



EUROPEAN COMMISSION

*Brussels, 16.08.2021  
C(2021) 6120 final*

*Ms Maria Elisabetta ALBERTI CASELLATI  
President of the  
Senato della Repubblica  
Piazza Madama, 1  
IT – 00186 ROMA*

*Dear President,*

*The Commission would like to thank the Senato della Repubblica 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}.*

*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), as well as of 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/EC<sup>1</sup> and the 2020 evaluation of the relevant provisions in the Directive 2006/54/EC implementing the Treaty principle on ‘equal pay for equal work or work of equal value’<sup>2</sup> 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 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 job predominately occupied by women. More specifically, it aims to*

---

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

<sup>2</sup> [https://ec.europa.eu/info/sites/default/files/swd-2020-50\\_en.pdf](https://ec.europa.eu/info/sites/default/files/swd-2020-50_en.pdf)

*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 Senato della Repubblica's support for the aims of the proposal. At the same time, it notes its concerns relating to the criteria to evaluate 'work of equal value', the provision in the last sentence of Article 4 (4) of the proposal and the exemption threshold for pay reporting obligations.*

*The Commission takes seriously these concerns and is pleased to have this opportunity to provide a number of clarifications regarding its proposal that trusts will allay the Senato della Repubblica's concerns.*

*As for a possible further specification of the evaluation criteria, 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 Labor 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.*

*As for 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.*

*Finally, as for choosing the threshold for pay reporting obligations, the Commission would like to clarify that the measures under Article 7 and those under Articles 8 and 9 have slightly different purposes. While all workers, independently from the employer's size, are covered under Article 7 with the aim to help individual workers to enforce their right to equal pay, pay reporting measures aim to encourage companies to proactively look at their pay systems and trigger structural change when necessary. While this also benefits individual workers, the systemic aim of Articles 8 and 9 was considered to better*

*fit to larger employers as a minimum requirement. It is, however, ultimately a matter of political decision and Member States would be free to go beyond the minimum requirements of the proposal.*

*The Senato della Repubblica's Opinion has been forwarded to the relevant Commission services and will form part of the briefing files in the ongoing negotiation. Discussions between the co-legislators and the Commission concerning the proposal are now underway and the Commission is hopeful that an agreement will be reached in the near future.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senato della Repubblica and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Janusz Wojciechowski  
Member of the Commission*