



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2014)

**Opinion**

**Title**

**DG JUST - Impact Assessment on an initiative to strengthen the principle of equal pay through transparency**

(draft version of 17 January 2014)\*

**(A) Context**

The principle of equal pay for men and women has been a fundamental principle of law since the Treaty of Rome where it was laid down in Article 119 (now Article 157). It was further specified by secondary legislation in Council Directive 75/117/EEC and is today a key element of Directive 2006/54/EC on the implementation of the principle of equal treatment of men and women in matters of employment and occupation.

In spite of the fact that this is a long-standing principle that is laid down in every Member State's legislation and has given rise to a considerable amount of case law both by the CJEU and at the national level, a substantial divide between pay levels of men and women appears to still persist throughout the Union, albeit to significantly varying degrees.

In its Strategy for Equality between Women and Men (2010-2015) the Commission reiterated its commitment to promote equal pay between men and women for equal work or work of equal value. It announced that it would explore together with the social partners possible ways to improve the transparency of pay.

**(B) Overall opinion: POSITIVE**

**There are several aspects of the report that should still be improved. First, the subsidiarity analysis should be strengthened, inter alia by better explaining why it is considered that Member States cannot effectively tackle the problem and how EU action would add value. The report should also streamline the presentation of the options by moving the identification (and analysis) of the implementation alternatives to a later section. While the assessment of the options has been improved, further efforts are needed to reinforce the analysis with regard to the effectiveness and proportionality of the measures. To this end, more details regarding Member States' relevant experiences with similar measures should be provided. Moreover, the presentation of distributional effects should be enhanced to better indicate which actors are to benefit the most from the recommended measures. Finally, a set of indicators to monitor the success of those measures in reducing the gender pay gap needs to be put forward.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

### **(C) Main recommendations for improvements**

**(1) Improve the analysis of subsidiarity.** The analysis of subsidiarity should more clearly explain the reasons why Member States on their own cannot effectively tackle the identified issues and the value added of acting at EU level. Legalistic interpretations of the implications of the subsidiarity principle (e.g. top of p. 25) should be deleted since they add complexity to the argumentation without clearly strengthening it.

**(2) Better present the options.** The presentation of the options needs to be further improved by focussing only on the different content alternatives. The identification of possible implementation instruments should then be left for a later section once the package of preferred measures has been determined. This would also help to streamline the analysis and avoid repetitions since the quantified impacts of each of the current 4 non-binding variants are systematically one third of those of the corresponding binding variant. The legality of the option to oblige social partners through EU law to consider equal pay as a separate issue in collective bargaining should be clarified given their autonomous powers to set wages in many Member States. With regard to the discarded options, the additional detail on the European Semester recommendations is welcome. However, conclusions on the issues which they can or cannot cover or to which they are suited should be avoided.

**(3) Better assess the options.** The assessment of the options section has been improved and the report now provides a more complete analysis. However, that analysis needs still to be rebalanced in favour of more qualitative arguments, e.g. with regard to the effectiveness of the options. To that end, the report should discuss the effectiveness of similar measures introduced at Member State level. Moreover, the report should better explain the reasons for preferring a non-binding solution (e.g. in the context of proportionality). It should also provide a clearer overview (e.g. in the form of a table) of the anticipated distributional impacts. Furthermore, the report should better explain why it is assumed that the competitiveness of EU companies will not be negatively affected. In particular, the assumptions made about the possible positions of different negotiating sides during wage bargaining should be backed up with stakeholders' views. Similarly, the report should clarify how possible 'transitional solutions' (as the one described in p. 31 and footnote 62) may impact on the effectiveness of the relevant measures.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation**

The report should put forward indicators to assess the success of the recommended measures in reducing the gender pay gap. (Currently identified indicators could only give an idea of the uptake by Member States of the recommendations). Consideration should therefore be given in the future to updating the calculations made in the Belgian Presidency report on the gender gap in order to verify if the 'non-objectively justified' part of the gap has decreased in those Member States that have implemented the recommended measures.

<b>(E) IAB scrutiny process</b>	
Reference number	2013/JUST/054
External expertise used	No
Date of IAB meeting	Written procedure An earlier version of this report was submitted to the IAB in December 2013, for which the Board issued an opinion on 19 December 2013.