

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 7 March 2014

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

(Text with EEA relevance)

(2014/124/EU)

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) Article 2 and Article 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 Council ⁽¹⁾ 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 final ⁽²⁾ 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 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.

⁽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'.

- (9) The Commission Communication COM(2010) 543 final⁽¹⁾ 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 2008⁽²⁾ and 24 May 2012⁽³⁾ 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⁽⁴⁾, 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 final⁽⁵⁾ 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 final⁽⁶⁾ 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 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 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⁽⁷⁾, as it could place a disproportionate burden on them.

⁽¹⁾ 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'.

⁽²⁾ OJ C 16 E, 22.1.2010, p. 21.

⁽³⁾ P7_TA(2012)0225.

⁽⁴⁾ OJ C 345, 18.12.2010, p. 1.

⁽⁵⁾ 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).

⁽⁶⁾ 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.

⁽⁷⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (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 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 530/1999 ⁽¹⁾ 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 employers are encouraged to promote the development and use of gender-neutral job evaluation and classification systems, drawing inspiration from Annex 1 to the Commission Staff Working Document accompanying the Report on the application of Directive 2006/54/EC ⁽²⁾.
- (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,

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.

⁽¹⁾ 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).

⁽²⁾ 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.

II. WAGE TRANSPARENCY

- 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

- 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

- 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

- 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

- 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

- 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 ⁽¹⁾, working time (full-time/part-time), economic control (public/private ownership) and age and be calculated on an annual basis.
- 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.

Data protection

- 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⁾.

Concept of work of equal value

- 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

- 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.
- As regards gender-neutral job evaluation and classification systems, Member States are encouraged to draw inspiration from Annex 1 to the Commission Staff Working Document accompanying the Report on the application of Directive 2006/54/EC.

⁽¹⁾ At least NACE Rev.2, sections B to S except O.

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

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.

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. This 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 March 2014.

For the Commission

Viviane REDING

Vice-President
