

Opinion on **Gender Pay Gap**





Advisory Committee
on
Equal Opportunities for Women and Men

The opinion of the Advisory Committee does not necessarily reflect the positions of the Member States and does not bind the Member States.



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1. Introduction

The Treaty of Rome 1957 established the principle for equal pay between women and men for equal work and work of equal value. Article 119 (now Article 141) of the Treaty of Rome was augmented by the Equal Pay Directive of 1975 and across the Member States of the European Union generally the principle of equal pay is reflected in legislation.

At European level also, there have been numerous referrals from national courts to the European Court of Justice on interpretation of the Treaty provision and the Equal Pay Directive. The Court's decisions have provided guidance for national courts on the application of the concept of equal pay for equal work and work of equal value.

Despite this, and the very different situation of women in the labour market than that which pertained in 1957, there remains a gender pay gap and the guarantee of equal pay for equal work, given to European women 50 years ago, is still far from being achieved.

The context in which this Opinion has been drawn up is one which has seen the adoption by the European Commission last year of the Road Map for equality between women and men, with its specific focus on equal economic independence for women and men; the European Pact for Gender Equality agreed by Member States in March 2006 which commits them to undertake concrete measures in relation to employment; and the continuing focus by the European institutions on equality matters, including the 2007 EU Year on Equal Opportunities for All. The Advisory Committee also notes the Framework of Actions on Gender Equality adopted in March 2005 by all European Social partners, which has addressing gender pay as one of its four priorities.

This Opinion of the Advisory Committee seeks to identify best practice amongst recent legislative and policy responses at Member State level and to propose solutions and orientations for possible actions and responses at EU level for reducing the gender pay gap. The Advisory Committee trusts that the Commission will find this Opinion useful in preparing its communication on equal pay scheduled for 2007. It is understood that the aim of the Communication will be to identify and explain the factors contributing to the pay differences between men and women and to propose possible actions for eliminating the gender pay gap.





2. The gender pay gap

The gender pay gap has remained one of the consistent areas of inequality between women and men. Estimates vary on the extent of the pay gap, ranging between 15-25%. Numerous reports and studies have sought to both quantify the gender pay gap, at EU level and at Member State level, and to analyse the causes of the gender pay gap.

Much recent work for the European Commission has provided valuable information from which the following is drawn. It should be stated that such information and analysis that can be included in an Opinion such as this is, by its nature, taken at an aggregate level and does not necessarily reflect the position in each and every Member State of the European Union.

This Opinion does not seek to repeat the wide-ranging research undertaken in this area but the following factors are generally put forward as contributing to the gender pay gap:

- occupational segregation: the increase in female employment is being achieved mainly in occupations which are dominated by women and characterised by low pay;
- sectoral/industrial segregation remains a factor also, with much greater differences evidenced in the private sector than the public sector;
- vertical segregation of the labour market remains a factor in determining the gender pay gap, with women less likely than men for example to work in the highest paid levels, even in areas where they are relatively well-represented;
- inequalities in education and training, with consequences into the labour market, inequalities based in some instances on access to provision and in other instances based on stereotypical assumptions about appropriate roles for women and men and subject choices made by young people, although there has been significant improvements in educational attainment levels of girls;



- work performed by women is in many cases considered as of lower value than that performed by men, based on stereotypical attitudes and historical patterns and this also contributes to the gender pay gap;
- wage structure/composition of pay: pay systems consist of several different parts of remuneration, sometimes negotiated on an individual basis and considered confidential, for example task-specific components, individual performance and competence components, and results-based components. It is therefore important to ensure equal awareness of women and men of the impact of such individual negotiations and their equal treatment. It is also important to review regularly pay scales and job evaluation schemes to ensure they do not include any directly or indirectly discriminatory features;
- differences between women and men in terms of hours worked - part-time work, in which women are over-represented, is one of the key determinants of being in the lower income brackets;
- the current imbalance in the sharing of family responsibilities between women and men: women spend more time in paid and unpaid care for dependents and people with additional support needs than men do, impacting on the hours they have available for paid work;
- male worker model: labour market organisation and its pay system were established following a male worker's life cycle and needs. Laws and policies have tried including female workers in the labour market by granting women equal rights and equal treatment. However, this has not changed the contradictions female workers experience when having to follow the male worker model, for example comparing their working life experience to their male colleagues' working life experience, and demand equal treatment and non-discrimination. It is also relatively rare that experience and skills gained in unpaid work is taken into account;
- systems of collective bargaining and negotiations between the social partners in some countries are based on the male worker model and this can also operate to perpetuate the gender pay gap;



- there are also differences in pay between different groups of women – for example, the gender pay gap tends to widen with age, and it is higher for married workers than for single workers, and for working mothers; factors such as disability, race and other factors which lead to multiple discrimination of vulnerable groups of women also impact on the pay gap. This also impacts of relative pay rates between different groups of men;
- the pension gap is the continuation of the pay gap after retirement: statutory and occupational pensions are not included in the concept of the gender pay gap, i.e. the difference between the average pay level of male and female employees yet it is clear that women's pensions on average are less than men's.

It is also true that the individual nature of equal pay litigation, with its inherent limitations in addressing structural inequalities, and the specific provisions of equal pay provisions such as the identification of a comparator and the gathering of proof of pay discrimination, information usually considered confidential and therefore not easily or at all accessible, has had limited impact.

The gender pay gap is the result of pay discrimination on the one hand, both direct and indirect, and all the aforementioned interdependent and inter-related factors on the other hand.

Equal pay legislation, equal opportunities policies and relevant wage policies are neither effective nor adequate, given that affordable, accessible and high-quality care for dependants and people with additional support needs, and women-sensitive leave arrangements have not been intrinsic components of the effort to close the pay gap. It is the collective responsibility of the European Union, Member States' governments, employers and trade unions to implement a set of specific measures to close the pay gap and these measures should be highlighted in the European Employment Strategy (EES) as a special target. The active involvement of women's groups in this work would be beneficial.

The Advisory Committee recognises that the European Employment Strategy (EES) in 2003 called on Member States 'to achieve by 2010 a substantial reduction in the gender pay gap in each Member State through a multi-faceted approach addressing the underlying factors of the gender pay gap including sectoral and occupational segregation,



education and training, job classifications and pay systems, awareness raising and transparency'. However, the reformulation of the EES in 2005 with its emphasis on integrating employment policies with economic policies involved the replacement of the reduction of the gender pay gap as a special target to incorporate in general guidelines.

It is clear that efforts remain necessary to close the gender pay gap in both the private and public sectors, and concrete objectives and timetables are required, both at EU level and at national level.

Good practice in reducing/elimination the gender pay gap at Member State level

A number of recent studies, for example the Report on Equal Pay of April 2006 to the Commission regarding the situation in individual Member States by legal experts and the publication 'The gender pay gap – Origins and policy responses: A comparative review of 30 European countries', of July 2006, have provided a useful source of information.

Some examples of good practice include:

- Belgium – An Equal Pay Day has been established, with the aim of raising awareness of the public about the persistence of gender wage inequality, to discuss wages more openly and to encourage positive policy responses, there is also a Guidebook on job classification which is a tool available for employers and trade unions in avoiding and eliminating gender bias in pay systems (2006) and a 2006 decision by the federal government to establish an annual report aimed at monitoring progress being made in reducing the gender pay gap based on updated and reliable statistics. The first annual report will be published on 26 March 2007.
- France – a law adopted in March 2006 on equality of remuneration between men and women and strengthening women's rights in respect of maternity leave aims to oblige enterprises to take steps to close the gender pay gap by 31 December 2010 and to provide for catch up salary payments to be made following maternity or adoption leave.
- Hungary – two relevant provisions in the law aimed at promoting voluntary regulation by parties on equal opportunities. One is an Equal Opportunity Plan



(EOP) under the Labour Code where it provides that an EOP shall be adopted by public employers and private employers with State-owned share over 50% for each year. In order to eliminate the inequalities in employment of traditionally discriminated against or vulnerable groups. Wages are specifically mentioned among the subject of the Plan of Action.

- Italy – public and private firms employing more than 100 employees have an obligation to provide statistical information on the employment conditions of their employees broken down by gender every two years (1991 Law on Positive Actions; Article 9, Act 125/1991). The companies have to give the report to local equality advisors and to the trade unions at company level. These reports could be used by equality advisors and/or trade unions to tackle horizontal and vertical segregation as well as the gender pay gap at company level.
- Luxembourg – Since June 2004 a law was enforced that obligates social partners to bargain on equal pay. Under this law, collective bargaining has to include a provision concerning the implementation of the principle of equal pay between men and women.
- Malta – where relatively little information is available, a study has been initiated on the gender pay gap which is regarded as an important step towards assessing the actual gender pay gap and a useful tool for raising awareness.
- Netherlands – An equal pay working group was established in 2005, bringing together organisations relevant to equal pay – employees and employers organisations, the Equal Treatment Commission, the Dutch Human Resources Policy Association and the Dutch Association for Employee Participation. In a specific focus on equal pay, the group is focusing on increasing familiarity with equal pay regulations, increasing compliance with such regulations and publicising various instruments that have been drawn up on equal pay
- Norway – in March 2006 the Government announced the appointment of the first Norwegian Commission on Equal Pay. It is tasked with placing the issue firmly on the political agenda and to vitalise the debate on equal pay. The Commission will launch concrete proposals for future strategies not only in connection with the



wage settlement processes. The Commission has been established because gender differences are still substantial and change has been low.

- Portugal – The Commission for Equality in Labour and Employment has promoted several gender equality training courses for judges and other agents involved in the process of justice administration, with the purpose of promoting a better application of gender equality legislation.

Since 2004 all employers, with the exception of central, regional and local administrations, public institutes and other collective public entities, as well as employers of domestic service workers, are obliged during the month of November to display in a visible place (or for online consultation) for a period of at least 30 days, the list of their staff indicating each employee's earnings (Law N° 35/2004, of 29 July, Articles 452 to 457 and 490). This information must be available to the public authorities, as well as, on demand, to trade unions and employers' associations. Non-compliance is considered a minor offence, and depending on the degree of guilt and the firm's outcomes, the fine may vary between UC 2 and 15 (each UC corresponds to EUR 89).

- Sweden – in a major reform of the Equal Opportunities Act introduced an undertaking in 2000, the rules on pay discrimination were amended to better conform to Article 141 EC and the European Court of Justice case law. This reform included a definition of the concept of work of equal value and new detailed rules on active measures to tackle pay discrimination – this part of the EOA sets a requirement on employers and employees organisations to co-operate actively to achieve equality between the sexes and the issue of equalising and preventing differences in pay in traditional employment are explicitly addressed. The Swedish Trade Union Confederation co-ordinated their collective bargaining at the industrial level in the bargaining round of 2004. This was to allow higher wage increases by industrial unions representing big groups of lowly paid women without this leading to high general wage increases. This benefited municipal workers in the care sector and shop assistants.

In Sweden also, from 1 July 2006, the Parental Leave Act has been strengthened. A prohibition against unfair treatment of parents was implemented. An employer may not, for example, treat a parent unfairly when applying salary terms or other terms of employment when the parent is on parental leave. The prohibition will probably have a



positive impact on the gender pay gap as one important cause of wage inequality on Sweden is parental leave.

- United Kingdom – In 1999 an important agreement was made in the National Health Service ‘*The Agenda for change: modernising the NHS pay system*’. One of the main aspects of this agreement was the introduction of a new integrated pay structure for the NHS with two important goals – to improve the relative position of the very lowest paid workers in the NHS and to ensure as many staff as possible moved to a band that would provide higher maximum pay than previously. The first indications are that several groups have improved their rate of pay, eg cleaners and health care assistants.

The Equality Act of 2006 amends the Sex Discrimination Act 1975 in Britain to place a statutory duty on all public authorities from carrying out their functions to have due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women. This will come into effect on 6 April 2007 and should ensure the public sector addresses issues of equal pay. In NI, there has been a focus on mainstreaming gender equality through the equality duties given to public authorities enacted in the Northern Ireland Act 1998.

3. Recommendations

The Advisory Committee recommends the following for action by the European Commission in the coming period:

Availability/dissemination of information

The European Commission should/could:

- facilitate an exchange of information across the European Union about the gender pay gap and policy responses – through publications and EU-funded working groups both at national official level and at the level of social partners;
- encourage improvements in statistics and analysis of statistics at EU level and at Member States level to ensure an ongoing focus on the extent to which the gender pay gap remains problematic and a greater uniformity of data collection to facilitate EU comparisons;



- encourage greater focus by Member States Governments on raising the gender pay gap as a matter of political concern through such mechanisms as the establishment of task forces with a specific remit to look at the gender pay gap and to produce recommendations relevant to the Member State;
- produce a set of guidelines to advise social partners on concrete measures that can be taken to improve the gender pay gap, including addressing such issues as gender neutral job evaluation, job classification systems and the importance of analysis of pay gap within organisations, recognising the autonomy of collective bargaining and negotiations between the social partners in Member States;
- disseminate information on the caselaw of the European Court of Justice as a means of encouraging adherence across the EU to the standards set by the European Court, to the legal profession and the judiciary in Member States and to the social partners and women's groups;
- this dissemination to include, in particular, a focus on the consistent application of Directive 97/80/EC and its provisions to shift the burden of proof in equal pay cases, to make it easier to take individual complaints;
- support the work of national equality bodies in their efforts to promote action to eliminate the gender pay gap.

4. Additional legal measures

The European Commission should/could:

- consider augmenting existing legislation with an obligation on employers to produce pay audits and action plans covering all aspects of the pay gap on a mandatory basis¹;
- consider ways of encouraging Member States to make provision under national equal pay laws for representative legal actions as well as legal action by individuals;



- explore ways in which the legislative framework could be more supportive of social partners which wish to tackle the gender pay gap, which could include a limited protected period when social partners are implementing action plans to eliminate a gender pay gap;
- seek to use the positive action provisions of Directive 2006/54/EC as the basis for encouraging Member States to adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring the full equality in practice between women and men in working life, for example, introducing statutory equality duties to oblige public authorities to undertake to address the gender pay gap.

5. Complementary measures

The European Commission should/could:

- encourage Member States to address the provision of adequate, affordable and quality care for children and other dependants to enable women and men to contribute equally at work;
- encourage an increased and equal role for men in child rearing care for other dependants, and through taking paternity and parental and family leave by improving legislation, fighting stereotypes and highlighting examples of good practice across the EU;
- encourage employers to adopt family friendly arrangements, including leave and flexible working arrangements, career breaks, to enable better balance between work and caring responsibilities through the provision of examples of good practice and business benefits in firms across the EU;
- encourage actions to address the stereotyping of educational and career choices in particular of young people, to help address occupational and industrial segregation;

¹ This recommendation is not supported by the employers' associations represented on the Advisory Committee.



- consider supporting the use of public procurement of goods and services as a means of promoting action to address the gender pay gap.

6. European Employment Strategy

The European Commission should work to ensure the reintroduction of a specific target and timetable for the elimination of the gender pay gap into the European Employment Strategy and emphasise the importance of encouragement of concrete objectives and timetables being set by the Member States, to cover a range of measures including positive action to address the current occupational and sectoral segregation by gender of education and training and of the labour market, with annual progress reports being drawn up by Member States and a clear role for the European Commission in monitoring progress.