisations with at least 50 employees regularly inform employees, workers' representatives and social partners of the average remuneration by category of employee or position, broken down by gender.

Pay audits

5. Member States should take appropriate measures to ensure that pay audits are conducted in undertakings and organisations with at least 250 employees. These audits should include an analysis of the proportion of women and men in each category of employee or position, an analysis of the job evaluation and classification system used and detailed information on pay and pay differentials on grounds of gender. These audits should be made available to workers' representatives and social partners on request.

Collective bargaining

6. Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States should ensure that the issue of equal pay, including pay audits, is discussed at the appropriate level of collective bargaining.

Statistics and administrative data

7. Member States should further improve the availability of up-to-date gender pay gap data by providing Eurostat with statistics annually and in a timely manner. These statistics should be broken down by gender, economic sector,¹² working time (full- time / part-time), economic control (public / private ownership) and age and be calculated on an annual basis.
8. Member States should also provide the Commission with data on the number and types of pay discrimination cases when notifying it in accordance with point 18.

12 At least NACE Rev.2, sections B to S except O.

Data Protection

9. To the extent that any information provided pursuant to measures taken under points 3 to 8 involves the disclosure of personal data, it should be provided in accordance with national data protection laws, in particular those implementing Directive 95/46/EC of the European Parliament and of the Council.

Concept of work of equal value

10. In line with the case-law of the Court of Justice of the European Union, Member States should clarify the concept of “work of equal value” in their legislation. The value of work should be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved.

Job evaluation and classification systems

11. Member States should promote the development and use of gender-neutral job evaluation and classification systems, including in their capacity as employers in the public sector, to prevent or identify and tackle possible pay discrimination based on gender-biased pay scales. They should specifically encourage employers and social partners to introduce gender-neutral job evaluation and classification systems.
12. As regards gender-neutral job evaluation and classification systems, Member States are encouraged to draw inspiration from the Annex 1 of the Commission Staff Working Document accompanying the Report on the application of Directive 2006/54/EC.¹³

III. HORIZONTAL PROVISIONS

Equality Bodies

13. Member States should ensure that their national equality bodies’ powers and mandates cover issues related to gender pay discrimination, including transparency obligations. Where applicable, Member States should give equality bodies’ the right to access the information and audits referred to in points 4 and 5 of this Recommendation.
14. Member States should reduce procedural obstacles to the bringing of equal pay cases to court by enabling equality bodies to represent individuals in cases of pay discrimination.
15. Member States should ensure closer cooperation and coordination between the national equality bodies and national bodies that have an inspection function in the labour market.

Monitoring and enforcement

16. Member States should ensure the consistent monitoring of the implementation of the principle of equal pay and the enforcement of all available remedies for pay discrimination.

13 SWD(2013) 512 final.

Awareness-raising activities

17. Member States should raise awareness among public and private undertakings and organisations, social partners and the general public to promote equal pay, the principle of work of equal value and wage transparency, to tackle the causes of the gender pay gap, and devise tools to help analyse and assess pay inequalities.

IV. FOLLOW-UP

18. Member States should take the necessary measures to ensure the application of this Recommendation and are invited to notify the Commission of these measures by 31 December 2015, in order to enable the Commission to closely monitor the situation, to draw up a report on progress made in implementing this Recommendation and, on that basis, to assess the need for further measures.

V. FINAL PROVISIONS

19. The Recommendation is addressed to all Member States. It is also addressed to the social partners, in particular in the Member States where in accordance with the national law and practice, the social partners have a specific responsibility for implementing the principle of equal pay by concluding collective agreements.

Done at Brussels, 7.3.2014

For the Commission
Viviane REDING
Vice-President

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