



EUROPEAN COMMISSION

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*Mr. Roberto FICO
President of the Camera dei
Deputati
Piazza Montecitorio
IT 00100 ROMA*

Dear President,

The Commission would like to thank the Camera dei Deputati for its Opinion on the proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms {COM(2021) 93 final}.

The proposed Directive aims to lay down minimum requirements to strengthen the application of the principle of equal pay between men and women for equal work or work of equal value enshrined in the Treaty of the Functioning of the European Union (Art. 157 TFEU) and the prohibition of discrimination on grounds of sex (Art. 4 of Directive 2006/54/EC), in particular through pay transparency and reinforced enforcement mechanisms.

The principle of equal pay for equal work or for work of equal value has been a founding principle of the European Union since the Treaty of Rome of 1957. The 2013 Report on the application of Directive 2006/54/EC¹ and the 2020 evaluation of the relevant provisions in Directive 2006/54/EC implementing the Treaty principle on 'equal pay for equal work or work of equal value'² pointed to a number of problems deterring victims of pay discrimination from enforcing their right and deemed further action necessary. In particular, despite the 2014 Recommendation, a very limited number of EU Member States put forward measures to improve transparency in pay setting systems within organisations. Moreover, key legal definitions and concepts are not applied uniformly in

¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2013:0861:FIN>

² https://ec.europa.eu/info/sites/default/files/swd-2020-50_en.pdf

practice, are insufficiently implemented across national legislations and victims have difficulties to claim their rights.

With this legislative initiative, the Commission aims, first, to empower workers to enforce their right to equal pay and, secondly, to trigger action to address the systemic undervaluation of jobs predominately occupied by women. More specifically, it aims to ensure that all workers have the right to information allowing to uncover gender pay discrimination and to improve victims' access to justice. Large employers with at least 250 workers will be required to report on pay gaps in their organisation and when such a report shows a high risk of unjustified gender pay inequalities, employers and workers' representatives will jointly need to take action to remedy the situation.

The Commission welcomes the Camera dei Deputati's support for the aims of the proposal and takes note of its observations and suggestions regarding Article 4, Article 5(2), the attribution of rights and powers to workers' representatives provided for in Article 7 (4), Article 8, Article 9, Article 10(3), Article 13, Article 18 and Article 22. The Commission has carefully considered each of these issues in an Annex to this letter.

The Commission would like to note that the proposed Directive was submitted to the Union's co-legislators, who are currently scrutinising and negotiating the proposal. The Commission takes an active role in presenting and explaining the proposed legal provisions. The Camera dei Deputati's observations and suggestions are much appreciated for this important legislative stage.

In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.

The Commission looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Didier Reynders
Member of the Commission*

Annex

The Commission has carefully considered each of the issues raised by the Camera dei Deputati in its Opinion and is pleased to offer the following clarifications:

As for a possible further specification of the evaluation criteria of article 4, these are intentionally broad: the only requirement is for them to be gender-neutral. This flexible obligation leaves to Member States the choice of the tools or guidelines at national level; these could be developed by Governments and/or social partners. Such tools may include guides, based on examples such as the International Labour Organization (ILO) Guide ‘Promoting Equity: Gender-Neutral Job Evaluation for Equal Pay’ published in 2008 and the Commission guide from 2013 (published as an annex to the implementation report of the 2006 Recast Directive {SWD/2013/0512} and based on the ILO guide), and methodologies such as the Lithuanian Methodology for the Assessment of Jobs and Positions based on eight main factors.

With regard to the reference to a hypothetical comparator, this possibility is already envisaged by some Member States in their national legislation transposing existing EU gender equality legal provisions (see i.e. Directive 2006/54/EC, Article 2(1)(a-b)), on the definitions of direct and indirect discrimination (e.g. ‘[...] where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage [...]’). Such a possibility of referring to a hypothetical comparator, when a real comparator is absent, allows the alleged victim to compare to a person who would be treated differently. This possibility is especially relevant in highly gender-segregated employment markets where finding a real comparator of the opposite sex could make it almost impossible to bring an equal pay claim. This practice is already explicitly recognised in 10 Member States (AT, DK, ES, FR, HU, IT, MT, PT, RO, SE) but is, according to the current legislation, applicable in all Member States. The proposal only seeks to make the existing rules in this respect more visible.

The Commission has carefully considered the Camera dei Deputati’s suggestion to clarify the scope of Article 5(2), in order to limit its application to requests that may have discriminatory effects. The Commission however considers the general prohibition to ask about previous salary as essential to disrupt the perpetuation of a pay gap between female and male workers which affects individual workers over time, especially when they change jobs, and which thus has a very important impact on their gender pay gap by the end of a career.

In relation to the attribution of rights and powers of workers’ representatives, the proposal strengthens the promotion of forms of collective protection in its Article 13(2) by introducing the right for equality bodies and workers’ representatives to bring claims on behalf of more than one worker. This aims at overcoming the procedural and cost-related obstacles that victims of gender pay discrimination face when seeking to enforce their right to equal pay. It further aims to bring about procedural efficiencies and to trigger pro-active compliance by employers through awareness raising and peer

pressure. Allowing workers to join their claims also shows that, as a society, we do not see matters of equal pay as individual workers' interests but also as a broader societal, public interest.

As regard the Camera dei Deputati's suggestion to specify in the text of the Directive that the representatives should be identified by the workers concerned, the Proposal's recital 29 and its operative parts do not enter into details on how workers' representatives should be designated. This is dependent on social dialogue at national, sectoral, and employment level. Would the co-legislators consider that further detail is necessary on this point, this could be clarified through amendments in the text of the Directive.

Regarding the Camera dei Deputati's opinion on Article 7(3) and (4), Article 7(3) is directly related to workers' right to request information on their own through Article 7(1). Article 7(4) however aims at avoiding fear of victimisation by providing the right to workers to request the information through their representatives or an equality body. The requesting method chosen by an employee would then determine whether the employers' obligation under Article 7(3) will be fulfilled by providing the requested information through the representatives or directly to the workers themselves.

The Commission takes due account of the Camera dei Deputati's suggestion with reference to Articles 8 and 9, to extend the information requirements to employers with fewer than 250 employees. The proposal provides for a relatively high threshold taking into account the current difficult economic situation, which calls for proportionate action. This is counterbalanced through Article 7 by the right of each individual worker, irrespective of the size of the employer, to request and obtain the information needed to assess whether they may be subject to gender pay discrimination.

As regard Article 11 of the proposal, the Commission views as crucial the participation of social partners in advancing gender equality in employment relations. This provision is a tool for stimulating social dialogue, to trigger discussion of social partners about equal pay. As a result, employers and trade unions could for example identify a list of possible measures to address equal pay issues and/or the discussion could feed into wage negotiations. Social partners are best placed to detect the strengths and weaknesses of action at national, regional, and local level to prevent and combat pay discrimination based on sex. The objectives of this provision could be achieved through different policy measures aimed at developing active social partnership. The provision however does not require any obligation of results so that it does not interfere with the autonomy of social partners and their contractual freedom and takes due account of the diversity of national law and practice in this regard.

With reference to Article 22, the proposal provides workers and their representatives the right not to be treated less favourably after having exercised their rights relating to equal pay between men and women. Its paragraph 2 requires Member States to introduce measures to protect workers and their representatives against dismissal or adverse

treatment by the employer as a reaction to a complaint or legal proceedings aimed at enforcing any rights or obligations relating to equal pay. This consequently applies to workers who have exercised their right to information under Article 7 of the proposal.

As regard the monitoring body of Article 26, it has specific tasks in relation to the implementation of the pay transparency measures foreseen in the proposal and should gather certain data to monitor pay inequalities and the impact of the pay transparency measures. This body can be part of a ministry, an equality body, a labour inspectorate or another body pursuing similar objectives. The provisions of the proposal gives flexibility to Member States to decide which of existing national bodies better fits for this exercise or whether they wish to set up a new body.

Regarding the Camera dei Deputati's suggestion to give the monitoring body functions to promote organisational and decision-making skills acquired by workers following maternity, the Commission is of the view that this precise function falls outside the scope of this proposal related to pay transparency.