

Evaluation of the relevant provisions of EU law implementing the Treaty principle on 'equal pay for equal work or work of equal value'

Fields marked with * are mandatory.

Public consultation on the Evaluation of the relevant provisions of EU law implementing the Treaty principle on 'equal pay for equal work or work of equal value'

Introduction

The [Gender Equality Recast Directive](#) requires Member States to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. Besides, Member States have to introduce measures to enable persons who consider themselves wronged by a failure to apply the principle of equal treatment to pursue their claims by judicial process, possibly after recourse to other competent authorities. Therefore, effective, proportionate and dissuasive penalties for breaches of the obligations under the Directive must be provided by the Member States. The Directive also lays down rules to alleviate the burden of proof on claimants pursuing discrimination claims, including pay discrimination, and contains provisions regarding victimization, protecting persons lodging complaints from adverse treatment.

An [evaluation of the implementation of Gender Equality Recast Directive](#) carried out in 2013 showed that the main challenge is to implement the provisions of the Directive relating in particular to the enforcement and legal interpretation of the principle of 'equal pay for work of equal value'. It also demonstrated that the problem of gender pay inequalities is greater in the private sector, where there is generally more discretion in wage setting. These problems are confirmed by cases brought before the Court of Justice of the European Union, cases reported by the equality bodies and complaints submitted to the European Commission.

In order to raise awareness about the persistence of (unconscious) gender bias in pay and to incentivize companies to take initiatives to analyse and revise their pay structures, the [2014 Pay Transparency Recommendation](#) provided four core measures to improve pay transparency. Member States were encouraged to implement the most appropriate measures in view of their specific circumstances and include at least one of these core measures. However, the [2017 Implementation Report of the Recommendation](#) revealed very limited follow-up to the Recommendation: in a third of Member States, transparency-enhancing measures are still entirely absent. It also revealed that the current national transparency measures in place are insufficient and not effective on their own.

As a result, the Commission decided to launch a more in-depth evaluation of the existing EU legal provisions of the Gender Equality Recast Directive and Pay transparency recommendation implementing the Treaty principle on "equal pay for equal work and work of equal value" for women and men. The present public consultation is intended to feed into that assessment.

IMPORTANT NOTICE ON THE PUBLICATION OF CONTRIBUTIONS

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* Organisation name

255 character(s) maximum

* Organisation size

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- Large (250 or more)

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- American Samoa
- Andorra
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- Antigua and Barbuda
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- Australia
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- Azerbaijan
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- Belarus
- Belgium
- Belize
- Benin
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- Bhutan
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- Bosnia and Herzegovina
- Botswana
- Bouvet Island
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- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- Former Yugoslav Republic of Macedonia
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
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- Nigeria
- Niue
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- Northern Mariana Islands
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
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- Swaziland
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
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- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
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- Trinidad and Tobago

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| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Poland | <input type="radio"/> Uruguay |
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| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Helena
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Tristan da Cunha | <input type="radio"/> Yemen |
| <input type="radio"/> Czech Republic | <input type="radio"/> Lebanon | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Lucia | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Martin | |

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Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

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Background documents:

1. [The Treaty on the Functioning of the European Union](#) (see Article 157);
2. [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);

3. [Commission Recommendation of 7 March 2014](#) on strengthening the principle of equal pay between men and women through transparency;

4. [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), COM(2013) 861 final;

5. [Report from the Commission](#) to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Commission Recommendation on strengthening the principle of equal pay between men and women through transparency, COM(2017) 671 final

Consultation questions

I. General part

The principle of equal pay between women and men is enshrined in Article 157 of the Treaty on the Functioning of the European Union. In line with the Treaty, Gender Equality Recast Directive 2006/54/EC prohibits any direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration for the same work or work to which equal value is attributed. It requires that where a job classification system is used for determining pay, it should be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

In accordance with settled case-law of the Court of Justice of the EU, the notion of “pay” includes not only basic pay, but also, for example, overtime supplements, special bonuses paid by the employer, travel allowances, compensation for attending training courses and training facilities, termination payments in the case of dismissal and occupational pensions. Furthermore, 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.

Member States should ensure that all employment-related arrangements, including provisions in individual or collective agreements and contracts, internal company rules, rules governing independent professions and rules governing employees’ and employers’ organisations contradicting the principle of equal pay should be or may be declared null and void or may be amended.

1. Would you say that men and women are paid equally for the same work or work of equal value in your country?

- Yes
- Partially
- No
- Do not know

Comments, if any:

No, men and women are still not equally paid for the same work or work of equal value in Belgium. Following the most recent Belgian statistics (from 2014), women are paid 7,6% less per hour than men, and the gender pay gap based on the annual salary is even higher (20,6%), which highlights the unequal distribution of care tasks.

The main factor contributing to the gender pay gap is the care penalty. Women still perform the majority of unpaid care work, such as household work and caring for children, disabled, elderly or frail. This has an effect on their availability to be present on the labour market forcing women to reduce their paid working hours. As a consequence, this not only reduces their overall income, but also their career progression, time for training or retraining, but also affect their hourly-wage and pension income. In addition, there is the perception women with children are less available, competent and are discriminated in terms of promotions, access to training, more senior positions etc.

The feminisation of poverty in old age is a very serious challenge (with a gender pension gap of 39% on average in the EU) we could tackle if the gender gap gap was reduced.

2. How effective do you consider that the implementation of the equal pay principle in your country is?

	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Do not know
In the public sector	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In associations and non-governmental organisations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
In academic / research funding and performing organisations, including universities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
In the private sector, in particular:	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Large enterprises (from 250 employees)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Medium-sized enterprises (50 to 249 employees)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Small enterprises (10 to 49 employees)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Microenterprises (less than 10 employees)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

In public services the pay structure is governed by objective criteria and by the general principle of equality before the law (Article 10 of the Constitution). Consequently, knowing the rank of a staff member, gross remuneration is transparent (2018 Belgium Country report on gender equality from the European network of Legal experts on gender equality and non-discrimination commissioned by the European Commission).

Therefore the gender pay gap is lower in the public sector because wages are decided in advance and pay levels (salary brackets) are set up by category. However, there still a gender pay gap which is a result of direct discrimination of women in practice not in the legislation. In the private sector, there is a bigger margin for wage negotiation and therefore a bigger pay gap. It is absolutely necessary to also have more transparency on pay grids ("grilles de rémunération") to be able to identify when discrimination occurs.

The 2012 Belgian Gender-Equality Act covers both sectors. In the private sector, the wage gap increases with the size of the company, except in 1000 or more employees enterprises, where it slightly decreases as salaries are also decided by category (position) level.

3. In your opinion, which of the following measures enshrined in the Gender Equality Recast Directive have been effective in your country in facilitating respect of equal pay rights for women and men?

	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Do not know	No such measures in my country
Access to information on pay levels in the private sector	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to information on pay levels in the public sector	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enforceable rules on equal pay for equal work	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enforceable rules on equal pay for work of equal value	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of gender-neutral job classification systems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The use of gender-neutral job evaluation systems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Recurrent analysis and review of pay structures at employer level	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promotion of social dialogue between the social partners	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

Belgium adopted a legislation in 2012 to tackle the gender pay gap (hereafter “the Gender Act”), which contains enforceable rules on equal pay for equal work or for work of equal value. The main points of this legislation are the improvement of pay transparency, the encouragement of social dialogue concerning all levels where wages are set up, the development of gender-neutral classifications and the limitation of paperwork (bureaucracy) (especially for small enterprises).

However, considering there are no new figures on the gender pay gap in Belgium since 2014, it’s really difficult to assess the effectivity of that new legislation. It is of the utmost importance to impose a recurrent measurement of the gender pay gap, and a regular impact assessment of the measures adopted.

4. In your opinion, which of the following measures enshrined by the Gender Equality Recast Directive have been effective in your country in ensuring the protection of a worker claiming enforcement of his/her rights to equal pay?

	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Do not know	No such measures in my country
In case of a legal claim by an employee, putting a duty on the employer to prove that there has been no breach of the principle of equal pay (burden of proof)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Right to adequate compensation / reparation for victims of discrimination	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Protection of employees lodging complaints against dismissal or other adverse treatment	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Effective, proportionate and dissuasive penalties for discrimination faced by employees	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

The burden of proof lies on the employer, but the shift in the burden of proof requires the victim to first establish the facts that support the presumption of discrimination. Only then will the employer be required to prove the absence of discrimination.

The protection against victimisation is applicable during twelve months after the complaint was filed, or until the end of a three-month period following the delivery of a final judgment in the case. When an employee has been dismissed by way of retaliation, the sanction is often that the dismissal, or any other disadvantageous treatment by the employer, is considered to be null and void. Consequently, the employee concerned is reinstated in his/her job and/or all other disadvantageous treatment is eliminated. If reinstatement is not possible, fixed damages equal to six months' gross remuneration are due.

Pay discrimination on the ground of sex is a misdemeanour/criminal offence and is therefore subject to criminal sanctions. Practices of discrimination in employment relations are considered to be penal offences under the Belgian Gender Act. The perpetrator of various breaches of that Act is liable to a term of imprisonment of between one month up to one year and/or a fine of 400 up to 8000 Euros. The dissuasive character of that sanctions varies depending on the size and turnover of the companies.

5. Would you agree/disagree with the following statements about the broader impact of the Gender Equality Recast Directive and EU Pay Transparency Recommendation?

	Agree	Somehow agree	Somehow disagree	Disagree	Do not know
There has been increased public debate about the need to ensure pay transparency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
There has been increased public debate about the need to introduce effective measures to ensure the implementation of equal pay for work of equal value	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There has been increasing attention by employers and trade unions to develop gender neutral job classification and job evaluation systems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The need for pay transparency has been increasingly taken into account in wider policy measures	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The need to ensure equal pay for work of equal value has impacted policy actions more widely	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Equality bodies have been empowered to play a more significant role in implementing the principle of equal pay for work of equal value by supporting enforcement (e.g. in providing guidance, receiving complaints, victim representation)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

There has been an increased public debate about pay transparency when the Gender-Equality Act was adopted. However, at present time that debate has decreased. A very popular preventive campaign is the 'equal pay day' initiative set up in Belgium. The empowerment of the Belgian equality body and trade unions has played a very effective role in increasing pay transparency. On the other hand, the situation is less clear regarding employers, particularly in the private sector.

6. Would you agree/disagree with the following statements about the national measures in your country facilitating respect of equal pay rights for women and men and protection of a worker claiming his/her rights?

	Agree	Somehow agree	Somehow disagree	Disagree	Do not know
National measures made employers aware of (unconscious) gender bias in pay	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
National measures made employees aware of gender pay gaps	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
National measures allowed for comparisons of job content to find a comparator performing work of equal value even where one is not present in the same employer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
National measures triggered employers to analyse their pay structures and assess the extent of pay discrimination based on gender	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
National measures ensured that follow-up actions are taken by employers where unjustified gender gaps in pay have been revealed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
National measures helped to ensure access to justice for victims of gender-based pay discrimination	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

In our opinion gender pay gaps remain very difficult to detect at employee level. This is due to the indirect character of the discrimination suffered by women and particularly mothers. There is also a taboo in Belgium in openly speaking about the wages people earn. In the private sector, women are paid on average less than men in equal/similar positions. The fact that they have care responsibilities makes them less available at work and they are perceived as less competent for the job. This has a negative impact in their career progression and the increase in their salaries.

7. Do you think that over the last 10 years progress has been made in your country in facilitating the enforcement of equal pay rights for women and men?

- Agree
- Somewhat agree
- Somewhat disagree
- Disagree
- Don't know

Comments or explanations, if any:

Since 2009 to 2014 the gender pay gap on hourly basis has reduced from 11% to 7,6%, and on annual basis it has been reduced from 23% to 20,6%. However, the gender pay gap based on annual wages have been stagnating between 2013 and 2014 and there are no new figures since 2014. Five years have elapsed without any new calculations, or at least these calculations are not available. It is urgent to collect new figures on the situation of gender pay gap to assess if the new legislation from 2012 is bearing its fruits.

The Gender Equality Act of 22nd April 2012 on equal pay aims to better understand and fight against pay gaps at all levels: at inter-professional level via the obligation for social partners to negotiate measures to tackle the pay gap, at sectoral level, notably through the introduction of classifications of gender-neutral jobs and finally at company level through the organization of mandatory consultations and the adoption of equality plans.

In addition, various implementing decrees have been adopted: Royal Decree of 17 August 2013 implementing chapter 4, section 2, of the law of 22 April 2012 to combat the pay gap between men and women; Royal Decree of 25 April 2014 on the analysis report on the structure of workers' compensation; Royal Decree of 25 April 2014 relating to the Ombudsman in the fight against the pay gap between men and women; Ministerial Order of 25 April 2014 setting out the model forms to be used as a basis for the analysis report on the workers' compensation structure.

Despite the fact that there has been improvements in the legislation, enforcement remains difficult in practice.

8. Do you think that over the last 10 years progress has been made in your country in ensuring the protection of workers claiming these rights (e.g. against dismissal or adverse treatment by employer)?

- Agree
- Somewhat agree
- Somewhat disagree
- Disagree
- Don't know

Comments or explanations, if any:

Belgian laws protect employees who have lodged a reasoned complaint with the labour inspectorate or who have taken legal action. Indeed, workers enjoy protection against dismissal. The employer cannot terminate their employment relationship or unilaterally change the working conditions of the worker.

In Belgium, protection against victimisation is applicable during twelve months after the complaint was filed, or until the end of a three-month period following the delivery of a final judgment in the case.

It is important to highlight that even if legislation has improved enforcement remains difficult. Due to the scarcity of case law, the only 'landmark' case worth mentioning involved the European Trade Union Institute (of the European Trade Union Confederation), where a female researcher complained of pay discrimination in comparison with male colleagues. The Labour Court of Appeal in Brussels found that the employer's pay system was opaque and simply referred to the CJEU's decision in Case 109/88 Danfoss to conclude that there was gender discrimination. (2018 Belgium Country report on gender equality from the European network of Legal experts on gender equality and non-discrimination commissioned by the European Commission).

9. What are the obstacles to an effective implementation of the principle of equal pay for women and men?

	Agree	Somehow agree	Somehow disagree	Disagree	Do not know
Lack of legal certainty of national equal pay rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of job evaluation systems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of effective application of existing job evaluation systems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of capacity of enforcement bodies	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limitations imposed by data protection rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Entrenched features of collective bargaining systems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limited applicability of the equal pay rules to the private sector	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limited applicability of the equal pay rules to small/medium-sized companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Limited applicability of the equal pay rules to the research organisations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Lack of effective compensation systems for victims	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of dissuasive penalties for employers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of awareness among employees of existing rights equal pay rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of awareness among employers of existing rights equal pay rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Lack of capacity of the public administration to ensure a follow up action is taken by employers, even if unjustified gender gaps in pay have been revealed



Other, please specify:

What is missing from this list of obstacles is the lack of pay transparency which is crucial in order to seek legal remedies to the gender pay gap. Without transparency there will be no possibility to compare salaries and provide proof for redressing inequalities through legal complaints.

The main factor contributing to the gender pay gap is the care penalty. Women still perform the majority of unpaid care work, such as household work and caring for children, disabled, elderly or frail. This has an effect on their availability to be present on the labour market forcing women to reduce their paid working hours. As a consequence, this not only reduces their overall income, but also their career progression, time for training or retraining, but also affect their hourly-wage and pension income.

The gender wage inequality isn't only a pay gap between men and women but more importantly between mothers and women without children (motherhood penalty). It is not the fact of being a women but being the person who performs the care which penalises mothers.

II. Pay transparency

In 2014, the Commission, by adopting Recommendation 2014/124/EU on strengthening the principle of equal pay between men and women through transparency, suggested that every Member State adopt (or adapt) at least one out of four measures ensuring greater transparency of pay:

- employee's right to request information from his /her employer on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value;
- employer's duty to report on wage structures by category of employee or position, broken down by gender;
- analytical gender pay audits in large companies; and
- inclusion of equal pay aspects in collective bargaining and collective agreements

10. How important do you find the below mentioned benefits of the pay transparency measures in your country?

	Very important	Rather Important	Rather unimportant	Not at all important	Do not know	No such measures in my country
The right for employees to request pay information enables employees to enforce their right to equal pay for work of equal value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The employers' duty to provide and publish pay information helps to create an atmosphere of trust	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Having access to pay information increases employees' motivation and productivity	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased employee motivation linking to greater pay transparency helps to reduce labour turnover	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased employee motivation linked to greater pay transparency increases companies' economy performance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater pay transparency contributes to a better image of the employer	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater pay transparency contributes towards the reduction of the gender pay gap	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or explanations, if any:

We believe that pay transparency understood as the right for employees to be informed of pay levels in their workplace is a good principle to apply. However, we are conscious of the difficulty of putting this in practice due to employer's resistance and the right to privacy.

The aim of the questions below is to gather opinions on any possible impact on administrative burden, wages, and working environment resulting from of the implementation of pay transparency measures.

11. How likely do you think the following risks might occur in case pay transparency measures are applied in your country?

	Very large extent	Rather large extent	Rather small extent	Not at all	Do not know	No such measures in my country
Increasing administrative burdens/costs for employers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increasing administrative burdens/costs for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increasing wage demands and /or labour costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Disclosure of pay information leads to a hostile work environment	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limiting employers' freedom to negotiate wages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Other, please specify:

12. In your country, do you think that the implementation of pay transparency measures has led to higher implementation costs compared to the benefits resulting from it?

Please consider both monetary and non-monetary costs for you or your organisation. Please provide explanations, facts and figures below.

- Yes
- No
- Do not know

Comments or explanations, if any:

III. Enforcement measures and protection of victims of gender-based pay discrimination

13. In your country, which enforcement measures are in place against employers in cases of proven pay discrimination based on gender? Which of them do you find dissuasive?

	Very dissuasive	Rather dissuasive	Rather not dissuasive	Not dissuasive	No such measures in my country
Monetary fines	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disqualification from public procurement	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disqualification from public benefits, subsidies	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Publication of pay discrimination judgments	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
“Naming and shaming” an employer guilty of gender-based pay discrimination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other, please specify:

Practices of discrimination in employment relations are considered to be penal offences under the Belgian Gender Act. The perpetrator of various breaches of that Act is liable to a term of imprisonment of between one month up to one year and/or a fine of EUR 400 up to EUR 8 000. The employer is also condemned to pay the victim damages and interests. Although the damages and interests compensate the loss/damages for the victim, the monetary fine is insufficient to have a deterrent effect on certain employers. It would better if the amount of fines was proportional to the turnover of the company.

A declaration on oath is requested from all applicants for public procurement stating that the applicant organization ‘has not been found guilty of sex discrimination in the past five years.

The 2007 Belgian Gender Mainstreaming Act states that within the scope of procedures for the assignment of public spending contracts and the granting of subsidies, consideration should be given to the equality of men and women and to the integration of the gender dimension.

There is no systematic way of making case law available, except for the cases of the Constitutional Court, the Council of State and the Court of Appeal. The Institute for Equal Treatment of Men and Women does make an effort, however, to annually compile, in the form of a booklet, all ‘known’ case law that relates to sex equality, i.e. the relevant case law from the European and national levels that has come to the Institute’s knowledge. Judges can also order the discriminator to display the court’s decision within or outside the enterprise’s premises.

14. In your country, how important are the possible factors mentioned below which would influence a person's decision to avoid seeking redress in case of alleged pay discrimination based on gender?

	Very important	Rather important	Rather unimportant	Not at all important	Do not know
Lack of knowledge on how/where to complain	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inadequate levels of compensation for victims	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lengthy and costly litigation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support from professional bodies (e.g. equality bodies etc.)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Perception that no action will be taken to remedy a wrongdoing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Fear of professional consequences (e.g. lack of promotion, discontinuation of an employment contract)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other, please specify:

The cost of litigation is a barrier that still seems to be a major disincentive for many victims of pay discrimination to actually bring a claim is the high cost of legal proceedings. High costs relate to both court fees as well as to the costs of legal representation. In Belgium, the losing party bears all the costs, i.e. the court fees as well as the legal representation costs of the winning party (2017 Legal experts Report on the enforcement of the equal pay principle in EU Member States, Iceland, Liechtenstein and Norway).

The analysis of the Belgian case law has shown that few cases relating to wage inequality are brought before the courts. Access to justice for victims of wage discrimination can be hampered by lengthy and costly court proceedings, delays, lack of effective sanctions and inadequate compensation. The problem also lies in the limited access to the information necessary to bring a claim for equal pay. This poses a problem in the context of the shift in the burden of proof, which requires the victim to first establish facts that support the presumption of discrimination. Only then will the employer be required to prove the absence of discrimination. The communication of salary information is therefore problematic in the private sector, given the confidential nature of this data.

Several bodies can be seized to assist the victim, namely the Institute for equality between men and women (Institut pour l'égalité des femmes et des hommes). The employer can also directly seized the Belgian Authority in charge of Controlling Social Laws. Inspectors are empowered to initiate conciliation proceedings to end discrimination.

Belgian laws protect the employee who has lodged a reasoned complaint with the labour inspectorate or who has taken legal action. Indeed, workers enjoy protection against dismissal. The employer can not terminate their employment relationship or unilaterally change the working conditions of the worker.

Protection against victimisation is applicable during twelve months after the complaint was filed, or until the end of a three-month period following the delivery of a final judgment in the case.

15. Which of the following measures would encourage victims of gender-related pay discrimination to seek a redress in your country, and to what extent?

	Very large extent	Rather large extent	Rather small extent	Not at all	Do not know
Clear information and awareness-raising by the State (e.g. information campaigns) concerning the right to redress for victims of pay discrimination (including on advice, assistance, applicable procedures and costs)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear information for individuals about the possibility to be represented in the judicial and/or administrative procedure by the equality body.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Awareness of individuals that their claim is facilitated by the fact that it is up to the employer in a judicial procedure to prove that there was no breach of the principle of equal pay (burden of proof)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear information on pay systems at company level (e.g. regarding the existence of a comparator performing work of equal value in the company /organisation)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear information by employers to their employees on the right to compensation for victims of pay discrimination and on the internal procedures in place	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear information and awareness-raising by trade unions concerning the right to redress for victims of pay discrimination	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other, please specify:

The awareness of individuals that their claim is facilitated by the fact that it is up to the employer to prove there was no breach of the principle of equal pay would not make a significant difference in encouraging victims to seek redress. Indeed, the problem lies in the limited access to the information necessary to bring a claim for equal pay. This creates a problem in the context of the shift in the burden of proof, which requires the victim to first establish facts that support the presumption of discrimination. Only then will the employer be required to prove the absence of discrimination. It is only by making pay information transparent that the victims will have the necessary information to seek a redress.

16. Do you think that the measures (legal or administrative) which exist in your country are sufficient to combat gender-related pay discrimination, or that there is a need for some further EU-level action on measures to address such discrimination?

- Existing measures at national level are sufficient
- Existing measures at EU level are sufficient
- Member States should enhance existing legislative measures
- EU should enhance existing legislative measures
- There is a need for further non-binding national measures
- There is a need for further non-binding EU measures
- There is a need for new legislative measures at national level
- There is a need for new legislative measures at EU level
- Do not know

Comments or explanations, if any:

Pay inequality has barely changed since 2010, and has actually gotten worse in some countries, including the UK, Poland, Portugal and Bulgaria. Closing the gender pay gap by 2030 is possible. This was confirmed during the 2017 Annual Colloquium on Fundamental Rights “Women’s Rights in Turbulent Times” organized by the European Commission. Participants agreed that “it should be possible to close the gender pay gap by 2030”. They highlighted that “shifting the balance of responsibility” and “starting to share the care” were the main keys to achieve this goal.

It is unfortunate that the questionnaire mainly focuses on measures treating the symptoms and that measures tackling the care penalty are not proposed at all. This is the most important root cause of the gender pay gap and it is included in the EU Action Plan 2017-2019 on tackling the gender pay gap as one of the 8 areas for action but the public consultation does not mention the use of work-life balance policies. We strongly support the need to ensure the swift implementation of the non-legislative actions laid down in the Communication of the Commission (COM(2017) 252 final) about the protection of carers.

The principle of equal pay has been an integral part of the Treaties for almost 60 years. However, despite legislation adopted at European and national levels, the gender pay gap has not been closed yet. This can be explained by the fact that we have failed to address one of the major root causes of the gender pay gap which is the unequal distribution of the care work. A new way to approach this issue is necessary and care work needs to be put at the centre of priorities in addressing the gender pay gap.

The 2017 Gender Equality Index of the European Institute for Gender Equality emphasizes the growing and persistent gender inequality in time-use for housework and caring of dependent family members (children, the elderly and people with disabilities). Time spent on domestic and care work has a major impact on women’s employment opportunities, economic independence and capacity to participate in leisure activities. It has been observed that Belgium is among the three countries in which the biggest decrease in unequal time sharing between women and men scores took place.

As the European Union’s population is ageing, the need for care work will only increase and the care gap will grow wider. Women carers will not be able to remain in the workforce if public authorities do not support them in their caring activities by creating more quality and affordable childcare facilities, support of informal carers (respite care, training etc), work-life balance policies etc.

We also notice there is no clear notion of “work of equal value” at EU-level, which creates legal uncertainty. The ECJ case-law is trying to define this notion but this definition remains too broad. We suggest to include a definition of “work of equal value” with the precise criteria Member States should consider to classify the different jobs. Annex 1 of the Commission staff working document 2013/0512 about Gender Neutral Job Evaluation and Classification Systems could be the standard framework to be used by Member States to compare the jobs. This is crucial to determine if there is a gender pay gap and calculate it in an

harmonious way across the Member States.

The existing lack of wage transparency is also an obstacle to the gender pay gap. Indeed transparency makes the pay gap visible by revealing possible gender bias or discriminations in pay structures of a company or industry. Moreover, it enables employees, employers or social partners to take appropriate action and it constitute the necessary information for victims of discrimination to bring their case to court. It is only by making pay information transparent that the victims will have the necessary information to seek a redress.

The 2014 EU Recommendation on strengthening the principle of equal pay between men and women through transparency provides the first ever toolbox of specific pay transparency measures that aim to tackle pay inequality and the persisting gender pay gap. It encourages Member States to introduce at least one of these transparency-enhancing measures to address pay discrimination. However, it is a non-binding legal instrument which does not impose any formal obligations on Member States. As revealed by the 2017's Commission Report although most Member States have some measures aiming an increased pay transparency, in a third of Member States such measures are entirely absent. We therefore suggest to implement these measures in the revision of the 2006 Directive on the gender pay gap and impose States to introduce these transparency-enhancing measures to address pay discrimination.

Taking into account the above elements, we believe the 2006 Directive on gender pay gap should be revised. You can find our precise recommendations in our attached file.

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